

# The Militarization of U.S. Domestic Policing

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## Abstract

This paper develops the political economy of the militarization of domestic policing. We analyze the mechanisms through which the “protective state”—where the government utilizes its monopoly on force to protect citizens’ rights—devolves into a “predatory state” which undermines the rights of the populace. We apply our theory to the U.S., where we trace the (failed) historical attempts to establish constraints to separate the military functions and policing functions of government. In doing so we emphasize the role of crises in the form of perpetual wars—the “War on Drugs” and the “War on Terror”—in the accelerated militarization of domestic policing.

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# 1 Introduction

Can government simultaneously be empowered and constrained? This “paradox of government” is the central question of constitutional political economy (see Buchanan 1975; Buchanan and Brennan 1985; Weingast 1995; Gordon 2002). In order for a government to function, individuals must allow governing forces to control different aspects of their lives. The danger in granting such powers, however, is that the government may abuse this authority and engage in predatory behaviors against citizens.

The common solution is to establish checks and balances on government to prevent such abuses. History has demonstrated, however, that effective checks on government power are elusive. The rise of Nazi Germany, the rule of Idi Amin in Uganda in the 1970s, Josef Stalin in the former Soviet Union, China’s Mao Tse-Tung, Cambodia’s Pol Pot, and present-day Syria are but a few examples of the tragic consequences of unconstrained government power. Beyond these examples, the poorest countries in the world today suffer from the actions of rapacious states, most of which are largely unconstrained in their predation against citizens.

One reason governments are able to effectively exploit their citizens is because they maintain a monopoly, or near monopoly, on military force. It is the concentration of military power, with its weaponry, organizational structure, and tactics that serves as the ultimate tool of government abuse. The threat of violent force raises the cost of deviations from government decree and can be used to repress citizens. As per the paradox of government, this leads to the central concern that while force can, in theory, serve the function of protecting citizens from threats to their person and property, it can also be used by the political elite to undermine the very rights government is tasked with protecting. Taking this crucial concern as our starting point, this paper develops the political economy of the militarization of domestic policing. We

identify the conditions and mechanisms through which the “protective state”—where the government utilizes its monopoly on force to protect citizens’ rights—devolves into a “predatory state” which undermines the rights it is tasked with enforcing.

Our analysis focuses on the U.S., where a long history of laws has attempted, at least in spirit, to draw a clear distinction between domestic policing and the military functions of government. This tradition is grounded in the fundamental differences between these two functions. State and local law enforcement are charged with upholding *domestic* laws that protect the rights of citizens. While they “combat” crime within their jurisdictions, their goal is not to physically annihilate criminals, but to maintain public order and “keep the peace.” They are to protect the rights of the citizenry, both victims and criminals alike. In the realm of domestic policing the police are, in principle, trained to resort to violence only as matter of last resort. Military forces, in contrast, are trained to engage in combat with the goal of destroying an *external* enemy deemed a threat to the rights of domestic citizens (United States Army Field Manual 7-10: 1). Typically operating in hostile environments, soldiers are trained to kill an adversary. The fundamental difference between policing and military functions is perhaps best highlighted by comparing the well-known LAPD motto, “to protect and serve [citizens,]” with the U.S. Soldier’s Creed, “I stand ready to deploy, engage, and destroy the enemies of the United States of America in close combat” (Rizer and Hartman 2011).

Despite historical efforts to make laws that enforce this distinction, during the past four decades domestic policing in the U.S. has become increasingly militarized. That is, domestic law enforcement has taken on the characteristics of the armed forces by engaging in military-like training, acquiring military weapons and utilizing military tactics in everyday operations. To provide just one illustration of this militarization, consider the number of state and local law

enforcement agencies which have acquired and maintained Police Paramilitary Units (PPUs) or Special Weapons and Tactical units (SWAT). In 1982, 59 percent of police departments employed a PPU. By 1990, 78 percent of departments had a PPU. By 1995, 89 percent of police departments had a PPU (Kraska 1997). Police departments of all sizes around the country have obtained and preserved the use of hundreds of millions of dollars worth of military equipment ranging from M-16 assault rifles, riot gear and body armor, to tanks, grenade launchers and armored vehicles. Further, the use of wire-tapping, the examination of financial and other personal records without judicial clearance, and other violations of personal liberties, once unimaginable, are no longer an uncommon practice among domestic police.

The rise of the militarization of domestic policing in the U.S. is coincident with onset of two ongoing “wars”—the “War on Drugs” which began in the 1980s, and the “War on Terror” which began in the early 2000s. Like any other war, these conflicts utilize military personnel, equipment, and tactics to combat and eradicate real and perceived enemies. Because these wars are carried out both internationally *and* domestically, they have had the effect of transforming the culture and behavior of domestic police. Instead of a narrower focus on “keeping the peace,” many police assume the characteristics of soldiers and have adopted a militaristic strategy in their domestic activities. As per the paradox of government, the fear should be that this progressive militarization of domestic policing will lead the abuse of force and power. Indeed, examples of such abuses abound. There are hundreds of reports involving police use of “no-knock” raids and other tactics resulting the injury or death of unarmed, non-violent or innocent civilians (Cooper 2004; Balko 2006; Brown 2009; Lodge 2011).

In what follows we use the tools of political economy to explain how the line between domestic police forces and the military has blurred over time. In doing so we explain the erosion

of rules intended to permanently separate military and policing functions. Our analysis contributes to several strands of literature, the first of which is the aforementioned literature on the role of rules in constraining abuses of government power. Our contribution is to explore how rules which constrain the use of military power can be eroded or circumvented over time. Second, we contribute to the literature on the political economy of crises (Higgs 1997, 2004, 2005, 2007, 2012; Congleton 2005; Coyne 2011). Our contribution is to demonstrate how crises may lead to the erosion of rules separating domestic policing from military functions. Finally, we contribute to the small, but growing, literature on the militarization of domestic police in the U.S. (Kraska and Kappeler, 1997; Ericson, 1999; Lutterbeck 2004; Balko 2006). While these works explore the magnitude of the growth of militarization and the ways in which this growth occurs, none of the present research has examined *why* and *how* such changes occurred. Our analysis fills this gap.

## 2 The Political Economy of Militarization

The militarization of domestic policing may occur directly or indirectly. Direct militarization occurs when governments utilize their military forces domestically to control and repress citizens. Recent civil conflicts in Libya and Syria provide examples of direct militarization, as the respective governments of these countries deployed the military to attempt to repress citizens in order to maintain their grasp on power. Under this scenario of direct militarization, constraints demarcating policing and military functions are either ineffective or altogether absent.

Indirect militarization occurs when domestic police forces acquire military characteristics over time. Instead of performing their standard function of enforcing laws to protect property, police begin proactively seeking criminal activity and engage in activities involving the use of

militaristic strategy, weaponry, and tactics (e.g. no-knock raids, counter-terrorism operations, etc.). Ideally, effective constraints exist to prevent the blurring of police and military functions. However, political economy explains how constraints can erode over time due to the nature of the political process through which policing and military activities are carried out.

To begin to understand this process, we must first appreciate the inherent tendencies of government bureaucracies, as this is the main form of organization for both the police and military. Existing literature indicates that in the absence of profit and loss, success in bureaucracies is measured through the size of discretionary budgets and the number of subordinates (Niskanen 1971, 1975; Mique and Belanger 1974). The result is that while government agencies do not vie for profit through private markets, there exists stiff competition over the distribution of a given pool of resources. The possibility of securing a windfall profit creates incentives for bureaus to engage in intense rent-seeking behavior to secure as much of the available budgetary pie as possible.

One result of this tendency is “mission creep” whereby bureaus attempt to expand their portfolio of activities to increase the size of their budgets and the number of personnel employed. Through the expansion of the scale and scope of their activities, bureaucrats attempt to signal to other parts of government, and the public, that the agency is engaged in the provision of crucial services. This expansion is then used to justify requests for additional funding and employees. Just as mission creep signals the public and government that a bureau’s work is “relevant,” exhausting a bureau’s budget also sends an important signal. Specifically, by spending down its entire budget, a bureau signals that it needs additional resources in future periods to accomplish its increasing portfolio of “crucial” activities.

These characteristics of government bureaus matter in the context of our analysis, as there is an inherent tendency for both the police and military to push to expand the range of their activities. Both agencies look to steadily increase their spending on new and existing activities. Consider that in 1988, the U.S. spent \$306 billion on the military. By 2010, military spending had climbed to \$698 billion (Stockholm International Peace Research Institute 2012). Domestic police spending followed a similar pattern, with police spending jumping 445 percent from 1982 to 2007 (Couper 2012).

The incentives facing military and police bureaus results in a relationship between the two whereby each benefits from expanded interactions. The military, looking to extend its powers, expand its budget and increase its personnel, has incentive to expand into and exert influence over domestic police. By providing weapons, training and other resources to police, the military effectively augments the power of its various agencies and the number of personnel under its influence. Likewise, domestic law enforcement benefits by extending operations in hopes of acquiring additional funds and staff. If the military is engaging in activities which yield significant windfall profits—e.g. counter-terrorism efforts or drug interdiction—police forces face a strong incentive to adopt similar activities and methods. Once domestic police forces acquire additional funding, tactical training and weaponry, they face an incentive to use this training and equipment to justify the spending while seeking further increases. The result of this process is a blurring of the police-military dichotomy and the erosion of constraints on domestic police activities.

Yet another factor working to erode constraints on policing and military functions are special interest groups. Special interest, or “pressure,” groups work to influence government for the benefit of their members and, in the process, contribute to the erosion of checks and balances

on government power. Just as bureaus compete for government funds, so too do special interest groups as they look to secure a share of available funds. This results in intense political competition as these groups lobby Congress, finance political campaigns, and work to sway public opinion in order to influence policy. They work not only to maintain the status quo, but push to expand spending and influence resource allocations in the areas that will benefit their members. An example of the logic is provided by Mueller (2006), who argues that the War on Terror generated a “terrorism industry” consisting of various government agencies, technocrats, consultants, and private firms who offer security and anti-terrorist services. Each of these parties represents a special interest that actively lobbies government and works to foster a persistent state of fear in order to secure more resources (see Higgs 2007, 2012).

Bureaucracies and special interest groups have existed in the U.S. throughout its history. Yet the militarization of domestic policing did not accelerate until recently. Therefore, the political economy of bureaucracy and special interest groups cannot, by themselves, explain the indirect militarization of domestic policing. In order to provide such an explanation we need to identify mechanisms through which these forces are unleashed in a largely unchecked manner.

One such mechanism can be found in the literature on the political economy of crises (see Higgs 1987, 2004, 2005, 2007, 2012; Congleton 2005; Coyne 2011). This literature implies that crises, whether they are actual or merely perceived (e.g., the threat of drug gangs, terrorism, nuclear war, etc.) provide an opportunity for government to increase the size and scope of its activities. During times of crisis, there is frequently a public outcry for government to “do something.” As per the political economy of bureaucracy and special interests, these groups take advantage of the openings created by crisis to expand their operations. Increased government spending on new programs and initiatives results in rent-seeking behavior and the entry of new

political competitors, each seeking to secure a portion of the windfall profits associated with the crises. As Higgs (1987) indicates, crises have a “ratchet effect” on the size of government. Once the crisis has ended, the government reduces its activities, but does not return to the pre-crisis level because some programs, expanded agencies, and spending persist.

As we detail below (in Section 4), the War on Drugs and the War on Terror are two examples of how crises create openings for massive expansions in police and military operations. These particular crises are especially troubling for two reasons. First, they are carried out both domestically and internationally, meaning that military operations are carried out on domestic soil. Second, there is no clear end to either war, meaning that the crises, and the associated expansion in government, will continue into the foreseeable future resulting in an ongoing “ratcheting up” of government spending and power.

A complementary mechanism which helps explain the militarization of domestic policing over the past several decades is improvements in military-related technologies. Cowen (1999) has argued that a large part of the overall growth of government is attributable to the rise in certain technologies. He posits that only with the invention of new technologies—electricity, better transportation and communication devices, etc.—was government able to expand to its current scale and scope. For example, enhanced transportation permitted government workers and lobbies to travel easily over the whole country, thus contributing to an “increased national consciousness” and a greater emphasis on national issues. Further, Cowen argues that the increased availability and lower cost of communication devices allowed government officials to contact each other and communicate directly with their constituencies via telephone and telegraph, and eventually by radio and television. Advancements in technology similarly enabled

the government to better keep records of its citizens and collect taxes, both of which allowed the government to expand its size and range of activities.

While the role of technology has been important in the growth of government in general, it has been vital in the expansion of the U.S. military and in the militarization of domestic policing. Increases in surveillance and information technology are incontrovertibly vital in the present operations of police and military forces both domestically and abroad. Advances in computer technologies have significantly decreased the costs of gathering nearly all types of information. Activities like crime mapping, compiling and accessing criminal histories and suspect monitoring, which were once impossible or could only be observed through hundreds of hours of surveillance and other “leg work,” can now be discovered and monitored via the internet and other technological methods (Byrne and Marx 2011). Further, technologies once used exclusively by the military, like facial recognition systems, thermal imaging, satellite monitoring, and retinal scanners are now regularly transferred to, and utilized by, police agencies across the country for domestic activities (Nunn 2001). The aforementioned crises opened the window for the militarization of the domestic policing, and technological improvements allowed for the relatively easy transfer of military capabilities to domestic police forces.

### 3 Attempts to Constrain Militarization in the U.S.: 1787-1970

The attempt to create rules to delineate domestic policing from military functions has a long history in the U.S. From the time the United States Constitution was ratified in 1787, numerous laws, rulings and events have attempted to both empower and restrain the federal government

and military. In the five years immediately following the adoption of the Constitution, legislation affirmed that while civilian militia groups may be called upon as military recruits in times of extreme crisis, the military should not be used to enforce civil laws unless extreme circumstances prevent local officials from properly implementing state and local regulations. Even under these circumstances, the law required government officials to obtain Congressional permission to use the militia and limited the length of time the militia could be used.<sup>1</sup>

The end of the Civil War posed a significant threat to the separation of domestic policing and military functions. The Reconstruction Act of 1867 divided the former Confederate states into military districts and placed them under the control of the U.S. Military, various commanders, and the U.S. Attorney General.<sup>2</sup> The military was used as the primary source of civil law enforcement.<sup>3</sup> This continued until 1878 when Congress passed the Posse Comitatus Act following the controversy surrounding the presidential election of 1876. Underpinning this controversy were accusations that U.S. Marshals used physical force to intimidate southern voters, prompting some to claim the election results were fraudulent.

The Act prohibited the use of the army as a posse comitatus (“force of the people”) except in cases where it was specifically allowed by the United States Constitution or ordered by Congress. The Act also allowed state governors to request military assistance when domestic forces were unable to enforce the law. By declaring it illegal for the army to enforce civil laws except under specific circumstances, the Act effectively ended military governance in the post-Reconstruction south. The Posse Comitatus Act sought to explicitly constrain the government by creating parameters on the ability of the federal government to use its military power domestically. While the original law applied only to the army, it was later amended include the

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<sup>1</sup> Militia Act of 1792, chapter 28 § 2

<sup>2</sup> Reconstruction Act of March 2, 1867, session II, chapter 153

<sup>3</sup> A supplement to the Reconstruction Act of March 2, 1867 (July 19, 1867) , Session I, Chapter 30, §2 and 3

United States Air Force, United States Navy, and Marine Corps.<sup>4</sup> The National Guard and Coast Guard are exempt from the Act so long as they remain under control of the state government.

The Posse Comitatus Act provided the legal foundation for demarcating policing from military functions. That said, one could observe the gaps in the constraints created by the Act soon after its passage. For example, concerns over the capabilities of local law enforcement in the western territories prompted the government to deploy troops as early as 1878 under the pretense that Posse Comitatus applied only to unionized states (Laurie and Cole 1995: 57-61). During the First World War, Secretary of War, Newton D. Baker suspended the Posse Comitatus Act so the military could be used to quell domestic issues while the National Guard was stationed abroad. During the period from 1917-1921, Baker's policy of "direct access" allowed state and local agencies to call upon the military for assistance without the usual permissions (Laurie 1991).

In the 1970s, the Posse Comitatus Act was invoked in several high profile legal cases which worked to redefine the scope and application of the Act, and hence the role of the military in domestic law enforcement. The most important of these legal proceedings were the Wounded Knee cases. During a 71 day standoff between police and members of the American Indian Movement (AIM) in Wounded Knee, South Dakota, a mix of state and local police, FBI agents, U.S. Marshals, and other federal agencies were called upon in an attempt to enforce order. The groups enforced road blocks, shut off water and electricity to the compound, and exchanged gunfire with the AIM (Nelson 2009). Upon conclusion of the incident, many AIM members were arrested and charged with various crimes. Their defenders claimed the presence of federal forces constituted a violation of the Posse Comitatus Act.

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<sup>4</sup> United States Code, section 10 §375; Department of Defense Directive 5525.5

After a series of trials, the court concluded the act only applies in instances where federal forces play an “active role.”<sup>5</sup> The ruling in *U.S. v. Jaramillo* (1974) established that military forces may act so long as these activities are not “pervasive.” *U.S. v. McArthur* (1975) would become the most important of the cases as it established the baseline test for determining whether or not the participation of the army rose to the level of “executing the law.” The judge in the case concluded the Armed Forces had not violated the Act because their presence had not, “Subjected citizens to the exercise of military power which was *regulatory, proscriptive, or compulsory in nature, either presently or prospectively*” (*U.S. v. McArthur* 1975, emphasis added). These cases, and the *McArthur* ruling in particular, created a distinct opening through which the police and military could cooperate on domestic soil with legal impunity.

In addition to the Wounded Knee cases, in several other instances defendants attempted to invoke the Posse Comitatus Act as a means to exclude evidence or have charges dismissed in court. For example, *U.S. v. Walden* (1974) ended in a conviction of the defendant despite the court concluding that Marines in the case had violated the law.<sup>6</sup> Other defendants made similar attempts to suppress evidence or obtain an acquittal by claiming a violation of the Act. In many of these cases, both trial judges and appellate courts denied requests for exclusion or acquittal.<sup>7</sup> Further, courts ruled that a violation of Posse Comitatus does not require evidentiary exclusion or the acquittal of a defendant because the penalties for violating the Act are plainly stated in the language of the law.<sup>8</sup> Courts further concluded that a violation of the Act does not violate an individual’s Constitutional rights, which excludes dismissing a case on the basis of a Posse

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<sup>5</sup> *U. S. v. Red Feather*, 392 F. Supp. 916

<sup>6</sup> William and Ruby Walden were convicted of illegal firearm sales. Their conviction was based in large part on the testimony of three U.S. Marines

<sup>7</sup> *Gilbert v. U.S.* 165 F. 3d 470; *U.S. v. Griley* 814 F. 2d 967; *U.S. v. Wolffs*, 594 F. 2d 77; *Taylor v. State* 640 2d 1127

<sup>8</sup> *State v. Valdobinos*, 858 2d 199; *U.S. v. Roberts* 799 F. 2d 565

Comitatus violation.<sup>9</sup> In establishing the parameters of the Act, these rulings created expanded space for the greater use of the military domestically.

While the 1970s saw new interpretations of the Posse Comitatus Act in the courts, two other events—the ongoing War on Drugs, beginning in the 1970s, and the ongoing War on Terror, beginning in the 2000s—were driving forces behind the militarization of domestic policing. The events surrounding these ongoing “wars” further weakened the separation of police and military functions. Further, the unique nature of these events has led to an unprecedented acceleration of the militarization of domestic policing with no end in foreseeable sight.

## 4 The Acceleration of the Militarization of U.S. Domestic Policing

The War on Drugs and the War on Terror differed greatly from other conflicts in U.S. history. During the World Wars, the conflicts in Korea and Vietnam, and even the Cold War, the “enemy combatants” were external to the U.S. These new “wars,” however, changed the face of the America’s enemy. While there was a foreign enemy in the wars on drugs and terror in the form of South American drug cartels and Al-Qaeda, other enemies resided much closer to home—American citizens.

These domestic enemies resided within the U.S. in the form of actual and potential drug dealers, drug manufacturers and drug users. In the war on terror, the U.S. government placed an emphasis on combating “homegrown terrorists,” and expanded their focus from curtailing the activities of terrorist groups abroad to monitoring the activities of U.S. citizens. These domestic

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<sup>9</sup> *U.S. v. Unis* 924 F. 2d 1086; *U.S. v Hartley* 796 F. 2d 115

enemies are viewed as equally threatening as their foreign counterparts. Attorney General Eric Holder bluntly expressed the Obama administration's views on the homegrown terror threat as one that,

[K]eeps me up at night....You didn't worry about this even two years ago —about individuals, about Americans, to the extent that we now do... and that of great concern....*The threat has changed from simply worrying about foreigners coming here, to worrying about people in the United States, American citizens...*” He further discussed a specific American-born terrorist, stating that, “He would be *on the same list with Bin Laden*....He's certainly on the list of the people who worry me the most. (Epstein 2009, emphasis added)

The wars on drugs and terror differed from previous conflicts in other ways as well. While the events which sparked the majority of the changes to the Posse Comitatus Act and other restrictions on the military were largely localized (e.g., violence in the western territories, the absence of the National Guard during WWII, race riots in the south, etc.), the War on Drugs and the War on Terror found their roots in national crisis. These perceived crises prompted a mass shift in public opinion, providing opportunities for bureaucratic expansion and openings for pressure groups to enhance their agendas as per the logic discussed in Section 2.

After Richard Nixon declared drugs to be a major threat to the U.S in the early 1970s, concerns over the “drug problem” in the U.S. grew. Throughout the 1970s, 1980s and 1990s, the U.S. engaged in a number of operations in Mexico, Panama, Nicaragua, and Colombia to stop the flow of drugs into the U.S. (NPR 2007). The creation of the Drug Enforcement Administration in 1973 led to more drug arrests and increased the publicity of drug use. Consider that in 1980, there were approximately 375,000 drug related arrests. By the end of the decade, that number climbed to almost one million (HRW 2009). The increase in arrests served as an important signal for the DEA because it provided a readily observable indication that the

government was proactively taking action against illegal drugs. By steadily increasing the number of drug arrests, the bureau was able to justify its present expenditures and provide justification for additional funds

During the same period, and in the years following, the government undertook a public relations campaign to gain public support for its ongoing “war.” This campaign included a series of television and radio ads to increase public awareness of illegal drug use and the supposed dangers of illegal substances. Public service announcements aimed at parents and children highlighted the use of marijuana, cocaine, and other drugs, as well as the possibility of arrest and physical side effects. Horror stories of drug use during pregnancy and the “epidemic of “crack babies,” placed illegal drugs at the forefront of American news (Glenn 2006; FeCases 2001; ONDCP 2001). Nancy Reagan’s “Just Say No” campaign and programs like Drug Abuse Resistance Education (D.A.R.E) provided an anti-drug message to millions of American schoolchildren (D.A.R.E. 2012).

Higgs (2004, 2005, 2006, 2007, 2012) notes that governments use the fear of crises to expand the scale and scope of their power. The government campaign surrounding the War on Drugs fits this logic quite well. And it worked. As a result of the massive government campaign highlighting the supposed national and global drug crises, popular support for the drug war increased. The number of Americans who identified the use of illegal drugs as a serious problem increased steadily throughout the period. In 1968, 48 percent of Americans described illegal drug use as a problem in their community (Robinson 2002). By the late 1980s, 61 percent of the public thought of illegal drugs as the *primary* problem facing the U.S. (Sourcebook of Criminal Justice Statistics 1994). In 1989, the Bureau of Justice Statistics reported that a majority of Americans, 65 percent, believed the federal government had the capabilities to significantly

reduce the “drug problem.” Moreover, 82 percent were in favor of using the military along the U.S. border for the purposes of combating illegal drugs, and 43 percent favored using military strikes abroad as means to control the pervasiveness of drugs within the U.S. (Sourcebook of Criminal Justice Statistics 1994, 2003). These mounting concerns over the manufacture, sale and use of illegal drugs resulted in ever increasing calls by the public for the government to “do something” about the growing crisis of illegal drugs. This opened the window for the militarization of domestic policing as domestic law enforcement expanded their operations as per the aforementioned political economy of militarization.

In 1981, Congress passed the Military Cooperation with Law Enforcement Act (MCLEA). In addition to creating several exceptions to the Posse Comitatus Act, the MCLEA would “enhance” the ability of federal and domestic law enforcement to enact drug interdiction laws. State and local law enforcement overwhelmingly supported the legislation and called for the assistance of the military in enforcing drug laws. Both the National Association of Attorney Generals and the U.S. Conference of Mayors called for the military to become a key player in drug prohibition activities within the U.S. (Sanchez 1991).

In the final version of the MCLEA passed by Congress, the Department of Defense was permitted to share information collected in the course of “normal operations” with state and local police. The Act allowed the military to provide advice to local agencies as long as the military officials involved did not assert that they were in charge of the operation. It granted the DOD permission to offer military equipment and facilities to domestic law enforcement and authorized the DOD to maintain any equipment given to domestic agencies as long as the agencies were enforcing immigration, drug or customs laws (United States Code, Title 10, sections 371-378).

Following the passage of the MCLEA, the military's participation in the war on drugs grew steadily. In many cases this participation involved direct coordination with local law enforcement. In the first three years following the MCLEA's passage, the DOD granted nearly 10,000 requests from state and local law enforcement to assist in civil activities (Reuter 1988). The DOD provided surveillance and support to agencies in the form of aircraft and Navy vessels. In 1983 fewer than 1,000 aircraft provided 3,000 hours of aerial surveillance to a variety of agencies. Less than a year later, more than 3,000 aircraft provided forces with nearly 10,000 hours of surveillance (Gonzales et. al. 1986: Appendix E). By September 1985, the DOD had assisted in 38 vessel seizures across the U.S. During the same year, the Joint Chiefs of Staff recommended the military further expand their role in drug interdiction measures by providing more equipment and training to both domestic and foreign anti-drug forces (Gonzales et. al. 1986: 383-384).

Proponents of military involvement in the drug war also called for greater use of the National Guard and Coast Guard in drug interdiction activities, citing that those forces were well trained and not subjected to the restrictions of the Posse Comitatus Act so long as they remained under the authority of the states (Gonzales et. al. 1986: 385). As a result, many states utilized their Guard troops to combat illegal drugs. In 1985 alone, 19 states employed the National Guard in more than 199 separate missions related to drug enforcement operations (Gonzales et. al. 1986: appendix E). In the early 1990s, Congress granted funding specifically to National Guard troops engaged in drug operations.<sup>10</sup> The "drug crisis" in the U.S. provided a clear opportunity for police and military bureaus to expand their operations, increase their personnel, and expand their discretionary budgets. But bureaus were not the sole benefactor of the drug war. Pressure groups also utilized expanded drug interdiction policies to further their agendas.

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<sup>10</sup> HR 2461, National Defense Authorization Act.

Perhaps the most influential of these pressure groups were the police and prison guard unions. Police departments across the U.S. became increasingly dependant on the federal funds granted for anti-drug measures. One program, Community Oriented Policing Services (COPS), allocated more than ten billion dollars to more than 12,000 agencies in less than a decade (Eisler 2012). The availability of these funds, and the lure of further windfall profits, prompted these groups to push for expanded drug laws and additional drug interdiction activities. A relaxation of drug laws would mean smaller budgets for police and prison guard unions. To understand the beneficial implications of more stringent drug laws for these groups consider the following. In 1980, the number of individuals incarcerated for drug-related offenses was just over 41,000. Today, that number is near half a million, representing half of all those in jail or prison—an astounding 1,100 percent increase in the number of persons incarcerated on drug-related charges (Maurer and King 2007).

In 2008, the National Fraternal Order of Police (FOP) lobbied Congress to increase the penalties for offenses involving particular types of narcotics, for the creation of a registry and public database for persons convicted of certain drug offenses, and to establish increased penalties and mandatory sentences for individuals involved in “large drug trafficking rings.” The FOP also lobbied for stiffer penalties against individuals who “threat[en] violence against law enforcement officers” and increased regulation on products used to manufacture drugs (Pasco 2008). Each of these policies, if passed, would expand the resources available to police in order to enforce the more stringent laws.

Private prisons, whose main source of income is government contracts, also worked to expand and perpetuate the war on drugs. Income for these firms is directly derived from the number of incarcerated individuals. The increased penalties for drug crimes advocated by police

unions have made private prisons a particularly lucrative business. To provide some context, consider that the revenue for the two largest private prison businesses total nearly \$3 billion annually (Corrections Corporation of America 2010). In 1990, private prisons contained an average of 7,771 inmates at a given time. By the end of 2009, that number had soared to 129,336—an increase of 1,664 percent (American Civil Liberties Union 2011). The GEO Group, the second largest operator of private prisons explicitly identified changes in drug policy as a threat to the profitability of their business.

Our growth depends on our ability to secure contracts to develop and manage new correctional, detention and mental health facilities.... *Changes with respect to the decriminalization of drugs and controlled substances could affect the number of persons arrested, convicted, sentenced and incarcerated, thereby potentially reducing demand for correctional facilities to house them.* Similarly, reductions in crime rates could lead to reductions in arrests, convictions and sentences requiring incarceration at correctional facilities. (GEO Group 10k Annual Report 2011: p. 25, emphasis added)

As this quote plainly states, private prisons have a strong interest in not just sustaining the status quo, but in increasing the number of individuals incarcerated. One way of working toward this outcome is to lobby governments to pass more stringent laws which ensure an ongoing stream of criminal to incarcerate.

Beginning in the 1990s, while the war on drugs was still ongoing and expanding, a new threat emerged in the form of terrorism. The attacks on the World Trade Center (1993) and the federal building in Oklahoma City (1995) marked the beginning of a new era in American domestic and foreign policy. As a result of the terrorist threat, the U.S. once again saw significant convergence between the military and domestic law enforcement. In the late 1990s, Congress passed legislation titled, “Military Assistance to Civilian Law Enforcement Officials in Emergency Situations Involving Biological or Chemical Weapons.” The law allowed the

Secretary of Defense to provide assistance to domestic law enforcement, via the Department of Defense, during an emergency situation involving “weapons of mass destruction.”<sup>11</sup>

The FBI also began expanding its Joint Terrorism Task Forces (JTTFs) with the purpose of sharing intelligence, training, and other knowledge across agencies. Coordinating through the Federal Bureau of Investigation, information flows freely between federal, state, and local agencies connected through the JTTFs. The original taskforce was based in New York City, but over time the force expanded to include more than 100 JTTFs across the country. To understand this growth of JTTFs, consider that 71 forces were added in the post-9/11 period alone. The JTTFs presently include more than 4,400 personnel from over 600 local and 50 separate federal agencies (Federal Bureau of Investigation 2012). During this same period, the Joint Task Force Six (JTF-6), a multi-agency force first created in 1989 as part of counter-drug operations, was renamed and reorganized to include an anti-terrorism component to its mission.

An important blurring of the military and police functions of government occurred in 1997 when Congress passed legislation (“Program 1033”) allowing the DOD to transfer excess military equipment to state and local law enforcement. Eligible agencies are those whose foremost function is to enforce state and local laws, with particular preference given to agencies who engage in counter-drug and counter-terrorism activities (Missouri Department of Public Safety 2012). Program 1033 expanded on the earlier Military Cooperation with Law Enforcement Act and allowed state and local agencies to more easily acquire body armor, aircraft, armored vehicles, weapons, riot gear, watercraft, and surveillance equipment, as well as other materials. Since September 11, 2001, the program has seen increased usage by state and local agencies. 2010 and 2011 set new records with \$212 and \$500 million in transfers, respectively (Ruppert 2011).

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<sup>11</sup> United States Code, chapter 10 § 382.

In order to understand the growth of government activities in the post-9/11 period, one must appreciate the dramatic shift in public opinion toward the role of government both domestically and abroad. For example, following the 9/11 attacks, 63 percent of Americans thought it would be necessary for the average person to give up some civil liberties to curb terrorism (Saad 2002). Further, in the wake of the attacks, more Americans stated they trusted the U.S. government on both foreign and domestic issues. On September 7, 2001, a Gallup poll found that only 14 percent of Americans trusted the government a “great deal” on their ability to handle foreign problems and only six percent trusted the government’s capabilities in terms of domestic troubles. By October, 2001, however, 36 percent of Americans felt a “great deal” of trust in the government on foreign issues and 24 percent “highly trusted” the government on domestic issues. A total of 83 percent felt a “great deal” or “fair amount” of trust on foreign issues. Finally, 77 percent felt confident in the government’s ability to handle domestic concerns (Saad 2002).

Public confidence in the president and support for the military and local police also jumped significantly in the post-9/11 period. For example, in December 2001, 82 percent of Americans approved of the way President George W. Bush chose to fight the Global War on Terror (Gallup 2001). Between 2001 and 2002 Americans’ confidence in the military jumped from 44 to 71 percent while support for the police climbed from 48 to 58 percent (Bureau of Justice Statistics 2003). Moreover, a majority of Americans felt it necessary to increase the scope of government activities. For example, following the terrorist attacks 86 percent of Americans approved of the use of facial recognition software by authorities at public events. In addition, 63 percent favored extending the use of cameras and other surveillance technologies while 54

percent approved of increased monitoring of private cell phones, emails, and internet usage (Bureau of Justice Statistics 2003).

As per the political economy of crises, it is this popular support for anti-terrorism efforts and public calls for government to actively respond to the terrorist threat by expanding the scale and scope of its activities that created an opening for the largest government reorganization in recent history—the USA Patriot Act which was passed in October, 2001. The Act reduced restrictions on law enforcement and allowed them to gather increased intelligence information on U.S. civilians. It also authorized indefinite detentions, the search of private property without consent or knowledge of the owner, and expanded the ability of federal forces to search telephone, email, and financial records without a court order.

In addition, the Homeland Security Act, signed into law by President George W. Bush in November, 2002 created the Department of Homeland Security (DHS) with the specific purpose of coordinating operations against domestic terrorism by, “preparing for, preventing, and responding to terror attacks” (Department of Homeland Security 2012). The DHS maintains more than 200,000 employees and, upon its creation, absorbed 22 separate agencies into a single cabinet. The creation of the DHS not only enhanced communication and information sharing between agencies, but also created a host of new bureaucratic arms, each of which seeks to expand its own discretionary budgets, personnel, and influence over policy.

In addition to the creation of a massive bureaucracy dedicated solely to “homeland security,” the extension of the military into domestic policing has been greatly enhanced by innovations in military technologies which are now being used domestically. Our theory of the militarization of domestic policing highlights the role of technological improvements which lower the cost of police taking on military-like characteristics. This is because improvements in

technology allow for the easy transfer and use of military equipment and capabilities, much of which is not readily observable by citizens. The following examples illustrate the role of technology in this regard.

During the wars in Iraq and Afghanistan, the military used drones, small, easily concealed, unmanned aircraft to conduct surveillance and gather information on individuals and terror groups. The increased use of drones in foreign military interventions was intended to reduce the risk to U.S. soldiers while reducing the costs of gathering information in international settings. However, the use of this drone technology has quickly expanded and, on February 8, 2012, Congress passed House Resolution 658, the “Federal Aviation Administration Air Transportation Modernization and Safety Improvement Act. The legislation authorizes domestic use of aerial spy drones by the U.S. government. State and local police departments have already expressed great interest in using these technologies in their daily operations (Hennigan 2011).

A key part of the expanded use of drones is the growing lobbying industry associated with this technology. The drone lobby includes the manufacturers of drones, as well as those who provide supportive services to the aircraft—training, maintenance, and consulting services. This interest group has invested significant resources attempting to influence the government to further expand the use of drones both domestically and internationally. For example, the Association for Unmanned Vehicle Systems International (AUVSI) more than doubled its lobbying budget in 2011 in support of H.R. 658 (Stone 2012). The possible benefit to these companies is substantial. Consider that one drone manufacturer contracted with the Department of Homeland Security for more than \$250 million in drone-related contracts since 2005. Another saw its unmanned aircraft business increase by \$25.6 million in one year, climbing to \$248.9 million in 2011 (Schulz 2012).

While federal and local agencies intend to use drones, in conjunction with other surveillance technologies, to gather increasing amounts of information on U.S. citizens, they also intend to store it, track its patterns, and analyze its contents. To provide some insight into the magnitude of this effort, consider that the U.S. National Security Agency (NSA) is presently building a multi-billion dollar complex with the purpose of intercepting, deciphering, and analyzing vast amounts of data from both domestic and international sources. The complex will house information including personal emails, cell phone and financial records, as well as other information like internet searches and travel itineraries. The amount of data to be stored within the new facility's mainframes is almost unfathomable. As Bamford (2012) states,

Given the facility's scale and the fact that a terabyte of data can now be stored on a flash drive the size of your little finger, the amount of information that could be housed...is staggering. But so is the exponential growth in the amount of intelligence data being produced every day by the sensors of the intelligence agencies....the Pentagon is trying to expand its worldwide communications network...to handle yottabytes (1024 bytes) of data. [A yottabyte] is a septillion bytes -- so large that no one has yet coined a term for the next higher magnitude.

As these examples illustrate, while the crises of the wars on drugs and terror opened the door for the growth of government, technological advances contributed to the militarization of domestic policing by reducing the cost of domestic police adopting military characteristics.

## 5 Concluding Remarks

Our analysis has several implications. First, our analysis provides support against the position that the paradox of government can be resolved, in any kind of permanent manner, through constitutional rules intended to check the power of government. The inherent tendency of government agencies is to expand beyond their initial aims and goals of their designers. This

problem is exasperated by special interests seeking to expand their power and influence. The onset of crises—whether real or manufactured—begins a long and extensive process that erodes imperfect constraints on the powers of government. The question is ultimately one of speed. That is, following the onset of a major crisis how quickly will the process of constraint erosion take place?

Second, the convergence of the military and domestic police functions of the U.S. government will likely continue. Higgs (1987) emphasized that at the end of crises government shrinks, but not back to its previous size. What happens, however, if there is a perpetual crisis with no clear enemy and no clear endpoint? In general, the growth of government will continue. More narrowly, our analysis indicates that the militarization of domestic policing will continue into the future as the unremitting “wars” on drugs and terror are carried out by the U.S. government. These crises have created a set of conditions where the blurring of police and military activities are self-enforcing and self-extending.

Third, there is no clear mechanism for reestablishing the demarcation between the domestic police and military functions of the U.S. government. While political economy highlights the process through which the militarization of domestic policing emerges, it also makes clear why policies attempting to address the situation are unlikely to be adopted. Even if one assumes that citizens generally agree that the demarcation between the police and military functions must be reestablished (a heroic assumption in itself), the massive drug-terror complex, which benefits from a permanent state of war domestically and internationally, would actively work to undermine such efforts. This complex includes an array of government bureaucracies, contractors, unions, and consultants whose very existence is predicated on the continuation of maintaining a culture of fear and crises.

The resolution to accelerating militarization is by no means simple or even clear. In order to overturn the chimera of a sustainable “protective state” citizens must become skeptical of the possibility of establishing permanent constraints on government power. Ultimately, this requires a recognition and appreciation of the realities of government power and a rejection of government as a solution to perceived crises.

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