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Where Have All the Soldiers Gone II: Military Veterans in Congress and the State of Civil-Military Relations

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ESSAY: WHERE HAVE ALL THE SOLDIERS GONE II: MILITARY VETERANS IN CONGRESS AND THE STATE OF CIVIL-MILITARY RELATIONS

Donald N. Zillman*

I.

In a 1997 essay in these pages, I reported on the fact that a declining number of senators and members of the House of Representatives were veterans of military service.¹ At the height of the Vietnam War, roughly 70% of the members of Congress were veterans.² By 1991, the Congress that approved the use of force against Iraq in Operation Desert Storm had only slightly more veterans than non-veterans.³ Three Congresses later, the percentage of veterans had dropped to 32%.⁴

The explanation for the decline is almost certainly not that the American voter no longer likes to elect veterans to serve in Congress. On balance, a period of honorable military service is a plus on any candidate's resume. The primary reason for the decline in congressional veterans is the change in the likelihood that a prospective candidate for Congress would have seen military service. Legislators who came of age during World War II were highly likely to have served in America's largest mobilization for foreign war. Legislators who came of age during the early Cold War (including the Korean Conflict) and faced the military draft during a period of shortage of young men of draft age were quite likely to have served in the armed forces. Congressmen who faced the draft during the Vietnam War era (birth dates 1939-1955), however, were three times as likely *not* to have served in the armed forces as to have served. Lastly, the growing numbers of Congressmen and women who reached maturity after the end of the military draft (birth dates after 1956) were almost certain *not* to have military experience.

Those were the numbers as of the elections of 1996. Given the changing demographics of veterans in the general population, they were not surprising. The numbers also offered the easy prediction that the number of veterans in Congress would further decline as the World War II and Cold War generations left Congress to be replaced by members who came of age during the Volunteer Era.

The article further asked why we should care.⁵ Should we be concerned that Congress is over- or under- represented by lawyers, union members, business owners, or social workers? I argued that military veterans bring unique assets to the Congress including a familiarity with high or ground level military policy, a prior exposure to national service, an appreciation of the distinctive characteristics of military service,

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1. Donald N. Zillman, *Where Have All the Soldiers Gone? Observation on the Decline of Military Veterans in Government*, 49 ME. L. REV. 86 (1997).

2. *Id.* at 88.

3. *Id.*

4. *Id.* at 90.

5. *Id.* at 101-03.

and the moral authority of having "been there themselves" when sending young men and women into combat for national objectives. Former Senator Warren Rudman captured a number of the points eloquently in his book *Combat, Twelve Years in the U.S. Senate*:

I saw an unexpected theme emerge: the importance of my Korean War experience in my life and the bond I felt with other senators, such as Bob Dole, Dan Inouye and Bob Kerrey, who had also known combat. If you have that experience, not much is left in life that will intimidate you If as a young man, you have seen your friends die for their country, you are left with a sense of what is important in life and what is not.⁶

The discussion of the declining number of congressional veterans has implications for the structure of our armed forces and for the relations between the military and civilian society in 21st century America. The drafters of the Constitution were richly experienced in the values of and the threats from the military. They crafted a document that paid serious attention to the structure of the military in American society. Two hundred and fifteen years of legislation, judicial decisions, and practice in the field has modified and refined the basic legal structure of the armed forces in America and the relationship of the civilian and military communities.

This essay will first update the figures for legislators with military experience through the 2004 election. Prior trends continue. Military veterans now compose only 25% of Congress. Young senators and congresspersons are highly unlikely to have military experience. The Republican party has become disproportionately the party of veterans in Congress.

The amount of military experience in Congress provides a framework from which to examine aspects of civilian-military relations in 2006. I want to discuss three questions and offer some tentative answers. First, have the workings of the all-volunteer military exempted many of the privileged in society (and Congress is certainly a bastion of privilege) from any responsibility for military service and any connection with the military? Second, do these and other factors suggest the need to return to military conscription—the draft? Third, has a precept of healthy military-civilian relations—the politically neutral or "above politics" status of the military—been altered? The 1997 Essay closed with a plea for greater connectedness between all sectors of the American people and its armed forces.⁷ That need is even greater in 2006.

My goal is not to draw precise causal connections between the number of veteran members of Congress and military policies or the connections of civilian society to the military. Fifty more or fifty fewer legislators with military service might not change congressional votes or congressional attitudes. What the steady decline in members of Congress with military service does reflect is a unique confluence in American history. We have had periods when serious military challenges faced the country and the military and civilian society (including civilian elites) joined in the common effort. The Revolution, the Civil War, World War I, and World War II and the Cold War are the examples. We have also had periods of our history when the military was

6. WARREN RUDMAN, *COMBAT, TWELVE YEARS IN THE U.S. SENATE* 274 (1996).

7. Zillman, *supra* note 1, at 110.

insignificant in size and mission and when its concerns were remote from most of civilian society. The early days of the Republic, the pre-Civil War period, the Gilded Age of the late 19th century, and the 1920s and '30s are examples. What we now have is an era in which military matters are highly important to America and in which a significant portion of the American population (and a large portion of some of its elites) are largely disconnected from the military.⁸

II.

How profoundly things have changed since the 1997 article appeared. In 1997, the United States was adjusting to victory in the Cold War. The Soviet Union was no more. Eastern Europe was evolving in the direction of the Western democracies. The 1990-91 operation in Iraq and Kuwait proved that America could gather a coalition of allies to defeat any military threats from the rest of the world. The change from forty years of Cold War and nuclear standoff was so great that in 1992, a relatively obscure Democrat who had dodged the draft during Vietnam could unseat a war hero president who had just guided the Desert Storm victory. The immediate future did appear to be about "the economy, stupid" with military concerns playing a secondary role.

A great deal has happened since 1997: September 11, Operation Enduring Freedom, Operation Iraqi Freedom, the Axis of Evil. The names suggest a world in which the military is again highly relevant. So too, our politics have been sharply divided. Two bitterly contested presidential elections followed a sharply partisan impeachment effort. Politics in the Congress is remarkably bitter.

We return to the issue of military experience in Congress.⁹ The four Congresses elected since 1996 have shown a steady decline in the number of military veterans who are members. The 176 veterans in the 106th Congress have been reduced to 164 veterans in the 107th Congress, to 147 veterans in the 108th Congress, and 133 veterans in the 109th Congress, elected in November 2004. Only one in four legislators now brings to Congress any military experience.¹⁰

Of the twenty-three veterans who left Congress after the 2002 election, virtually all chose not to run again for their seat. The prominent exception was Senator, and Democratic Minority Leader, Tom Daschle, who was defeated for re-election by a non-veteran. Of the departing veterans, thirteen were Republicans and ten Democrats. Nine veterans were among the new members of Congress. Eight were Republicans. Representative John Salazar of Colorado was the only Democrat.

The numbers continue to reflect the changing of generations in Congress. Only nine senators and representatives with military experience are members of the World War II generation, but most of the legislators of that age are veterans. At the other

8. For a superb study of the divide between the military and the civilian elites, see generally KATHY ROTH-DOUQUET & FRANK SCHAEFFER, *AWOL: THE UNEXCUSED ABSENCE OF AMERICA'S UPPER CLASSES FROM MILITARY SERVICES – AND HOW IT HURTS OUR COUNTRY* (2006).

9. Virtually all information is drawn from the congressional staff directory biographies of senators and representatives. In a few instances, information comes from legislators' web sites. In both places military service is self-reported by the legislator.

10. The Veterans Administration reports that the 2000 Census identified 26,403,703 civilian veterans. They formed 13% of the civilian population over eighteen years of age. Center for Minority Veterans 2000 Census, <http://www.va.gov/centerforminorityveterans/page.cfm?pg=5> (last visited Oct. 3, 2005).

end, 110 members of Congress were born after 1955 and never faced the military draft. Of their number, only seven are veterans.

The 1997 article observed that:

More veterans were Republicans than Democrats. However, the numbers do not appear out of proportion with GOP majorities in both houses of Congress [T]he matter bears watching in future Congresses. The disappearance of a veteran presence in Congress is troubling It would be even more troubling if that limited presence represents one political party disproportionately.¹¹

Today, disproportion has arrived. In the 109th Congress, the thirty-one veteran senators are thirteen Democrats, seventeen Republicans, and Independent Jim Jeffords of Vermont. The House veterans are sixty-five Republicans and thirty-six Democrats. The disproportion by political party is even greater when date of election and age are considered. Of the veterans first elected to Congress in 2000 or later, twenty-one are Republicans and eight are Democrats, one of whom, Senator Frank Lautenberg of New Jersey, returned to his former seat. Of the fourteen veterans, most of whose service took place in the All-Volunteer Force Era, twelve are Republicans and two Democrats. That includes Republican Representative Heather Wilson of New Mexico who has the distinction of being the only female member of Congress of any age or party with military service. Of those seven legislators born in 1956 or later with military service, all are Republicans.

III.

The continuing decline of military experience among members of Congress and the heavily Republican leanings of the veteran legislators who remain raise questions about the relationship of America to its armed forces. American military policy has been shaped by the Constitution, federal statutes, executive orders and decisions, and popular assumptions about what the American people expect of the military and what the military needs from the American people.

The drafters of the Constitution had ample experience with the military. No other 21st century mission of the federal establishment—provision of social services, preservation and use of the national lands, governance of the economy—received the attention that the military did in the text of the Constitution and the first ten amendments. Those provisions have stood unamended for over two centuries.

Two themes appear in the seventeen Constitutional clauses that relate directly to the military. The first is a suspicion of uncontrolled military force. The grant to Congress of the powers to “raise and support armies”¹² and to “provide and maintain a navy”¹³ presumed the creation of some federal military establishment. That military establishment was placed under the control of the two major elected units of the new national government: Congress and the president. The fear of the permanent standing army—a far greater threat to the citizen than the permanent navy—was addressed by

11. Zillman, *supra* note 1, at 91.

12. U.S. CONST. art. I, § 8, cl. 12.

13. *Id.* at cl. 13.

the requirement that Army appropriations be for no longer than two years. This required each new Congress to rethink and refund Army policies.

Civilian control over the military was divided between the Congress and the executive. The single Article II executive power—the president shall be “commander in chief”¹⁴ of the national military establishment—was balanced by Congressional powers to fund the forces, to make “rules for [their] Government and Regulation,”¹⁵ to provide for calling forth the militia and for shaping their structure. Congress, not the president, was given the power to “declare war.”¹⁶ All of these provisions reduced the prospect of a single civilian commander conspiring with the uniformed military to tyrannize the American people.

Fears of the standing national military were also mitigated by the militia provisions. The Constitution recognized a significant military power in the state militias, the predecessors of the National Guards. The militia could augment the federal forces, but they also served to continue the close ties of colonial days between the armed forces and the civilian populations. The regulars might be career officers and long-term enlistees whose primary home and loyalty was the army. The militia members were the descendants of the Minutemen, you and your next-door neighbor.

Similar fears of the national military were reflected in two of the provisions of the Bill of Rights. Whatever else it meant, the Second Amendment’s praise of a “well-regulated militia, being necessary to the security of a free state” and its recognition of the “right of the people to keep and bear arms” indicated that one purpose of the militia was to serve as a check on a too-powerful national military establishment.¹⁷ The Third Amendment—that deadest letter of the Bill of Rights—forbade the forced housing of soldiers in civilian homes in peacetime.

As important as the fear of uncontrolled military power was, a second theme of the Constitution was a desired connectedness of the armed forces with the citizenry. The recognitions of the militia in the Constitution and its endorsement in the Second Amendment spoke to a world in which the average male citizen would take part in some military activities and would possess one of the most fundamental military skills. The congressional powers over force size, funding, governance, and use also put the average citizen close to elected leaders who were regularly involved in setting military policy. The recognition of the president as commander-in-chief held open the possibility that much of the military leadership could come directly from the citizenry. Lastly, while not specified in the Constitution, the new government and the American people soon adopted the precept that Americans would conduct America’s military business. To a nation that had won its independence with considerable European military assistance and had watched the British fight with hired German mercenaries, such a proposition was not self-evident.

While the Constitution has remained unchanged in its assignments of military power and control from 1791 to 2006, many of the assumptions of the 18th century have changed drastically. Other matters that were left open in 1791 have now resolved themselves. Federal statutes, executive decisions, and changes in citizen attitudes have

14. *Id.* at art. II, § 2, cl. 13.

15. *Id.* at art. I, § 8, cl. 14.

16. *Id.* at cl. 11.

17. *Id.* at amend. II.

shaped a very different military establishment from that envisioned at the Constitutional Convention. Some changes have evolved over the full two centuries. Other changes have taken place just in the remarkable sixty-five years since American entry into World War II.

Over the passage of two centuries, the professional military has gained pre-eminence. For many years, there has been nothing discretionary in the grants of power to Congress to create armies and navies. A proposal to abolish either would probably end the career of most legislators. The creation of the service academies recognized military leadership as a skilled profession. Americans understand that a part of the American military establishment will be a cadre of senior officers and non-commissioned officers (NCOs) whose lifetime business is the measured use of force.

The growth of the national, permanent military establishment has doomed the militia, or National Guard, to a subordinate role. Federal dollars determine how the National Guards will be equipped, trained, and used. The president trumps the governor.¹⁸ The prospect of the militia serving as the check on a too-powerful national military force has long since disappeared. The point is captured in the possibly apocryphal story of die-hard Louisiana segregationist, Leander Perez, discussing plans in the 1950s to resist federal racial integration orders by the use of local military force. One of his U.S. senators from Louisiana put an end to such fancies with a blunt: "No, no, Leander. You don't understand. The feds have got the atomic bomb."

Over two hundred years, presidential power over military matters has grown at the expense of the Congress. Curiously, presidents have not asserted fully their express Constitutional designation as "commander-in-chief" to exercise field command over the troops. Presidents have, however, boldly construed the "commander-in-chief" power to direct major aspects of the operation of the armed forces. Two centuries have shown the reality that in times of crisis, America rallies around one leader, rather than the Congress. The Lincoln, Wilson, Roosevelt, or Bush who acts boldly can usually bring the country, and the Congress, along with him.

Modern American military history starts with the immense activity of America's two-year involvement in World War I. The actions of President Woodrow Wilson and the 65th Congress—enormous military build-up, conscription, mobilization of the civilian economy for war, and close involvement in international affairs—provided precedents when America entered an even greater world war. America has never looked back from World War II. Several of the premises of that era about the American military have remained unchanged to today. Others, particularly ones involving the connectedness of the average citizen to the military, have changed.

The three decades from 1940, and the introduction of America's first peace-time military draft one year before Pearl Harbor,¹⁹ to the early 1970s, and the termination of America's failed involvement in Southeast Asia, set a standard for America's understanding of the relationship of the military and civilian society. For the entire period, it was expected that world affairs might call for the use of American military force. Whether the enemy was Germany, Japan, the Soviet Union, or Communist China, America knew that it faced formidable adversaries. It also knew that large

18. See *Perpich v. Dep't of Def.*, 496 U.S. 334 (1990).

19. Act of Sept. 16, 1940, ch. 720, 54 Stat. 885.

portions of the rest of the world depended on American military strength. Any serious prospect of continued American isolation vanished in the face of long-range bombers, intercontinental ballistic missiles, nuclear weapons, and an increasingly interconnected world economy. America became a world military power.

American presidents, Congresses, and a solid majority of the public assented to the proposition that America would supply all the military force that was needed to do the job. The military budget took a favored position in congressional debates. For a wide variety of other government expenditures, the question was "how much can we afford?" For the military, the question was how much do we need for supremacy in nuclear weapons, for a conventional army sufficient to repel a Soviet invasion through Germany, or to defeat fascist or communist aggression in the Pacific, North Africa, Europe, or East Asia.

The military establishment that was created to serve those objectives was closely connected to most Americans. Selective Service and voluntary enlistments brought sixteen million young Americans into the armed forces during World War II. Their spouses, children, and parents picked up the responsibilities of parenting and filling out an understaffed civilian work force. Few populated parts of the United States were not closely proximate to a military installation or industrial plant working for the war effort. For much of the period, war—hot or cold—was the preeminent story.

Heavy manpower demands, the draft, and popular sentiment made the World War II effort one that included all social classes. President Roosevelt's sons served in uniform. Some members of Congress, including future President Lyndon Johnson, determined they should serve in uniform rather than remain in their congressional seats. Professional baseball, the prominent sport of the time, saw much of its talent in the armed services. Prominent entertainment figures of both sexes and all ages either joined the forces for serious wartime service or offered their talents for morale building to aid the war effort. The draft of the early Cold War years continued to touch the lives of most healthy young males.²⁰

All of this gave the military a close connectedness to the life of the average American. Some military veterans became lifetime champions of all things military. Others took a more cautious view of military virtues. A few veterans despised their service. But, it was probably accurate to say that during the 1950s and 1960s, the considerable majority of the American adult population of all social classes could say they had served in the armed forces, knew people who had or were doing so, or had connection with the military in the life of their home community.

A final aspect of civilian-military relations from 1940-1970 was the military's relative freedom from partisan politics. World War I had firmly placed uniformed leadership of the military in the hands of service academy and other career professionals. The model of non-partisan military leadership in World War II was Chief of Staff General George Marshall who took quiet pride in not becoming a Franklin Roosevelt intimate and refused even to vote lest it call into question his readiness to serve whomever the American people elected as commander-in-chief.

20. The early Cold War draft reached America's elites. The eminent military sociologist Charles Moskos reports: "In my Princeton class of 1956, out of 750 males, well over 400 served. In the class of 2005—1,100 male and female—only 8 served." Letter from Charles Moskos, to Donald Zillman (Sept. 5, 2005) (on file with the author).

When General Dwight Eisenhower first emerged as a presidential prospect, both political parties believed he could be enlisted in their cause. That direction from the top permeated the ranks of career officers and senior enlisted men. Good soldiers stayed quiet about their politics, avoided political activities, and scorned the rare senior officers who appeared to be playing politics for career advantage. On the civilian side, bipartisan consensus governed much military policy. Both major parties were seen as solidly pro-military. Civilian leaders respected the professional military's need to stay out of partisan politics.

This aspect of military-civilian relations began to change with the Vietnam War. In the long run, the Vietnam War will likely be seen as a minor setback in fifty years of successful, and by no means certain, American diplomatic and military policy. How did the world look from an American perspective in 1941? Germany and Japan appeared to be the military powers of the era. Both nations were ready to use their armed forces to expand their control over resources and population. Soviet Russia was either aligned with the fascist nations against the Western democracies or posed a separate threat to Western values. A United States, still struggling to recover from economic chaos and without major military forces, hardly seemed a superpower ready to shape the world in its image.

Who, but the most cockeyed optimist in 1941 would have predicted the world of 1991? By then, fascist militarism in Germany, Italy, and Japan had been exterminated. All three countries had become leaders in the Western democratic alliance with commitments to market economies, multi-party democracies, human rights, and opposition to the aggressive use of force throughout the world. The Soviet Union had imploded. 1950s-style communism had vanished in all but a handful of backwaters. Many of the former Soviet colonies had moved to Western-style democracy. Russia itself was struggling in that direction with a massively reduced military capability. Communist China retained a non-democratic government, but had shifted to a market economy and increased connections with the Western democracies. In 1991, the United States stood alone as the military superpower able to use its force to advance a variety of national and international ends. No other nation could have undone Iraq's economically and politically momentous seizure of Kuwait.

The state of the world, however, looked far different in the 1970s. Then, Vietnam was seen as a serious defeat for America. Portions of the American population blamed both civilian and military leadership. The military, particularly the army, was forced to a hard rethinking of its future. An anti-military philosophy became popular with portions of the American people.

The draft was one casualty of the times. Previous assumptions that the United States would fight everywhere to maintain amorphous concepts of liberty and freedom faced newer doubts whether the United States should fight anywhere. In the half dozen years following American withdrawal from Vietnam, America refused to contest the final communist takeover of Southeast Asia, avoided challenging Soviet adventurism in Africa, Central America, and Afghanistan, endured the economic and political use of Middle Eastern petroleum against its interests, and suffered the humiliation of a seizure of its embassy in Iran and a failed military effort to recover the embassy hostages.

Military rebuilding began in the Carter Administration. However, the election of 1980 put military policy clearly on the national ballot. The American people opted

decisively for Ronald Reagan's promise to rebuild America's forces and confront America's enemies. The new administration did so with heavy investment in hardware and personnel. It verbally challenged Soviet expansionism but was careful about the actual use of force in open-ended commitments. Secretary of Defense Casper Weinberger's precepts on the use of military force—only for clearly defined objectives solidly supported by the Congress and the American people done with overwhelming force and with a clear exit strategy—combined restored military power with a promise of “no more Vietnams.”

Historians will debate forever whether brilliance or luck should describe the Reagan policies. Whichever it was, America was left as the single military superpower by 1991, a claim that could not have been made at the end of World War II. Another decade made clear that some of the fundamental assumptions that governed American civil-military relations from World War II to Vietnam had changed and were changing. An underlying theme is the disconnectedness of the American electorate with the military. A Congress that increasingly lacks personal military experience mirrors the larger civilian society.

IV.

One connection between the citizenry and the military can come in the men and women in uniform who exercise command of the forces. As noted, the Constitution does not mandate a professional military establishment to lead the army and navy. Even the commander-in-chief power suggests that the civilian president might take field command. Congress, however, created the military academies at West Point and Annapolis in the first half of the 19th century. Those actions anticipated that senior leadership of the military and naval forces could come from the ranks of academy graduates. But the triumph of the professionals was not immediate. The “political general” remained a significant part of the military establishment through the Civil War. Despite the pejorative connotation of “political generals” today, skilled soldiers emerged from the political ranks. My state of Maine reveres Bowdoin College professor turned regimental commander Joshua Lawrence Chamberlain who earned the Congressional Medal of Honor at Gettysburg. And, such men knew their soldiers and their civilian communities. They were governors, legislators, mayors, and influential citizens whose success outside the military depended on their ability to lead and to reflect the needs of their fellow citizens. These men could also return to civilian leadership after their military service with a strong understanding of the military. Andrew Jackson and William Henry Harrison rode a combination of civilian and military accomplishments to the presidency in the first half of the 19th century. Almost all post-Civil War presidents served as Union officers in that conflict.

That eminent American Teddy Roosevelt became the classic political commander as organizer and second-in-command of the Rough Riders in the Spanish-American War in 1898. Two decades later, and after his presidency, Roosevelt became the rallying point for a continuation of the political general in the World War I mobilization. Roosevelt offered to raise one or more divisions of volunteers, whom he would command, to be the first American troops sent to France. Congress delayed passage of the draft bill to seriously vet the Roosevelt volunteer proposal. Congress

stopped just short of ordering President Wilson, Secretary of War Newton Baker, and the professional army command to accept the Roosevelt offer.²¹

The rejection of Roosevelt's service marked the end of the military amateur in command of the forces. Today, one could imagine the political firestorm if a president announced that he was appointing his campaign manager or a recently defeated senatorial candidate of his party to lead the 82nd Airborne Division. The citizenry of today may be quite content, if not encouraging, of a health and human services secretary who has never seen the inside of a hospital or a social welfare agency, a secretary of agriculture who has never farmed, or an ambassador who needs to be reminded of the capital city of his new post. They do expect the uniformed leader of military forces to have come up through the ranks of professional soldiers and sailors.²² As a consequence, however, the general or admiral and the legislator who meet on Capitol Hill come from very different worlds.

V.

A greater civilianizing of the armed forces will not come at the uniformed top ranks. That leaves changing the composition of the forces at the lower ranks. The most certain method of increasing the numbers of the armed forces and broadening their representation of American society would be a return to involuntarily inducting young men (and possibly young women) through the draft. Immediate political wisdom is that this is a non-starter. The draft can be resumed only with congressional approval. Both civilian and military leaders oppose the return to conscription. The Selective Service System, the civilian agency that would handle the mechanics of a reinstated draft, emphatically denies any plans to return to conscription.²³ In a bipartisan effort, taken primarily for political cover, the Congress overwhelmingly rejected a return to conscription shortly before the 2004 election.²⁴ Parents and others leading the campaign against military recruiters seeking volunteers in the schools

21. Act of May 18, 1917, ch. 15, 40 Stat. 76, 77-83.

22. The contemporary illustration may be the hapless Michael Brown's tenure as the head of the Federal Emergency Management Agency at the time of the Hurricane Katrina disaster. This classic political appointee lacked any emergency management experience, and it showed in time of crisis.

23. In its 2004 Annual Report to Congress, the Selective Service System reports:

On October 5, 2004, the House of Representatives voted 402-2 to defeat H.R. 163, introduced on January 7, 2003, by Representative Charles Rangel, D-NY. The bill proposed that all young persons in the United States, including women, aged 18 through 25, perform two years of military or civilian service in furtherance of national defense, homeland security, or community service.

....

Senator Ernest F. Hollings, D-SC, offered a parallel bill, S. 89. As of the end of FY 2004, the Senate Committee on Armed Services had not acted upon this bill, which died officially with the end of the 108th Congress.

SELECTIVE SERVICE SYSTEM, FISCAL YEAR 2004 ANNUAL REPORT TO THE CONGRESS OF THE UNITED STATES 12 (2004), available at http://www.sss.gov/PDFs/SSS_Annual_ReportFY04.pdf.

24. *Id.*

would be apoplectic about a return to conscripted military service.²⁵ Nonetheless, anti-draft sentiment has changed before in American history.

The modern memory of the draft stems from the final few years of the Vietnam Conflict. The received wisdom is that a draftee army all but refused to fight in Vietnam, engaged in massive drug use, and killed its commanders. As a consequence, Presidents Nixon and Ford were forced to abandon Southeast Asia and to end the draft, replacing it with the all-volunteer armed forces. President Nixon's political judgment was accurate in the short-term. Removing the threat of involuntary military service slowed the anti-war movement and bought time for Nixon's bold strategy of building openings to China and using those openings to deal with the Soviet Union.

The end of the draft was supported by both the political and the military establishment. A new generation of military leaders, exemplified by Colin Powell, had already started to rebuild morale and capability from the damage of Vietnam. They had no desire to repeat the political struggles of the last years of the draft. They promised that if the civilian leadership would provide ample dollars for hardware and for improved salaries and benefits, clear direction as to mission, and popular support, the military could return to pre-eminence. The Reagan and first Bush administrations and the Congresses obliged and the 1991 Desert Storm campaign vindicated the all-volunteer force. America, it seemed, did not need the draft to provide all the military force it needed.

Two factors distinguished the Vietnam force from that of Desert Storm and helped explain the Desert Storm success. First, following Vietnam, the military committed to the full and coordinated use of active, reserve, and National Guard components. One of the ironies of the Vietnam experience was that the trained reserve and National Guard forces were not called to service in Vietnam. The reluctant 19-year-old draftee faced a far greater chance of dying in the Vietnam jungles than the 20-year veteran of a reserve or guard unit or the recent draft-evading recruit to that Guard or reserve unit.

The "total force" policy made clear that in the next war, the reserves and Guard would serve with the active forces.²⁶ The Guard and Reserve forces received

25. See Damien Cave & Laura Cummins, *Growing Problem for Military Recruiters: Parents*, N.Y. TIMES, June 3, 2005, at A1; Bob Herbert, Op-Ed., *They Won't Go*, N.Y. TIMES, June 13, 2005, at A17; Bob Herbert, *Uncle Sam Really Wants You*, N.Y. TIMES, June 16, 2005, at A27.

26. The National Guard's website describes the thinking:

Following the experience of fighting an unpopular war in Vietnam, the 1973 Total Force Policy was designed to involve a large portion of the American public by mobilizing the National Guard from its thousands of locations throughout the United States when needed. The Total Force Policy required that all active and reserve military organizations of the United States be treated as a single integrated force. A related benefit of this approach is to permit elected officials to have a better sense of public support or opposition to any major military operation. This policy echoes the original intentions of the founding fathers for a small standing army complemented by citizen-soldiers.

Army National Guard, <http://www.arng.army.mil/history/Constitution/default.asp?ID=7> (last visited January 10, 2006). The website also identifies the substantial Guard contribution to national defense. Half of the Army's combat engineers are in the National Guard and 44% of all Army combat divisions are Guard divisions. As of October 15, 2005, of the 1,970 military deaths in Operation Iraqi Freedom, 189 are members of a reserve component and 305 are National Guard personnel. See Department of Defense Directorate for Information Operations and Reports, *Operation Iraqi Military Deaths*, <http://www.dior.whs.mil/mmids/casualty/oif-deaths-total.pdf> (last visited January 10, 2006).

equipment and training that would make them fully prepared for front-line combat service. The total force was structured in such a way that mobilization for war could not take place without the call-up of significant numbers of reserve and Guard units. Such a force fought Desert Storm; the next-door neighbors called to active service became both the heroes and casualties of war, where previously only the career officer, NCO, or the first-tour young regular force recruit had been.

The second factor was the emergence of women as a part of the force. At the end of American involvement in Vietnam in 1973, 2.5% of the active duty military was female.²⁷ By Desert Storm, 11 percent of the entire uniformed military were female.²⁸ Between the two wars, substantial numbers of military occupational specialties were opened to women. The ability to include significant numbers of women in the monthly recruitment quotas for the volunteer force certainly eased the transition from the draft.²⁹

After Desert Storm, the military continued to downsize. This served budgetary objectives. It also eased concerns about getting sufficient volunteers. The Clinton Administration was characterized by a reluctance to use military force; it delayed intervention in the Balkans, withdrew from Somalia after casualties in Mogadishu, ignored genocide in Rwanda, and failed to pursue military options against the early evidences of Islamic terrorism. General Colin Powell, an advocate of the Weinberger "use of force" standard, led or endorsed the Clinton policy. A revealing episode of the era was when Secretary of State Madeleine Albright challenged General Powell by asking what the point was of having the finest armed forces in the world if they were not going to be used. Those days seem far distant in 2006.

A serious assessment of the military draft must go beyond the last years of Vietnam and the thirty years of success with the all-volunteer force. The worst experiences with the draft came in its first and (to date) last uses—the Civil War and Vietnam. The Civil War was fought primarily with volunteers. The Union experience with conscription provided less than 10% of the total armed forces raised.³⁰ The 1863 Draft Law allowed individuals to avoid drafted service by buying substitutes for \$300.³¹ This blatant class bias helped inspire draft riots in New York City in the same week that the Battle of Gettysburg was helping to decide the outcome of the War.

27. See Department of Defense Directorate for Information Operations and Reports, *Selected Manpower Statistics*, <http://www.dior.whs.mil/mmid/m01/fy96/smsstop.htm> (last visited Oct. 31, 2005) (in particular, see Tables 2-11 and 2-17A for the pertinent raw data).

28. *Id.*

29. A third change in military force structure was a movement to hire contracted civilians in the place of those positions previously held by the military. For example, in Iraq:

[M]ore than 60 firms currently employ more than 20,000 private personnel . . . to carry out military functions . . . roughly the same number as are provided by all of the United States' coalition partners combined. President George W. Bush's "coalition of the willing" might thus be more aptly described as the "coalition of the billing."

P.W. Singer, *Outsourcing War*, FOREIGN AFFAIRS, Mar.-Apr. 2005, at 119, 122.

30. JOHN W. CHAMBERS, II, TO RAISE AN ARMY: THE DRAFT COMES TO MODERN AMERICA 42 (1987) (during the Civil War, "the U.S. Volunteers composed more than 92 percent of the 2,100,000 men . . . who served in the Union Army").

31. Act of Mar. 3, 1863, ch. 75, 12 Stat. 731.

Memories of the Civil War draft were still strong a half-century later, as the United States prepared to enter World War I. Nonetheless, the strong preference of the uniformed military leadership, and eventually of President Woodrow Wilson and of the Congress, was to use conscription to form the army that would fight Germany. What prompted America to turn its back on a history of raising armies by volunteers? One factor was the accurate perception that this war would mobilize the entire American people. America would have to be both the arsenal and the granary of democracy. Production of weapons, ships, and food would be needed for European allies as well as the American forces and the citizenry. A second factor prompting conscription was the presence of reports from British military experts on the disastrous British experience of allowing eager first volunteers to be sent immediately to the front lines where they were slaughtered. Many of these victims would have better served the national interest as the training cadres for later groups of recruits and draftees. In America, the perception of many members of Congress was the exact opposite of what it would be in 2005. In 1917, legislators felt that the "best and brightest" young Americans would volunteer and be killed first, while the lower class "slackers" avoided service.³² A third factor supporting conscription was that selective service appealed to the public policy makers of the Wilson Administration. Mobilization demanded unemotional, scientific examination of who served the country best in what position, rather than a patriotic rush to the colors.³³

The Draft Act of 1917 achieved its objectives.³⁴ Nine and one half million young men registered for possible service on June 5, 1917. Their credentials were assessed by civilian draft board members who chose over two million of their young neighbors to enter the armed forces.³⁵ That national mobilization helped encourage other volunteers from all social classes. By war's end, American fatalities included a son of former President Roosevelt (two others were seriously wounded), the former mayor of New York City, a leading member of the House Military Affairs Committee, and numerous children of privilege.

The conscript army arrived in France just in time to help roll back the final German advance in June and July of 1918 and to compel the Germans to ask for an armistice in November. Historians will continue to debate whether the American force in 1918 deserved major credit for winning the war or merely arrived at the time of eventual French and British success. What is undeniable is the assessment of an anonymous Frenchman at the welcome for American General Pershing in Paris in 1917: "Behind him there are ten million more!" Those ten million would have come from the military draft.

32. See 55 Cong. Rec. 971, 976, 980 (1917) (remarks of Reps. Lunn, Crago, and Olney).

33. *A Proclamation by the President of the United States*, N.Y. TIMES, May 19, 1917, at 1. In the proclamation, President Wilson noted:

The whole nation must be a team, in which each man shall play the part for which he is best fitted. To this end, Congress has provided that the nation shall be organized for war by selection; that each man shall be classified for service in the place to which it shall best serve the general good to call him.

Id. (noting that, "[t]he business now at hand is undramatic, practical, and of scientific directness and precision").

34. Act of May 18, 1917, ch. 15, 40 Stat. 76.

35. *Id.*

Twenty years later, America mobilized again. The World War I experience with the draft served as the model for an even greater conscription. The expectation was that every physically able young male would serve. Many, persuaded by the First World War experience that Uncle Sam was quite serious about conscription, volunteered for the armed force or assignment of choice, rather than waiting for the unavoidable draft call. Again, as in World War I, the perception was that all served—presidents' sons, star athletes, Ivy League graduates, and movie stars. After the fact, the symbol of upper class sacrifice was millionaire and former Ambassador to Great Britain, Joseph Kennedy. Despite Kennedy's considerable reluctance to fight Nazi Germany, he lost one son to a high-risk aerial mission in Europe and had another seriously wounded in Naval combat in the South Pacific.

The conscript-shaped army of World War II also provided a remarkable quality of young Americans for missions that needed exactly that kind of initiative. The late historian Stephen Ambrose's exhaustive study of the D-Day veterans made the point that the success of the Normandy landings was less a matter of superb generalship than superb, and often uncoordinated, leadership by junior officers and NCOs. Speaking more broadly of the quality of the first American troops in Europe in the summer of 1944, Ambrose noted: "Rich kids. Bright kids. The quarterback on the championship high-school football team. The president of his class. The chess champion. The lead in the class play. The solo in the spring concert. The wizard in the chemistry class. America was throwing its finest young men at the Germans."³⁶ A large number of those "very best" were conscripts, or draft inspired volunteers. The common experience for the healthy, young male regardless of race, class, or occupation in 1944 was to be a uniformed member of the armed services.

For a brief period after the war, the draft ended as America demobilized. By the late 1940s, however, the Cold War was in full swing and the draft was reinstated. For most of the next fifteen years, including the hard fighting of the Korean War, military service remained a common feature of the experience of young American men. Such disparate Americans as Ted Kennedy and Elvis Presley served an honorable term of enlisted service. Ted Williams was recalled to active duty from his position as one of the most visible professional athletes of his generation. To an America whose memories of the massive mobilization of World War II were still fresh, this seemed normal.³⁷

In the mid-1960s, things changed. The coming of age of the huge Baby Boom cohort of young males and the growing unpopularity of the Vietnam War doomed the draft. The large numbers of draft-eligible young men provided more manpower than the armed forces needed. A Selective Service System pamphlet of the era captured the dilemma: "Who Serves, When Not All Serve?"³⁸

36. STEPHEN E. AMBROSE, *THE VICTORS, EISENHOWER AND HIS BOYS: THE MEN OF WORLD WAR II* 262 (1998). *See generally* STEPHEN E. AMBROSE, *D-DAY, JUNE 6, 1944: THE CLIMACTIC BATTLE OF WORLD WAR II* (1994); STEPHEN E. AMBROSE, *CITIZEN SOLDIERS* (1998).

37. PETER F. RAMSBURGER AND D. BRUCE BELL, *WHAT WE KNOW ABOUT AWOL AND DESERTION*, (U.S. Army Research Institute ed., 2002), *available at* <http://www.hqda.army.mil/ari/pdf/s51.pdf> (reporting that draftees had lower AWOL and desertion rates than volunteers in World War II, Korea, and Vietnam).

38. *See generally* BURKE MARSHALL, *IN PURSUIT OF EQUITY: WHO SERVES WHEN NOT ALL SERVE?* (1987).

Reliance on the draft to staff the Vietnam force was made worse by the practical answer to the question: Who serves when not all serve? The answer was the poor, the undereducated, and the unprivileged. Congress, the leaders of Selective Service, and hundreds of individual draft board members joined to exempt many children of the privileged classes from service. Educational or occupational deferments favored those in college and numerous white-collar occupations. The extensive physical and mental fitness standards served to help the privileged. A careful physical review of the prospective draftee could reveal trick knees, ulcers, or psychiatric conditions that precluded military service. The child of the privileged class typically had an extensive medical record and a supportive family doctor or psychiatrist to document such a claim. The less fortunate did not.

Even the prospective draftee who did little to game the system stood an excellent chance of ultimately avoiding any military service. Those who needed more could alter their lives or records in ways—a sudden passion for divinity school, enlistment in the Peace Corps, the newly discovered psychiatric disability—that risked no criminal prosecution and found favor with a draft board. Journalist and Harvard graduate James Fallows, who perceptively noted the class bias of the Vietnam War draft, recalls his ticket out was to starve himself below the accepted weight-for-height limit.³⁹ I recall a college roommate who successfully went in the other direction, eating himself over the magic maximum weight limit on a diet high in starch and dairy products.

A law school classmate of mine captured the sentiment of 1968: “I can’t be drafted, I’ve got a job with Ford Motor Company!” And this early representative of the ‘Me Generation’ had it exactly right. By the late 1960s elite Americans sensed that the Vietnam War was a failure and did not involve vital American interests. If someone had to fight it, it shouldn’t be themselves or their children. Most privileged young men of draft age had a considerable support system—parents, friends, adult counselors—who endorsed their decision to avoid military service.

Would a more egalitarian draft or a greater civic sense of obligation on the part of American elites have made a difference? In the ultimate outcome of the Vietnam conflict, it most probably would not have. The fault in Vietnam was not primarily poor American soldiers in the rice paddies or the air-conditioned support offices. The failures went right to the top of the civilian and military leadership. Yet, in small and not so small ways, the quality of the force was important. Suppose, to borrow Stephen Ambrose’s phrase: “America chose to throw its finest young men against the Viet Cong and North Vietnamese” through a draft that operated on the philosophy that there was no more important place for a talented young American to be than in Vietnam helping to win the war, or, at least, to avoid defeat. Professor William Eckhardt, a prosecutor in the My Lai war crimes trials captured the point perfectly at a retrospective conference on My Lai. He observed: “If the small unit commander at My Lai the day of the massacre had been William Jefferson Clinton instead of the misfit Lieutenant William Calley, we wouldn’t be here today.” A contemporary observer might speculate on the impact of a dozen young Americans in the Military Police

39. See generally James Fallows, *What Did You Do in the Class War, Daddy?*, THE WASHINGTON MONTHLY (Oct. 1975).

detachment at the Abu Ghraib prison who had been specifically selected for the duty because of their exposure to Islamic cultures.

A military in Vietnam that was representative of all social classes might also have forced a faster resolution of America's uncertainties about the war. Were enough members of the Vietnam era Congresses receiving input from their sons and daughters serving at the front? Were they getting the "have to be answered" phone calls from bank presidents, state party chairmen, and newspaper editors recounting the experiences of their children in Vietnam?

In retrospect, President Nixon may not have needed to end the draft in order to placate young American elites (the majority of the most vocal anti-war protestors) and their parents. The actual operation of the draft described above and the declining draft calls as American forces began to withdraw from Southeast Asia, probably placed few upper class young American men at risk of forced induction in 1971-72. Nevertheless, the draft was a powerful symbol for the generation and its termination gave the president considerable political and diplomatic advantage. By 1973, the draft had few defenders and what military sociologist Charley Moskos has called "the triumph of economics over sociology" took place with few objections.

Is a restoration of the draft possible? If so, how should Congress structure 21st century conscription? An American military in which sacrifice is more widely shared amongst all classes is theoretically attractive. It might even make for a better armed force. However, mere egalitarian sentiments are likely to have little political potency. America is a generation away from the experience of conscription. The prospect that Congress could order military service of their son or daughter is anathema to many parents who vote, make campaign contributions, influence public policy, or just respond to public opinion polls.

What could force a reconsideration of conscription is a situation in which America lacks the personnel to staff the military it needs. As of the fall of 2005, that is not a fanciful prospect.⁴⁰ American armed forces are at their smallest levels of the entire post-World War II period.⁴¹ The current active duty armed force—Army, Navy, Marines, Air Force—is smaller than the Vietnam Era army alone. Recruitment shortfalls make national news.⁴² The forces are lowering recruitment standards to try

40. See, e.g., Niall Ferguson, *Sinking Globalization*, 84 FOREIGN AFFAIRS 64, 73-74 (2005). Ferguson concisely notes:

The U.S. empire also suffers from a personnel deficit: 500,000 troops is the maximum number that Washington can deploy overseas, and this number is simply not sufficient to win all the small wars the United States currently has (or might have) to wage. Of the 137,000 American troops currently in Iraq, 43 percent are drawn from the reserves or the National Guard. Even just to maintain the U.S. presence in Iraq, the Army is extending tours of duty and retaining personnel due to be discharged.

Id.

41. See Department of Defense, *Military Personnel Statistics*, <http://www.dior.whs.mil/mmmd/military/miltop.htm> (last visited Oct. 14, 2005). DOD Active Duty Military Personnel Strength Levels reports an army of 1,596,419 in 1952 (the height of the Korean Conflict) and 1,570,343 in 1968 (the height of Vietnam). The army of 2002 numbered 486,542. The total strength of the Army, Navy, Marines, and Air Force as of August 31, 2005 was 1,429,760.

42. See, e.g., Eric Schmitt, *For First Time in Months, Army Meets Its Recruiting Goal*, N.Y. TIMES, June 30, 2005, at A22; *Army Appears Headed to Recruiting Shortfall*, THE NEW MEXICAN, June 9, 2005, at A6; Damien Cave, *For Army Recruiters, a Day of Rules, and Little Else*, N.Y. TIMES, May 21, 2005, at A8;

to keep pace. As troubled as active duty recruitment has been, things are even worse for the reserves and National Guard. The current situation is the reverse of the Vietnam experience, in which the Guard and reserves were the hiding places from unwanted Vietnam service. Today, the total force concept has made Guard and reserve personnel subject to repeated overseas call-ups. Guard and reserve personnel understandably feel they get the worst of military service while doing harm to their civilian careers and family obligations.⁴³

The world remains a seriously dangerous place in 2005. An amorphous cadre of terrorists has declared unconditional war on the United States and much of western civilization. Diplomacy and ordinary law enforcement can handle some aspects of the problem, but the military remains likely to play a role. The use of force, partially for the purpose of fighting international terrorism, has placed the United States at risk of a mid- to long-term commitment of combat forces to Afghanistan and Iraq.⁴⁴ Those commitments have stretched the present American armed force close to the breaking point.

Does that exhaust the possible range of crises that could demand American military response? Hardly! President George W. Bush identified Iraq, Iran, and North Korea as an 'axis of evil,' an allusion to the World War II alliance of Germany, Japan, and Italy. Even those who believe the presidential rhetoric was unwise and overblown would concede Iran and North Korea have fundamental differences with the United States that could lead to war.⁴⁵ Moreover, Iraq may have been the least militarily challenging of the three foes. A comparison with World War II would place the United States in the position of having a difficult time fully subduing Mussolini's Italy.

That leaves the rest of the world. The United States has made a half-century of promises of Israeli security. Less strong promises allow Taiwan to define its eventual relationship with the mainland of China. What attitude would the United States take towards a reassertion of Russian dominance over parts of the former Soviet Union? Has long-term security finally come to the Balkans? And aside from Israel and Iraq, what changes of government in the oil-rich Middle East would command an American response? What other genocides or failed states anywhere would command some American response? This is neither a small, nor unrealistic, agenda.

Editorial, *The Death Spiral of the Volunteer Army*, N.Y. TIMES, May 29, 2005, at 4.9; Editorial, *The Army Numbers Game*, N.Y. TIMES, June 13, 2005, at A16; Damien Cave, *Pentagon May Consider Older Recruits*, N.Y. TIMES, July 22, 2005, at A11.

43. See Eric Schmitt & David S. Cloud, *Part-Time Forces on Active Duty Decline Steeply*, N.Y. TIMES, July 11, 2005, at A1.

44. See JEREMY RIFKIN, *THE EUROPEAN DREAM* 292 (2004) (quoting President Bush's West Point graduation speech of 2003: "America has, and intends to keep, military strengths beyond challenge— thereby, making the destabilizing arms races of other eras pointless, and limiting rivalries to trade and other pursuits of peace."); John F. Burns & Eric Schmitt, *Generals Offer Sober Outlook on Iraqi War*, N.Y. TIMES, May 19, 2005, at A1; Richard A. Oppel, Jr. & Eric Schmitt, *Bombing Attacks on Iraqi Forces Kill 38 in North*, N.Y. TIMES, June 27, 2005, at A1 (quoting Secretary of Defense Rumsfeld: "Insurgencies tend to go on five, six, eight, 10, 12 years."); Eric Schmitt, *Iraqis Not Ready to Fight Rebels on Own*, U.S. SAYS, N.Y. TIMES, July 21, 2005, at A1.

45. See David E. Sanger & Thom Shanker, *U.S. Warns North Korea Against Nuclear Test*, N.Y. TIMES, May 23, 2005, at A9.

America's enormous technological advantages give it a unique potential to inflict military damage worldwide. In some cases, that response may achieve desired political results. As Afghanistan and Iraq suggest, however, our adversaries have learned from the mistakes of Saddam Hussein. One does not fight a conventional war in open terrain against the world's foremost nuclear and military power. The alternatives to traditional warfare can be immensely demanding of American personnel. Further, those personnel will need to be very good because their failings have consequences. Any young officer or enlisted person armed on the streets of Baghdad or working in the Abu Ghraib prison has the ability to make international news with a momentary lapse of judgment.⁴⁶

All of this should invite the American people to take a hard look at the military and the purposes we want it to serve. If a return to conscription is unacceptable under any circumstances, we may need to recognize that we will not have 'all the force we need.' Our ability to influence crucial world events may need to be limited to diplomatic and economic responses or may demand the involvement of genuine international coalitions. That may be a very healthy thing.

If the decision is to return to the draft, Congress and the American people need to carefully review the prior draft experiences—both successful and unsuccessful. A crucial message from the past is that fairness is essential.⁴⁷ Both constitutional law and sound public policy in 2006 may demand that both sexes be conscripted. Exemptions—whether on account of health, occupation, education—should be kept to a minimum. Young people should be subject to induction only when they reach their 18th or 19th year. If they are selected through a random drawing of numbers or birthdates, they should serve their obligation prior to college or the start of their occupational career. A carefully designed conscientious objector program might allow some draftees to substitute civilian services which pose some of the burdens of military service. Exemptions to military service, however, should not turn into a broad youth service program. The object of the draft is to secure personnel for the military. Lastly, those who serve should be guaranteed the modern equivalent of the post-World War II GI Bill. These young Americans will have earned full payment of college or vocational school costs and other readjustment benefits.

VI.

The American people continue to demand civilian control of the military even if we are not sure what that means. In the modern era, the most visible challenge to the precept of civilian control was General Douglas MacArthur's bold attempts to override President Truman's direction of the Korean War. While the momentary public response of 1951 favored MacArthur with his "no substitute for victory" philosophy,

46. See generally MARK DANNER, *TORTURE AND TRUTH, AMERICA, ABU GHRAIB, AND THE WAR ON TERROR* (2004) (reprinting the Article 15-6 Investigation of the 800th Military Police Brigade and the Article 15-6 Investigation of the Abu Ghraib Prison and the 205th Military Intelligence Brigade).

47. See Charles Moskos, *Our Will to Fight Depends on Who is Willing to Die*, WALL STREET JOURNAL, March 20, 2002, at A22. Professor Moskos outlines his thesis: "Only when the privileged classes perform military service does the country define the cause as worth young people's blood. Only when elite youth are on the firing line do war losses become more acceptable." *Id.*

history has sided solidly with President Truman. He was right both on the constitutional issue and on the proper direction of the Korean Conflict.

No high commander since MacArthur has attempted such a public challenge of his commander-in-chief. In practice, generals and admirals have become more skilled politicians. A study of the Clinton Administration reflects a militarily inexperienced president regularly being outflanked on military and political issues—e.g., gays and lesbians in the armed forces, Balkan policy—by such savvy insiders as General Colin Powell. If the military's wishes do not have the support of the commander-in-chief, there is always Congress, the media, and the American public to help support the military's case.

A review of military-civilian relations since the Truman-MacArthur controversy would suggest that the civilians have been less respectful of their role than has the military. Healthy civil-military relations require the military to recognize that political considerations may outweigh military ones and that the ultimate decisions lie with the civilian leadership. Healthy civil-military relations, however, also encourages the civilian leadership to respect the expertise of the professional military. Civilian micro-management (e.g., Lyndon Johnson approving individual bombing raids in Vietnam) does harm to that objective. Civilian overriding of the military on major military decisions is a closer question. The size of the force needed for the Iraqi invasion in 2003 raised the issue most sharply. Secretary of Defense Rumsfeld heard, but rejected, Army Chief of Staff General Eric Shinseki's warning that sufficient American forces were not in place to both displace Saddam Hussein and to win the peace. Clearly, the decision as to what post-war consequences follow a successful regime displacement involve both military and political/diplomatic considerations. The Constitution gives the ultimate decision to the civilian establishment. As of the fall of 2005, however, General Shinseki appears the more foresighted on the issue.

VII.

Some final considerations involve the political neutrality of the military. The Supreme Court in *Greer v. Spock* endorsed the concept a quarter-century ago.⁴⁸ The *Spock* decision suggests we mix the military and partisan politics at considerable risk to the country and the military. As with civilian control issues, obligations for preserving the military's partisan neutrality fall on both the military and the civilian leadership. Military leaders, and the collective institution of the military, should avoid being drawn into partisan politics. As noted, the military model is General George Marshall—during his time in uniform he was the political neutral. The civilian leadership also has a responsibility to keep the military out of partisan politics and avoid using the military to score partisan points. For the most part, the leaders of 1940-1970 followed these precepts. The last three decades have considerably eroded them.

One aspect of the change is the position of the major political parties on military issues. A comparison of the 1960 and 2004 Presidential elections is revealing. In 1960, Democrat John Kennedy upset Republican Vice President Richard Nixon, the

48. *Greer v. Spock*, 424 U.S. 828, 848 (1976) (holding that the military may prohibit partisan campaign activities on military installations).

logical successor to the highly popular military hero Dwight Eisenhower. Part of Kennedy's successful campaign contrasted his PT-109 combat experience with Vice President Nixon's less heroic service as a desk-bound staff officer. More importantly, Kennedy challenged President Eisenhower's defense policy—namely, the presence of a Soviet advantage in long-range missiles—and made his case to the American people. President Kennedy then reaffirmed Democratic Party defense credentials with his widely praised inaugural address that promised to “pay any [military] price” to fight Communist aggression.⁴⁹

In 2004, the Democrats again offered an attractive war hero who could trump President Bush's less attractive record of military service. The complications of the Iraq War provided the basis for a strong challenge of the administration's defense policy. Yet, the Democrats could not sell their case to the American people. Many things make 1960 different from 2004, but a core difference is that over those forty-four years the Democrats have lost credibility as a party to entrust with responsibilities for national defense. The party of Woodrow Wilson, Franklin Roosevelt, Harry Truman, and John Kennedy has become the party of George McGovern, Jimmy Carter, Michael Dukakis, and John Kerry. Capable military credentials of its candidates—World War II bomber pilot McGovern, Naval Academy graduate and nuclear submarine officer Carter, Korean era draftee Dukakis, and decorated Vietnam combat veteran Kerry—could not reverse the popular perception that the Democratic Party was ambivalent about financial support for the military, did not understand the military culture, and was actively hostile to some aspects of a robust national defense program.

Of equal importance, these views were shared by a considerable portion of the career military.⁵⁰ The euphoric responses from officers clubs and in NCO clubs to Ronald Reagan's victory over Jimmy Carter in 1980 and the opposition to Bill Clinton's effort to integrate gays and lesbians into the forces in 1993 were symbols of a larger alienation.⁵¹ Democratic opportunities to put solidly pro-military candidates at the head of the ticket were rejected either by party insiders or primary voters. Senator John Glenn, the epitome of the ‘right stuff’ could not secure the party nomination for president. Senators Henry Jackson and Sam Nunn, solid defense strategists, saw presidential trial balloons go nowhere. In 2004, General Wesley Clark found that a solid military resume left one struggling for 4th and 5th place finishes in Democratic primaries. Even the Kerry experiment turned out badly. His actual war record was blurred by the Swift Boat Veterans' challenges to his opposition to the war. Kerry's uncertainties and reversals on the Iraq War came across to the American voters as indecisive.

49. Transcript of Inaugural Address of President John F. Kennedy, *available at* <http://www.ourdocuments.gov/doc.php?flash=false&doc=91&page=transcript> (last visited Oct. 31, 2005).

50. A related concern is reflected in documented reports that officers and faculty at the Air Force Academy had become advocates for their own conservative Christian beliefs in their dealings with cadets. See Laurie Goodstein & Will Shanley, *Air Force Academy Staff Found Promoting Religion*, N.Y. TIMES, June 23, 2005, at A12; T.R. Reid, *Air Force Chaplain Removed From Post*, PHILADELPHIA INQUIRER, May 15, 2005, at A4.

51. Historian David Hackett Fischer is blunt on the Clinton record: “[Clinton] had no knowledge of military problems, alienated the armed services, failed miserably as a military leader in Somalia, and was one of the least successful commanders-in-chief in American history.” DAVID HACKETT FISCHER, *LIBERTY AND FREEDOM* 701 (2005).

Partisan politics also seem to be infecting the senior ranks of the armed services in ways that I suspect General Marshall would have deplored. Both Republican and Democrat conventions in 2004 were eager to parade numbers of recently retired senior officers praising their party's cause and candidates. While such conduct would violate regulations for an active duty officer, the fact that a well-known military name has just recently retired may be lost on the American convention viewer and voter. It would also be a leap of faith to assume that the general or admiral had only acquired partisan political views in the few months since retirement.

A new definition of the 'political general' characterizes the era. Previously, the 'political general' was the influential civilian politician suddenly raised to high military rank and command. Now he or she is the career military figure who jumps to partisan politics. There is nothing new in American history about the career soldier becoming a major political figure. Grant, Eisenhower, and Marshall head a distinguished list. However, all three turned to partisan politics after they had completed their military careers with enormous distinction and with no perception that they had played partisan politics to reach the highest ranks. Part of the attraction to voters and presidents was precisely their non-political, servant-of-the-American-people posture.

The modern political generals or admirals—Alexander Haig, Colin Powell, and Stansfield Turner are major examples—have followed a different pattern. Their military skills, including combat heroism, have brought them to the attention of Washington political figures in the middle of their careers. These are upwardly mobile colonels and one star officers, not supreme commanders and chiefs of staff, when their careers begin to mix the military and partisan politics. When their contemporaries, and competitors for higher rank, help run Camp Swampy or a Pentagon office, they are mixing with presidents, secretaries of defense, and congressional leaders. The role is a delicate one and subject to the reality and perception that the military officer has become part of the president's political team. Within the military, the perception may be that the position offers the 'big break' to move to the highest levels of military leadership.

One danger of the contemporary 'political general', whether still on active duty or retired, is the loss of a skilled non-partisan servant of the nation. Recent American history is full of examples of retired military officers moving to civilian leadership positions in the public sector. The officers often bring an expertise and leadership ability that make them unique. Much of their credibility in their new position comes from the reality and perception that they don't bring a partisan political agenda with them. They are servants of the American people, not adjuncts of the Republican or Democratic Party. Few others in national and international affairs can bring that background. To trade that non-partisanship for an appearance on stage at a national convention or a pro or anti-administration op-ed in a national newspaper is a loss for America.

Finally, the military needs to be careful about placing all its eggs in one political basket. Democrats may feel they cannot win back the military community and should not try. Their political future is in a different vision of America, one that is respectful of military personnel, but also envisions solving international public policy matters in ways different than the use of military force. Under this vision, new weapons systems, expanded force structures, and larger Pentagon bureaucracies will yield to other priorities. If the Republicans have become undeniably the military party, they may

feel little need to specially cultivate military voters or the military command. Secretary of Defense Rumsfeld's bold efforts to restructure the military⁵² doubtless have been helped by the reality that the military has little political clout to upset major changes that come from the Republican party.

VIII.

These are uneasy times. The nation and the military face a wide range of serious challenges. Servicemen and women are highly regarded in the abstract. But their lives are remote from significant portions of the population.⁵³ Within a decade we may expect it will only be the rare senator or representative who knows the military from firsthand experience. A troubling 'quasi-wartime' has placed all the sacrifice on the members of the military. Civilians in prior wars have seen their taxes rise, their access to essential and inessential goods and services cut, and their persons ordered to military service. American civilians since September 11, 2001 have been encouraged to shop and have had their taxes cut. More Americans today can identify the hosts of reality shows and top professional draft choices than can identify the members of the joint chiefs of staff or the field commanders in Iraq and Afghanistan.

The American people and their leaders need to take a hard look at what they need from their military. They also need to assess whether the civilian community can command wars without civilian sacrifice. The questions challenge some fundamental assumptions of the last three decades. But, the times demand realistic answers.

52. Thom Shanker & Eric Schmitt, *Pentagon Weighs Strategy Change to Deter Terror*, N.Y. TIMES, July 5, 2005, at A1; see generally Department of Defense, *2004 Secretary of Defense Annual Report to the President and Congress* (2004), available at http://www.defenselink.mil/execsec/adr2004/adr2004_toc.html.

53. The closing of military bases over the last two decades has also removed many communities from daily connection with the military and military personnel. In the latest round of proposed closings, thirty-three major bases are on the hit list. See Eric Schmitt, *Military Base Closings: The Overview*; *Pentagon Seeks to Shut Dozens of Bases Across Nation*, N.Y. TIMES, May 23, 2005, at A1.