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No more 9/11s: Reconceptualizing national security and the creation of an American garrison state.

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By Jacob M. Waxman

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Acknowledgements

When I first applied to do an Honors project in April 2013, I was on my study abroad program at King's College London, and had little idea of what I was getting myself into. At the time, I was studying war and conflicts at King's, and wanted to write about United Nations Peacekeeping. To my surprise, I was accepted to the Honors Colloquium. Then, over the summer, I interned at the United States Army | Peacekeeping and Stability Operations Institute at the US Army War College. When I began my research, I soon felt that there was little I could say about peacekeeping that had not already been said. Instead, I drew inspiration from the military atmosphere around me, and decided to write about civil-military relations. As someone who has always been interested in the military and security, with many friends in uniform, but having not served myself, this was a topic that I felt affected me personally.

In the course of my research over the summer and into the fall of my senior year at Macalester, my focus narrowed within civil-military relations and national security until I rediscovered my original scholarly passion, intelligence. The path from that idea to this thesis here has been long and arduous, but I am proud of what I have accomplished. Of course, I would not be where I am today without the help, advice, and inspiration from many people. I want to thank my parents, Paula and Mark, and my extended family, for making me the person I am today. Thank you to my academic advisor, Andrew Latham, for four years of mentoring at Macalester and leading the Honors Colloquium. I also want to thank my reviewers: Dr. Terry Boychuk, Dr. Zornitsa Keremidchieva, and the rest of the Political Science faculty and staff; my Honors partner Kai Wilson for reading the first draft; and everyone else who helped me along the way. Last but certainly not least, I want to thank the staff of the US Army | Peacekeeping and Stability Operations Institute for the inspiration for my project. Hooah.

List of Acronyms

AFSA – Armed Forces Security Agency

AUMF – Authorization for Use of Military Force

CIA – Central Intelligence Agency

Cointelpro – Counterintelligence Program

COMINT – Communications Intelligence

DCI – Director of Central Intelligence

DHS – Department of Homeland Security

DoD – Department of Defense

FBI – Federal Bureau of Investigation

FISA – Foreign Intelligence Surveillance Act

FISC – Foreign Intelligence Surveillance Court

GCHQ – Government Communications Headquarters

HUMINT – Human Intelligence

IRTP – Intelligence Reform and Terrorism Prevention Act / Intelligence Reform Act

MIC – Military Industrial Complex

NATO – North Atlantic Treaty Organization

NSA – National Security Agency

NSA-47 – National Security Act of 1947

NSC – National Security Council

NSC-68 – National Security Council Report No. 68

ODNI – Office of the Director of National Intelligence

OSS – Office of Strategic Services

SIGINT – Signals Intelligence

USA PATRIOT Act – Uniting and Strengthening America by Providing Appropriate Tools
        Required to Intercept and Obstruct Terrorism Act

UCAV / UAV – Unmanned Combat Aerial Vehicle / Unmanned Aerial Vehicle

"What should Americans expect from their government in the struggle against Islamist terrorism? The goals seem unlimited: Defeat terrorism anywhere in the world. But Americans have also been told to expect the worst: An attack is probably coming; it may be terrible. With such benchmarks, the justifications for action and spending seem limitless."

—The 9/11 Commission Report

Introduction

A frequent refrain in contemporary American politics is that 9/11 changed everything. Increased airport security, the wars in Iraq and Afghanistan, and other measures to prevent more terrorist attacks certainly seem to validate this viewpoint. Paradoxically, on a more fundamental level 9/11 changed nothing about US national security. The United States responded to 9/11 with the desire to prevent another devastating surprise attack. In doing so, the US built on existing legislation, bureaucratic agencies, and conceptual frameworks deeply embedded in American political thought and culture. 9/11 was not the first time the US was attacked by foreign agents, and nor was what followed, the War on Terror, the first time the US entered a period of national emergency to defeat a dangerous enemy. This paper will examine the evolution of the national security state in the contemporary United States, focusing specifically on the role of intelligence collection and intelligence agencies within national security.

Even within national security, intelligence does not exist in a vacuum. Understanding how intelligence fits into the national security state will also require studying how the national security state is constructed: in response to a threat, through rhetoric, and legislation and policy papers, and then focusing specifically on intelligence. Exploration of national security fits within the broader scholarly field of civil-military relations. American national security has always been a military-oriented activity, and intelligence is an auxiliary to military force for carrying out national security. Unlike civil-military relations focusing on the armed services, scholarship on what could best be described as "civil-intelligence relations" is profoundly lacking, as the literature review will demonstrate.

The current national security framework is based on legislation and bureaucracy first established during the Cold War. During the 1950s and '60s, American national security policy was transforming the country into a garrison state, and many national security policies and developments today appear to parallel or echo those of the early Cold War. Post-9/11 national security will be compared to that of the Cold War to gain a better understanding of it in a historical context. However, the Cold War ultimately proved to be a temporary emergency, and

when it ended, the quasi-garrison state built to wage it was reduced as well. This is where the episodes diverge. The current national security state began in response to terrorism, which is likely to remain a threat to US national security indefinitely, as the final chapter will explain. The outward projection of the national security state, electronic surveillance on a massive scale, is far less obtrusive than previous actions by earlier iterations of the national security state. Because of this, the current national security state does not appear to draw the same Congressional and public opposition that led to its downfall during the Cold War. Together, these are indicative of a national security state that is likely to be permanent.

The national security state is one of several options that the United States could have chosen to pursue in response to a violent threat. Exactly which option the US chooses depends on two factors: the nature of the threat itself, and how national security is conceptualized when the threat emerges. While the US has had to respond to threats gong back to American Indian tribes on the western Frontier, only select threats have triggered significant reorganizations of how national security is conceptualized and carried out. Those that do tend to threaten the very existence of the United States and its way of life, such as the Civil War, World War I, World War II, and the Cold War. It is these existential threats, or national crises, that trigger the all-encompassing response in the form of a national security state. The possibility of a new national security state within the United States very clearly has implications for the entire country, as it affects the rights of citizens and matters of war and peace. From a scholarly perspective, the national security state matters for policy makers and civil rights advocates, both of whom need to understand each other's concerns in the debate between liberty and security.

In the winter of 2013-2014, the war in Afghanistan is winding down and the war in Iraq is over, while revelations of domestic surveillance are raising profound questions about to what lengths the government is willing to pursue to defeat terrorism. Thirteen years after September 11, 2001, it is now necessary to reflect on the War on Terror, and understand how the nation has changed since then. To provide focus to this topic, I propose the following three research questions that I will answer in this paper. Has the 9/11 terrorist attacks precipitated a conceptual shift in American national security? How does recent government surveillance activity fit into the theoretical underpinnings of national security? How will civil liberties, specifically privacy, be affected by the changes to national security? This paper will specifically focus on the domestic politics of national security, and not on the global portion of the War on

Terror or overseas surveillance. The scope of this paper will also remain at the federal level, examining Congress and the Executive Branch, not the role of the Judiciary or state-level governments, as this is where the majority of civil-intelligence relations occur.

To answer these questions, I will first examine the existing literature on the overarching field of civil-military relations after 9/11, and analyze the dearth of civil-intelligence relations literature. Second will be an exploration of the conceptual framework that has guided American national security since Independence. Then will come the two national security state case studies, the Cold War, and the War on Terror. Within these case studies, this paper will assess the threats that triggered them and how national security was conceptualized in response. From this, I will examine the Congressional legislation and policy directives that created them, and the bureaucracy that operationalized them. I will then examine the presidential rhetoric that legitimized them. Because these are all large subjects in their own right, this paper will only cover selected laws and agencies of particular significance in each case study. This will be followed by an analysis of public involvement in the war effort of each conflict. Public involvement has traditionally served as a limiting factor in the drive towards a national security state. The paper will culminate in an analysis of the current national security state and how it is changing the United States. Based on my accrued research, I argue that the desire to prevent more catastrophic terrorist attacks has led to a change in how national security is constructed and implemented in the United States. While the dire predictions of permanent war abroad and indefinitely suspended civil liberties no longer appear valid, the government appears to have chosen security at the expense of liberty, and is becoming a national security state based on intelligence-gathering, which has been made possible by the unprecedented disconnect between American society and the military.

Chapter 1: Existing Civil-Military Relations Literature

American civil-military relations is a field rich in scholarly literature that address the history, evolution, and current state of the relationship between the military, its civilian masters, and the rest of American society. This body of literature examines civil-military relations from Independence through the present day. This essay will review two landmark works on contemporary civil-military relations, Mackubin Owen's *U.S. Civil-Military Relations After 9/11*, and Andrew Bacevich's *The New American Militarism*. These two books are the preeminent works of post-9/11 civil-military relations scholarship. They examine how the United States appears to have entered into an indefinite war against terrorism, focusing on the use of military force and the growing diversion of views between Congress, the public, and the military in the War on Terror.

1.1 *U.S. Civil-Military Relations After 9/11*

Mackubin Owens' *US Civil-Military Relations After 9/11* was published in 2011, during the US withdrawal from Iraq, but before it was completed in December 2011. Owens reminds his audience that many points of contention present in contemporary civil-military relations debates have occurred previously in American history, such as political parties using the military to advance their own agenda, which happened during the Civil War and after the Cold War.

Owens writes that Samuel Huntington's theory of objective civilian control, now described as "normal" theory, has in fact hindered the prosecution of the War on Terror because in this war, where there is a primacy on non-kinetic activity,[1] actions down to the operational level have significant influence on the success or failure at far higher levels. Thus, military actions must take on an increasingly political calculus, overturning the idea of military autonomy and civilian political decision-making only at the strategic level. He notes that this is a two-way dialogue. While civilian political leaders may play a growing role in deciding the conduct of military operations, the military must also assist civilians in deciding national strategy towards a given conflict.

Owens stands apart from other civil-military scholars, especially his contemporaries, by declaring that claims of a "crisis" in civil-military relations are overblown. He explains that the

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[1] Non-kinetic activity implies actions designed to win "hearts and minds," or clear-hold-build; to win popular support against terrorists or insurgents, rather than destroying an enemy in conventional warfare.

real problem is a lack of grand strategy to guide the application of military force at the strategic/theater level, and in particular conflicts.

Owens writes further that civilian control of the military is divided between the executive branch (the President) and the legislative (Congress). This has encouraged a three-way relationship in which the President and Congress use the military to advance their own agendas, while the military itself also seeks to play the President and Congress against each other.[2] While inefficient and plagued by politics, this system has prevented the military from seizing power as has been the case in numerous other countries, despite the myriad wars the US has been involved in. Elsewhere in the world and history, a unified executive and legislative branch, and the pressures of frequent wars have contributed to the collapse of civilian governments and imposition of military rule.[3]

Owens, like most of his predecessors in the study of civil-military relations, focuses on how civilian control of the military, and the military's influence on its governance, will affect the military's composition and how and when force will be used.[4] He argues that the continuing challenges of Iraq, Afghanistan, and elsewhere have changed the internal dynamic of civil-military relations within the US. Owens stresses the need for civilian political leaders to make policy decisions for the military to execute.

It not a lack of civilian control of the military but rather the implosion of civilian political leadership with regards to its ability to formulate coherent policy and political objectives for the military to achieve in either combat or non-combat operations (such as humanitarian assistance or stability operations), or through non-military measures. There remains a competent and coherent military institution, which is perhaps most dangerous to civil-military relations and liberal society. With no civilian authority capable of standing up to the military in debates over policy, the military has been able to exert a powerful influence over how the War on Terror is conducted.

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[2] Mackubin Thomas Owens, *US civil-military relations after 9/11: renegotiating the civil-military bargain* (New York: Continuum, 2011), 59.

[3] Owens, 80.

[4] Owens, 44.

1.2 *The New American Militarism*

The New American Militarism, by Colonel (retired) Andrew Bacevich, now a professor of political science and national security at Boston University, identifies what he argues is a new and unprecedented rise of militarism in American society. Bacevich traces its history from the creational myths of America's founding through the arrival of the United States on the world stage in the early Twentieth Century, and into the War on Terror. Bacevich argues that while the United States has never shied away from using military force to achieve its foreign policy objectives, the country has experienced a profound shift in how it views the military, and the use of military force, after the Vietnam War.

Bacevich takes the "military metaphysics'—a tendency to see international problems as military problems and to discount the likelihood of finding a solution except through military means" of C. Wright Mills[5] and connects it to the deep-rooted American belief that the United States was doing God's will.[6] This gave the United States the conviction that it pursued a Constructivist, values-based foreign policy, seeing its role in the world in Christian-derived religious terms. He notes, "even among citizens oblivious to or rejecting its Christian antecedents, widespread, almost automatic support for this doctrine of American exceptionalism persists."[7] From that, there was a tendency to see every major conflict, the Revolutionary War, the Civil War, and both World Wars, as an all-encompassing, yet temporary measure. Bacevich argues that prior to Vietnam, "the resort to arms could for the United States never be more than an expedient, a temporary measure reluctantly employed, not a permanent expression of the nation's character."[8]

During the Vietnam War however, this ideology cracked and broke. Bacevich writes that, "Vietnam was a defining event, the Great Contradiction that demolished existing myths about America's claim to be a uniquely benign great power and fueled suspicions that other myths might also be false."[9] This led to a greater scrutiny of the government and military, but Bacevich does not reflect on the role of intelligence, nor the intelligence reforms put in place as a result of the spread of hostility and suspicion regarding all government activities that he himself

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[5] Andrew J. Bacevich, *The new American militarism: how Americans are seduced by war* (New York: Oxford University Press, 2005), 2.

[6] Bacevich, 11.

[7] Bacevich, 122.

[8] Bacevich, 11.

[9] Bacevich, 34.

argues took place in the aftermath of Vietnam, and which was certainly part of the expanding garrison state at the time.

The linchpin of Bacevich's argument is that after the Vietnam War ended the draft; the link between the military and the rest of society, both the public and political elites, was severed, leaving the military to look after itself while the rest of society moved away from it. He writes "Vietnam demolished the notion of military obligation and brought the tradition of the citizen-soldier to the verge of extinction."[10] During the 1980s and the Reagan Revolution, President Reagan promoted a nostalgia for the military as the bastion of conservative American values, and instituted hero-worship of the military and the individuals serving. Reagan created the notion of "support for 'the troops'— as opposed to service *with* them—as the new standard of civic responsibility."[11] This dovetailed with the second Reagan principle, that "reconstituting U.S. military power, Reagan tacitly promised, was not going to entail sacrifice on the part of the average American."[12] While this did not legitimize the national security state, it made it easier to accept. Bacevich uses the Reagan administration years and subsequent rise of neo-conservatism to explain how militarism came to be in the contemporary United States, before finally concluding that this was all leading to an era of indefinite war abroad—the War on Terror, in which Iraq and Afghanistan were still raging, and an American society that is becoming highly militarized.

1.3 Where the Literature Falls Short

As Bacevich and Owens demonstrate, scholarly literature on civil-military relations has identified the disconnect between the military and society after 9/11, and the potential for an endless war against terrorists and other threats. When discussing national security, they explore the use of military force abroad, rarely venturing into domestic politics and national security concerns. This is likely because civil-military relations literature typically focuses on the uniformed Armed Services: the Army, Navy, Marine Corps, and Air Force. Intelligence has always served as an auxiliary component to the military operationally (half of the United States' intelligence agencies are within the Department of Defense), and conceptually it is a complementary foreign policy tool. As the chapter on the Cold War will explain, intelligence has

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[10] Bacevich, 99.
[11] Bacevich, 108.
[12] Bacevich, 108.

taken on a prominent role in national security since World War II, but is unappreciated in the discourse on civil-military relations.

Through my own research, I have come to many similar conclusions about the use of military force as Bacevich, but I will extend his theories further by applying them to the field of intelligence, which is an outgrowth of and now complementary to the military.

The literature on contemporary US civil-military relations and its impact on the condition of the American garrison state falls short because it does not examine the roles of intelligence in post-9/11 national security. Owens' book was considered to be the definitive literature on current civil-military relations in the United States, but largely ignores the implications for domestic national security, and was published in 2011. The first leaks about the National Security Agency surveillance program occurred on June 6, 2013, and have continued on periodically since then. There has not been a serious scholarly effort to reconcile the surveillance programs with the theories and strategies that have guided American national security and foreign policy since World War II. No author has sought to identify the connections between civil-military relations, intelligence, and the growth of a garrison state in the United States. This project will do just that.

Chapter 2: Guiding Theories in National Security

This section will cover the theories necessary to understand civil-military relations, intelligence, and national security: the garrison state, American anti-militarism, citizen-soldiers, civic republican and liberal civil-military relations, conscription, rhetoric, and ultimately the rise of national security in World War II.

2.1 The Garrison State

Sociologist Harold Lasswell first described the theory of a garrison state in a paper in January 1941. Lasswell wrote nearly a year before the Pearl Harbor attack triggered American involvement in World War II. However, there is little doubt that Lasswell wrote in the context of the peacetime American rearmament. He wrote that a garrison state in the US was probable, but not guaranteed, and that it would require significant reorganization of society at all levels.[13] The garrison state is a theoretical condition of national security taken to its extreme conclusion. An entire country will become organized to serve the military and contribute to national defense against some perceived threat. In such a scenario, senior military leaders control society either directly, or through the authority of the legislature and executive branches. Lasswell writes that, "in the garrison state all organized social activity will be governmentalized …there will be no organized economic, religious, or cultural life outside of the duly constituted agencies of government."[14] All of society's exertions are redirected towards the military and preparation for war. Civilian society is organized and stratified to produce soldiers and workers, while the reins of power are passed down within the military and political elite. This society produces soldiers, workers, and war materials either in constant preparation for a war, or to fight an ongoing war. It shifts from a measure of desperation to defend against an existential threat to a method of social control. Threatening an impending total war and yet not going to war is somewhat paradoxical, but serves to maintain societal acquiescence to the garrison state indefinitely. The paradox is that while a garrison state maintains that there is a constant threat to be defended against, it does not seek to go to war, as this would put the garrison state to the test. A battlefield victory would remove the threat, while a defeat would make the public question the efficacy of

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[13] Harold D. Lasswell, "The Garrison State," *American Journal of Sociology* 46, no. 4 (January, 1941).
[14] Lasswell, 1941.

the garrison state. Therefore, the garrison state warns of impending war and the need for deterrence to justify its existence all the while trying to avoid actual violent hostilities.

Lasswell contrasted the garrison state with Cincinnatus-style[15] emergency abrogation of civil liberties, writing that "during emergencies the great powers have given enormous scope to military authority, but temporary acquisitions of authority lack the elements of comparative permanence and acceptance that complete the garrison state."[16] What differentiates a garrison state from an emergency authoritarian state is that in such an emergency, there is an expectation that the crisis is temporary and that emergency powers will be rescinded and liberties restored once the crisis has passed. A garrison state exists indefinitely, in response to an external threat, and will either identify new threats or fabricate them after a particular threat has passed.

Lasswell's dire predictions of what a garrison state in the United States would look like did not come to pass, but the idea of an encroaching garrison state has haunted discussions of American civil-military relations since Lasswell wrote in 1941. In keeping with Lasswell's prediction, during World War II the US government did employ an enormous propaganda machine to maintain public support for the war effort, including official newsreels, posters, and war bond drives. The entertainment industry also helped, working with the government to produce various war films designed to boost the morale of both soldiers overseas, and of civilians on the home front. The federal government rationed food and other consumer goods. Additionally, World War II saw the creation of internment camps for Americans of Japanese ancestry, and domestic anti-spying programs. World War II was a temporary emergency, however.

From the outset, there was an expectation that the Cold War would exist indefinitely. President Eisenhower said as much during his farewell address, describing communism as a "hostile ideology global in scope, atheistic in character, ruthless in purpose, and insidious in method. ... [and] of indefinite duration."[17] By the end of the Cold War however, the United States had not become a garrison state.[18] This is not to say that no parts of Lasswell's prediction came true, but not to the extent nor in the ways he believed they would. What did emerge

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[15] In reference to the Roman dictator Cincinnatus, who was bestowed power by the Roman Senate during an emergency, and then relinquished his power after the emergency had passed.

[16] Lasswell, 1941.

[17] Dwight D. Eisenhower, "Farewell address to the nation," January 17, 1961.

[18] Aaron Friedburg, "Why didn't the United States become a Garrison State?" *International Security* 4, no. 16 (Spring 1992).

during the Cold War was a new version of the Garrison State, the Military-Industrial Complex, popularized in Eisenhower's Farewell Address, and periodic assaults on civil liberties. Today, there is no talk of a full military takeover of the United States, and the US government has not ceded its control of the country to military leaders. However, there are certain, less-extreme tenets of the garrison state that did emerge during the Cold War, and those and others may have re-emerged during the past decade of the War on Terror. These will be examined later on.

2.2 Citizen-Soldiers and the Birth of Civil-Military Relations

Despite the talk of the United States transforming into a garrison state during the Cold War and the War on Terror, and with it, the civil-military/intelligence divide and fears of unending war, it is important to note that such a mentality is a relatively recent phenomenon in American history. Since the Revolutionary War, Americans have long been distrustful of a large standing military and militarist thinking, finding it antithetical to the American values of individualism and capitalism.[19] The American naval historian and geostrategist Alfred Thayer Mahan went so far as to bemoan the *lack* of militarist sentiment in society. Huntington writes that, "the American people, Mahan regretted, were unmilitary and viewed the military spirit as 'the obtrusion of an alien temperament'"[20]

This was in large part a reaction to British policies that helped trigger the American Revolution in the first place, and were spelled out in the Bill of Rights of the Constitution. The strict Constitutional provisions against stationing soldiers in private homes during peacetime, unreasonable search and seizure, and requirement of a public trial by jury were all inspired by Britain's policies in the American colonies prior to the Revolutionary War.[21]

Unlike its European contemporaries, and nearly everywhere else in the world for that matter, the fledgling United States had no "natural predators:" other powers that might pose a significant military threat to the United States and its territorial sovereignty. Its only neighboring state (at that time a colony) was sparsely populated Canada, and it would not come into contact with the viceroyalties of New Spain until much later, during its westward expansion. The Native American tribes on the western border occasionally posed a threat to isolated communities and

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[19] C. Wright Mills, *The Power Elite*, Oxford University Press, 1956: 178.

[20] Samuel P. Huntington, *The soldier and the state; the theory and politics of civil-military relations* (Cambridge: Harvard University Press, 1957), 279.

[21] Constitution of the United States of America, Amendments III, IV and V, (1791).

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farms, but they never posed any real danger to the colonies or the United States as a whole. The Atlantic Ocean and British naval strategy during the early 19th century provided an adequate buffer to any European encroachment.[22] C. Wright Mills, who coined the term garrison state, wrote that the result was, "until the rise of Nazi Germany, the America that had become the creditor to the bankrupt nations of Europe had little military threat to fear,[23]" and so never needed nor developed a standing army or militarist sentiment. The War of 1812 was the only significant exception to this, but even then there was little fear of Britain reconquering all or part of the United States.

This is not to say that Americans or the United States as a whole shied away from fighting. While American Protestantism and capitalism viewed war as unnecessary and the military as anti-liberal, the American way of war had a distinctly liberal bent to it. The idea of mass conscription of citizen-soldiers mobilized to defend their homeland dates back to the Revolutionary War, and played a significant role in shaping how the American public viewed citizenship and military service since then, particularly in how civil liberties and other restrictions on government activity may be superseded during a wartime emergency.

Instead of a large standing federal army to provide for the common defense, the United States before the twentieth century relied heavily on a system of state militia units to maintain internal order, and a mix of territorial militias and Federal units along the western frontier. Aside from a handful of small garrisons to protect federal arsenals (storing heavy weapons to be used by citizen-soldiers during national emergencies), there were no permanent military garrisons within the United States. When there was a national emergency, such as insurrection or foreign invasion, male citizens were expected to answer a call to arms through their state militia or conscription into the federal army.

Conscription is the third rail in discussions of American national security and civil-military relations. It is almost entirely attributable to the problems of the Vietnam War and the use of the draft during it, which resulted in riots and a host of other problems. Until then, mass conscription during national emergencies had been an enduring feature of American politics since before the Revolutionary War. American political thought traditionally held that democratic self-rule required the obligation of self-defense to succeed. The willingness to defend

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[22] Mills, 175.

[23] C. Wright Mills, *The Power Elite*, Oxford University Press (1957): 175.

one's home, community, and polity was the highest expression of civic participation at the local level.[24]

The idea of citizen-soldiers taking with them their civil liberties when called to defend their polity was firmly rooted in two tenets. First, that self-defense went only so far as to include one immediately local polity: the town and county, possibly the state (as in Massachusetts or Pennsylvania), but in no greater sense (the nation). Second, military service was to be for a brief period, and only for citizens. Because it was men of property, they could only afford to be away from their business or farm for so long, before needing to go back to run it. Citizen-soldiers of this kind expected to retain their full civil liberties while under arms, being able to choose officers, speak their minds, and leave when they wanted, rights that civilian citizens enjoyed. This form of citizen soldiery, conducted at the local militia level, helped inspire patriotism in members, but a string of military defeats after Lexington and Concord in 1775 convinced the Continental Congress that promoting military service as an obligation of patriotic citizenship would not win the war.[25]

The lofty rhetoric of patriotic military service as an obligation of citizenship unfortunately did not last long before the onslaught of British regulars steeped in discipline and military professionalism, with dire consequences for the future balance of civil liberties and wartime necessities in the United States. Military necessity trumped patriotic citizenship. Within a year of signing the Declaration of Independence in July 1776, the Continental Congress did two things: expanded the boundaries of citizenship to include all freemen, and made all of them eligible and required to serve in a national army.[26] Once again, military service was an obligation of citizenship, but at a national level. More importantly, whether entering voluntarily or conscripted, recruits entering into the national army were temporarily stripped of the rights and privileges of citizenship, replaced by authoritarian discipline and military drill.

The Revolutionary War was based on a desire to gain a more secure regime of civil liberties and self-rule for citizens, not subjects. The realities of warfare quickly put an end to the idea of citizen-soldiers and civil liberties under arms. Instead, Congress and President Washington realized that the requirements of fighting and winning a protracted war could not

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[24] Meyer Kestnbaum, "Citizenship and Compulsory Military Service: the Revolutionary Origins of Conscription in the United States," *Armed Forces and Society* 27, no. 1 (Fall, 2000).

[25] Kestnbaum, 2000.

[26] Kestnbaum, 2000.

coexist with full civil liberties. Developing an effective combat force meant the temporary suspension of civil liberties for soldiers during emergencies. While the emergency was temporary and full civil liberties would be restored after it had ended, under an emergency some authoritarianism was necessary. Suspending civil liberties originally only applied to those actually serving under arms, but this set the precedent for repealing the civil liberties of the entire population during national emergencies. Subsequent national emergencies, such as the Civil War and World War I saw a continuation of the policy of suspending civil liberties during wartime. Civil liberties were generally restored and authoritarian laws repealed or allowed to expire following the cessation of hostilities.[27] The relationship between over conscription, civil liberties, national defense and military necessity that emerged in the Revolutionary war would go on to set important precedents for domestic political and military concerns in future wars. Civil liberties could be rescinded, and other actions legitimized, by virtue of military necessity for victory.

2.2.1 Democratic Civil-Military Relations

The realization that not all citizens could or would serve in the military even during wartime emergency created a divide between the military and civilian components of society. This divide would exist for as long as there was any sort of military in the United States, regardless of whether it was war or peacetime. Since 1776, the divide has only grown more pronounced and deeper between the two, especially as the military grew larger and more professional. The need for a standing and disciplined army to fight and win the nation's wars was balanced by an instinctual wariness towards anything that could be used to subvert republican rule and install tyranny in its place. By virtue of being an army, the standing regular army of the United States was regarded as a potential enemy to free society. Therefore, it was made subservient to Congress and the President, part of a sweeping system of checks and balances laid out in the Constitution to prevent any one group, in particular the army, from concentrating too much power. This created the field of civil-military relations.

Civil-military relations are the patterns of all interactions between the military and civilian society. Scholars tend to focus on interactions between the military establishment and Congress and the Presidency, as these two bodies directly affect the composure and conduct of the military, and where the military can exert influence over policy and law. There is a

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[27] There are important exceptions, such as the Enemy Aliens Act, still in force today.

normative belief in the United States that civilian control of the military is an intrinsic good thing, and military control of the state is inherently bad.[28]

Civil-military relations at the Legislative and Executive level compares the degree of control that the civilian government has over the military, and the extent of the influence the military has over Congressional and Presidential decision-making. These are not necessarily opposing poles on a spectrum; they are how each side interacts with the other. By virtue of a democratically elected civilian government and structural military subservience to civilian government, the military cannot legally control any aspect of government, nor veto a decision. It can only provide its advice on matters of national security and defense, and carry out defense of the country as defined and tasked by the president and Congress.

2.2.2 Civic Republican and Liberal Civil-Military Relations

There are two prevailing theories of how civil-military relations are conducted in a free society such as the United States. The first is described by historian James Burk as "civic republican theory,"[29] and clearly shows up in the early days of the Revolutionary War. Civic republican theory emphasizes the use of military service as a vehicle for civic participation. This would cultivate civic virtue and a sense of collective identity in the community. Here, where the military and civilian society are one and the same, there is little risk of a military takeover of government, and citizens, in both civilian life and military service, desire to look out for the best interests of themselves and the country as a whole. However, as the Revolutionary War showed, a military comprised under the civic republican theory does not translate well into the dirty business of actually fighting and winning wars.

The liberal theory of civil-military relations does not identify service under arms as an obligation of citizenship. Instead, it views the military as the mechanism to protect the rights and liberties of the civilian populace and the nation from threats to its existence, foreign and domestic. In liberal theory, civil-military relations are an extension of Thomas Hobbes' social contract.[30] The military is distinct from the rest of society and internally autonomous, allowed to organize itself and prepare for war as it sees fit, with the expectation that it will fight and win wars of the nation's choosing, and not question the wisdom of a particular military engagement.

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[28] James Burk, "Theories of Democratic Civil-Military Relations," *Armed Forces and Society* 27 no 1, (Fall 2002).
[29] Burk, 2002.
[30] Burk, 2002.

Civilians are expected to let the military take the lead in dealing with threats. In exchange, the military agrees to remain loyal and subservient to civilian authority, and to not involve itself in the civilian affairs of either government or society more broadly.

Both the civic republican and liberal theories have tenets that can be identified in American civil-military relations. In keeping with the liberal-conservative hybrid that marks American political thought, American civil-military relations resemble a hybrid of civic republican and liberal theories. While the citizen's militia was quickly disproven as an effective combat force, the idea of compulsory service as patriotic civic participation persisted well after the end of the war. In peacetime, the military was frequently marginalized politically, geographically, and financially. However, in significant national emergencies, such as the Civil War and both World Wars, compulsory service returned and all eligible men were expected to either volunteer or be conscripted. Participation also came in the form of paying taxes, and consent to national security measures, including the suspension of civil liberties. This was more in keeping with the liberal theory, which called for civilian consent to the military's decisions for how to wage war. The caveat of course, was that the national emergency was temporary, and when it ended, civil liberties would be restored and the conscripted army demobilized and returned to civilian citizenship.

With a detached military operating under the control of a civilian government, there would always be the question of how to ensure that the military never sought to usurp control or become insubordinate to the civilian government. There were structural checks on this possibility written into the Constitution to prevent it from happening. Under the Constitution, the President of the United States is the Commander in Chief of the Armed Forces, but the Congress of the United States has the authority to raise and maintain a military, as well as to declare war. This set the President and Congress on a perpetual collision course over the use of the military and entrance into armed conflicts, but helped to reduce the power of any one body over the others.

As the military and national defense are the responsibilities of the executive branch under the President, the two typically side together in policy and funding debates with Congress. How much influence and power the military has is a function of how much power the President has in comparison to Congress. When the chief executive is "strong," the military is also more likely to successfully influence Congress in matters of policy. This would include the executive branch

convincing Congress to allow the repeal of civil liberties and other executive branch actions during national emergencies. Conversely, after an emergency or during a period of prolonged peace, Congress is more likely to be "strong" compared to the executive branch and military, and push to reduce the size of the military and return civil liberties.

Civic republican theory most clearly shows up in how American political thought treats the national war effort, though not the military organization itself. During wartime, the whole nation was to become a 'nation-in-arms,' singularly united in total war. According to Samuel Huntington, war became a crusade for society to pursue, and the focus of their every energy.[31] This was shown in World Wars I and especially II, when it did seem like the whole nation was devoted to the war effort. During peacetime however, the power balance shifted back in favor of civilian society, and the military was seen as a vehicle to advance societal goals and ideals. This was demonstrated by the desegregation of the Armed Forces in 1948, and the repeal of "Don't Ask, Don't Tell;" the acceptance of homosexuals in the military in 2013. This is an extension of the idea that service confers the full rights of citizenship, and the equality of citizens, for those who serve.

The draft and conscription periodically returned during great national emergencies, such as the Civil War, World War I and World War II through Vietnam. Even if not all citizens served under arms, the whole country would mobilize in support behind them, either by working to produce war materials, or political support for the war and the politicians and generals running it. This was used to legitimate many public policies passed during wartime, regardless of their connection to the actual war effort.

From this, the first hints of a garrison state emerge. Actions undertaken by the government and military during times of great national emergency were justified on the grounds of military necessity, and they were justified into reaching into all corners of society and life because the country was supposed to be a unified nation-in-arms, committed with crusader-esque zeal for a total war until absolute victory. Should such an emergency continue to exist, and the threat remains indefinite, or is replaced by new ones in rapid succession, then the wartime measures ought to remain in place as well.

It is important to note that not every military engagement in the history of the United States has resulted in mass-mobilization on the part of the entire country. Only the truly great

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[31] Huntington, 157.

existential crises have done so. These were: the Revolutionary War, the Civil War, World War I, World War II, and the Cold War. The War on Terror's inclusion on this list is the source of much debate and will be the focus of a later portion of this essay. Smaller wars, and other limited military engagements have not occasioned the use of conscription to fill the ranks of the military, though they have often been occasion for the President and Congress to pass laws and Executive Orders restricting civil liberties and political participation.

2.3 Conscription in a Democratic Society

To further understand how civic republican theory has influenced the course of American national security from the Revolutionary War to the War on Terror, it is necessary to examine how the use of conscription influences public support for American involvement in war. As discussed earlier, a major war can require the mass conscription of citizens to provide an army, particularly when national survival is at stake. Conscription makes the war effort personal for society. Retired Lieutenant General and former Ambassador to Afghanistan Karl Eikenberry writes that, "as most citizens take a keen interest in the cost and conduct of their police force, so citizens at the national level should have a broad sense of responsibility for the behavior of our armed forces."[32] Under both liberal and civic republican theory, a military should reflect the society that gave rise to it. (Universal conscription was only a feature beginning in the World War I drafts, a lesson drawn from the Civil War draft riots and the rhetoric of shared sacrifice.) Conscription ensures this by requiring all able-bodied citizens to serve, regardless of socioeconomic and ethnic status. Scholars Michael Horowitz and Matthew Levendusky took a quantitative study of conscription and popular support for wars, and noted that, "in existential wars, where the survival of the nation is at risk, democratic publics … will rally and support a war. American support for World War II, from public opinion data, is the prototypical example of such a conflict."[33] Of course, few wars are as total as World War II, and the level of popular support for the war effort varies with each conflict. Eikenberry notes that since the Revolutionary War, "our government has only relied on conscription to field an armed force four times: the Civil War, World War I, World War II, and the Cold War."[34] It is only when the

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[32] Karl W. Eikenberry, "Reassessing the All-Volunteer Force," *The Washington Quarterly* 36, no. 1 (Winter, 2013).

[33] Michael C. Horowitz and Matthew S. Levendusky "Drafting support for war: conscription and mass support for warfare," *The Journal of Politics* 73, no. 2 (April, 2011).

[34] Eikenberry, 2013.

United States is threatened by an existential threat that the public is willing to give up its Constitutional freedoms for the war effort.

Horowitz and Levendusky found that for the decision to go to and remain at war, "mass support falls by 17% when there is a draft (relative to when there is an all-volunteer force)."[35] Support for the war effort is based on the use of conscription, the primary connection between the public and the military, but goes on to affect the broader national security debate surrounding it; how far should the country go towards total mobilization to fight and win? To what extent can civil liberties be temporarily rolled back, and for how long? When conscription is used during a national emergency, the public is more aware of the crisis, and while they may support the war effort, they are also more likely to be wary of an authoritarian expansion of government.

Deciding whether a given war is one of national survival for the United States is as much a matter of perception as it is of reality. Are Congress and the American people sufficiently alarmed by a given threat that they are willing to surrender their civil liberties, pay higher taxes, and send themselves or their sons into battle? In a democratic, free society such as the United States, constructing a narrative of national emergency is a prerequisite to designing, building, and implementing a national security strategy in response to a threat. The greatest spokesperson for that national security strategy is the President of the United States

2.4 The Rhetoric of National Emergency

Rhetoric is a tool used by political figures to convince the public or other politicians to support their idea or course of action. Political communication scholar Robert L. Scott notes that rhetoric shapes perceptions of reality, and is used to induce cooperation and motivation in its audience.[36] While the president is by no means the only political actor in the United States capable of using rhetoric to convince the American to support a particular course of action, he is the most prominent, and directs other members of the executive branch, and allied members of Congress, to follow his lead in rhetorical persuasion. Great speeches by presidents have taken on a timeless quality in American political thought, often invoked decades and even centuries after they were first delivered. They are used to establish historical precedent for contemporary action, reconciling what may seem to be radically new polices and concepts within one long and

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[35] Horowitz and Levendusky, 2011.
[36] Robert L. Scott, in Medhurst, et al, *Cold War Rhetoric*, (Westport, CT: Greenwood Press, 1990), 7.

unchanging arc of American values and national identity. As scholars Kathe Callahan, Melvin Dubnick, and Dorothy Olfshfski write, "myth is the stuff of great orations, such as the Gettysburg Address, which contained fundamental aspects of American political thought. Today, these myths would be regarded as narratives that play a key role in the political acquiescence of the American public."[37]

One of the most important speech acts a president may perform is convince Congress and the public to support going to war. Successful persuasion requires building a narrative that the decision to go to war is in accordance with American values. It requires conveying a sense of crisis, which then legitimizes the response; the national security strategy, and certain policy measures, such as suspending civil liberties, raising taxes, or imposing conscription. Persuasion is easier when the crisis does indeed pose an existential threat, rather than an exaggerated one, as "the greater the perceived stakes, the clearer objectives, and the higher the probability of success, the greater the level of public support for war."[38] However, in a democratic society, the president and other political elites can be replaced if they are perceived as "going too far" in their quest for national security. The president must therefore communicate that the measures put in place are truly necessary given the scope of the crisis, and that they are temporary, to last only for the duration of the crisis, and no longer.

2.5 The Dawn of National Security

World War II was the last war in which the United States would mobilize in response to an existing threat and because of a war already underway. It quickly became a total war for the United States; every industry was devoted to the war effort, and some 10 million Americans served in uniform during the conflict. Civil liberties were curtailed, and even the free market, sacrosanct in the United States, was suspended in favor of an extensive rationing system for the duration of the conflict. The United States came as close as it ever had previously or since to becoming a garrison state. There was one crucial difference however, that made it more like a Cincinnatus-esque emergency authoritarian state, and less like the garrison state of Lasswell's prediction. World War II was a fight for the survival of the United States and liberal democracy

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[37] Kathe Callahan, Melvin J. Dubnick, and Dorothy Olshfski, "War narratives: framing our understanding of the War on Terror," *Public Administration Review* (July|August, 2006).

[38] Adam J. Berinsky, "Assuming the costs of war: events, elites, and American public support for military conflict," *The Journal of Politics* 69, no. 4 (November, 2007).

that consumed every aspect of the country, but it was always regarded as a finite conflict that would one day end. After the Axis advances of 1942 were halted and reversed, the Allied powers grew closer to victory by the day, and as early as 1943, they were planning out the end of the conflict and the post-war world.[39] After Japan formally surrendered on September 2, 1945, the United States began dismantling its war machine; ending the rationing system in 1946, restoring civil liberties, and demobilizing both industry and the vastly inflated War Department, especially the eight million men and women in uniform in 1945. Unlike demobilization after World War I however, US policy makers were under no such illusions that World War II had been the "war to end all wars."

The events of the 1930s and early 1940s demonstrated that threats on the far side of the world, if allowed to metastasize, could eventually strike the United States itself. The Pearl Harbor attack forever dragged the United States out of its "splendid isolation" by proving that the US could indeed be suddenly attacked by other powers. Technologies later introduced by the war—even developed by the US, such as the intercontinental bomber, ballistic missiles, and especially nuclear weapons, ended the idea that geographic remoteness equaled physical security.[40] American policy makers drew the lesson that the events in the Munich Conference in 1934 had invited attack by making the US and other western powers appear weak. Appeasement became an anathema for the US government. All threats would need to be met head-on and defeated, by any means necessary. The assessment of national security and American vulnerabilities at the end of World War II meant that from then on, "the nation was to be permanently prepared. America's interests and responsibilities were unrestricted and global."[41] World War II ended the cycle of returning to pre-war isolationism after the cessation of hostilities. The global presence the US had established by the end of the war meant that the entire world was now America's first line of defense

The concept of national security, as opposed to simply national defense, emerged in the American political lexicon as a result of Pearl Harbor and was confirmed by the ensuing war. National security quickly became the driving principle of American policy, representing the belief that national interests: physical security, economic prosperity, and the defense of democratic

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[39] For example, the Tehran Conference of the "Big Three" Allied Powers in December 1943.

[40] Friedburg, 1992.

[41] Daniel Yergin, quoted in David Jablonsky, "The state of the national security state," *Parameters* (Winter, 2002-2003).

capitalism, were inextricably linked to foreign policy.[42] The successful preservation of these three interests, it was believed, would combine into one overriding goal: no more Pearl Harbor-style attacks. National security became the dominant focus of government, utilizing all instruments of government, including foreign and public policy.

Operationalizing national security brought with it three new sub-concepts as well. First, an erasure of the distinction between war and peace in the US, giving way to permanent preparations for war, including industrial and social mobilization if necessary.[43] Second, the utility of the military, including military force and its auxiliary, intelligence, to carry out national security abroad, and assist law enforcement within the US. From this comes the third sub-concept, the importance of foreknowing events to detect and neutralize threats before they could harm the US, especially if the next surprise attack was likely to be nuclear. The focus on national security led "increasingly to the dominance of military-security concerns and a transcendent military establishment."[44] This was to the detriment of the State Department, the traditional leader of American foreign policy in peacetime, and by extension, the use of diplomacy to solve foreign policy problems. Together, the concept of permanent war, reliance on the military and intelligence, and the desire to prevent surprises, and the legislation, bureaucracy, and rhetoric needed to realize them were the genesis of the modern American national security state, in both the Cold War and the War on Terror.

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[42] Jablonsky, 2002.
[43] Douglas T Stuart, "Ministry of fear: the 1947 National Security Act in historical and institutional context," *International Studies Perspectives* 4 (2003).
[44] Jablonsky, 2002.

Chapter 3: The Cold War

This section will explore how the United States created a national security posture that came close to making the country a garrison state in the first half of the Cold War, 1945 to 1973. To do this, I will first explain the threat faced by the United States, and how the country responded, the overarching framework of national security in the Cold War. I will then delve into how the US implemented its national security along a bifurcated path, first exploring the legislation and policy directives, and then the bureaucracy as tangible evidence of the garrison state. The second aspect will be more ontological, examining how presidents legitimized the national security project through rhetoric. Because of the volume of laws and organizations involved, I will only cover specific laws and policy directives, and agencies of direct relevance to both the Cold War and the War on Terror that play a role in creating a contemporary national security state.

3.1 The Threat

The primary threat that United States national security planners faced was the Soviet Union, made acute after it developed nuclear weapons in 1949. While Soviet communism was never compatible with American capitalism, the two countries had put aside their differences to defeat Nazi Germany together. Almost immediately after World War II ended, the façade of collaboration broke down over their rival ideologies, giving rise to the extreme polarization of the Cold War.

The Soviet Union came out of World War II feeling that it could trust no other state and that it too must become permanently prepared for war. Lacking democratic institutions and the capacity for technological innovation, the Soviet Union spent the next forty years implementing a labor-intensive national security strategy that produced tens of thousands of tanks, aircraft, artillery pieces, and nuclear weapons, and mobilizing its populace for military service or work in the defense industry. By every measure, the Soviet Union did become a garrison state comparable to the model put forth by Lasswell, until it collapsed from too many internal failings in 1991.

In the Soviet Union, the United States faced a challenging, but recognizable foe. The Soviet Union was a nation-state, appearing monolithic to the outside world, with an official ideology, doctrine, and military strategy. It had a fixed physical address (albeit quite an extensive

one), and most of its military and diplomatic corps wore uniforms (spies of course, did not). Within the Soviet Union resided nearly 170 million men, women and children, some enthusiastic about the Soviet project, and some not. Military commanders practiced doctrine found in published manuals, political officials regularly expounded Soviet and communist ideology, and the state made no effort to hide its military might. Should the worst occur, the Soviet Union was a ripe target for an American nuclear strike, something Soviet officials were well aware of, which influenced their thoughts and decision-making throughout the Cold War. The Soviet system, as confusing and backwards as it may have seemed to American officials, was ultimately learnable. The US, relying on a sophisticated intelligence apparatus, could study the Soviet Union, and attempt to understand its intents and future actions.

3.2 National Security in the Cold War

While American military planners worried that at any moment, Soviet tanks would come racing out of East Germany, they were more concerned that at the same time, or even beforehand, the continental US would be hit by nuclear warheads, dropped by airplanes and missiles, launched from within the Soviet Union itself. Most worryingly of all was that the US itself was vulnerable to attack by Soviet long-range aircraft and submarines. Both the United States and former Soviet Union stretch from the Atlantic Ocean to the Pacific[45], and a small skirmish in one area could lead to a retaliatory strike thousands of miles away. As the President's Advisory Commission on Universal Military Training noted in its report at the beginning of the Cold War, "the signal for the start of a war against us will … be a large-scale, long-distance onslaught with atomic explosives."[46] American defense planning took on a global scope, not limited to just the defense of the US mainland and territories, because of a desire to wage any wars far from American shores, and prevent threats from reaching the country.

Both sides developed nuclear "triads" comprised of nuclear weapons launched from aircraft (bombs), and ground-based and submarine-based missiles. They also had plans to use these in offensive first-strike capabilities to wipe each other out, and second-strike capabilities in the event that the other side attacked first. Neither the United States nor Soviet Union ever

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[45] Technically, the Soviet Union's western shore ended in the Barents Sea, through which the Soviet Navy's Northern Fleet could access the Atlantic and Arctic Oceans.
[46] President's Advisory Commission on Universal Military Training, in Friedburg, 1992.

developed effective countermeasures to defend against nuclear attack, even as nuclear delivery mechanisms grew more sophisticated and accurate.

The American strategy for the Cold War was based on the confluence of lessons learned "in light of the Pearl Harbor experience, the advance of technology, and the development of the atomic bomb,"[47] and traditional American notions about national defense. To fight such an all-encompassing conflict, the United States constructed a large national security apparatus that permeated all levels of government and made its way into civilian society as well. Throughout the Cold War, the United States did adopt tenets of the Garrison State as described in Lasswell's theory, though in less extreme versions. What emerged in the United States during the Cold War was fundamentally at odds with the pre-World War II United States, which had little concern for the military during peacetime. The United States transformed from a country that saw war as a temporary aberration from peace, to a country that experienced peace as an intermediate prelude to war.

The whole country was to be mobilized, to varying degrees, and prepared for war indefinitely. In the words of one scholar, this was "the first time in American history that a domestic crisis has no foreseeable end date."[48] The United States chose to fight the Cold War with a capital-intensive strategy, predicated on the idea that in the age of nuclear weapons and one-strike knockout blows, "there was little need for elaborate and expensive preparations to mobilize and expand defense production, or to convert civilian industry to military purposes." [49] Technological superiority would replace sheer quantity. The war would be fought well beyond American borders, to contain Soviet communism from spreading elsewhere and threatening the US mainland. In a nuclear war there simply would not be enough time to mobilize before nuclear weapons destroyed everything. This would also require a massive intelligence apparatus to detect Soviet actions before they launched an attack. American policy makers decided that they must create a posture ready to go to war immediately, with no distinction between peace and war to affect the level of readiness. The American people, notoriously anti-military up until World War II,[50] would need to be convinced to support the expanded national security

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[47] Melvyn P. Leffler, "The American conception of national security and the beginnings of the Cold War, 1945-48," *The American Historical Review* 89, no. 2 (April, 1984).

[48] Stuart, 2003.

[49] Friedburg, 1992.

[50] Huntington 279.

bureaucracy and Cold War effort.[51] This was the impetus for the presidential rhetoric of the Cold War, which will be discussed later on.

With the benefit of hindsight, it is clear to see that the Cold War did not transform the United States into a militarized garrison state in the classic definition set forth by Harold Lasswell.[52] The full mobilization of the country during World War II was reversed after 1945 as millions of men and women left the military, and the "arsenal of democracy" shifted into peacetime production of civilian goods. Even after the Korean War, and the realization of a perpetual existential threat in the form of the Soviet Union, the garrison state and full mobilization of society and the economy did not occur, despite the existence of a massive national security bureaucracy, including espionage agencies, the military, and other governmental organizations.

3.3 Legislation of the Cold War
3.3.1 The National Security Act of 1947

The official start of the national security project of the Cold War, that later pushed the United States towards a garrison state, can be traced to the National Security Act of 1947 (NSA-47). This act contained several key operational and conceptual changes that directly constructed the national security strategy that brought the country close to becoming a garrison state (referred to later in this paper simply as the garrison state). NSA-47 created the Department of the Air Force, independent from the Department of War (the Army), and combined both of them along with the Department of the Navy into one National Military Establishment.[53, 54] NSA-47 created the Central Intelligence Agency to coordinate the various intelligence-gathering components of the government, and the National Security Council, to decide and oversee the country's national security strategy and bureaucracy. The National Security Council, Department of Defense, Central Intelligence Agency, and their roles in the national security bureaucracy will be discussed in Chapter 3, Section 4. These three new federal executive-branch

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[51] Marcus G. Raskin, "Democracy versus the national security state," *Law and Contemporary Problems* 40, no. 3 (Summer, 1976).

[52] Friedburg, 1992.

[53] This was a bureaucratic compromise as a result of the post-war Unification debate between the armed services and Executive branch, based on the difficulties of coordinating inter-service operations during World War II.

[54] The name was changed to the Department of Defense in 1949 (also referred to as the Pentagon after its famous headquarters building) after the realization that the acronym "N.M.E" sounded too much like the word "enemy."

agencies "displaced the State Department at the top of the Washington policy making pyramid,"[55] and in doing so, marked the shift towards a militarized and security-focused national policy and policymaking process.

The conceptual changes legally enshrined in NSA-47 were even more important than the operational changes. NSA-47 marked the end of the "long U.S. tradition of thinking about peace and war as distinct phenomena requiring different institutional responses."[56] The Act established the new grand strategy of American national security, "above all, to protect the United States against another Pearl Harbor."[57]

Curiously, NSA-47 did not contain a specific definition of national security.[58] The Act did however, "[legitimate] secrecy and intelligence as a necessary form of government."[59] It did not specify how the domestic side of national security would be carried out, except for a blanket ban on CIA activity within the United States, with few exceptions.[60] However, there was murkiness on what precisely was legal and what was not, which gave national security officials and agencies cover for their actions within US territory and under US law, particularly when the conditions of a national emergency might compel extralegal action out of military necessity. What NSA-47 did do was give the National Security Council the authority and mandate to pursue both foreign and domestic matters.[61]

The latter half of the 1940s saw the creation of new thought paradigms, legislation, and bureaucracies to carry out the new conception of national security. However, during this time US national security planners were confident that the US monopoly on nuclear weapons made war extremely unlikely, if not obsolete all together.

The Soviet detonation of their own nuclear weapon in 1949 and the Korean War punctured this bubble, and forced the US to realize that its nuclear monopoly was over, and that nuclear weapons alone would not guarantee America's security. The NSC decided that the country needed further preparation beyond what was laid out in NSA-47. Mitigating the threat of another, possibly nuclear, Pearl Harbor-style attack would require expanding the concept of national security to encompass emerging threats. Under the broad authority of NSA-47, the

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[55] Stuart, 2003.
[56] Stuart, 2003.
[57] Stuart, 2003.
[58] Raskin, 1976.
[59] Raskin, 1976.
[60] Stuart, 2003.
[61] Stuart, 2003.

United States began on the path towards becoming a garrison state, choosing expanded government and restricted liberties in the name of security, and preparing for an indefinite, rather than temporary, sense of emergency.

3.3.2 National Security Council Report 68

In response to the Korean War and Soviet nuclear program, a joint State Department and Department of Defense review board produced a report for the National Security Council and President Harry Truman, known as National Security Council Report 68 (NSC-68). NSC-68 committed the US to do whatever was necessary to stop the advances of the Soviet Union. NSC-68 cast the Soviet Union as the perfect archenemy for the United States to orient itself against, and vastly magnified the Soviet military capabilities to the point that the Soviet Union could initiate a "comprehensive strategic plan of occupying almost the entire Europe and carrying out selective atomic attacks on various regions of the world."[62] The exaggeration was due to the nature of infighting with the national security bureaucracy. Each different agency tasked with a different aspect of national security stood to benefit—in money, resources, and authority, if all or part of the Soviet threat was overestimated.[63]

The Soviet Union did indeed pose a threat to the US, and struck a nerve in the American national psyche. NSC-68 went so far as to state that "our free society finds itself mortally challenged by the Soviet system. No other value system is so wholly irreconcilable with ours, so implacable in its purpose to destroy ours."[64] The Soviet planned economy and authoritarian government was an anathema to the capitalist "free society."[65] The authors of NSC-68 viewed the growing Soviet nuclear and conventional arsenal with alarm, noting that the US conventional military was set to decline in numbers and capability in comparison to the Soviet Army[66] (as part of the post-war mass demobilization), and soon the country's industrial potential would as well. [67] The ability of either side to destroy the other in a first strike and the apparent

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[62] Efstathios T. Fakiolas, "Kennan's Long Telegram and NSC-68: a comparative analysis," *East European Quarterly* 31, no. 4 (January, 1998).

[63] Fakiolas, 1998.

[64] The National Security Council Study Group, "The underlying conflict in the realm of ideas and values between the U.S. purpose and the Kremlin design," National Security Council Report 68 (April 14, 1950).

[65] "The underlying conflict," NSC-68.

[66] "US intentions and capabilities--actual and potential," NSC-68.

[67] "US intentions and capabilities--actual and potential," NSC-68.

inability of the two belligerents to live in peace with each other "puts a premium on a surprise attack."[68]

After establishing an existential threat, NSC-68 then made the case for an American national security state, implicitly including the need for foreknowing events—a massive intelligence apparatus, as well as the capability for clandestine action, and counterintelligence to prevent the Soviets from doing the same. NSC-68 stated, "the preferred technique is to subvert by infiltration and intimidation. Every institution of our society is an instrument which it is sought to stultify and turn against our purposes."[69] Herein lay a fundamental tenet of subsequent American national security policy: the NSC viewed domestic political and social affairs, particularly political dissidents, as a venue for Soviet incursion, and therefore a legitimate target for intelligence and counterintelligence activity to stop Soviet infiltration. NSC-68 recommended an increase in intelligence programs, both foreign and domestic to "assure the internal security of the United States against dangers of sabotage, subversion, and espionage."[70]

NSC-68 cautioned that doing these things in a free society such as the United States would not be easy. NSC-68 explained, "a large measure of sacrifice and discipline will be demanded of the American people."[71] Mindful of the power of public opinion in a democratic society, NSC-68 stressed that "nothing could be more important than that they fully understand the reasons for this."[72] This explained the need for presidential rhetoric to convince the American public and Congress of the danger of the Soviet threat and the need to respond with their national security strategy.

The vulnerabilities of the United States, the Soviet threat and the proposed response as laid out in NSC-68 significantly influenced US national security policy for the rest of the Cold War. The decisions made by the Truman administration and subsequent presidencies in response to NSC-68 would help build the American national security bureaucracy into something approaching Lasswell's garrison state. The three decades following NSC-68 (authorized in 1954) saw a massive expansion of the national security bureaucracy with the creation of several more intelligence agencies, many within the Department of Defense, in recognition of the military-first strategy of the new US national security policy.

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[68] "The underlying conflict," NSC-68.
[69] "atomic armaments," NSC-68.
[70] "Conclusions and recommendations," NSC-68.
[71] "Possible courses of action," NSC-68.
[72] "Possible courses of action," NSC-68.

3.4 Agencies of the National Security Bureaucracy

The National Security Act of 1947 created the national security bureaucracy, which encompasses the different executive branch organizations that play a major role in US national security. It includes the National Security Council, the Department of Defense (the US military and civilian employees), the Department of State, the Intelligence Community, and after 2001, the Department of Homeland Security, and smaller agencies within other Cabinet-level Departments, such as the Departments of Justice, Treasury, and Energy. Only the major national security organizations: the National Security Council, the Department of Defense, the Central Intelligence Agency, the Federal Bureau of Investigation, and the National Security Agency, will be discussed because of their prominent role in government surveillance and the growth of a garrison state.

3.4.1 The National Security Council

The National Security Council (NSC) is the President's chief advisory body regarding issues of national security and other major emergencies. While subservient to the president, the NSC decides executive branch policy and oversees its implementation. The NSC contains: the president, the vice president, the National Security Advisor, the Secretaries of State, Defense, and Treasury, the Chairman of the Joint Chiefs of Staff, and later the Director of National Intelligence (since 2004).[73] Meetings include the Chief of Staff of the NSC, who oversees the standing bureaucracy that supports the Council, the Chief Legal Counsel to the president, the Attorney General, the president's economic advisor, and the Director of the Office of Management and Budget. The importance of the NSC fluctuates according to the preferences of each president.[74]

The National Security Council coordinates foreign policy and national security, ensuring that the different agencies of the national security agency are not working against each other, and marshaling all resources and capabilities available to the government for use as necessary. While Congress can subpoena individual members of the NSC, the body as a whole does not typically

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[73] David Auerswald, in Roger Z. George and Harvey Rishikof, editors, *The national security enterprise: navigating the labyrinth* (Washington, DC: Georgetown University Press, 2011), 35.
[74] Auerswald, in George and Rishikof, eds. 32.

report to Congress like other agencies.[75] This gives it a degree of autonomy and freedom of action on national security outside of Congressional oversight.

3.4.2 The Department of Defense

The Department of Defense (DoD) contains the Army, Navy, Marine Corps (part of the Navy) and Air Force, as well as civilian employees and specialized agencies, such as the Defense Advanced Research Projects Agency (DARPA) and the Defense Logistics Agency.[76] The Department of Defense also includes several independently run intelligence agencies: the National Security Agency (NSA), the National Reconnaissance Office (NRO), the Defense Intelligence Agency (DIA), and the National Geospatial-Intelligence Agency (NGIA).

The agencies within the Department of Defense are joint civilian-military organizations, staffed by both but meeting the needs of the armed services. Intelligence serves as an auxiliary to the military in that it can aid the use of military force by providing information on enemies and targets, and by accomplishing national security objectives that the military itself cannot do, whether because of law or mission requirements. These agencies, particularly the NSA, demonstrate how military thought paradigms and culture transcend the armed services to influence the rest of the national security bureaucracy.

3.4.3 The Intelligence Community

The Intelligence Community is the third major component of the national security bureaucracy, comprising seventeen different intelligence agencies, which oversee all aspects of US intelligence capabilities. Each agency operates independently, and many are housed in different departments. The agencies are: the Central Intelligence Agency, the Office of Intelligence and Counterintelligence (Department of Energy), Intelligence and Research (Department of State), Office of Intelligence and Analysis (Department of the Treasury), the DIA (Department of Defense), the Drug Enforcement Agency (Department of Justice), the Federal Bureau of Investigation (Department of Justice), the NGIA (Department of Defense), NRO (Department of Defense), the NSA (Department of Defense), as well as the specific intelligence agencies of each armed service: the Army, Navy, Marine Corps, and Air Force.[77] After the

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[75] Auerswald, in George and Rishikof, eds. 32.
[76] Michael J. Meese and Isaiah Wilson III, in George and Rishikof, eds., 123.
[77] Thomas Fingar, in George and Rishikof, eds,143.

September 11 terrorist attacks, the Intelligence Community expanded to include the Office of the Director of National Intelligence (ODNI), who is supposed to oversee and manage the intelligence community and facilitate interagency cooperation, as well as the Office of Intelligence and Analysis within the Department of Homeland Security.

3.4.4 The Central Intelligence Agency

Prior to World War II, intelligence activities had been conducted by the State Department, and agencies within the War Department (US Army Signal Corps) and Department of the Navy (Office of Naval Intelligence). There was little coordination between the three, and none of them looked into matters not of immediate concern to each respective department. Because of this, intelligence warning of the Pearl Harbor raid remained unnoticed until it was too late. A post-war Congressional review of Pearl Harbor and the war as a whole concluded "US intelligence procedures were insufficient for modern-day security challenges, particularly with the new American status as a global power."[78]

During World War II, President Franklin Delano Roosevelt had created the Office of Strategic Services, to conduct covert and clandestine intelligence-related activities, and counterintelligence operations behind enemy lines during the war. When the war ended however, President Truman disbanded the OSS and divided its activities between the State Department and War Department. Truman believed that with the war over and with the US nuclear monopoly, such activities were no longer necessary.

The Cold War brought back the need for intelligence, counterintelligence, and clandestine activities. NSA-47 created the Central Intelligence Agency, "with responsibility for the overall coordination and integration of the intelligence efforts of various governmental groups engaged in national security matters."[79] The CIA was responsible for collecting human intelligence (HUMINT; intelligence derived from human sources, as opposed to signals intelligence or satellites). The CIA was officially barred from any activities in the United States, but there were workarounds. The conceptual shift in national security that erased the distinctions between war and peace also recognized that foreign-based threats could emerge

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[78] Jablonsky, 2002.
[79] Amos A. Jordan, William J. Taylor, Jr., and Michael J. Meese, and Suzanne C. Nielsen, et. al. *American National Security (*Baltimore: The Johns Hopkins University Press, 2009), 93.

within the United States, and foreign-oriented intelligence agencies might be required to neutralize these threats.

As described earlier, NSC-68 raised the issue of communist infiltration and subversion within the United States. Internal counterintelligence operations were the FBI's domain, but the CIA was allowed to assist in such activities if the FBI requested their help.[80] Concern for Soviet clandestine activity within the US ostensibly "provided the backdrop for the expansion of FBI and CIA from the end of World war II until the end of the Vietnam War."[81]

3.4.5 The National Security Agency

United States signals intelligence capabilities, defined as "listening in on wireless radio intercepts and breaking encryptions,"[82] came with the advent of wireless communication in wartime, which the US began doing in World War I.[83] The practice of eavesdropping on foreign powers' radio traffic was halted in 1929 by Secretary of State Henry Stimson, who uttered the famous phrase "gentlemen do not read each other's mail."[84]

Signals intelligence was revived by the Army and Navy separately in the run up to World War II, but both departments missed Japanese radio traffic on the planned Pearl Harbor raid. During the war, the Army, the Navy, and the State Department all maintained their own separate signals intelligence operations.[85] When Japan surrendered, "each U.S. Service Comint[86] agency, [communications intelligence] manned by thousands … faced inevitable and rapid shrinkage."[87] The downsizing was halted by the onset of the Cold War, and the US soon established new communications intelligence agencies. The NSC directed the creation of the Armed Forces Security Agency (AFSA) to oversee SIGINT (signals intelligence) collaboration between the armed services.[88] Before AFSA was fully operational in 1949, the Soviet Union detonated its first atom bomb, which came as a complete surprise to the United States.[89]

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[80] Jordan, et al, *American National Security*, 2009: 159.
[81] Stuart, 2003.
[82] Howe, George F. "The Early History of NSA." National Security Agency. Declassified on September 18, 2007. Original publication date unknown.
[83] Howe, 2007.
[84] Howe, 2007.
[85] Howe, 2007.
[86] Communications Intelligence, a derivative of signals intelligence
[87] Howe, 2007.
[88] Office of the Historian, "Foreign Relations of the United States, 1950-1955: The intelligence community, 1950-1955, Document 99" US Department of State (accessed January 22, 2014).
[89] Howe, 2007.

Another failure of the various signals intelligence operations came during the Korean War, when "the quality of strategic intelligence derived from Comint information fell below that which had been provided during World War II."[90] In response, President Truman ordered a review of the government's communications and signals intelligence capabilities, to examine "efforts and to recommend measures to improve their conduct and security."[91] The committee's report noted the duplication of effort and lack of coordination within the armed services, and recommended the creation of a new agency to replace the multiple different programs.[92] A revised version of National Security Council Intelligence Directive No. Nine was signed by President Truman and replaced AFSA with the National Security Agency, and put it within the DoD, under the direct control of the Secretary of Defense. The armed services were allowed to keep their respective intelligence agencies, but with sharply curtailed authorities limited to supporting their services' immediate operations.[93]

The National Security Agency was tasked with both carrying out signals intelligence gathering and analysis, and providing security: encryption and counterintelligence for the US national security bureaucracy.[94] Its clients included the US military, the entire US government, and NATO allies.[95] While the NSA was officially barred from surveillance activities within the US, much like the CIA, it had a freer hand to operate where the law was ambiguous. The official history of the NSA points out "all comint operations, unless explicitly specified in an NSC order, were exempted from the controls applied to other intelligence agencies."[96] This gave it greater freedom of action to conduct its electronic intelligence-gathering mission within the United States, if it believed foreign-based actors were communicating with their operatives within the United States.

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[90] Howe, 2007.
[91] Office of the Historian, "Foreign Relations of the United States, 1950-1955: The intelligence community, 1950-1955, Document 99" US Department of State (accessed January 22, 2014).
[92] Office of the Historian, "Foreign Relations of the United States, 1950-1955: The intelligence community, 1950-1955, Document 99" US Department of State (accessed January 22, 2014).
[93] Office of the Historian, "Foreign Relations of the United States, 1950-1955: The intelligence community, 1950-1955, Document 99" US Department of State (accessed January 22, 2014).
[94] Howe, 2007.
[95] Howe, 2007.
[96] Howe, 2007.

3.4.6 The Federal Bureau of Investigation

The last major agency within the national security bureaucracy to be explored here is the Federal Bureau of Investigation. The Federal Bureau of Investigation began in 1908 as a federal law enforcement agency able to operate across state lines,[97] but was given the role of conducting counterintelligence operations against foreign agents during World War I.[98] This brought the FBI into the ranks of intelligence agencies. In World War II, President Roosevelt "expanded the primarily domestic intelligence-focused agency to handle overseas intelligence matters."[99] The FBI sent agents to Latin and South America to conduct counterintelligence operations against German agents operating there.[100] Domestically, it conducted numerous operations to root out German and Japanese spies and saboteurs. Until the War on Terror and the creation of the Department of Homeland Security, it was the only agency within the bureaucracy authorized to operate primarily within the United States and conduct activities involving US citizens.

During the Cold War, "the FBI continued its domestic focus in its anti-communist investigations in the 1950s,"[101] and broke Communist spy rings, such as Julius and Ethel Rosenberg, but also gained a reputation for overzealous investigations, and falsely accused numerous people in the 1950s. The attention to open and suspected communists in the United States spread to other left-wing groups, originally motivated by the belief that they may have been backed by Soviet intelligence agencies.[102]

3.5 Presidential Rhetoric in the Cold War

At this point in the essay, I have explained how a shift in how national security is conceptualized led to the creation of a national security project that approached a garrison state. The tangible evidence of this is the legislation and policy directives references here, as well as the new agencies of the national security bureaucracy. However, the garrison state is a social construct, and as such was also created through the articulation of ideas. Specifically, presidents used rhetoric to convey a sense of national emergency stemming from a foreign threat to the American public and Congress, and used this to gain their consent and build legitimacy for the

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[97] Rishikof, in George and Rishikof, eds,. 179.

[98] Rishikof, in George and Rishikof, eds,. 179.

[99] Rishikof, in George and Rishikof, eds., 179

[100] Rishikof, in George and Rishikof, eds., 180.

[101] Rishikof, in George and Rishikof, eds., 180.

[102] Matthew M. Aid and William Burr, "Secret Cold War documents reveal NSA spied on Senators," *Foreign Policy* (September 25, 2013).

national security state. Presidents Harry Truman and Dwight Eisenhower did the most to create the national security bureaucracy and set the tone for US national security during the Cold War. Several of their speeches will be analyzed here.

3.5.1 President Harry Truman: the Truman Doctrine

By late 1946, the first movements of the Cold War had begun to take shape. Soviet machinations so thoroughly alarmed the government that President Harry Truman and his advisors felt it necessary to re-mobilize the country in anticipation of a drawn-out confrontation with the Soviets. Although the country as a whole had emerged triumphant and stronger from World War II, American disinclination towards prolonged war kicked in, and the public was not interested in another conflict right away. Creating a national security state, and an ambitious, active foreign policy to counter the Soviet threat wherever it appeared would require convincing the American people that they faced an immediate existential crisis; a true national emergency. The solution was the "Truman Doctrine Speech," as it came to be known, delivered by President Harry Truman on March 12, 1947, and specifically designed to "scare the hell out of the country," as Senator Arthur Vandenburg described it at the time.[103]

President Truman and his advisors were convinced that the Soviet Union constituted an existential threat to the United States, and that the covert actions by communist agents in Greece and Turkey in 1946 (and counter-actions by American and British operatives as well) were but the opening shots in what would be a drawn-out global struggle. The proposed national security strategy required the president to convince the American people that they faced an international emergency, and that it could spread to the United States as well. The President needed to maximize the public's support for American involvement there and beyond, to defend themselves.[104] If they did not fight Communism overseas, then it would soon come to America's shores.

In his speech, President Truman deliberately "heightened the nation's sense of vulnerability and its determination to meet the threat of chaos and communism," through alarmist wording and the use of contagious disease metaphors and allegories.[105] This was used to

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[103] Robert L. Ivie, "Fire, flood, and red fever: motivating metaphors of global emergency in the Truman Doctrine Speech," *Presidential Studies Quarterly* 29, no. 3 (September, 1999).
[104] Ivie, 1999.
[105] Ivie, 1999.

silence critics and justify an expanded national security paradigm.[106] Subsequent speeches by Truman and other Presidents would keep in line with the grand strategy of containment outlined in the Truman Doctrine. Through the continued use of alarmist rhetoric, appeals to national emergency would be used to justify further expansions to the national security bureaucracy, and growing defense budgets.[107]

With the American people alarmed, the president and NSC could push their legislation proposals through Congress and begin to create the national security bureaucracy necessary to defeat the communist menace. It was motivated by self defense, but still the invocation of national emergency appealed to the American political concept of whatever was necessary to achieve victory in wartime. With public acquiescence, they began to build legitimacy for the national security state, which they viewed as militarily necessary and to which neither the public nor Congress objected. As Lasswell's original thesis pointed out, and subsequent scholars such as Samuel Huntington reaffirmed, there was a real threat to the country, and the Truman Doctrine did not call for an aggressive campaign to destroy communism and the Soviet Union, only to deter and contain it.[108] In doing so however, President Truman and the NSC also began to push the country towards becoming a garrison state.

3.5.2 President Dwight Eisenhower: Atoms for Peace

President Dwight Eisenhower gave many speeches justifying some aspect of the national security state, including, "Atoms for Peace." While the "Atoms for Peace" speech was on its surface a call for the peaceful use of nuclear energy, it was also the beginning of a diplomatic offensive against the Soviet Union. It called on the Soviet Union to accept the peaceful proliferation of nuclear energy around the world.[109] For his domestic audience, President Eisenhower prepared the country for an expanded nuclear arsenal and testing, and larger conventional military programs.[110] President Eisenhower did not speak explicitly of a national emergency as President Truman had, but rather of the destructive capabilities of nuclear weapons. Like President Truman, President Eisenhower encouraged a climate of fear and the

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[106] Ivie, 1999.
[107] Robert Scott in Martin J. Medhurst, *Cold war rhetoric: strategy, metaphor, and ideology* (New York: Greenwood Press. 1990), 10.
[108] Ivie, 1999.
[109] Medhurst, 41.
[110] Medhurst, 46.

belief that the country was in a national emergency that justified all actions necessary to ensure security and achieve victory. The most visible aspect of this was the increase in the country's nuclear weapons arsenal, but also included the overarching national security state and the use of the national security bureaucracy to gather intelligence and conduct counterintelligence.

The Atoms for Peace speech warned the American people of the dangers of the Soviet's nuclear arsenal, and gave Eisenhower the political capital necessary to expand the US' own nuclear arsenal and other national security measures. It was part of a larger public information campaign, Operation Candor, to do the same. Political communication scholar Martin Medhurst explains, "for four months prior to the December 8 address, the American media ran story after story about governmental, military, and scientific concerns about a possible nuclear confrontation."[111] The American public was already growing weary of what promised to be a long struggle against the Soviet Union, and if they no longer felt the emergency to be dire, their consent to the national security bureaucracy would also wither. Medhurst further explains that "public weariness with the Korean War made incorporation of the American audience behind the US effort an absolute necessity,"[112] if Eisenhower hoped to expand the conventional military and nuclear arsenals. The "Atoms for Peace" speech challenged the Soviet Union to disarm, but President Eisenhower assumed that it would not. Instead, he sought to justify to the American people an increase in the US' own nuclear stockpile, by warning of the dangers of nuclear weapons and the country's perceived vulnerability to nuclear attack. More nuclear weapons would make the US more secure in the short term, by raising the cost of any potential Soviet aggression.

3.5.3 President Eisenhower's Farewell Address

By the end of the Eisenhower administration the national security apparatus of the country had swelled enormously. However, President Eisenhower appeared to have undergone a conversion experience, and used his last speech to warn of the dangers of the national security state he had helped create. Eisenhower's farewell address contained another warning on foreign threats, but also domestic ones which Eisenhower himself had helped cultivate. Unlike other presidential speeches, which propagated a climate of fear and the necessity of a permanent national security bureaucracy, Eisenhower's farewell address identified the growing garrison state

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[111] Medhurst, 39.
[112] Medhurst, 32.

within the United States, and attempted to warn the nation against its growing influence. Since its creation during World War II and revival during the Korean War, the public-private partnership between the United States military (Department of Defense since 1947) and private industry had grown significantly. The military-industrial complex (MIC) was born of wartime necessity, out of the ongoing arms race between the United States and Soviet Union and the need for the US to build and maintain more and more technologically advanced weapons systems and other tools, such as satellites. From a working relationship, the MIC morphed into a coherent and self-aware actor with its own interests and means for achieving them.

The military-industrial complex is perhaps the most recognizable, feared, and hyped aspect of the garrison state theory, and the national security state, though certainly not the only aspect, as this paper explains. The high defense budgets of the era became profits for defense contractors, and their desire for profits was leading them to exercise "unwarranted influence" on the national security decisions of the United States.[113] In doing so, the MIC had an interest in propagating a perpetual feeling of national emergency, which in turn justified high defense spending. As long as a threat existed, there was a legitimizing rationale for the MIC, and left unchecked, the influence of the national security bureaucracy would push the country towards a garrison state, with the full mobilization of society for national security, for the benefit of the MIC.

At the end of his illustrious military and political career, President Eisenhower perhaps felt some measure of responsibility in creating the national security state. His farewell message sought to alert the American people and Congress to the dangers to their way of life posed by the MIC, and the broader national security state already in place, which was slowly encompassing more and more aspects of American life, beyond defense and including the university system and scientific research.[114]

Eisenhower's message went unheeded in the months and years following its delivery, in part because successive Democratic administrations wanted little guidance from their Republican predecessor, and because of the mixed messages within the speech itself. While Eisenhower genuinely sought to warn the country about the MIC, this speech followed his previous speeches with dire warnings about the Communist menace. These repeated warnings drove home a consistent message of a national emergency and a country that needed to defend itself with

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[113] Dwight D. Eisenhower, "Farewell Address," January 16, 1961.
[114] Eisenhower, 1961.

nuclear and conventional arms. For President Eisenhower, fear of MIC taking over the country was overridden by fear of the Soviet threat and a nuclear holocaust.[115] As much as he was wary of the inherent dangers of an expanding national security bureaucracy; the growing debt, curtailed civil liberties, and industry's reliance on government contracts, President Eisenhower felt all of these things were necessary to some degree to resist the Soviet threat. This message of impending doom — that the Soviets were leading the missile gap, that Soviet bombers could penetrate the United States air defense system, that Soviet agents were engaged in clandestine activity around the world — encouraged a climate of fear and a feeling of national emergency. This in turn brought blanket consent for whatever policies and programs the government deemed necessary to national security. As long as the national emergency existed, the liberal theory of civil-military relations dictated that Congress and the public should defer to national security policy makers, and even their extreme actions were to protect the country and therefore were legitimate.

3.6 Analyzing the Garrison State, 1947 - 1973

Between 1947 and 1973, the United States was caught in a sense of national crisis because of the Cold War, which blurred the distinction between war and peace. Under the direction of the National Security Council, the country built up a massive security apparatus to respond to the Soviet threat. This meant constructing a nuclear arsenal and conventional forces to respond to any Soviet aggression on any scale anywhere in the world, as well as an intelligence apparatus to observe Soviet actions and intents. The national security state created by the National Security Act of 1947 and National Security Report 68 grew rapidly in the ensuing years, and by the 1960s appeared to be approaching a garrison state. By 1978 however, this was no longer the case.

The military-focused national security was legitimized by presidential rhetoric, which emphasized the sense of an indefinite national crisis. This theme played off the American civic republican theory of civil-military relations, which held that defense of the nation was every citizen's responsibility, and by the liberal theory, which held that military necessity justified all actions by the government. Public participation came in the form of higher taxes, conscription, and general acceptance of a large national security bureaucracy, particularly the military and

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[115] Robert Ivie, in Medhurst, 103.

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intelligence establishments. That many of the intelligence agencies' activities within the United States and abroad were clandestine made public acceptance of the national security strategy easier. At the time, "most Americans would agree that the problems that were created by [NSA-47] were outweighed by the essential role that this system played in winning the bipolar struggle against the Soviet Union."[116] The intelligence apparatus of the national security bureaucracy played a crucial auxiliary role to the military establishment, providing direction and information on Soviet and other enemy activity.

By the mid 1950s, both sides faced the prospect that a skirmish between conventional forces or nuclear first strike could culminate in both countries, their allies, and likely much of the rest of the world becoming a barren, irradiated wasteland. The result was a nuclear stalemate between the United States and the Soviet Union, which drove them to seek other means to subvert each other, often through covert and clandestine means. Both sides turned to their intelligence agencies, and to stop the other side's activities as well. For the United States, this led to a massive expansion of the resources and authority of the CIA, NSA, and FBI, and the ability to operate domestically for the former two agencies as well.

The paramount goal of the intelligence agencies and the national security bureaucracy was "the mandate of the 1947 system—no more Pearl Harbors,"[117] through foreknowing plans, intentions and capabilities before they became devastating events. Done in the name of national security, the growth of these intelligence agencies and the national security bureaucracy as a whole were slowly channeling the United States towards becoming a garrison state, with an internal security apparatus to complement the driving governmental focus on security and defense and defense-industrial buildup. This was legitimized at the time by the sense of national emergency, which expanded the powers of the executive branch and national security bureaucracy, with little objection from Congress or the public. This national security project would ultimately go too far however, and proved to be unsustainable. The day of reckoning for the national security bureaucracy and the garrison state-within-a-state it was creating would come in the public outcry over the Vietnam War.

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[116] Stuart, 2003.
[117] Stuart, 2003.

3.7 Vietnam: A Watershed Moment

The United States first became involved in Southeast Asia after Vietnamese insurgents defeated French forces, who had sought to reestablish their colony there after World War II. Fearing communist influence, President Eisenhower sent military advisors to train the military of the Republic of Vietnam (South Vietnam) in 1955. US military involvement steadily increased both in size and activities to the point that in 1962, the advisory mission was renamed "Military Assistance Command" in reflection of the increasing combat and combat support roles US advisors were playing. Involvement in Vietnam continued to increase each year and the CIA became involved as well, including orchestrating a coup that toppled South Vietnamese leader Ngo Dinh Diem. The American public generally supported the war in the beginning because of the national security bureaucracy's successful effort to link the war in Vietnam to the broader Cold War and thus America's national security. Vietnamese communists did not pose a threat to the United States territory, and by the mid to late 1960s, the reasons for US involvement in Vietnam came under increasing domestic scrutiny, especially after the North Vietnamese' Tet Offensive in 1968. After the Tet Offensive, media coverage swung sharply against the war[118] as did Congressional attitudes. This provided hostile elite opinion, which in turn triggered public opposition to the war, and popular protests against the war. This would eventually lead to the national security state's undoing.

During the 1960s and early 1970s, actions by the NSA, CIA, and FBI together demonstrated that the national security project was dangerously close to becoming a garrison state. As the tempo of the Vietnam War increased, so too did the protests against it, so much so that both Presidents Lyndon Johnson and Richard Nixon "wondered whether domestic protests were linked to hostile foreign powers, and they wanted answers from the intelligence community."[119]

At the request of President Johnson, and later President Nixon, the NSA began listening in on the foreign communications of US citizens, as well as their overseas travel activities. The NSA began keeping watch lists of private citizens and public figures, which grew in step with the anti-Vietnam protests.[120] Both the FBI and CIA sent agents to infiltrate opposition groups as

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[118]Amy Gershkoff and Shana Kushner, "Shaping public opinion: the 9/11-Iraq connection in the Bush administration's rhetoric," *Perspectives on Politics* 3, no. 1 (September, 2005).

[119] Aid and Burr, 2013.

[120] Aid and Burr, 2013.

well. The NSA's activities were known first as "Operation Shamrock," and later "Project Minaret," while the CIA's sister operation was somewhat unsettlingly called "Project Chaos."[121] The CIA spied on and kept records of large numbers of American citizens, particularly anti-government dissidents, providing names and organizations for the FBI and NSA to investigate.[122] President Nixon later expanded the activities to target political enemies of his administration as well, including Senator Frank Church.[123]

The FBI launched a campaign known as Cointelpro, short for counterintelligence program, to investigate and neutralized left-wing groups. Cointelpro featured FBI agents infiltrating groups of antiwar protesters, civil rights advocates, and other political dissidents.[124] The power of the FBI grew significantly in this time, exploiting the ambiguous wording in legislation to conduct surveillance activities nominally prohibited by law.[125] The FBI then compiled watch lists and provided names of suspected dissidents to the CIA and NSA for surveillance.[126] These actions "violated federal laws and constitutional guarantees"[127] but the FBI continued Cointelpro on the belief that it was imperative to national security, justified by the national crises of Vietnam and growing sociopolitical turmoil at the time.

In 1973 the last US combat forces left Vietnam, marking an official end to the war. The United States "left Indo-China bewildered, pleased, and beaten, the era of false consciousness ended," and its citizenry were extremely suspicious of all government activities and motivations afterwards.[128] News of domestic clandestine activity by the national security bureaucracy, which had first been discovered in 1970, increased after the end of the war, when the national crisis of the Vietnam War (exaggerated though it was) ended and could no longer justify such activity. Bacevich explains, "Vietnam was a defining event, the Great Contradiction that demolished existing myths about America's claim to be a uniquely benign great power and fueled suspicions that other myths might also be false."[129] While the initial outcry was directed at the excesses of the military and presidency, the uproar soon extended to the Intelligence Community as well.

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[121] Aid and Burr, 2013.
[122] Aid and Burr, 2013.
[123] Aid and Burr, 2013.
[124] Rishikof, in George and Rishikof, eds., 180.
[125] Theoharis, 1981.
[126] Stuart, 2003.
[127] Theoharis, 1981.
[128] Raskin, 1976.
[129] Bacevich, 34.

After the Vietnam War ended, members of the press discovered the national security bureaucracy's domestic activities, leading to a public uproar.[130] In 1971 that FBI director J. Edgar Hoover "formally terminated the COINTELPROs following the public release of FBI documents describing this program."[131] By this time, the Vietnam War was winding down, the Civil Rights Act had been passed, and the great national emergency was perceived to be winding down. Hoover feared, rightly so, that Congress would move to restrict FBI counterintelligence operations. This, coupled with the expanding Watergate scandal, and the stinging loss in Vietnam (the US-backed government in Saigon fell in 1975) brought the era of rampant domestic activity by the CIA and other agencies to a close.[132] Congress and the public were "prepared to sacrifice operational effectiveness to whittle down the CIA's power. The fact that the Cold War was presumably replaced by détente … reinforced this tendency to downgrade the CIA."[133] It was at this time that the immediate emergency of Vietnam had ended, and the broader Cold War emergency was in a lull as well. This made it particularly difficult for the president to justify domestic surveillance and counterintelligence programs, allowing Congress to step in and halt such activities.

Scandals of questionable, if not outright illegal, domestic activity by the Army, CIA, NSA, and FBI soon emerged in rapid succession,[134] culminating in the Watergate scandal, which pushed President Nixon to resign rather than face an impeachment trial. With the Cold War in détente (ironically, Nixon reduced the tension in the very conflict that could have justified his actions), there was no pressing national crisis to legitimize the national security state that had moved towards a garrison state during the Vietnam War. A vengeful Congress, backed by strong public opinion, created powerful investigatory committees, held hearings, and moved to check the powers of the national security bureaucracy. Congress ultimately passed the War Powers Resolution and the Foreign Intelligence Surveillance Act as part of the Thermidorian Reaction-style [135] pushback against the overreach of the executive branch. The national security bureaucracy's movement towards a garrison state had been halted for the time being.

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[130] Jordan, et al,165.
[131] Theorharis, 1981.
[132] Stuart, 2003.
[133] Jordan, et al, 94.
[134] Jordan, et al, 165.
[135] From the Thermidorian Reaction against the Reign of Terror during the French Revolution, July 1794.

3.8 The Fallout From Vietnam

3.8.1 The War Powers Resolution of 1973

At the close of the Vietnam War, Congress sought to reassert its Constitutional authority of declaring war and raising an army, which it had allowed presidents to do with little protest since World War II. Under the Constitution, "war powers are divided. Congress has the power to declare war and raise and support the Armed Forces (Article I, Section 8), while the President is Commander in Chief (Article II, Section 2)."[136] The national emergency of the Cold War, piqued by the Korean and Vietnam Wars, had allowed an assertive executive branch to unilaterally increase its power in matters of war and peace at Congress' own expense. The public and Congressional outcry over Vietnam and the excesses committed by the national security bureaucracy during the war triggered demands that the executive branch be reined in. In response, Congress passed Joint Resolution 93-148, the War Powers Resolution (1973) that sought to reclaim Congress' role in the use of military force abroad.

The War Powers Resolution limited the deployment of combat forces to "(1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces."[137] This last sub-clause did allow presidential flexibility during times of national emergency, but limited such emergencies to direct attacks on the US, akin to Pearl Harbor, and not simply deterring communist aggression abroad. The resolution also required the president to notify Congress in writing of the decision to deploy combat forces abroad, and continually provide updates of their situation while they were deployed. The president had 60 to 90 days after the deployment of such forces to notify Congress, after which they would vote to authorize (or not) the deployment of such a force. A failure to authorize it would automatically require the president to withdraw US forces.[138] President Nixon recognized that the War Powers Resolution would significantly decrease the power of the executive branch, and attempted to veto the resolution. Congress overrode his veto however, and the resolution passed in both the House and Senate on November 7, 1973.[139]

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[136], Richard F. Grimmett ,"Authorization for Use of Military Force in Response to the 9/11 attacks (P.L. 107-40): legislative history," Congressional Research Service, (January 16, 2007).

[137] US Congress "War Powers Resolution of 1973," Public Law 93-148, 93rd Congress (1973), § 2 (c).

[138] Grimmett, 2012.

[139] Grimmett, 2012.

3.8.2 The Foreign Intelligence Surveillance Act

When the national security bureaucracy's domestic surveillance and counterintelligence programs were discovered in the aftermath of the Watergate scandal,[140] the public outcry pushed Congress to investigate executive branch wrongdoing. Congress created the "United States Select Committee to Study Government Operations with Respect to Intelligence Activities," popularly known as the Church Committee after its chairman, Senator Frank Church (D-Idaho), to look into the deepening surveillance scandal. In the course of investigating, the committee revealed that the FBI, CIA, and NSA had conducted "warrantless privacy infringements, both by electronic surveillance and physical search, of U.S. citizens, including a U.S. congressman, some congressional staffers, anti-war protesters, and the late Martin Luther King Jr."[141] The Church Committee's investigation and recommendations for reform led to the passage of the Foreign Intelligence Surveillance Act (FISA) in 1978. FISA sharply curtailed the legal ability of the national security bureaucracy to conduct surveillance within the United States and increased Congressional oversight, and in doing so took the national security bureaucracy a step back from becoming an American garrison state.

The Foreign Intelligence Surveillance Act established that "non-criminal electronic surveillances within the United States were only permissible for the purposes of collecting foreign intelligence and/or foreign counterintelligence."[142] Here, "foreign" means a foreign government or faction or agent thereof, who is a non-US person (a US person is a citizen or permanent resident) operating on US territory.[143] FISA created the Foreign Intelligence Surveillance Court (FISC), "one at the district level for the initial review of surveillance applications, and one at the appellate level should the government appeal a district level denial of an application."[144] The FISC system was created to provide judicial oversight and grant (or withhold) warrants for domestic surveillance and other forms of intelligence gathering.[145]

The Foreign Intelligence Surveillance Act was enacted in response to the great excesses and abuses of power and secrecy committed by the intelligence agencies both in the US and abroad. FISA appeared to finally resolve the dilemma first raised by the National Security Act in

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[140] James G. McAdams III, "Foreign Intelligence Surveillance Act (FISA): An Overview," Department of Homeland Security (2009).

[141] McAdams III, 2009.

[142] McAdams III, 2009.

[143] 50 USC 36.1 § 1801.

[144] McAdams III, 2009.

[145] McAdams III, 2009.

1947, how the foreign-oriented national security bureaucracy would operate within the United States.[146] This belatedly brought legislative attention to what had long been noted, and taken of advantage of, by agents of the national security bureaucracy, the melding of foreign and domestic spheres within national security, without necessary safeguards.

There were however, several exceptions in which an intelligence or law enforcement agency did not need a warrant. With the Cold War still raging in the not-so-distant background, Congress recognized the necessity of gathering foreign intelligence, still based on the long-standing goal of preventing a nuclear Pearl Harbor-style attack. Intelligence agencies were exempted from obtaining warrants when the proposed surveillance operation is not likely to gather intelligence on a US person.[147] With the FISA law in place, intelligence agencies were banned from spying on US persons without a warrant, but were allowed to spy on non-US persons within the US under specific national security purposes.

FISA helped prevent a full-fledged garrison state from emerging by ending the unrestricted surveillance and counterintelligence programs within the United States. Before FISA, the President, and the National Security Council below him, had been able to direct the FBI to investigate domestic social and political groups whom were suspected of having ties to Soviet intelligence agencies. The CIA and NSA were able to assist the FBI in intelligence collection and counterintelligence because of the foreign-borne nature of the threat.

As executive authority naturally seeks to expand under the legitimating concept of national security, this investigation into possible Soviet clandestine activity spread into investigating domestic political concerns of the chief executive: President Nixon, and his subordinates. When President Nixon removed US ground forces from Vietnam, he ended the immediate emergency that had legitimized the increased domestic activity by the FBI, CIA, and NSA, resulting in significant pushback when they were discovered. Without the legitimizing national emergency of Vietnam (though this was an artificial, constructed emergency, not necessarily a true national crisis), Congress moved to restrict the powers of the intelligence community to prevent further surveillance within the country and from that, halted the slide towards becoming a garrison state. The broad activities under President Nixon and other presidents were banned, but as the Cold War carried on in the background, Congress felt it was necessary to maintain some internal intelligence and counterintelligence capabilities. FISA and

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[146] Stuart, 2003.
[147] 50 United States Code 36.1 § 1801.

the War Powers Resolution reduced the intensity and obtrusiveness of the national security state/garrison state, but did not end it entirely. These laws also made it more legally robust, by specifying what actions were and were not allowed, and through the War Powers Resolution's clause mandating regular presidential reports to Congress, laid the foundation for closer relations between Congress and the executive branch regarding national security.

3.8.3 The End of Conscription

The American people, anti-military and isolationist up until World War II, (at least during peacetime) accepted and supported the national security program because they were strongly anti-communist, and presidential rhetoric and elite opinion told them to fear the Soviet threat. However, the general public was compelled to pay attention to the state of affairs of the national security bureaucracy and foreign policy because of the use of conscription by the military, particularly when the military was deployed overseas. The Cold War-era draft began in earnest in 1948 and continued until 1973, albeit only in significant numbers during the Korean and Vietnam wars. Its use grew out of the civic republican theory of civil-military relations, and was used when the military vitally needed manpower. In World War II, the Pearl Harbor raid and the sense that the United States could be attacked, even overrun by Germany and Japan—a true national, existential crisis—motivated millions of Americans to volunteer, partially reducing the need for conscription. The Vietnam War began with popular support, but after media opinion turned against it, public and Congressional opinion soon followed suit. When combined with elite opinion hostile to the war, this triggered increasing opposition to the war, and to the draft, including large-scale public protests.

During the Vietnam War, conscription was used to provide manpower for the military, which forced the public to pay attention to the conflict. In keeping with the relationship between popular support for a conflict and conscription as described by Horowitz and Levendusky, support for the Vietnam War declined precipitously as the use of the draft increased. The public resistance to the war, coupled with other left-wing protests going on simultaneously, proved too much for the national security bureaucracy and its legitimizing crisis and rhetoric. President Johnson decided not to seek reelection because of popular opposition to the war and the draft. President Richard Nixon was elected on the campaign promise that he would end the Vietnam War.

One of the greatest legacies of the Vietnam War was that it caused President Nixon and his security advisors to end the use of conscription to provide manpower, and the draft remains as politically unpopular today as it was in 1973. The public's eventual disgust with all aspects of the war, spurred on by critical media opinion and the use of conscription sent powerful shockwaves through society, and "demolished the notion of military obligation and brought the tradition of the citizen-soldier to the verge of extinction."[148] Nixon pushed for an end to the draft because he believed that doing so would significantly undermine the anti-Vietnam protests going on at the time, by severing the largest and most visible link between society and the military, giving the executive branch greater freedom in the decision to use force abroad.[149] This would prove helpful for the resurgence of the national security state later on, as it had less need to maintain public support for the use of force abroad, and could then quietly expand the national security bureaucracy without public attention.

3.9 The Garrison State in Context

The United States ultimately did not become a garrison state during the Cold War. NSA-47 and NSC-68 created a conception of national security and a national security bureaucracy that moved the country towards a garrison state, while the national emergency of the Cold War provided a legitimate reason for it. While primarily focused outwards towards the world and containing the Soviet Union, it also grew domestically, monitoring domestic opposition. The Vietnam War, viewed as unnecessary, unjust, and even unwinnable by the American public, outgrew the ability of the national security bureaucracy and presidential rhetoric to maintain public support for it. This crisis of legitimacy brought the national security bureaucracy crashing down. Congress and the public pushed back when the national security bureaucracy within the executive branch was perceived to have exceeded the scope of the crisis.

The growth of a national security state, or a garrison state, is a product of the power of the executive branch of American government relative to the legislative branch. It relies on how well the executive branch, through the President, can convey a sense of crisis to the American people. A strong chief executive with an effective message of national crisis can justify the expansion of the national security state, an expansion of executive power, to respond to the crisis. The legislative branch, Congress, has proven willing to comply with the President's policy

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[148] Bacevich, 99.
[149] Eikenberry, 2013.

requests during the opening phases of an emergency, when the sense of crisis is greatest. The administrations of Presidents Roosevelt, Truman, Eisenhower, Kennedy, and Reagan during the Cold War demonstrate this, as do the early years of Johnson and Nixon. One national security scholar explained this tendency of the executive branch to increase its own power during national emergencies, as "even when the law bans extreme measures, emergency actors will probably pursue them anyhow."[150] Occasionally, the response to the crisis can prove unpopular enough to override the national emergency concerns they are being used towards, or the emergency itself can end. It is at this time that news of executive overreach, such as domestic surveillance or targeted assassinations, critical media reports come forward, and Congress and the Public react negatively. When this happens, the power of the executive branch is perceived as being too great, and Congressional and public opposition to the executive's expanded authority emerges and grows. The strong chief executive is either weakened, or replaced by a weak one, while Congress reasserts its authority. Witness the later years of both the Johnson and Nixon administrations, and then the administrations of Presidents Gerald Ford and Jimmy Carter, while Congress passed the War Powers Act and FISA, and conducted numerous investigations into executive branch abuses of power.

In 1991, the Soviet Union finally collapsed and broke apart, ending the Cold War, and with it, the national emergency that had underpinned American national security since 1945. Much like after the end of World War II, there was pressure to reduce the size of the military and national security bureaucracy, and the annual US defense budget fell by over 100 billion dollars between 1989 and 1996.[151] The Department of Defense similarly saw a 25 percent force reduction and 200,000 civilian employees cut.[152] The rest of the national security bureaucracy was similarly downsized, but much of the legislation and executive orders allowing it remained in effect. However, President George H. W. Bush and the National Security Council were determined to prevent any further reductions of the national security bureaucracy, wary as they were of the drawdowns at the end of World War II before the Cold War began in earnest.[153] Throughout the 1990s, the national security bureaucracy struggled with small-scale threats

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[150] William E. Scheuerman, "Survey article: emergency powers and the rule of law after 9/11," *The Journal of Political Philosophy* 14, no. 1 (2006).

[151] Dinah Walker, "Trends in U.S. military spending," Council on Foreign Relations, (July 30, 2013). http://www.cfr.org/defense-budget/trends-us-military-spending/p28855

[152] Jordan, et al, 59.

[153] Jordan, et al, 59.

around the world, none of which posed significant or direct threats to US national security. The absence of a peer competitor left the national security bureaucracy struggling to find a place for itself in the new international order, in need of a new major threat to justify its existence. The executive branch similarly needed a new crisis to legitimize an expansion of its authority once again.

Chapter 4: The War on Terror

While the War on Terror is frequently compared to the Cold War, it is important to note that the War on Terror was not only a parallel narrative, but also a subsequent event that built on the existing ideas, institutions, and policies established during the Cold War. Determining whether the War on Terror is leading to a resurgent national security state will follow in much of the same narrative order as the Cold War. The nature of the threat and the US response will be addressed, followed by the national security legislation and new bureaucratic agencies, as well as the presidential rhetoric that legitimized it. This will lead into a discussion of the current state of the American national security state, the role of public participation, and the possibility of an indefinite emergency and national security state.

4.1 The Threat

The collapse of the Soviet Union in 1991 left the United States without a peer competitor in terms of military strength, nuclear or conventional. The US stood alone as the world's only military superpower. That did not mean however, that the US was invulnerable to all threats. The US military was designed to fight state-on-state conflicts. It was not prepared for low-intensity wars, as Vietnam had already demonstrated. As a result, the military and national security bureaucracy behind it was largely unprepared to deal with terrorism and threats emanating from non-state actors.

On the morning of September 11, 2001, nineteen operatives from the shadowy international Islamist terrorist organization al Qaeda hijacked four commercial airliners departing from several airports along the northeast coast. Two crashed into the World Trade Center in New York City, one crashed into the Pentagon, and the fourth plane crashed in a field in Pennsylvania. The terrorist attack killed 2,977 people (plus the terrorists) and injured over six thousand more. The United States found its 60-year national security success since Pearl Harbor shattered by a new enemy; radicalized militant Islamists.

Terrorism after the Cold War is largely a product of discontentment with the process of globalization. As the *9/11 Commission Report* notes, Osama Bin Laden appealed to people "disoriented by cyclonic change as they confront modernity and globalization."[154] These groups

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[154] Thomas H. Kean and Lee H. Hamilton, Chairs, National Commission on Terrorist Attacks upon the United States. *The 9/11 Commission report: final report of the National Commission on Terrorist Attacks upon the United States* (New York: Norton, 2004), 48.

operate in the shadows, taking advantage of globalization to move from country to country, setting up training camps in weakly governed areas or in sympathetic regimes, such as Afghanistan, Libya, or Sudan.[155] They can slip members into target countries, such as the United States or Western Europe, to launch an attack and recruit new members from within. Terrorists are usually described as asymmetric enemies. They do not present a ready target for a retaliatory military strike, nor do they wear uniforms or follow other tenets of a professional military. While they have sympathizers and supporters, they do not have a civilian populace to defend like the Soviet Union and United States.

Modern terrorism has typically focused on striking high-value targets to create a mass spectacle in addition to killing many people. Their goal is to instill fear and changes in their enemy's way of life and political system by committing attacks on lightly guarded civilian or government targets. In an open, democratic society with an independent (and sensationalist) media such as the United States, terror attacks have cascading effects as images are repeated across the country and public pressure grows on the government to do something in response.

Terrorism and counterterrorism operations are in many ways an outgrowth of the cat-and-mouse game between intelligence and counterintelligence as the two sides race to strike or prevent a strike through clandestine means. Numerous terrorist groups around the world have received training and aid from a sympathetic state's intelligence agencies. For example, Pakistan's Inter-Services Intelligence Agency (ISI), and the CIA both supported Afghan insurgents against the Soviet invasion force in Afghanistan during the 1980s. Defeating terrorist groups requires operations and capabilities similar to counterintelligence operations, but it is even more crucial to identify suspected terrorists and prevent attacks due to the mass-casualty/high-spectacle nature of their attacks.

In the War on Terror, unlike the Cold War, the United States is fighting an enemy with no fixed address, and the threat itself is not homogenous. Terrorism is a method of political violence, capable of being used by any actor to achieve their goals. Al Qaeda was and remains an international coalition of different terrorist groups united by an ideology, and originally a desire to strike the US. Beyond the core al Qaeda headquartered in Pakistan's tribal regions, there are dozens of other al Qaeda factions and groups claiming affiliation, often with differing

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[155] Kean and Hamilton, 55.

tactics and objectives, making it difficult to determine where one terrorist threat ends and another begins.

4.2 National Security in the War on Terror

The response to the 9/11 attack was to launch the "War on Terror," a worldwide military, intelligence, and law enforcement campaign to root out and destroy al Qaeda and affiliated, sympathetic, or similar terrorist groups and state backers. The War on Terror has been dominated by two major land wars in Afghanistan (2001 – present) and Iraq (2003 – 2011), and featured military and clandestine engagements in many other countries around the world as well. The War on Terror is also being fought with expanded intelligence operations and domestic programs, conducting surveillance worldwide in an attempt to identify any potential terrorist plot before it can threaten the US, and domestic law enforcement to counter threats emanating from within the US.

The 9/11 attacks altered the conception of American national security. Whereas the previous conception of American national security had called for a national security bureaucracy and intelligence apparatus to detect and prevent state-based threats to the nation as a whole, national security now called for the intelligence community to detect and deter threats to individual citizens. As former Deputy Director of National Intelligence for Analysis Thomas Fingar explained,

> "For decades, national security, the military of our country, the activities of the Intelligence Community supported defense against foreign enemies, threats to the existence of our country, our way of life, survival of our nation, in existential terms. After 9/11, national security was redefined to de facto mean protecting every American citizen everywhere, around the globe every day."[156]

President Bush himself warned that combatting something as broad as terror itself would not be easy, saying, "our war on terror begins with al Qaeda, but it does not end there. It will not end until every terrorist group of global reach has been found, stopped, and defeated."[157] The Cold War was seen as an indefinite war against the Soviet Union. It would continue on until one side

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[156] Laurie West Van Hook, "Reforming intelligence: the passage of the Intelligence Reform and Terrorism Prevention Act," Office of the Director of National Intelligence (Washington, DC: ODNI History Office for the National Intelligence University, 2009).

[157] George W Bush, "Address to the nation," September 20, 2001.

or the other collapsed. From the outset, the War on Terror promised to be an indefinite war, with the only condition for victory being the complete destruction of any and all terrorist threats against the United States. The national security state, dormant since the end of the Cold War, would re-expand along lines similar to the early days of the Cold War, but with a stronger focus on intelligence to detect and defeat terrorist plots.

4.3 Legislation of the War on Terror

4.3.1 Authorization for Use of Military Force

On September 18, 2001, Congress passed Joint Resolution 23, "Authorization for Use of Military Force" (AUMF), authorizing President Bush (and future presidents) "to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or harbored such organizations or persons, in order to prevent any future attacks of international terrorism against the United States by such nations, organizations or persons."[158] The AUMF was effectively a declaration of war against al Qaeda and related groups. The Resolution as enacted gave the President broad powers to define who was a terrorist linked to al Qaeda, who constituted a threat to the United States, and did not include any "sunset" provision, or automatic expiration date or condition for the authorization. It did specifically note that the Resolution complied with the War Powers Resolution § 5(b), which required Congressional approval for further military action beyond 60 days except for a declaration of war, which this Resolution was. To date, the AUMF has not been repealed or modified in any way, allowing President Bush, and later President Obama to continue the War on Terror (now officially known as Overseas Contingency Operations) and pursue terrorists wherever militant groups have claimed the al Qaeda brand name. This provided the underlying foundation for the new national emergency and national security state of the War on Terror.

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[158] Congress, AUMF, 2001.

4.3.2 The USA PATRIOT Act

The second major piece of legislation came shortly afterwards, enacted on October 26, 2001. The "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act," (USA PATRIOT Act) was passed by Congress at the behest of President Bush in response to the perceived intelligence gaps and failures that had allowed al Qaeda hijackers to enter the country and carry out the 9/11 attacks.[159]

The USA PATRIOT Act significantly expanded the legal authority of the national security bureaucracy, and the intelligence community in particular, to conduct surveillance of electronic communications, as well as personal and business records. The Act "eases some of the restrictions on foreign intelligence gathering within the United States."[160] While the USA PATRIOT Act was originally set to expire (a sunset provision) on December 31, 2005, it has since been amended several times so that the provisions authorizing electronic surveillance and SIGINT-gathering do not expire until 2015 (if it is not amended again), while much of the rest of the Act has been made permanent. The USA PATRIOT Act also amended FISA, specifically the sections that govern the use of wiretapping electronic communications, and sharing foreign intelligence between the intelligence community and law enforcement agencies.[161] The Act has been credited with expanding the abilities of intelligence agencies to gather intelligence focused towards detecting and preventing future terrorist attacks, but has also been strongly criticized for infringing on the privacy rights of Americans in the name of national security.

4.3.3 The Intelligence Reform and Terrorism Prevention Act

In November 2002, Congress created the National Commission on Terrorist Attacks Upon the United States, colloquially known as the 9/11 Commission, to investigate the terrorist attacks, who perpetrated them, how they did so, and why the national security bureaucracy had been unable to stop them. The 9/11 Commission was tasked with providing recommendations to prevent a similar attack from happening in the future. In July 2004, the Commission released its conclusions as the *9/11 Commission Report*, which explained the al Qaeda threat and how the US should respond. The recommendations outlined in the *9/11 Commission Report* set in motion a

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[159] Charles Doyle, "The USA PATRIOT Act: a sketch," Congressional Research Service, April 18, 2002
[160] Doyle, 2002.
[161] Marshall C. Erwin, "Intelligence Issues for Congress," Congressional Research Service, Washington, DC: April 23, 2013.

process to pass the most far-reaching reforms to the American intelligence apparatus since the National Security Act of 1947.[162] This would become the Intelligence Reform and Terrorism Prevention Act (IRTPA, or Intelligence Reform Act) of 2004.

The Bush administration took the lead in drafting legislation that would become the Intelligence Reform Act, as the Truman administration had done with the National Security Act.[163] In crafting the legislation, the Bush administration sought to expand for itself the executive authority for intelligence gathering, and in attempt to satisfy all parties, produced language that was intentionally vague.[164] This gave it broad authority to create and run intelligence programs with minimal boundaries and definition, meaning they could be significantly expanded as necessary, at the discretion of the president and NSC. The language of the Intelligence Reform Act ended "the distinctions between foreign and domestic intelligence as well as civilian and military intelligence,"[165] which undid many of the reforms put in place by the Foreign Intelligence Surveillance Act in creating those distinctions. The Intelligence Reform Act also created the term "'national intelligence,' and defined it as 'all intelligence of any form and any type, to include, without limitation, information gathered inside or outside the United States.'"[166] Within the context of the War on Terror as a national emergency, and the real possibility of hybrid foreign and domestic threats, such action was seen as necessary to realizing the new national security objective, despite the inherent difficulties of such a monumental undertaking. Like the NSA, IRTPA also created new agencies to implement national security, in this case the Office of the Director of National Intelligence, which will be explored later in Chapter Four (4.4.2).

The 9/11 attacks revealed an almost complete lack of planning for major domestic terrorist attacks.[167] To fix this, IRTPA redrew the "boundaries between foreign and domestic intelligence, set new rules for intelligence and law enforcement, enhance[d] the interplay between civilian and military intelligence, correct the shortfall in information sharing, and [met] the needs of traditional and emergent intelligence functions."[168] This entailed a significant expansion of the

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[162] Van Hook, 2009.

[163] Van Hook, 2009.

[164] Michael Warner, "Legal echoes: the National Security Act of 1947 and the Intelligence Reform and Terrorism Prevention Act of 2004," *Stanford Law and Policy Review (*2006).

[165] Van Hook, 2009.

[166] Van Hook, 2009.

[167] Kean and Hamilton, chairs, 328.

[168] Van Hook, 2009.

duties of the national security bureaucracy and the intelligence community in particular. To perform this mission, the intelligence community created a global dragnet of SIGINT to detect any and all potential terror threats, both foreign and domestic. As NSA director General Keith Alexander said, "you need the haystack to find the needle."[169]

4.3.5 The FISA Amendments Act

The National Security Agency had seen its authorities to collect signals intelligence, particularly within the United States, vastly reduced by the Foreign Intelligence Surveillance Act. The Patriot Act and Intelligence Reform Act relaxed some of the restrictions put in place by FISA on interagency cooperation, allowing it to work with the FBI on counterterrorism, in providing an auxiliary role to collect SIGINT. The most significant piece of legislation to strengthen this relationship was the Foreign Intelligence Surveillance Act of 1978 Amendments Act of 2008 (FISA Amendments Act).

The FISA Amendments Act expanded the scope of FISA-approved surveillance to include any non-US person outside of the United States.[170] Under the new provisions of the law, the NSA was allowed to gather SIGINT of non-US persons overseas, including when their electronic data passed through US-based Internet and telephone service providers.[171] Due to technical limitations, the intelligence programs collecting the data of non-US persons inadvertently collected the data of US persons, including those on US soil, as well. However, rather than being immediately destroyed, this data is held for five years, and may be searched by the FBI or another agency with a FISC warrant.[172] These programs are still in place today.

[169] Barton Gellman and Ashkan Soltani, "NSA collects millions of e-mail address books globally" *Washington Post*, October 14, 2013.

[170] Edward C. Liu, "Amendments to the Foreign Intelligence Surveillance Act (FISA) extended until June 1, 2015," Congressional Research Service, Washington, DC: June 16, 2011.

[171] John W. Rollins and Edward C. Liu, "NSA surveillance leaks: background and issues for Congress," Congressional Research Service (Washington, DC: September 4, 2013).

[172] Rollins and Liu, 2013.

4.4 Agencies of the New National Security Bureaucracy

   4.4.1 The Department of Homeland Security

On September 20, 2001, President Bush created the Office of Homeland Security to coordinate the domestic response to terrorist threats and attacks.[173] In November 2002, Congress passed the Homeland Security Act, which created the cabinet-level Department of Homeland Security (DHS), under a Secretary of Homeland Security on March 1, 2003. The mission of the new DHS was to coordinate national disaster preparation and response management, with a primary emphasis on terrorism. To this end, the DHS incorporated some 180,000 federal employees and 22 different federal agencies, including the Federal Emergency Management Agency (FEMA), the Coast Guard, all federal immigration agencies, the Transportation Security Administration, and Secret Service.[174] This was intended to add structure and order to the complex interagency process for counterterrorism and engage the whole government, from border security to airport safety. However, the reorganization effort left the FBI and Drug Enforcement Agency within the Department of Justice (DOJ), setting up the DHS and DOJ for a running turf war over domestic counterterrorism.[175] The DHS also lacked direct access to the intelligence community and its resources, though it did have its own, small, Office of Intelligence and Analysis. Primarily a law enforcement organization, DHS represents a further incursion of national security concerns into domestic affairs, because of the new domestic nature of the threat.

   4.4.2 The Office of the Director of National Intelligence

The Intelligence Reform Act separated the Director of National Intelligence (DNI) from the Director of the CIA, giving the DNI a supervisory role over the entire Intelligence Community, while leaving the operations of the CIA to the Director of Central Intelligence (DCI).[176] This "centralized leadership for the Intelligence Community"[177] in the form of the Office of the Director of National Intelligence (ODNI), was in direct response to the gaps in inter-agency coordination exposed by the 9/11 attack. The ODNI would facilitate cooperation to "break down the bureaucratic 'stovepipes' that had been built around the various intelligence

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[173] Shiffman and Hoffman, in George and Rishikof, eds., 203.
[174] Shiffman and Hoffman, in George and Rishikof, eds., 208.
[175] Shiffman and Hoffman, in George and Rishikof, eds., 210.
[176] Fingar, in George and Rishikof, eds., 142.
[177] Van Hook, 2009.

collection specialties" and promote the "sharing of information across the agencies to 'connect the dots' with regard to the terror threat."[178]

The Director of National Intelligence[179] has the responsibility of being the intelligence advisor to the president, and the ODNI sets objectives for the different agencies to be concurrent with the overall goal of national security. The goal of the ODNI is to fill in the gaps in the Intelligence Community that allowed 9/11 to happen, as well as the faulty intelligence on Iraq's Weapons of Mass Destruction to be used to justify the invasion.[180] As a young agency, the Office of the Director of National Intelligence has faced considerable hurdles in overcoming interagency rivalries within the national security bureaucracy.[181] Many of the older and more storied agencies, such as the CIA, resent having an outsider tell them what to do. Nonetheless, the culture of interagency cooperation promoted by the ODNI has encouraged other agencies within the national security bureaucracy to work together on the terror threat.

4.4.3 The Federal Bureau of Investigation

After 9/11, Federal Bureau of Investigation Director Robert Mueller III led the agency to work more closely with other members of the intelligence community, specifically the CIA and NSA, to overcome the divide separating foreign and domestic counterterrorism intelligence programs. Under FISA, the FBI had been prevented from working with the rest of the intelligence community on parallel investigations.[182] The Patriot Act encouraged interagency cooperation on counterterrorism and removed barriers between foreign and domestic intelligence operations by allowing the FBI to use FISC-approved surveillance, carried out by the NSA, and share domestic- and foreign-gathered intelligence with other intelligence agencies.[183]

The standards to conduct a FISA-approved investigation under the Patriot Act were set low. To obtain a warrant from the Foreign Intelligence Surveillance Court, the FBI had to prove that there were "'reasonable grounds to believe' that the tangible things sought are 'relevant to an authorized investigation' into foreign intelligence, international terrorism, or espionage."[184] From a legal standpoint, "reasonable grounds to believe," or "reasonable suspicion" is considered

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[178] Warner, 2006.
[179] To date, all Directors of National Intelligence have been men.
[180] Fingar, in George and Rishikof, eds., 149.
[181] Fingar, in George and Rishikof, eds., 142.
[182] Rishikof, in George and Rishikof, eds., 186.
[183] Rishikof, in George and Rishikof, eds,. 187.
[184] Rollins and Liu, 2013.

to be less stringent than the typical "probable cause," and the FBI only had to prove that the investigation would reveal something to justify it, not that there was known evidence to be found.[185] The FBI also used documents known as National Security Letters (NSL), subpoenas to US companies to turn over requested information, and which did not require FISC approval. Under the Patriot Act, NSLs "were no longer limited to foreign powers or agents of a foreign power, but simply 'relevant to' or 'sought for' an investigation to protect against international terrorism or espionage."[186] This included US persons believed to be working for or in collaboration with foreign enemies.

The FBI's expanded role in intelligence and counterterrorism is reflective of the conceptual shift in national security as a result of 9/11 and the War on Terror. After 9/11, the distinction between foreign and domestic threats and legal frameworks evaporated, enabling the national security bureaucracy, through the FBI, to apply resources, intelligence-gathering programs, and the overall mentality of how to operate in each field equally. To carry out the surveillance, the FBI turned to the NSA and its powerful signals intelligence-gathering capabilities.

4.5 Rhetoric of the War on Terror

    4.5.1 President George W. Bush: the Bush Doctrine

Much like in the Cold War, justifying the expansion of the national security bureaucracy in the War on Terror required the support of the American people and Congress. This was accomplished through the use of presidential rhetoric to convince the public of the necessity of the response. Public and elite support for the president's national security strategy by extension legitimized the extraordinary measures of surveillance conducted within the US, undertaken in the name of national security. Two of President George W. Bush's speeches, the first in the immediate aftermath of 9/11, and the second to Airline employees several months later, indicate how he both built legitimacy for the expanded national security state, and also encouraged the public to return to normal.

President Bush's first major address after 9/11 was on September 20th, when he addressed a joint session of Congress regarding the attack. In his speech, President Bush

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[185] Rollins and Liu, 2013.
[186] Rishikof, in George and Rishikof, eds,. 188.

identified the enemy as al Qaeda, and its ideology as irreconcilable with western American values, saying "they hate our freedoms."[187] In doing so, President Bush described an idealized enemy for the American people to rally against in a black-and-white conflict. President Bush framed the conflict in terms easy for all Americans to understand, but perhaps too simplistically, with declarations like "freedom and fear are at war."[188] Using such rhetoric, President Bush superficially told Americans not to be afraid, but by portraying al Qaeda as pure and unyieldingly evil, the "enemies of freedom"[189] which was "dedicated to imposing its radical beliefs on people everywhere,"[190] he was in effect telling Americans that they did indeed have much to fear from al Qaeda and similar groups—and that America was now vulnerable to them.

With the national crisis explained, President Bush then moved on to his response to the threat. Comparing the rhetoric of the speech to what has transpired since then, President Bush was surprisingly candid about what the country could expect to happen, even if neither he nor the country realized it at the time. In launching the War on Terror (which had been authorized by the AUMF only a few days prior) President Bush declared, "our war on terror begins with al Qaeda, but it does not end there. It will not end until every terrorist group of global reach has been found, stopped, and defeated."[191] Combatting an idea and strategy capable of being adopted and used by any disaffected group is inherently a difficult, long-term project because of the transmutability of the target. This set up the War on Terror to be an open-ended conflict in which the terms of victory were unclear. Would it simply be the defeat of al Qaeda, or the neutralization of all terrorist groups who threatened the US whenever or wherever they appeared? Would these groups need to possess the ability to attack the US, or simply the intent, to appear on the target list? President Bush warned of this never-ending conflict, saying, "our response involved far more than instant retaliation and isolated strikes. Americans should not expect one battle, but a lengthy campaign unlike any other we have ever seen."[192] He also stressed the need to expand the country's intelligence capabilities, "to know the plans of terrorists before they act and to find them before they strike."[193] Again, this tapped into the deep-seated American desire to prevent surprises, such as Pearl Harbor and 9/11, and implicitly carried the

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[187] Bush, 2001.
[188] Bush, 2001.
[189] Bush, 2001.
[190] Bush, 2001.
[191] Bush, 2001.
[192] Bush, 2001.
[193] Bush, 2001.

argument that all measures taken to prevent future attacks were therefore justified. In this speech, President Bush also announced the creation of the Office (soon to become Department) of Homeland Security to coordinate domestic national security and emergency management and responses.

With this speech, President Bush set the tone for how the government would respond to 9/11 and the War on Terror. This was to be a total war against an existential threat, with extraordinary measures justified and undertaken not only in the name of national security but in the defense of freedom itself. President Bush said, "the course of this conflict is not known, yet its outcome is certain. Freedom and fear, justice and cruelty, have always been at war, and we know that God is not neutral between them."[194] Through powerful rhetoric, President Bush conveyed that the country had suddenly been plunged into a national emergency that threatened America's way of life.

4.5.2 President Bush: Speech to Airline Employees

In his next public speech, to airline workers on September 27, 2001, President Bush counteracted some of his own pronouncements to reassure the American people that their lives would continue on much as before. In this speech, President Bush told the country to "do your business around the country. Fly and enjoy America's great destination spots. Get down to Disney World in Florida … enjoy life, the way we want it to be enjoyed."[195] While President Bush did not literally tell Americans to "go shopping"[196] as his critics have claimed, he did tell them to participate in the economy and go back to their lives before 9/11. On the surface, the president did need to reassure the American people that they were going to be safe and that they should not live in paranoia of another terrorist attack. However, by emphasizing that everything would go back to normal for them, President Bush rhetorically detached the public from matters of national security and the newly launched War on Terror. Civilian citizens were to go about their daily lives while entrusting the War on Terror to the military and national security bureaucracy. This was in keeping with the liberal theory of civil-military relations, in which society cedes defense to a professional military, but it came with consequences as well.

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[194] Bush, 2001.

[195] Bush, "Remarks by the President to Airline Employees," 2001.

[196] Andrew Bacevich, "He told us to go shopping. Now the bill is due," *The Washington Post*, October 5, 2008. http://www.washingtonpost.com/wp-dyn/content/article/2008/10/03/AR2008100301977.html

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The speech encouraged the public to return to peacetime while the national security bureaucracy embarked on an indefinite war. This was intended to foster complacency in the public, acceptance of the War on Terror and the programs and policies needed to support it. The public was able to return to its interests before 9/11, when "the American people were content to focus on their 401k's and stock options."[197] The national security bureaucracy did not need to answer to public opinion, giving it greater autonomy in its course of action.

President Bush's argument for the War on Terror also benefited from a general consensus of opinion by the country's political elites and media. Numerous studies have shown the public to be woefully ill-informed about politics, and that "knowledge levels are even dimmer when the focus turns to specific information,"[198] even more so in the realm of foreign affairs. Instead, the public tends to take cues from political and media elites for how they should feel about a particular event or idea. In the wake of 9/11 and strong rhetoric of a national emergency, as in all crises, there was a perceptible "rally around the flag" affect, which significantly increased support for the President and his policies almost overnight.[199] President Bush was able to quell public dissent by political elites towards his national security strategy, challenging them to disagree with him by saying, "either you are with us, or you are with the terrorists."[200] Caught up in the rally-around-the-flag moment, there was effectively no opposition to President Bush's declared War on Terror or the conduct of it. The Senate passed the AUMF by a vote of 98-0 (with two abstentions) and it passed the House by 420-1.

The national security bureaucracy under President Bush was able to maintain the rhetoric of emergency and neutralize political opposition long enough to launch the invasion of Iraq in March 2003. Congress voted overwhelmingly to launch the invasion (77-23 in the Senate, 297-133 in the House), while neither the Democratic Party nor the media significantly opposed or even questioned the decision to go to war and Iraq's links to al Qaeda. This demonstrated the success of President Bush's use of national emergency rhetoric to legitimize all actions taken by the national security bureaucracy in the name of the War on Terror.

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[197] Stuart, 2003.

[198] Berinsky, 2007.

[199] Gershkoff and Kushner, 2005.

[200] Bush, Speech to the nation, 2001.

4.6 President Barack Obama: Ending the War on Terror?

In 2008, Barack Obama was elected president of the United States, and upon assuming office; one of his biggest tasks was deciding how to manage the War on Terror. Since then, President Obama's most significant speech on national security so far was his speech to the National Defense University in May 2013. The official purpose of the speech was to address the covert but widely known drone program run by the CIA in Pakistan and elsewhere, but President Obama addressed the possibility of an eventual end to the War on Terror. The speech was an attempt at a rhetorical bookend to President Bush's speech to Congress announcing the beginning of the War on Terror.

President Obama first emphasized, "our nation is still threatened by terrorists. From Benghazi to Boston, we have been tragically reminded of that truth."[201] Elsewhere in the speech, President Obama also stated that most of the original leaders of al Qaeda were dead or in custody,[202] leaving a terrorist group significantly different from the one behind 9/11, despite the shared name. President Obama touched on the infrastructure of the War on Terror, defending the use of unmanned combat aerial vehicles (UCAVs, popularly: drones) outside of declared battlespaces (i.e. Pakistan's tribal regions and rural Yemen) run by the CIA. He stressed that these were legal under the AUMF and necessary to defeat terrorists before they could pose a threat to US forces abroad or the United States itself.

The majority of the speech was divided between emphasizing the still potent and mutating terrorist threat, and the possibility of one day ending the War on Terror. For the threat, President Obama said that "we face a real threat from radicalized individuals here in the US," in reference to the Boston Marathon bombing earlier that year, and attempted car bombing of Times Square a few years prior.[203] He noted that US citizens or permanent residents often perpetrated these attacks, and that they posed a dangerous new terrorist threat because of the clash of national security interests and the civil rights of citizens. President Obama acknowledged that the US could not simply use military force to achieve victory.[204] Instead, he argued, "the use of force must be seen as part of a larger discussion we need to have about a comprehensive counterterrorism strategy."[205] What President Obama did not say, but

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[201] Barack Obama, "speech to National Defense University," May 23, 2013.
[202] Obama, 2013.
[203] Obama, 2013.
[204] Obama, 2013.
[205] Obama, 2013.

implied elsewhere in the speech was that the other component of the War on Terror was the use of intelligence to detect and disrupt potential threats before they materialized, and before military force was required to neutralize them.

President Obama alluded to the prospect and danger of permanent war, paying homage to James Madison's warning that "no nation could preserve its freedom in the midst of continual warfare."[206] President Obama admitted that he could not "promise the total defeat of terror," which in itself was a major departure not only from the original rhetoric of the War on Terror, and the fundamental American national security principle of preventing surprise attacks.

President Obama announced that the United States was in the process of winding down the War on Terror outside of the US, saying, "this war, like all wars, must end."[207] To this effect, he declared that he would like to work with "Congress and the American people in efforts to refine, and ultimately repeal, the AUMF's mandate."[208] Herein was the first time that a chief executive had offered to willingly cede power back to Congress. In doing so, President Obama used new, post-crisis rhetoric in a distinct break from President Bush and an earlier era, the presidents of the Cold War. President Obama's speech to the National Defense University is critical to understanding current controversies and debates on national security. The appearance of post-crisis rhetoric signaled that the War on Terror, the national emergency, was over.

4.7 The National Security State Exposed

On June 6, 2013, scarcely two weeks after President Obama gave his speech on ending the War on Terror, the Washington Post and the Guardian media outlet of Britain broke the story that the National Security Agency and British Government Communications Headquarters (GCHQ) were conducting a worldwide electronic surveillance program, collecting the metadata of emails, phone calls, web searches and other electronic information of million of people, including American citizens.[209] While a slim majority of the public was upset by the program, (a Gallup poll on June 2013 found that 53% of respondents had an unfavorable view of the program) Congress was even more ambivalent.[210] More documents released later also revealed

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[206] James Madison, in Obama, 2013.
[207] Obama, 2013.
[208] Obama, 2013.
[209] Barton Gellman and Laura Poitras, "U.S., British intelligence mining data from nine U.S. Internet companies in broad secret program," *The Washington Post*, June 6, 2013.
[210] Frank Newport, "Americans Disapprove of government surveillance programs," Gallup, (June 12, 2013).

that the Senate and House Intelligence Committees members were complicit in the programs, having voted to authorize them and receiving regular updates on the activities.[211]

The National Security Agency and British Government Communications Headquarters (GCHQ) operated a worldwide electronic intelligence collection program that gathered SIGINT by capturing the electronic signature information, such as the caller and recipient, duration, and date of a phone call, from suspected terrorists and people who they communicated with, within three degrees of separation from the original suspect.[212] This program grew in scope and intensity and for a variety of purposes not necessarily tied to national security. As the release of documents continued, they revealed that the NSA was also listening in on non-citizens with no apparent connections to terrorism, including the heads of state of allied countries, such as Germany and Brazil.[213] As of December 2013, documents continue to be released describing further activities by the national security bureaucracy that blur the line between legal and illegal.

The post-9/11 conception of American national security transcends the foreign-domestic barrier to responses because the terrorist threat itself is transnational. The separation of domestic law enforcement from military and intelligence affairs was seen as necessary to check the expansion of executive power and the potential for abuse, but as the *9/11 Commission Report* indicated, this led to a lack of coordination about domestic terror plots, which had allowed the al-Qaeda hijackers to carry out their attack. The 19 hijackers had entered the country legally (one would-be hijacker had been stopped by a customs agent in Miami[214]), attended flight school, and booked plane tickets without arousing suspicion, despite some evidence from foreign intelligence-gathering agencies that al-Qaeda was planning to attack the US. The attack demonstrated the need to allow foreign intelligence and domestic law enforcement agencies to cooperate with each other to prevent future attacks. Doing so raised the issue of the tradeoff between security and civil liberties, however. While the Patriot Act and Intelligence Reform Act both included provisions for Congressional oversight of intelligence-gathering activities, the wording in both was sufficiently vague as to allow a broad interpretation of what was "legal."

The USA PATRIOT Act, FISA Amendments Act, and Intelligence Reform and Terrorism Prevention Act were enacted to fill the gaps. Through these three laws, Congress

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[211] Rollins and Liu, 2013.

[212] Shane Harris, "3 degrees of separation is enough to have you watched by the NSA," *Foreign Policy*, July 17, 2013.

[213] Alison Smale, "Anger growing among allies on U.S. spying," *The New York Times*, October 23, 2013.

[214] Kean and Hamilton, chairs, 11.

overhauled the national security bureaucracy and intelligence community. The Intelligence Reform Act created a centralized Director of National Intelligence to oversee the intelligence community and foster interagency cooperation. The USA PATRIOT Act and FISA Amendments Act expanded the legal authority of the national security bureaucracy to conduct electronic intelligence gathering within and outside the United States. The FISA Amendments Act specifically lowered the requirements for intelligence agencies receiving a warrant for domestic surveillance from the Foreign Intelligence Surveillance Court. Under the justification of national emergency, particularly against a domestic threat, these Acts significantly changed the national security bureaucracy and intelligence community to create a more unified approach to counterterrorism. This translated to a further blurring of the theoretical and legal distinction between foreign and domestic boundaries for surveillance, and greater cooperation between the NSA and FBI on internal security activities.

The FBI, as the main domestic national security organization, could task the NSA and CIA to gather intelligence on persons within the US, as long as it was in support of an investigation of a foreign-derived threat, which terrorism was. The FBI had long had a reputation for aggressive law enforcement, to the point that President Truman worried about becoming a "Gestapo" in the United States.[215] As the anti-communist investigations and Cointelpro of the 1960s and early 1970s have already demonstrated, the FBI has indeed pushed the boundaries of the law in some of its national security operations. During each era, the FBI, the national security bureaucracy, and the president had justified such actions as necessary to respond to the national crisis going on at the time.

In the wake of 9/11 and the numerous intelligence reform laws passed, the FBI enlisted the help of the NSA to perform surveillance for national security to detect terror plots of a domestic origin,[216] on a scale not seen since the Vietnam War. While broadly legal, this surveillance program has proven unsettling to many Americans who fear the potential for abuse, the lack of transparency, and are simply uncomfortable with the government monitoring their private communications.[217] The electronic surveillance was legitimized by presidential rhetoric. As long as the nation was in a national security crisis, then the range of acceptable actions was

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[215] Stuart, 2003.
[216] Rollins and Liu, 2013.
[217] Rollins and Liu, 2013.

much greater, a mentality derived from the idea of military necessity to victory. This was a war, after all.

4.8 The New National Security State, 2001 - Present

The parallels to the early half of the Cold War seem obvious, up to this point. Unlike then however, there does not yet appear to be a watershed moment in the War on Terror to provide a critical halt and pushback. The bulk collection of signals intelligence is broadly legal under national security legislation, but the collection and retention of US persons data is illegal, even under the expanded FISA provisions.[218] Nonetheless, agencies of the national security bureaucracy, the NSA and FBI, are collaborating on collecting and utilizing this data. They are doing this because the national emergency of the War on Terror, constructed by presidential rhetoric, justifies all actions of military necessity towards the war effort. Their actions helped create a national security state by legitimizing action outside the rule of law in the name of national security. Vietnam and the draft provided the impetus for massive protests in the Cold War that eventually brought down the emergent garrison state. The lack of conscription, despite the wars in Afghanistan, and especially Iraq, has allowed the American public, and Congress to remain aloof from the War on Terror both domestically and abroad. Iraq, unlike Vietnam, did not become the national security state's Waterloo.

As the war in Iraq dragged on, the US military became desperate for manpower, and relied on a large and unprecedented number of private contractors to complement the military.[219] The war in Iraq did not did not implement a draft to meet needs of the force. Critically, while a majority of the country opposed the war in Iraq by 2011, there were never mass protests on the same scale as those against the Vietnam War, precisely because without a draft, most of the population felt no real connection to the war, and no reason to protest it. In Vietnam, with the draft in use, "one large wing of the edifice that [the national security bureaucracy] had erected collapsed, raising doubts about the integrity of the entire enterprise."[220] Without a draft and anti-draft protests, there was no great challenge to the overarching War on Terror and the rhetorical narrative that constructed it, enabling it to continue on largely unscathed even as the Iraq war ended.

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[218] Rollins and Liu, 2013.
[219] Eikenberry, 2013.
[220] Bacevich, 149.

The public disclosure of the NSA electronic surveillance programs was met with ambivalence and divided public opinion, again because of a general disinterest in the war effort, complemented by equally divided elite opinion. Similarly, unlike during the Vietnam War where the executive branch acted alone, the executive branch has acted with the complicity of Congress at every step of the War on Terror. Congress has repeatedly authorized the existence of electronic surveillance programs; meaning Congress was informed of and approved of their existence. The relationship between the executive branch and legislative branch on this front of the War on Terror has not been adversarial, and without this adversarial relationship, there has not yet been significant Congressional pushback to halt the growth of a national security state in the War on Terror.

Over time, the revitalized national security bureaucracy grew as a result of the new intelligence and counterterrorism laws. As al Qaeda was worn down and on the run overseas, new terrorist threats began to emerge from within the United States, including by US citizens and permanent residents. In most cases, the terrorist suspects (many of whom are currently on trial) were motivated by disillusionment and discontentment with life in the United States, and radicalized by Jihadist ideology accessed over the Internet.[221] Some of them traveled overseas to receive training by al Qaeda and other international terrorist groups before returning to the United States to mount attacks.

As the threat transcended the boundary between foreign and domestic, the national security bureaucracy soon followed suit. The domestic surveillance apparatus expanded to identify and track this new threat. Herein lay the ultimate challenge to the balance of law, liberty, and national security. Some US citizens presented threats not only to the state, but to their fellow citizens as well, and were operating within the United States. They would need to be detected and neutralized before they could carry out a mass-casualty terrorist attack. The legitimizing principle of national security over all else made it acceptable for the national security bureaucracy to operate outside the law to counter this threat, rather than potentially wait for a citizen-terrorist to carry out an attack and Congress to respond afterwards.

As long as there was a crisis, such efforts were legitimate. However, President Obama's post-crisis rhetoric announced the coming end of the emergency, despite cautioning about the extant threat within the United States. President Obama did not frame the domestic threat in

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[221] Rollins and Liu, 2013.

the rhetoric of a crisis however, as this would have been paradoxical to his call for an end to the War on Terror, if only the foreign component. Instead, the crisis was declared over. With it went the justification for the national security bureaucracy's domestic intelligence activities. It is unlikely that the NSA leaker Edward Snowden would have decided not to release documents on surveillance activities had the President continued to use crisis rhetoric, but it is likely that the public would have been more accepting of the programs with a crisis to justify them.

As the Gallup poll showed, the American public has been roughly evenly divided over the surveillance programs, though opposition to them has been growing steadily with the release of more details, and some programs with tenuous links to national security or foreign policy at best. International opinion has been almost uniformly outrage, by government officials and the general public of foreign countries alike. It is important to remember though, that the privacy rights of non-US persons not on US soil have never existed in the history of the United States with regards to SIGINT and COMINT gathering where national security and foreign policy are concerned. Other countries do not respect the privacy rights of American citizens when it comes to surveillance either.

The general ambivalence of American society towards the domestic surveillance programs stems from three key trends in the country. First, unlike the Vietnam War era, there is minimal public participation in the current War on Terror. Since President Bush's speech to airline employees, the general public has been on a peacetime footing, seeing no significant changes in their daily lives (except for the increasingly annoying airport security measures, of dubious effectiveness). President Bush even lowered taxes, denying the public the role of even paying for the War on Terror. More importantly, there was no call for conscription to increase the size of the military at the outset of the War on Terror, something that at least from a military perspective, could have been helpful in prosecuting two major land wars at the same time. As has been pointed out earlier, without the burden of conscription, the public tends to not pay attention to foreign policy, national security, and most critically, the use of military force abroad. The lack of a draft then made it easier for the public to accept the decision to go to war and continue waging it for so long, and by extension, the rest of the national security project.

The second critical factor was the use of presidential rhetoric to convey a sense of crisis, which compelled political elites and the public to accept the national security bureaucracy's proposed solution. Even President Obama's post-crisis rhetoric was really a bifurcation of the

crisis continuing (mostly on the domestic front) and ending (the global portion). The mixed messages influenced public opinion, as Americans had to reconcile these competing ideas, and decide upon that basis whether the extralegal actions of the national security bureaucracy were justified. A focus on the continuing crisis would imply yes they were, while a focus on the end of the crisis would imply no they were not. Presidential rhetoric also influence the third factor, which had an important role in influencing public opinion of the national security bureaucracy's activities as well.

The third factor is how the media and elite opinion of a subject influences public attitudes towards it. The reaction of political and media elites has been shown to correlate with the opinion of the general public, indicating that while Americans are especially ill-informed about government activities, they are adept at taking cues from political elites and media outlets for how they should judge an occurrence or narrative. Regarding the NSA's surveillance program, much of Congress was notably silent during the initial disclosures. Leaked documents revealed that Congress was complicit in the activities, having passed the bills that created these programs, and re-authorizing them as necessary. The powerful Senate and House Intelligence Committees had been well aware of the details of the programs. The media was largely indecisive about the programs as well. CNN's 60 Minutes ran an investigative story that was a largely flattering portrayal of the agency and its surveillance programs.[222] Thomas Friedman of the New York Times wrote an op-ed piece arguing that as uncomfortable as the programs appeared to some people, they were preferable to another terrorist attack occurring, and therefore justified.[223]

Nonetheless, without clear positions from media and political elites regarding the NSA surveillance program, the general public was divided and unsure of the program and other national security activities. Without a significant public outcry, it is unlikely that there will be meaningful reductions in the programs in the foreseeable future. There are two recent (as of the time of this writing) developments that demonstrate this. First, Senator Rand Paul of Kentucky recently proposed repealing the AUMF, as President Obama discussed in his speech before the NSA activities became public. This proposal has not yet moved forward however. Second, on January 17, 2014, President Obama gave another speech on the surveillance programs, backtracking from his previous post-crisis rhetoric in an attempt to justify and explain them to the American public.

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[222] David Folkenflik, "'60 minutes' criticized for NSA report," *National Public Radio*, December 18, 2013.
[223] Thomas Friedman, "blowing a whistle," *The New York Times*, June 11, 2013.

4.9 In Defense of the National Security State: President Obama's NSA Address

On January 17, 2014, approximately six months after his speech on ending the War on Terror, President Obama gave another speech, this time in response to the public disclosures of the NSA electronic surveillance programs. He sought to defend the programs by connecting them, and the motivations behind them, traditional and modern conceptions of American national security, many of which are explicated in this paper. President Obama first argued that, "throughout American history, intelligence has helped secure our country and our freedoms."[224] He made the case that the use of intelligence in national security goes back to Independence. President Obama spoke of the development and use of intelligence during the Cold War to counter the Soviet threat, "to give us insights into the Soviet Bloc and provide our leaders with information they needed to confront aggression and avert catastrophe."[225] Intelligence was justified because it helped prevent attacks, which has been the basis of American national security since 1945. President Obama admitted that intelligence agencies had committed past abuses in the name of national security, leading to new laws governing them in the 1970s.[226] However, he did not dwell long on this period, and quickly moved on to the new threat of terrorism, brought to the forefront by 9/11. Like other presidents before him, President Obama described a threat that challenged the country in a way it was not prepared for, saying "our framework of laws was not fully adapted to prevent terrorist attacks by individuals acting on their own or acting in small ideological – ideologically [sic] driven groups on behalf of a foreign power."[227]

Throughout the rest of the speech, President Obama argued two themes: that the programs were legal, and necessary, in the face of the extant terrorist threat. President Obama argued that it was Congress' responsibility to establish boundaries for the national security bureaucracy agencies,[228] but at the same time he repeatedly emphasized that Congress had already been monitoring and approving the programs, saying, "we've sought to keep Congress continually updated on these activities."[229] President Obama concluded the speech by announcing that there would be new safeguards put in place to protect the privacy of American

[224] Obama, "Speech on NSA reforms," 2014.
[225] Obama, "Speech on NSA reforms," 2014.
[226] Obama, "Speech on NSA reforms," 2014.
[227] Obama, "Speech on NSA reforms," 2014.
[228] Obama, "Speech on NSA reforms," 2014.
[229] Obama, "Speech on NSA reforms," 2014.

citizens and non-citizens around the world, but that the programs would not significantly change in their size and scope.

The speech was widely criticized for not containing any serious proposals for rolling back the surveillance activities.[230] Congress is now considering its own measures as well, but specific details have not yet emerged, and are not expected to make major changes. While public disapproval of the NSA surveillance has grown over time, it is not at levels that can bring pressure on the president and Congress to change course. There are no mass demonstrations in the streets protesting against the national security bureaucracy's surveillance programs. Prior to the speech, the president had commissioned a panel to investigate the NSA's surveillance activities and recommend how to better balance security and privacy. From the speech, it is evident that President Obama declined most of their recommendations.[231] Notably, the bulk collection of American electronic communications is expected to continue on as before.[232] The continuing terrorist threat is indeed a reason to keep some form of electronic surveillance, but the extent of the program and willingness to operate outside of the law is due to the lack of significant Congressional and public opposition to the programs after their exposure, which would have resulted in pushback against the surveillance excesses.

Obama's call for Congressional oversight exposed a paradox that indicates why the current national security state is likely to be permanent and more entrenched than that of the Cold War. As discussed earlier, the national security state is a function of growing executive branch power, which waxes and wanes in a cyclical pattern during national emergencies. During the crisis, executive power expands, but as the crisis subsides, the legislative branch reasserts its authority and establishes limits on the executive branch. The dueling relationship between the two branches ultimately halted the garrison state during the Cold War, and other periods of significant power expansion by the executive branch. In the War on Terror however, the executive branch and legislative branch have more often been cooperative, particularly on the subject of intelligence and surveillance programs. This makes it easier for the national security state to continue to operate.

Collusion between the executive and legislative branches also affects how the general public perceives the debate. As noted earlier, the American people typically take cues to their

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[230] Shane Harris, "NSA surveillance will change. Just not very much," *Foreign Policy,* (January 17, 2014).

[231] Harris, 2014.

[232] Harris, 2014.

opinions from political elites: the president, Congress, and the media. The lack of hostility between the president and Congress over the intelligence programs minimized negative elite opinion that would influence the reaction of the public to be against the programs. The lack of conscription makes Americans already predisposed to not be concerned with how their national security is being implemented, and ambiguous media opinion serve to further deny Americans oppositional elite opinion. This reinforces Congress' position of general compliance with the executive branch by minimizing constituent pressure on Congress to curb the growth of executive branch power and the surveillance programs.

Chapter 5: What Happens Now?

The War on Terror is not the first time the United States had faced an existential threat and responded with a national security state. The Civil War and both world wars witnessed massive expansions of executive power in the name of national security, before the term itself was even coined. These were all temporary emergencies however, and executive power contracted soon after hostilities ended. The Cold War broke with this mode as the first conflict that was expected to last indefinitely. The Cold War also dramatically raised the danger of the threat because for the first time, the US itself was vulnerable to a sudden and devastating attack on its own soil.

Faced with this threat from the Soviet Union, the United States responded by conceptualizing a new national security, which held that a surprise attack must be prevented at all costs, and as such, defense of the country began well beyond American shores, enveloping the entire world. The new national security of the Cold War rested on three pillars to operationalize it. Presidential rhetoric built legitimacy for the national security project by convincing the American people of the existential nature of the threat and the need to respond. Congress, heeding the executive branch's call for centralized authority in an emergency, passed legislation creating a new, permanent, national security bureaucracy and authorizing it to perform its mission. Policy directives within the national security bureaucracy provided guidance beyond the legislation. Finally, the newly created national security bureaucracy itself, consisting of executive branch agencies: most notably the Department of Defense and various agencies of the Intelligence Community, all under the National Security Council, implemented the new national security.

Together, these three aspects created a national security state within the United States. As the Cold War dragged on, the national security state grew in size and power, tending towards a full garrison state. The Vietnam War marked the highpoint and collapse of the national security state. Popular disillusionment with the war, brought on by the use of conscription and critical media opinion prompted the executive branch to conduct domestic surveillance and counterintelligence operations against opposition groups. To the executive branch, this action was legitimized by the emergency of the Vietnam War and the overarching Cold War. The protests continued and eventually forced the US to withdraw from Vietnam. Without the immediate emergency, and the Cold War in détente, the constructed framework that legitimized

domestic intelligence activities and the executive branch's emergency powers collapsed. When the intelligence programs were uncovered, there was a large public outcry and Congressional opposition, a Thermidorian reaction, to the extremes of the executive branch. New Congressional legislation drastically limited the executive branch's ability to pursue its national security agenda within the United States, using intelligence agencies. This stopped the executive branch from transforming the country into a garrison state.

The terrorist attack on September 11, 2001 triggered another reconceptualization of national security. National security was expanded from deterring surprise attacks that threatened the very existence of the US to a focus on terrorist threats to individual Americans. Once again, the powers of the executive branch expanded to implement the new national security, through presidential rhetoric, Congressional legislation and policy directives, and an expansion and transformation of the national security bureaucracy. Operationalizing this new national security required an expansion of intelligence operations to detect and deter all terrorist threats, a challenge made acute as those threats increasingly emanated from within the United States itself.

In a comparative historical time frame, the Cold War had gone on for roughly 25 years (1945 to 1970), before the executive branch met its Waterloo in Vietnam. The more War on Terror (2001 to 2013) has gone on for little more than a decade so far, but the parallels between the two conflicts are obvious. Nonetheless, Iraq has ended and Afghanistan is winding down, and despite the unpopularity of both wars, they did not trigger massive popular protests demanding they end. This is because there was no conscription to give the public and Congress a direct and tangible link to the two land wars, and the War on Terror more broadly. There were no mass protests to challenge and bring down the national security state. The broader national security state of the War on Terror was able to survive the end of the Iraq War largely unscathed.

When President Obama gave his speech in May 2013 on ending the War on Terror, he was deceptive. Despite the public message of ending the global, military aspect of the War on Terror, President Obama sought to retain the expanded powers of the executive branch to continue carrying out national security in the face of a diminished but still extant terrorist threat.

When Edward Snowden revealed the existence of a massive NSA-FBI-CIA signals intelligence program that included domestic surveillance, the ambiguous and divided opinion of Congress and the media was reflected in the mixed reactions of the general public. It did not

trigger massive protests like in the Vietnam War era. Congress was shown to be complicit in authorizing the programs each year, and without significant constituent pressure, is unlikely to react with strong legislation to stop the programs.

5.1 Where Does That Leave the Country?

One of the underlying features of the War on Terror was that it was sold to the public as *not* changing their lives in any significant way. This made it easy for the public to accept and then forget about. Had it required an appreciable change in their lives, it is likely there would have been much more opposition to the War on Terror. The absence of a draft has allowed the American public to escape the need to pay attention to national security developments, including domestic aspects, and enabled Congress to shirk its political ownership of the national security bureaucracy, allowing the executive branch to amass power at its expense. There is more too it than a lack of conscription, however. The civic republic theory of civil-military relations, that stresses that national defense is an obligation of citizenship, runs deep in the national psyche. In the American version of civic-republican civil-military relations, national emergencies become an all-encompassing project, and all militarily necessary actions are justified. The War on Terror is no different in this regard, but the lack of public involvement and elite dissent makes these militarily necessary actions—surveillance—and some actions not militarily necessary but pursued anyways, easier to accept.

5.2 Towards an Intelligence State

Many scholars on the War on Terror have warned that this is the beginning of permanent war for the United States. [233, 234, 235] They have focused on a permanent war footing and the continued use of military force abroad as evidence. While the AUMF does authorize the executive branch to wage war indefinitely, "eternal war-justifying deliciousness," as Stephen Colbert described it,[236] it does appear that the global theater of the War on Terror is heading towards an end. While other foreign threats will likely take its place (and some, like China, already have), the international terrorist threat against the US emanating from al Qaeda and

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[233] Bacevich, Andrew J. Interview by Joanne J. Myers. *Carnegie Council*, September 24, 2010.

[234] Jablonsky, 2002.

[235] Stuart, 2003.

[236] The Colbert Report, "AUMF repeal," *The Colbert Report* video, 1:00 May 23, 2013.
http://thecolbertreport.cc.com/videos/2j741e/aumf-repeal

like-minded groups has been largely defeated. What the authors do not touch upon, but what is more likely is that the internal security apparatus, through collaboration between the FBI, CIA, and NSA, and expanded electronic surveillance is going to be permanent. It may be productive to use the term "intelligence state" to specify the use of intelligence in the current national security state, and to avoid including other aspects of the national security bureaucracy which are indeed winding down.

The War on Terror, like the Cold War before it, represents an expansion of the desire to ensure total physical security from foreign (and later domestic) attack. President Bush spoke of an indefinite crisis and the need to completely eliminate the terror threat. He used this to justify an expansion of the national security bureaucracy, start two wars, and create a domestic surveillance campaign within the United States. As President Obama sought to wind down the overseas aspect of the War on Terror, he removed much of the legitimizing crisis that had supported the domestic programs as well. After this, the existence of domestic surveillance activity by the CIA, NSA, and FBI came out, much in the same way that news about domestic surveillance during Vietnam came out after President Nixon declared that the war was winding down. Unlike in Vietnam however, there has not been a massive public or Congressional uproar about the programs. Leaked documents revealed that Congress was complicit with many aspects of the programs, repeatedly voting to authorize their continued existence. Media opinion has been a mix of support and condemnation for the programs. The lack of conscription has allowed the public to remain largely ignorant of the conduct and scope of the War on Terror. When combined with an ambivalent elite opinion, there is no resulting public uproar over the domestic surveillance programs or the growing intelligence state they represent, and it may continue on despite the small protests against it.

The growth of a national security state within the United States is ultimately a project of the executive branch of government. The executive branch, under the president, seeks to expand its power relative to the other branches of government, the legislature (Congress), and the judiciary (the Supreme Court and inferior courts). During times of great national crisis, the executive branch has the capacity for leadership by unified authority under the president, and Congress and the Supreme Court typically acquiesce to encroachments on their power, and civil liberties, by the executive branch. Of course, they do this on the assumption that the crisis will be temporary, and the balance of powers will be restored with the end of the crisis.

In American history, during crises the executive branch has abused the powers ceded to it, but such abuses are legitimized, at least to the executive branch, by the scope of the crisis. When the crisis ends, the executive branch may wish to maintain its expanded power, but the discovery of its abuses, no longer legitimized by a crisis, are revealed and Congress and the Supreme Court assertively pushback against the executive branch.

The War on Terror may be different. Unlike the Soviet Union, terrorism is not a monolithic actor to be defeated through one grand campaign, nor is there one effective way to protect over 300 million Americans from terrorism at all times. A single terror group such as al Qaeda can be defeated, but its ideology may live on, inspiring new groups and individuals, overseas and within the United States, to take its place. Despite the killing of Osama Bin Laden, and President Obama's speech on winding down the War on Terror, the threat of another mass-casualty spectacle terrorist attack still remains. The overreach and abuses of the executive branch, through the domestic surveillance program by the NSA (and in collaboration with the CIA and FBI) have been revealed, but Congress has so far proven reluctant to push back against the executive branch in any significant way. Congress has been in fact complicit with many of the executive branch's actions. The adversarial relationship between Congress and the presidency that rolled back the quasi-garrison state of the Cold War after Vietnam no longer exists. As of this writing, the domestic surveillance programs are going to continue on, largely unchanged.[237] For this reason, the national security state is likely to continue on for the foreseeable future.

5.3 The Sky is Not Falling

The possibility of a truly indefinite threat, and equally indefinite national security state to counter it, is a genuinely frightening prospect for the United States. However, the national security state as it currently exists is unlikely to drag the country towards Lasswell's garrison state theory, or George Orwell's *1984* in the name of defeating terrorism. The surveillance apparatus run by the NSA and cooperation between the NSA, FBI, and CIA has not proven to be malicious in nature, at least not yet. First Amendment activities critical of the government and national security are not being investigated and disrupted.[238] As of this writing, Snowden has not revealed the existence of a modern day COINTELPRO campaign, and given how such a

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[237] Harris, 2014.
[238] Rollins and Liu, 2013.

program would validate his motivation and actions, the lack of documentation implies it does not exist. Here, the War on Terror national security state does not even reach the extremes of the Cold War/Vietnam national security state. As for the collection and retention of US persons' data, this is illegal, and indicative that yes, the national security state has overstepped its bounds. However the FBI still needs a warrant to search this data, and there is no indication that the FBI has bypassed FISC on this requirement.[239]

The national security state is not an evil big brother, and the use of electronic surveillance is far from the most extreme course of action the United States could have chosen to fight the War on Terror. The country is not becoming North Korea, or even Israel, both of which have become garrison states in response to external existential threats. Closer to the US in political alignment, the United Kingdom, which has partnered with the US to conduct SIGINT operations,[240] has closed circuit security cameras covering nearly every inch of public space in its cities, something that the US does not do.[241] To expand on the ideas presented in this paper, it would be worthwhile to explore the judiciary branch in matters of national security and executive power, and how the national security state of the United States compares to the national security postures of other states, both peer states such as the UK, France and Israel, and ideologically opposed states such as Russia, Venezuela, and Iran.

That the national security state in the United States is not close to a garrison state is a testament to the democratic political system of the US. Government authority is divided between three branches, each one independent and able to negate the actions of the other two. The independent media is also free to question government actions and agree or disagree. These three branches and the media constitute elite political opinion in the country. The most powerful force in American politics is the voting public, and all three branches, and the media, seek to court it. When elite opinion is divided, public opinion is divided and the power of the voting public is reduced, feeding back into a reduced pressure on the different branches of government and the media to react to each other. Even in a diminished capacity, Congress and the media can still offer some pushback to the expansion of executive power. Congress is unlikely

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[239] Rollins and Liu, 2013.
[240] Gellman and Soltani, 2013.
[241] Based on the author's own observations while travelling around the United Kingdom.

to end the surveillance programs, but there are new bills emerging that may enhance the limits of surveillance and do more to protect the data of US persons.[242]

The real danger of the national security state lies in the high potential for abuse by the agencies of the national security bureaucracy and the chief executive. The FBI in particular has already demonstrated that its zeal can lead to the gross abuse of its powers in law enforcement and national security. There is also a danger that in creating so much information through signals intelligence, the national security agency has amassed more data than it can sift through to identify potential threats, which may then slip through unnoticed, despite being collected by the national security bureaucracy. To this end, Americans and their Congress must remain vigilant against terrorism, and the potential for the defense mechanism against terrorism to abuse its power. To conclude, the problem of balancing vigilance against internal and external threats remains a vexing one for American politics. It brings to mind the Roman proverb, *quis custodiet ipsos custodes.* Who will guard the guards?

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[242] Charlie Savage, "Obama to call for end to N.S.A's bulk data collection," *The New York Times*, (March 24, 2014).

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