

Michael J. Glennon. *National Security and Double Government*. 2015. New York: Oxford University Press. ix + 257 pages. 29.95 (cloth).

As a senator running for the office of president, Barack Obama was a harsh critic of the national security policies of President George W. Bush. Yet, once elected president, Obama continued, and expanded, the security policies of his predecessor. Understanding this puzzle is the motivation behind Michael Glennon's important book, *National Security and Double Government*.

To resolve this puzzle, Glennon turns to a framework provided by William Bagehot, a nineteenth century British businessman and journalist, in his analysis of the evolution of the English Constitution. Bagehot noted that a dual set of institutions had emerged in Britain. One set consisted of the "dignified institutions," which included the monarchy and House of Lords. These institutions were "dignified in the sense that they provide a link to the past and excite the public imagination" (p. 5) through a range of public rituals and the associated pomp and circumstance. The second set were the "efficient institutions," which included the House of Commons, the Cabinet, and the Prime Minister. These institutions, which are largely hidden behind the dignified institutions, were, according to Bagehot, what actually drove policy and government activities. Glennon applies and extends Bagehot's dual institutions framework to the U.S. security state.

In the context of the U.S., the dignified institutions include the executive, legislative, and judicial branches. These are the institutions that most people have in mind when they think of the Founding Fathers or when they praise America for its constitutionally-constrained government. These institutions foster and perpetuate feelings of loyalty, patriotism, and nationalism among citizens. The origins of the U.S. dignified institutions can be found in the "Madisonian" structure

of dispersed power across the three branches of government. In advocating the separation of authority across the three branches, James Madison, and the other Founders, intended to create an arrangement which appreciated that the maintenance of liberty and freedom required checking against ambition in government. Such checks were necessary, they argued, so that as each branch sought to expand their power, they would be blocked by the others. However, Glennon points out that over time the Madisonian checks and balances on the U.S. national security state were eroded and supplanted by a new, second set of government institutions—the efficient institutions of the U.S. government.

In the U.S context the efficient institutions consist of the complex network of government agencies and departments—military, intelligence, law enforcement, diplomats—and private contractors and consultants who constitute the national security state. It is these, and not the dignified institutions, which, according to Glennon, are the drivers of national security policy. The origins of this second set of institutions can be traced to President Harry Truman signing into law the National Security Act of 1947. This law effectively created the foundations of the modern security state. Among other things, Truman unified the military under a new position—the Secretary of Defense—and established the CIA, the Joint Chiefs of Staff, the National Security Council and the National Security Agency. The goal was to centralize the country's defense and security operations to reduce waste and duplication, and, in doing so, improve capacity and efficiency.

In making these changes, however, Truman's reforms necessarily moved away from the Madisonian structure of dispersed power across the three branches of government. In removing the checks created by dispersed power, the concentration and independence of the security state in the name of efficiency and capacity building meant that there were fewer barriers to

expansions in scale and scope. Ultimately, the Truman reforms created an environment for the government's national security institutions to become self-reinforcing and self-extending absent the constraints envisioned by the Founders. The implications are counterintuitive to many and troubling for those who take seriously the importance of firm constraints on government power.

According to Glennon, “[l]arge segments of the public continue to believe that America’s constitutionally established, dignified institutions are the locus of governmental power; by promoting that impression, both sets of institutions maintain public support.” (p. 6). However, the reality differs starkly from this perception because, “America’s efficient institution makes most of the key decisions concerning national security, removed from public view and from the constitutional restrictions that check America’s dignified institutions” (p. 6-7). From this perspective it is not a matter of electing the “right” person to serve as president because the U.S. has, “moved beyond a mere imperial presidency to a bifurcated system—a structure of double government—in which even the President now exercises little substantive control over the overall direction of U.S. national security policy” (p. 7).

The same goes for the judiciary and Congress. The courts lack “the foremost predicate needed for Madisonian equilibrium: ‘a will of its own’ (p. 46). And even though there are instances where the judiciary has pushed back against the efficient institutions of the security state, the “occasional counterexample notwithstanding, the courts cannot seriously be considered a check on America’s Trumanite network” (p. 49). Congress is also ineffective for a variety of reasons including: the complexity of grasping foreign affairs and national security, information overload of representatives who must keep apprised of policies on a wide array of topics, an uniformed electorate who do not hold their representatives responsible for foreign affairs, and perverse incentives in Congressional oversight such as the desire to protect and expand budgets.

The result is that those in the efficient institutions influence almost every aspect of legislative activities related to national security. “Much of this activity is removed from the public eye, leading to the impression that the civics-book lesson is correct; Congress makes the laws. But the reality is that virtually everything important on which national security legislation is based originates with or is shaped by the Trumanite network” (p. 51). The implication is that the three branches of government “appear to set national security policy, but in reality their role is minimal. They exercise decisional authority more in form than in substance” (p. 39).

This is not to say that those embedded in national security institutions have complete freedom to do as they please. Glennon notes that there are instances where the courts have rebuffed the activities by those in the security state (see pp. 48-49 for examples). However, he argues that these instances are the exception rather than the rule. If I were to highlight a weakness of the book, it would be that Glennon fails to specify the specific conditions and contexts under which the dignified institutions still serve as a check on the efficient institutions of the security state.

There are also instances where the veil of secrecy shrouding the actions of the security state has been punctured, exposing the true activities of the state to the general public. Maintaining secrecy is crucial to perpetuating the façade that the dignified institutions determine and oversee policy. Where the activities of the efficient institutions are made public, they run the risk of undermining the equilibrium between the dual sets of institutions. When this does happen, as in the case of Edward Snowden’s revelations about the extent of the U.S. government’s surveillance or in the recently released “torture report” involving the actions of the CIA in the War on Terror, the national security apparatus will be called on the public carpet and chided by Congress, the courts, or the president for misbehaving.

Ultimately, however, within Glennon's framework these efforts are more for show than for actual change. The result is that the constraints on efficient institutions remain weak with significant slack for a wide range of unchecked behaviors. This reality stands in stark contrast to the common, romantic view of publicly spirited civil servants openly debating national security issues under a system of checks, balances, and oversight all in the name of the public interest. This romantic view is not just wrong, but dangerous, as it gives citizens a false sense that their government is constrained to act only in the public interest regarding matters of national security. Nothing could be further from the truth. The reality of the double government identified by Glennon is that members of the U.S. government are to design and implement national security policies with, at best, weak domestic constraints on their behaviors.

Where does this leave us? There is no easy way out of the status quo. Following Bagehot, Glennon suggests that the dual government can only persist if "the general public remains sufficiently credulous to accept the superficial appearance of accountability, and only so long as the concealed and public elements of the government are able to mask their duality and thereby sustain public deference" (p. 91). He is skeptical that public opinion can generate change because citizens have little incentive to become informed democratic participants. He also doubts that the media can serve as the mechanism to pierce the veil of the double government, since the media relies on government for access and information. Although he doesn't cite Mancur Olson's (1982) work on the rise and decline of nations, Glennon makes a similar argument to Olson, suggesting that an exogenous shock—e.g., war, crisis, etc.—is one means of potentially dislodging the entrenched interests which constitute the efficient institutions of the dual state. Of course, this is no guarantee, since crises—whether real or perceived—are often the drivers of expansions in government power (see Higgs 1987, Gordon 2002, p. 361).

The absence of a clear route out of the dual government status quo identified by Glennon is especially relevant for scholars interested in public choice and constitutional political economy. Constitutions are supposed to serve as binding contracts which tie the hands of those in power. But, as history shows, constitutional contracts are incomplete and can be broken by those in positions of power, resulting in expansions in the scope and scale of the state (see, for example, Greve 2012). Once unchained, how can constraints on government be reestablished, if at all?

James Buchanan (2000, 2005) wrestled with this question late in his career when he argued that state control over people's lives would persist because they were "afraid to be free" by accepting the responsibility for their own lives and actions. He argued that "classical liberalism, and especially economists, have not been sufficiently concerned with preaching the gospel of independence. Classical liberalism, properly understood, demonstrates that persons can stand alone, that they need neither God nor the state to serve as surrogate parents" (2005, p. 27). The solution for Buchanan was to be found in the ideas and beliefs held by citizens regarding the appropriate role of the state. Specifically, he emphasized the importance of animating the "soul of classical liberalism" to inform and excite citizens about the prospects of freedom, liberty, and constrained government (Buchanan 2000, see also Boettke 2014).

A key step in this process is for citizens and scholars to understand how Leviathan has expanded its powers beyond what most people realize and the dangers this growth poses to individual liberties. Michael Glennon's book is important precisely because it pulls back the curtain to reveal the realities of the largely unconstrained U.S. national security state. In doing so, Glennon's analysis shows how the national security apparatus is a threat to the very freedoms its inhabitants and supporters purport to protect.

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