

June 10, 2020

Congress, Civilian Control of the Military, and Nonpartisanship

The possible use of federal armed forces as part of the U.S. executive branch's response to incidents of violence during racial justice protests has raised questions about how the military is controlled by domestic political institutions and the U.S. military's relationship with American society. Article I of the U.S. Constitution grants specific powers to Congress, making the legislative branch a key actor in governing, overseeing, and funding the U.S. military.

What Is Civilian Control of the Military?

How to advance the nation's security while at the same time ensuring that instruments of force do not undermine the practice of American democracy has been a central question since the founding of the United States, if not before.

The designers of the Constitution were deeply skeptical of a standing army, as such a military instrument could also overthrow the government it professed to serve, much like Oliver Cromwell demonstrated in 1653 when he used his army to disband the English Parliament. Consternation regarding British deployment of its military to the American colonies without the consent of local governing officials was among the key grievances listed in the Declaration of Independence. In the context of a new, experimental, and democratic Republic, the Founding Fathers believed that subordination of the military to the authority of civil masters was critically important to prevent the emergence of a new form of tyranny or dictatorship.

The principle of *civilian control* of the military places ultimate authority over U.S. armed services in the hands of civilian leadership, with civilian responsibility and control of the military balanced between the executive and legislative branches of the government. In some ways, the relationship between the military and the civil society it serves is a paradox: the military, by its very nature, has coercive power that could threaten civil society. Yet without a sufficiently strong and capable military, civil society becomes vulnerable to attack, and the former might not be able to defend the latter.

Civilian Control of the Military: Congressional and Executive Branch Responsibilities

The Founding Fathers designed a system of civilian control of the military in a manner that conformed with the government's overall architecture of checks and balances. An elected President was designated the Commander-in-Chief of the nation's armed forces. This had the dual advantage of ensuring that an elected civilian leader presided over the nation's army while at the same time enhancing unity of command over the military. The President was also granted the ability to commission military officers, authority to appoint Secretaries to preside over military services, and the responsibility to regularly report to Congress on the state of the union.

Federalist Papers 46 and 59 show that the Founding Fathers were also concerned about unitary executive control of the military. The desire to ensure that the military reflected, and was subordinate to, the will of the people therefore led to considerable congressional powers on matters concerning the armed services. These include the power to lay and collect taxes for the common defense, the sole power to declare war, the ability to raise and support armies, and the authority to establish rules and regulations for the army, navy, and militias when in service of the United States. To further strengthen civilian control of the military, a provision prohibited the appropriation of money for the army for a period longer than two years.

In the post-World War II era, Congress has exercised this constitutional authority in a number of ways, including (but not limited to) the following:

- Annual strategy and posture hearings overseeing the Department of Defense's (DOD's) plans and programs.
- Annually authorizing the scope and priorities for the military's budget and appropriating monies accordingly.
- Establishing new service branches of the U.S. military, such as the U.S. Space Force in 2019 (P.L. 116-92).
- Establishing new components of the U.S. military, such as U.S. Special Operations Command (P.L. 99-661).
- Setting key DOD strategy production requirements, such as the National Defense Strategy (P.L. 114-328).
- Consenting upon the nominations of senior leaders to DOD civilian and military positions.
- Cancellation of weapons systems, as with the MBT-70 Supertank in 1971.
- Establishing authorities for DOD's noncombat cooperative activities with other nations' military and security establishments (Title 22 *U.S. Code*; Title 10 *U.S. Code*, Chapter 16).
- Organizing the military chain of command, for example through the 1986 Goldwater-Nichols Act (P.L. 99-433).
- Requiring reporting on key issues and areas of interest to Congress, such as the semi-annual Report on Stability and Progress in Afghanistan (P.L. 110-181).
- Setting criteria for military promotions, for example by requiring military staff in a "joint" position before becoming eligible for a General or Flag Officer position in the 1986 Goldwater-Nichols Act (P.L. 99-433).
- Setting personnel policies, including repealing DOD's "Don't Ask, Don't Tell" policy toward gay service members in the military (P.L. 111-321).

- Granting specific authorities for the legal conduct of military operations, such as the 2001 Authorization for the Use of Military Force (P.L. 107-40).

Civil-Military Relations

As noted above, civilian control of the military refers to the principle that the military is ultimately subordinate to civilian authority. This formal governance structure for the military has always been necessary, but not sufficient, to ensuring civilian control of the military. Underpinning these structures are a set of norms (i.e., a set of expected behaviors) of mutual respect for the roles, responsibilities, and interactions of both civilian and military leaders, which are often referred to as “civil-military relations.”

President George Washington played a vital role in establishing the norms and culture that formed the foundation for American relationships between the military and the civilian leadership it served. For example, in putting down the 1794 Whiskey Rebellion in western Pennsylvania, President Washington ensured that his subordinates upheld and respected civilian rule of law while doing so. This behavior, in conjunction with Washington’s earlier decision as a military officer to eschew his associates’ urging to install himself as a military dictator of the weak American confederacy, created the foundation for the norm in America that control of the military would be in the hands of democratically elected civilian leaders.

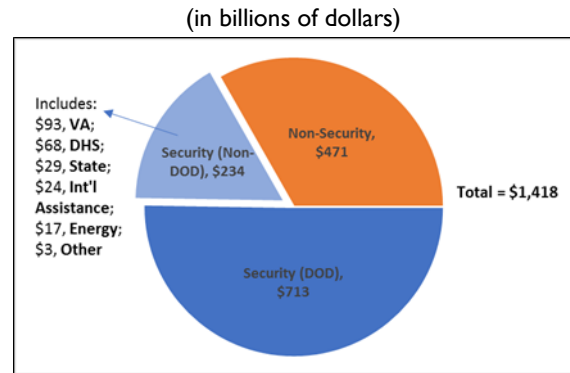
Over time, a key norm that emerged to help bolster civilian control of the military is that of a nonpartisan U.S. military. Although scholars debate the norm’s particulars and its implementation, the widely held view is that a military that is nonpartisan is able to serve the sovereign American people regardless of party and to defend all Americans regardless of their affiliation. This, in turn, protects and enables the process of American democracy to occur without fear of military intervention to shape or mandate a particular political outcome.

Its nonpartisan culture is arguably one reason that the U.S. military is one of the most trusted institutions in the eyes of the American public. A 2019 Gallup survey (see below) found that 73% of the American public has either a “great deal” or “quite a lot” of trust in the U.S. military as an institution (it should be noted that recent events may affect future surveys). This trust is also arguably one reason the U.S. military receives the lion’s share of U.S. national security resources (for an illustrative CRS estimate on how national security resources are allocated between DOD and non-DOD U.S. government agencies, see **Figure 1**).

In recent years, a number of scholars have expressed concern that this norm of nonpartisanship is eroding, citing increased partisan identification among military officers, the behavior of troops on social media, and the increased involvement of retirement generals in presidential campaign as evidence. Some observers also express concern that military services are taking on inherently political tasks within DOD. According to this view, civilian leaders are losing their ability to control the processes that manage DOD planning, budgeting, and deployments, all of which are ultimately political calculations. According to this view, too much military influence in these processes can compromise its reputation as a nonpartisan actor.

For example, the June 1, 2020, photographing of Chairman of the Joint Chiefs of Staff Milley in Lafayette Square immediately after protestors had been forcibly removed from the area was seen by some as the use of the military to endorse a partisan domestic political act. Others contend that removing protestors at that time was necessary to promote public safety.

Figure 1. Discretionary Budget Authority by Security and Nonsecurity Categories, FY2020



Source: CRS analysis of Office of Management and Budget, Public Budget Database, Budget Authority XLSX; and OMB Final Sequestration Report to the President and Congress for Fiscal Year 2012, p. 3. Analysis by Brendan W. McGarry, Analyst in U.S. Defense Budget, and Christopher T. Mann, Analyst in Defense Policy and Trade.

Notes: The U.S. government does not categorize spending by national security. This figure is a CRS estimate based on the “security” category in the Budget Control Act of 2011 (P.L. 112-25).

In the wake of June 1, several retired senior military leaders, including former Secretary of Defense James N. Mattis, voiced their concern about the use of National Guard personnel in a manner that infringes on American’s constitutional right to free assembly.

Issues for Congress

Given recent trends and events, Congress could explore

- whether recent events have eroded the norm of a nonpartisan U.S. military;
- whether actions by members of Congress or the executive branch that inject military leaders into partisan disagreements affect military advice, effectiveness, or unit cohesion; and
- to what extent legislative tools might be used to reassert congressional civil control, if necessary.

Further Reading

Risa Brooks and Jim Golby, “Congress Controls the Military Too,” *The Hill*, June 8, 2020.

Loren DeJonge Schulman, Alice Hunt Friend, and Mara Karlin, *Two Cheers for Esper’s Plan to Reassert Civilian Control of the Pentagon*, CNAS, September 9, 2019.

The Gallup Organization, *Confidence in American Institutions Polling*, July 2019.

Kathleen J. McInnis, Specialist in International Security

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