

IMAGINE AN AMERICA WITH A PRAETORIAN GUARD ENFORCING THE EDICTS OF AN AUTOCRATIC LEADER

As now widely reported and as I summarized in a prior [briefing note](#), the warning signs are unmistakable as to the potential threats to democracy that the nation would face were Donald Trump to occupy the White House a second time. In that [briefing note](#), I set out by way of specific examples what historians, political commentators and others really mean when they warn of a “democracy under threat.” Among the parade of horrors that a Trump 2.0 administration would beget, were it to come to pass, is the likely weaponization of the US military. By that I mean, Trump taking control of the US military (federal troops in constitutional terms) and by executive order deploying units as a domestic force to quell protests on the streets of America and to otherwise act as enforcers loyal to him only, and exacting revenge against those he feels constrained his actions during his first administration (which he may view, more benignly, as a betrayal or, more ominously, as treason).

In January 2021, prompted in part by Trump’s installation, *after* the November 2020 election, of his loyalist enablers in key positions at the Pentagon, all ten living Secretaries of Defense published a [joint statement](#) urging these newly appointed officials, including the new Secretary of Defense, to respect the Constitution, to honor “the history of democratic transition” in the United States and to “refrain from any political actions that undermined the results of the election or hinder the success of the new team.” This was not the first time members of the US military were reminded during the Trump administration of the historical role of the armed forces in American political-military affairs and the primacy of their oath “to support and defend the Constitution.” On June 2, 2021, Chairman of the Joint Chiefs of Staff General Mark Milley, reeling from the photo op arranged by Trump at Lafayette Square Park the day before, sent [an email](#) to the Joint Force, reminding them of that oath.

Crushing Peaceful Protests

We should all be mindful of what prompted the unprecedented plea of the former SecDefs and project ahead to January 20, 2025. There is the very real threat that Trump, were he elected for another term, would as a matter of priority seek to weaponize the military, potentially on the same day he takes the oath of office “to support and defend the Constitution” (his “Day One”— easily finding as justification a 2025 version of the “Reichstag” justification invoked by Adolf Hitler in February 1933). Trump in effect would turn the military into a force loyal to him rather than loyal to the Constitution. This is by no means in the realm of the unthinkable, much as we would like it to be: recall that General Milley, with a front row seat in countless Oval Office meetings with Trump and his enablers, is [reported](#) to have feared Trump would have, in Milley’s words, his “Reichstag moment” to remain in power.

Trump showed little qualms in deploying federalized law enforcement officers or the military to respond to domestic protests, notwithstanding scant evidence that state and local forces were incapable of doing so. In the weeks following the murder of George Floyd, federalized law enforcement, without insignia and in unmarked cars, were [deployed](#) on the streets of Seattle, Portland and Kansas City (technically to protect federal property).

The images of peaceful protesters being forcefully removed from Lafayette Square Park on June 1 by a militarized response, including with two National Guard medevac helicopters flying dangerously low overhead, were reminiscent of pitched battles between demonstrators and government forces typically associated with fragile democracies. What we did not see, thanks to the intervention of Defense Secretary Esper and General Milley, were the troops from the 82nd airborne division forward deployed across the river called onto the streets of Washington, D.C. Recall too reports of Trump asking Esper why protesters could not be “shot in the legs or something.”

At campaign stops in November, Trump has hinted he would deploy the military to impose order in Democratic-control cities he calls “crime dens” – singling out New York City and Chicago.

As for the enablers, recall the ominous reply of Jeffrey Clark, the environmental lawyer who would have been the Attorney General of the United States but for the courageous 11th hour intervention of senior Department of Justice (DoJ) officials who threatened mass resignations, supported by White House counsel. Clark, when warned of riots were Trump to refuse to leave office on January 20, 2021, responded, “That’s why there’s an Insurrection Act.” The January 6th Committee [reviewed](#) messages sent by various members of Congress and others who urged that Trump, as part of his effort to overturn the 2020 election results, invoke the Insurrection Act and seize voting machines. Former (and indicted) National Security Advisor and likely member of a Trump 2.0 cabinet Michael Flynn took out a full-page ad in The Washington Times calling on Trump to suspend the Constitution and declare martial law so that the military could run a new election. As the Brennan Center rightly pondered (“[How To Fix the Insurrection Act](#)”), imagine if Trump had declared martial law on January 6th.

The danger we face is that, although Trump tried and failed in the remaining days of his presidency to weaponize the military, he and his enablers likely have learned from that failure, and will not make the same mistakes again. And Trump will have had four years to fixate on revenge and retribution. Between purges of senior officials at the FBI and the DoJ and likely resignations at both agencies, Trump would have a freer hand to crush civil liberties and other rights Americans have long enjoyed.

A Purge of the Ranks

As Atlantic staff writer Tom Nichols wrote last month (“[A Military Loyal to Trump](#)”), Trump holds deep grudges against the senior military officers and civilian members of the Defense Department (DoD) who mitigated his “various illegal and autocratic impulses,” ranging from foreign adventures to deployment of the military on the streets of

America and his efforts to remain in office. The clearest evidence of his resentment is his [suggestion](#) that General Milley should be executed for treason. Recall too Colonel Alexander Vindman and his twin brother Eugene were escorted out of the White House in response to their efforts to bring to light the call with the Ukrainian President that led to Trump's first impeachment. Trump's first SecDef, James Mattis, resigned (after he was fired), or was fired (after he resigned) and his second permanent SecDef, Mark Esper, was "terminated," the latter likely due to public disagreements with Trump over the deployment of active duty military in US cities to serve in a law enforcement role (and, in particular, the potential deployment in Washington, D.C. on June 1 and related invocation of the Insurrection Act).

[Nichols](#) predicts that Trump's likely two-pronged response would be to seek revenge against those he feels betrayed him and to "break the military as one of the few institutions able to constrain his attempts to act against the Constitution and the rule of law."

As various journalists and writers have chronicled, while Trump is enamored of the pomp and the flashy toys of war, he has no respect for those who serve in the military and has no capacity to understand public service, let alone the selflessness to fight and die for the country. Most recently, former Chief of Staff and retired Marine General John Kelly, in an interview with [CNN](#), confirmed earlier reporting that Trump had called those who lost their lives fighting to defend the country as "suckers" and "losers" and insisted that wounded servicemen and women be kept out sight at military parades (a disdain of the disabled that first surfaced during Trump's 2015 campaign, and should worry us all). In November 2019, Trump [upended](#) the military chain of command by intervening to ensure that a former Navy SEAL charged with war crimes kept his SEAL Trident. Trump, having learned by Election Day 2020 the lesson that the likes of Jim Mattis, John Kelly, Mark Esper, Mark Milley and countless unsung heroes would curb his more dangerous instincts, started to promote only loyal foot soldiers.

As [Nichols](#) and others have reminded us, six days after Election Day 2020, [Trump](#) fired Defense Secretary Esper, and put in place a retired colonel, Christopher Miller. Miller brought with him another Trump enabler, Kash Patel, as his chief of staff. Trump also named Douglas Macgregor as a senior adviser to Miller. (Macgregor had failed to be confirmed by the Senate as Trump's ambassador to Germany.) Anthony Tata, who claimed President Obama was a Muslim and accused him of being a "terrorist leader," was named deputy undersecretary for policy. The Senate was opposed to his nomination as undersecretary for policy, and the nomination was withdrawn. Trump nonetheless, only days later, appointed him as an acting official, bypassing Senate confirmation, and following the firing of Secretary Esper, Tata was elevated to perform the role of undersecretary. While many in Washington scratched their heads at these appointments – only days after it was clear Trump had lost the election, the mystery would be solved on January 6th. Luckily for the nation, Trump's efforts were too clumsy and too late.

Through a combination of appointments of loyalists, and shuffling them around as necessary in multiple acting capacities if they are unable to gain Senate confirmation, and

converting key civilian positions at the Pentagon to Schedule F political appointments subject to firing at will, Trump would have his glide path to seek to assert control over the military. As [Nichols](#) pointed out, in the chapter on DoD included in the Heritage Foundation's blueprint for the next Republican presidential administration (Project 2025), author Christopher Miller calls for the removal of officers to purge "Marxist indoctrination" and trans service members and for the rehiring of service members removed for refusing COVID vaccinations.

Consequences

There could be any number of adverse consequences here and abroad of Trump's efforts to weaponize the military, even if he is only partially successful. As Nichols enumerates, Trump, surrounded by new and loyal enablers, could jeopardize national security by dissolving military alliances (including NATO), weaken the readiness of the military, abandon allies and seek closer relations with the autocrats he so admires, particularly Vladimir Putin. We could see a return to Global War on Terror tactics, particularly torture, and could find our world in a far more dangerous place given Trump's bluster and the absence of guardrails to mitigate his more dangerous impulses. As noted above, many of these excesses were curbed by members of the military and civilian employees of DoD, among other agencies, including those serving in the White House.

Trump would likely reverse DoD policies aimed at combatting the effects of climate change and enhancing diversity and inclusion in military ranks, and would likely also reverse DoD policies that today ensure access to abortion for all members of the military regardless of where they are stationed (the very same goal Senator Tommy Tuberville had hoped to achieve through his months-long hold on military promotions).

A similar purge at CIA and other key elements of the intelligence community would likely complement Trump's purge of the military.

Reform of the Insurrection Act

There is at least one step that should be taken as a matter of urgency and should be taken regardless of who the next president will be, but certainly in case it is Trump. That step is for Congress to reform the ambiguous and overly-broad law that, as Joseph Nunn of the Brennan Center noted in his piece first published in Slate ("[Trump Wants to Use the Military Against His Domestic Enemies. Congress Must Act](#)"), "gives the president nearly unchecked powers to use the military as a domestic police force." That legislation – the Insurrection Act – overrides the general prohibition set out in the Posse Comitatus Act on the use of the military (including not only the federal armed forces, but also National Guard troops called into federal service) to enforce civilian laws in the United States. As Michael Waldman, President of the Brennan Center, noted in his recent analysis ("[Trump's Insurrection Act Threat](#)"), federal troops were routinely used domestically in the 19th century, until Congress enacted the Posse Comitatus Act in 1878.

There is though an important loophole, which as Nunn [pointed out](#), gives the president virtually unlimited discretion in deploying the military. That loophole is the provision in the Posse Comitatus Act that allows federal troops, as an exception to the general

prohibition, to participate in domestic law enforcement when expressly authorized by Congress. That authorization was provided by the Insurrection Act, which in fact is a series of acts dating back to 1792, 1795 and 1807 and last amended in 1874. (*See also*, Nunn’s April 2022 “[The Insurrection Act Explained](#).”) Most refer to the Insurrection Act as the legislation signed by President Jefferson in 1807. (*See* “[Calling Forth the Military: A Brief History of the Insurrection Act](#).”) (Federal troops may also be used to assist in responding to natural disasters and public health crises under the [Stafford Act](#).)

The broader authorizations embedded in the Insurrection Act, including the power to use the military “or any other means” to enforce federal law, were added in 1871 in response to the Reconstruction-era terrorist acts committed by the Ku Klux Klan and other white supremacy groups across much of the Confederacy aimed at newly freed enslaved African Americans. Empowering a president to deploy federal troops made sense in light of the significant imbalance, at the time, between the capabilities of relatively well-armed and trained federal troops, on the one hand, and emerging, and fragmented, civilian law enforcement, on the other, as well as the unwillingness of state and local authorities in affected jurisdictions to act.

As Nunn also [pointed out](#), in 1827, the Supreme Court ruled in *Martin v. Mott*, that the president alone decides whether to invoke the Insurrection Act, and any deployment by the president is not subject to court review. Only Congress can act to end a deployment of the military under the Insurrection Act, if it disapproves of it, and because of a likely presidential veto any such resolution would need to be veto-proof to be successful (requiring a two-thirds majority).

The Act has been invoked 30 times in our history, and as the Brennan Center’s [Guide to Invocations of the Insurrection Act](#) highlights, these were largely objectively legitimate invocations. The Act was invoked, for example, by President Lincoln at the outbreak of the Civil War, by Presidents Eisenhower, Kennedy and Johnson to enforce desegregation in the South during the 1960s and by President George W. Bush, at the request of the governor of California, during the 1992 Los Angeles riots.

The Brennan Center, together with various other organizations, has [proposed](#) reforms of the Insurrection Act. The proposed reforms call for defining currently ambiguous key terms in the Act such as “insurrection” and “rebellion” and for oversight by Congress and the courts of a president’s powers under the Act. Deployment under the Act would trigger a requirement for the president, the secretary of defense and the attorney general to submit a joint report to Congress, and the deployment would lapse in seven days unless approved by Congress using expedited procedures. The proposal would also clarify that the Act does not authorize martial law (technically the suspension of writs of *habeas corpus* and the full displacement of civilian authority); congressional authorization to suspend *habeas corpus* was added to the Act in 1871, but lapsed a year later. These proposals should, in a rational political world, be nonpartisan and noncontroversial.

The January 6th Committee, among its eleven [recommendations](#), suggested that Congress “consider the risks posed for future elections” by the Insurrection Act, but did not recommend specific changes. As many of the 30 examples of the invocation of the Act

suggest, there are circumstances where objectively it would be legitimate, and necessary, to invoke the Act and, therefore, any changes need to provide flexibility for its use as well as oversight to prevent abuses.

Concluding Thoughts

As Nichols and other observers have noted, Trump's efforts to upend a bedrock principle of the Republic, namely that the US military stays out of politics, would encounter stiff resistance from both members of the military and civilian employees of DoD. In 2020, we came close to calamity, but ultimately avoided many potentially adverse and dangerous consequences. All this said, plenty of damage nonetheless could be inflicted on the nation and the rest of the world were Trump to unleash any portion of his agenda of revenge and retribution, largely unhindered by individual guardrails and the norms and Constitution principles that have guided the nation since its founding.

As a first step, Congress must update an anachronistic law that, while fit for purpose in the 19th century, has far more limited use today, and concentrates far too much power in the hands of a president, with virtually no checks and balances. While diminishing the power of any president to deploy federal troops domestically is important, the possibility that that president could be Donald Trump makes it imperative to do so.

At the same time, there must be a more broad-based effort to communicate to the American people in plain terms the threats posed to our democracy and our way of life were Trump to be re-elected. Far too few Americans seem aware of the threats or, if they are, take them seriously. One interpretation of recent polling suggests that many undecided voters currently do not even think Trump will run again and have shut him out of their minds – they simply do not want to think about him or a second Trump term. Others, with the salutary effect of three years of relatively normal politics conducted by adults, may have forgotten how destructive the Trump years were, or may wrongly conclude the nation survived four years under Trump, so it could survive another four years.

Finally, the willingness of so many, as we approach the third anniversary of the attack on the Capitol, to continue to embrace the Big Lie and election denialism, and/or to view the actions of those who stormed the Capitol as patriots fighting for their country¹ and/or, as reflected in a Washington Post/University of Maryland [poll](#) released today,² to view the attack as having been instigated by the FBI, suggests, first a fundamental

¹ According to [reporting](#) by Alan Feuer and Molly Cook Escobar yesterday in the New York Times, as of December, 1,240 people have been arrested in connection with the attack and 350 cases are still pending. Approximately 170 have been convicted at trial, two have been acquitted and approximately 720 have pleaded guilty, including 210 who pleaded to felony offenses. More than 720 sentences have been handed down, including 450 to periods of incarceration.

² The poll found that 25% of Americans believe it is “probably” or “definitely” true that the FBI instigated the attack. Among Democrats, 13% believe the FBI organized and encouraged the attack, compared to 30% of independents and 34% of Republicans. Under 10% of Biden voters believe the FBI was behind the attack, compared to 44% of Trump voters.

misunderstanding of civics and how our government works, second a failure to appreciate the rights we have under our democracy and what is under threat and, third, a readiness to be governed by a strongman who is captivated by Putin and other dictators. There are many who live under dictators or in illiberal democracies who simply get on with life. We must counter these perceptions between now and the day Americans cast their ballot for the next president of the United States.

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