

**The Politics of Homeland Security
And the Myth of Invulnerability
An Introductory Essay
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Though a wide ocean separates the United States from Europe, yet there are various considerations that warn us against an excessive confidence in our security. On the one side of us, and stretching far into our rear, are growing settlements subject to the dominion of Britain. On the other side, and extending to meet the British settlements are colonies and establishments subject to the dominion of Spain. . . . The savage tribes on our Western frontier ought to be regarded as our natural enemies, their natural allies, because they have most to fear from us, and most to hope from them.... These circumstances combined admonish us not to be too sanguine in considering ourselves as entirely out of the reach of danger.

–Alexander Hamilton
The Federalist, No. 24

Introduction

It was long a popular American myth that this country was invulnerable to foreign attack because of its unique, geographic placement. This sense of invulnerability led to what Selig Adler terms America’s “isolationist impulse” which is “woven into the warp and woof of the American epic.” Maps available to the early colonists “pictured the oceans in surrealistic proportions,” says Adler. The colonists knew from their own experience or that of their fathers that the Atlantic was rough and hazardous to cross. “They reasoned,” continues Adler, “that God Himself had intended to divide the globe into separate spheres” with America as the “New Zion,” severed from a “time-worn, corrupt and warring continent.”¹

The myth of invulnerability is alluded to by Hamilton in the epigraph to this essay as “an excessive confidence in our security,” and a sanguinity that our country is “entirely out of the reach of danger.” Hamilton’s admonition about not becoming euphoric was vindicated in the War of 1812 when the British sailed up the Chesapeake and burned the White House and the Capitol. That was forgotten soon enough as the country settled back into its protective womb.

The myth was supposedly not shaken until the Japanese attack on Pearl Harbor in December 1941, and the realization that if enemy planes could make it that far, they could attack our continental coastlines and beyond as well. The invulnerability myth nurtured not only a false sense of security leading up to World War I and World War II, but a dangerous isolationism that blinded America to its growing interdependence on the rest of the world and its responsibilities and vulnerabilities to it.

The isolationist impulse led some to a hatred of foreigners within our borders (i.e., recent immigrants), fueled by fears of the unknown and perceived threats to domestic peace and tranquility. As with any fears, some of these were grounded in reality: a few foreigners were more dedicated to foreign ideologies, causes, or countries than they were to their newly adopted country, and some were bent on violence to prove their commitment.

In his first State of the Union message to Congress after the assassination of President William McKinley by a deranged anarchist in 1901, Theodore Roosevelt recommended that Congress consider the anarchists and other persons coming to the U.S. who profess “principles hostile to all government and justifying the murder of those placed in authority--

...should be kept out of this country; and, if found here, they should be promptly deported to the country whence they came; and far-reaching provisions should be made for the punishment of those who stay. No matter calls more urgently for the wisest thought of Congress.

Specifically, Roosevelt called for giving the Federal courts jurisdiction over “any man who kills or attempts to kill the president or any man who by the Constitution or by law is in line of succession for the presidency.”²

As the peacetime assassination demonstrated, perceived threats to the country from within are not unique to war situations alone. But the government’s ability to deal with such threats is made easier in time of war when the people are more willing to temporarily give up some of their liberties for increased security.

It has often been observed that with each war in modern times, the U.S. government has grown bigger, and that with the end of each war, it has seldom gotten smaller. If one does not count the usual demobilization of much of the uniformed military after a war, the observation holds true. Agencies created as auxiliaries to the war effort tend to find new missions (or threats) in peacetime to justify their continued existence. For example, the advent of the Cold War on the heels of World War II led to a further ratcheting-up of the national security state and its attendant bureaucratic apparatus.

This essay examines some of the early roots of the modern homeland security debate in our founding experience and its modern roots in the early twentieth century. It poses the question of how well Americans balance their needs for liberty and security over time given the shrinkage of the oceans and the increased potential for internal acts of terrorism by the new forces of anarchism. Finally, it lays the predicate for the seminar’s discussion of the new challenges to internal safety and stability and how well a bureaucratic response might deal with them.

Fears of Our Founders

In crafting the Preamble to the Constitution, the Convention's Committee on Style relied on the rhetorical device of contrasts—speaking to both the hopes and the fears of the new American nation—the fears of instability, injustice, and invasion, and the hopes for peace, well-being, and freedom. Thus, the Preamble speaks of the people ordaining a constitutional order that will “establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty.”

The Constitution carefully divided responsibilities for protecting the new country against internal threats to stability and external attacks. It was the Constitution, with its system of federalism, that would “insure domestic tranquility and provide for the common defense,” and not the national government alone. Congress was given general powers in Article I, section 8, “to provide for the common defense” through various enumerated means: defining and punishing piracies and felonies committed on the high seas, and offenses against the laws of nations; declaring war and granting letters of marque and reprisals; raising and supporting armies; providing and maintaining a navy; making rules for the government regulation of the land and naval forces; providing for organizing, arming, and disciplining the militia and calling it forth to “suppress insurrections and repel invasions,” while reserving to the states the appointment of its officers and authority for training its members according to the discipline prescribed by Congress.

The President, on the other hand, was charged by Article II, section 2, of the Constitution to be the Commander in Chief of the Army and Navy of the United States, and militia of the several states, “when called into the actual service of the United States.” Finally, Article IV, section 4, of the Constitution obligates the government of the United States to guarantee to every State a republican form of government and to “protect each of them against invasion,” and, upon the application of the legislature or the executive, protect them “against domestic violence.”

It may be difficult to imagine now, but not so difficult to imagine if you immerse yourself in the colonial experience and mentality, that one of the biggest debates over the new Constitution between the so-called Federalists and Anti-Federalists was the fact that the document did not prohibit a standing army in times of peace. The Anti-Federalists, drawing on their immediate past experience with British soldiers both before and during the revolution, but also the history of European military classes, saw the potential for a standing military as one of the greatest potential threats to their freedoms. Here, thought the Anti-Federalists, was a direct threat to liberty that should not be allowed to exist. The local militias, they argued, would be available to guard against any threats to the peace.

The Federalists, on the other hand, considered this objection to the Constitution as irrational at best, and hysterical at worst. To them the greatest threats to domestic security and tranquility were hostile Indian tribes, foreign armies in the territories immediately adjoining the U.S. to the north, south, and west, and internal insurrections. Even in times of peace, they argued, it made sense to have some army guarding the borders against these potential threats. The local, citizen militias might not be a sufficient deterrent to sudden attack, and it would take time to raise and train an army in an emergency. So great was the Federalists' concern with the argument raised over standing armies that Hamilton spent no fewer than seven successive essays in *The Federalist* refuting the points made by the Anti-Federalists, and Madison followed-up with another shortly thereafter.³

One of the Anti-Federalists, writing in *The New York Journal* under the pseudonym, "Brutus," questioned why the Constitution did not specifically forbid standing armies in times of peace. Noting that one of the Federalist writers had used the argument that such a provision was unnecessary "because the principles and habits, as well as the power, of the Americans are directly opposed to standing armies; and there is as little necessity to guard against them by positive Constitutions, as to prohibit Mahometan religion." Brutus responds:

It is admitted then that a standing army in time of peace, is an evil. I ask then, why should this government be authorized to do evil if the principles and habits of the people of this country are opposed to standing armies in times of peace, if they do not contribute to the public good, but would endanger the public liberty and happiness, why should the government be vested with the power?⁴

Two days later, writing in the *Independent Journal* under the pseudonym "Publius," Madison responds that, "Security against foreign danger is one of the primitive objects of civil society. It is an avowed and essential object of the American Union." The powers to declare war and raise armies and navies, wrote Madison, are all "involved in the power of self-defense." But, is such a power necessary both in times of war and peace? Madison answered his own question with a question: "How could a readiness for war in time of peace be safely prohibited, unless we could prohibit in like manner the preparations and establishments of every hostile nation? The means of security can only be regulated by the means and the danger of attack."⁵

Madison compared the geographic advantages of Great Britain and the United States, the former "being rendered by her insular situation and her maritime resources, impregnable to the armies of her neighbors," and, "the distance of the United States from the powerful nations of the world, gives them the same happy security." But he cautioned that for this security they are indebted to their Union alone, and "the moment of their dissolution will be the date of a new order of things."⁶

In defending the need for a navy, Madison observed that all the inhabitants of the Atlantic

frontier are interested in naval protection against “the predatory spirit of licentious adventurers,” and the “terrors of conflagration” threatened if inhabitants do not yield “to the exactions of daring and sudden invaders.” Except for Maryland and Virginia which are peculiarly vulnerable on their eastern frontiers, “no part of the Union ought to feel more anxiety on this subject than New York “whose reservoir of wealth lies every moment at the mercy of events, and may almost be regarded as a hostage for ignominious compliances with the dictates of a foreign enemy, or even the rapacious demands of pirates and barbarians.”⁷

It is clear from this debate between the Federalists and Anti-Federalists over the ratification of the Constitution that there were serious differences over what is now called homeland security, and whether the national government would be a help or hindrance in insuring it, or, in the case of a standing army during peacetime, whether the government itself posed a danger to individual liberties.

The debate today over the appropriate roles of the federal, state, and local governments in homeland security does not swirl around whether a standing military poses a threat itself to such security. Nevertheless, some concerns arise over which levels of government should take the lead role in certain activities, and whether the federal government should play a coordinating and supporting role or should dominate the nation’s homeland security policy-making and its implementation.

Moreover, the proper role of the military in combating domestic terrorism is also a consideration in this policy debate. While the military is prohibited by the so-called *Posse Comitatus* Act (18 U.S.C. 1385) from direct law enforcement activities, it is not precluded from providing logistical support, technical advice, facilities, training, and other forms of assistance to civilian law enforcement agencies even though that assistance may aid those activities. However, only the President can authorize the use of active duty military in a domestic situation. While this is not stated explicitly in the Constitution, it is generally implied from the President’s Commander-in-Chief powers that he can direct the conduct of military action to include repelling a sudden attack against the U.S. Other situations in which such authority might be exercised domestically include a President’s determination that a terrorist situation threatened national survival or the continuity of government, or that it was necessary to ensure public safety.⁸

World War I and the Enemy Within

President Theodore Roosevelt’s strong rhetoric about anarchists in the immediate aftermath of his predecessor’s assassination in 1901 captures an ongoing anxiety among politicians and citizens

alike that many of the new immigrants flooding the country might retain a higher loyalty to their countries of birth than to their newly adopted home, and that they might resort to the violent and subversive tendencies so prevalent in much of Europe.

Just as xenophobia and a fear of invasion during the “Quasi-War” with France led to enactment of the Alien and Sedition Acts in 1798, similar sentiments surfaced during World War I, resulting in enactment of the Espionage Act of 1917, and the Sedition Act of 1918.

The proposed Espionage Act gave a new definition to crimes against the public interest during times of war and enlarged the powers of the Postmaster General to see to it that enemies of the government did not make use of the mails in advancing their arguments. Not only did the act define espionage and provide for punishing those convicted of being spies, but it also defined crimes of obstruction or conspiracy that were likely to interfere with the execution of the laws by the government.

The most controversial provision of the draft espionage bill recommended by President Woodrow Wilson’s Justice Department would, in essence, have given the President authority to censor the publishing or communicating of materials relating to the national defense which he determined might be useful to the enemy. The provision was stricken by the House, retained in the Senate, modified in a first conference, and finally jettisoned in a second conference.

The final espionage bill cleared by Congress also dropped sections granting power to control enemy aliens and to punish industrial saboteurs—an omission the Attorney General reportedly lamented for several months. But the bill as enacted did retain a section on false reports and statements made willfully with the intent to interfere with the operations or success of the military or naval forces, and for willfully causing or attempting to cause “insubordination, mutiny, or refusal of duty” or for obstructing the recruiting or enlistments service.

Despite the Attorney General’s complaint that the powers to protect the government were inadequate, cases brought under the new powers “indicate that sedition was uncommon,” according to historian Frederic L. Paxson. He also notes that the Espionage Act was used as “a tool to trim the margins of public opinion.” Whether it was necessary to proceed against it, writes Paxson, is open to debate. “The sharp criticism of government and the courts by those who disliked any legal coercion was out of proportion to either the extent of the dislike or the burden of coercion. Public opinion settled the matter, for public opinion supported the war effort of the Government to carry it to a successful end.”⁹

According to historian Samuel Eliot Morison, under the espionage and sedition laws, the government arrested over 1,500 persons for disloyalty. Among those sentenced to long prison terms

were Socialist presidential candidate Eugene Debs and House Member Victor L. Berger (Socialist-Wisc.). Morison writes that even worse than the official crusade against sedition “was the unofficial spy-hunting that engaged the energy of frustrated old women of both sexes. It was a wonderful opportunity to bring patriotism to the aid of neighborhood disputes and personal grudges.” German Americans, who supported the war as much as anyone else, suffered the most, according to Morison:

Stay at home patriots indulged in an orgy of hate, which even extended to passing state laws forbidding the teaching of German in schools or colleges, throwing German books out of public libraries, forbidding German or Austrian musicians to play in public or their music to be performed.¹⁰

But even the official proceedings against suspected spies were tainted by popular sentiments at the time. Writes Paxson:

Arrests were made by patriots irritated by any opposition. Juries, and the panels from which they were selected, had their ideas about proper behavior in war time, as their indictments and verdicts proved. Attorneys and judges had too little of that disposition that should go with law enforcement. And before final judgments could be obtained from the Supreme Court upon the propriety of the verdicts, the war was over.¹¹

It wasn't until after World War I that the greatest abuses of wartime powers occurred. President Wilson's third Attorney General, A. Mitchell Palmer, decided that the way to fame and the presidency was to crack down on “Reds.” Pro-Germans were no longer a threat, but the Bolsheviks in Russia, on the heels of their successful revolution, their threatening rhetoric, and their growing control over socialist elements around the world, were the new source of American fears. On April 20, 1920, at the first cabinet meeting following his physical breakdown (from campaigning cross-country for the League of Nations), Wilson reportedly told his Attorney General, “Palmer, do not let this country see red.” But Palmer had already been doing just that for five months.¹²

On a single night in January 1920, Palmer's agents instigated a series of raids on homes and labor headquarters, arresting over 4,000 alleged communists in 33 cities. According to Morison, in Detroit some 300 men were arrested on false charges, held for a week in jail and denied food for 24 hours, only to be found innocent of involvement in any revolutionary movement. For a brief while, though, Palmer was a national hero for his crackdown on suspected communists.

Early in April, however, the Department of Labor ruled against Palmer on pending deportation proceedings, insisting on fair hearings with proper counsel. Actions were cancelled against dozens of those awaiting deportation. The Labor secretary's assistant, Louis Post, made such an impressive case before a congressional committee that critics were forced to back down. By final count, 5,000 arrest warrants had been sworn out, but only about 600 aliens were actually deported.

Palmer was finally discredited when he issued a series of warnings of a May Day plot to overthrow the government. It did not materialize. Says Morison, “the country concluded that Palmer had cried wolf once too often.”¹³

Wilson, Congress and Government Organization During War

As noted above, new and existing laws to combat threats to internal security during World War I were administered primarily through the Justice Department and the Postmaster General. No new agencies were formed to deal directly with ensuring domestic tranquility. The mobilization of the government and the people for the overall war effort, however, did result in the creation of numerous boards, committees, and commissions to address the unique challenges of war. These included: the Council of National Defense; the Committee on Public Education; the Fuel Administration; the Railroads War Board; the General Munitions Board (precursor to the War Industries Board); the Commission on Training Camp Activities; the War Industries Board; the War Trade Board; the Food Administration; and, the Selective Service Board.

Congress did not always agree with the specifics of the President’s designs for these temporary entities, but the President usually got his way since most were created without specific statutory authorization. The two initiatives Congress did attempt were to create a Joint Committee on the Conduct of War, and a three-member war cabinet. The joint committee proposal was attached in the Senate as a rider to the food control act, with only six negative votes. Wilson objected strenuously to such a committee, knowing how a similar committee during the Civil War had dogged President Lincoln. The joint committee proposal was subsequently stricken by the House.

The proposal for a new, three-member war cabinet to be made up of three distinguished Americans having executive experience, and through whom the President was to exercise his authorities under the Constitution as Commander-in-Chief, was even more of an affront to Wilson who said he already had his own war cabinet. Wilson vociferously denied charges by the proponent of the idea, Senator George E. Chamberlain, chairman of the Senate Military Affairs Committee, that the war effort had broken down. As Paxson wrote,

Chamberlain’s bill was lost before it was printed. It was conceivable that the President was incompetent to wage the war, yet it was he and not Congress that was designated Commander-in-Chief. . . . It was not possible to dislodge him from the position of President as described in the Constitution.¹⁴

To counter the Chamberlain committee’s investigations into the inadequacies of the war effort, Secretary of War, Newton D. Baker, established a War Council consisting of the Chief-of-Staff and important bureau chiefs, whose function was to “oversee and coordinate all matters of

supply of our field armies and the military relations between the armies in the field and the War Department.” Shortly thereafter, the Secretary of War sent to Congress draft legislation that was the Administration’s alternative to Chamberlain’s proposals for reforming the war preparedness effort. The measure was introduced by Senator Overman of North Carolina.

To congressional criticism that the President had not prosecuted the effort adequately, the Administration argued that the President had been hamstrung by too many laws and regulations forced on him by Congress. In place of new laws being suggested by the Military Affairs Committee to tie the hands of the President and teach him his duty, the President was asking that he be relieved of the red tape and statutory interference. Historian Paxson writes of the resulting legislation of 1918, “Few statutes have in so few words surrendered so much; and none has vested more discretion in the President than was done by the Overman Act. . . . It cut through checks and balances.” For the remainder of the war and for six months thereafter, the Overman Act, writes Paxson, authorized the President--

to redistribute the functions of executive agencies as he saw fit; to utilize, coordinate, or consolidate any executive or administrative commissions, bureaus, agencies, offices, or officers now existing by law; to create new agencies; to transfer, redistribute, or abolish the functions of others; and to utilize funds voted for any purpose for the accomplishment of that purpose by whatever means might to him seem good.¹⁵

As the bill left the Senate, a jocular amendment was hurled at it by Senator Frank B. Brandegee (R-Conn.): “If any power, constitutional or not, has been inadvertently omitted from this bill, it is hereby granted in full.”¹⁶

Conclusion

As the U.S. Congress attempts to get its arms around the new Department of Homeland Security, which brings together over 200,000 federal employees from some 22 agencies at a cost of \$40 billion a year (for starters), it is challenged both by the enormity of the policy issues that have been and will continue to be raised, debated and decided, as well as by the responsibility to oversee the sprawling new department and ensure it is as effective as possible, and that the need for security and liberty are properly balanced and preserved.

This essay began with the premise that America was founded on the myth of invulnerability given its ocean borders to the east and west, and that this sense of invulnerability from outside forces at times has created both an isolationist impulse as well as a fear of enemies within. The myth of invulnerability was exploded with the bombing of Pearl Harbor in 1941, though vestiges of isolationism and fear of foreign persons and ideologies resurfaced during the Cold War. But the

invulnerability myth was further pierced in the 1950s and 1960s by the realization that enemy nuclear-tipped, inter-continental ballistic missiles could wipe-out our civilization as we know it with less than 15 minutes warning.

The end of the Cold War could have lured the U.S. back into thinking that its foreign enemies had been permanently driven into the ground. But the new world disorder flowing from the breakup of the communist empire and the inability of a single world power to keep the peace worldwide has been brought home again in the form of international terrorism.

The very notion of a “Homeland Security Department” is, in a sense, an appeal to the old myth of invulnerability, in that the rhetoric that accompanies its creation is replete with pledges to do everything possible to make our borders and our citizens safe once again from enemy attack, whether from within or without. Most Americans understand that if we are to remain a free and open society under a democratically elected government that respects and protects the rights of all, we will never be completely safe from horrific attacks from any number of sources using any variety of weapons of mass destruction. At the same time, the temptation is always there to hope that the government can do much more to ensure our safety.

On February 23, 2003, two *New York Times* columnists, writing in separate columns, captured this ambivalence of the American people and our twin longings for individuality and freedom, on the one hand, and security and invulnerability on the other. Thomas L. Friedman wrote about the clash of these two values and his conclusion:

In an open society, there are simply too many threats, too many openings and too many interactions that are built on trust. You can’t even begin to secure them all without also choking that open society. Which is why the right response, after a point, is not to demand more and more security—but to learn to live with more and more anxiety.¹⁷

Maureen Dowd, on the other hand, ridiculed the Department of Homeland Security’s advice to Americans on what they can do to protect themselves against terrorist attacks as being like saying, “You’re on your own, buddy, an army of one, be all that you can be in the short time that remains.” She argued that Homeland Security Secretary Ridge instead should be getting the best scientific and technical expertise as it relates to all threats, “and developing concrete plans and suggestions for every possible contingency.” And she concluded her column with the following:

He’s not supposed to be selling security, or spinning it; he’s supposed to be providing it. He doesn’t need to make security more alluring to us. We already find it absolutely alluring. We’d just like to get some more of it.¹⁸

This debate and delicate balancing act traces back not just to the framing of the Constitution with its pledges to assure domestic tranquility, the common defense, and the blessing of liberty, but, even before that, to the debates in the colonial legislatures. In November 1775, Benjamin Franklin left no doubt that he would agree with Thomas Friedman in today's debate. Rising in the Pennsylvania assembly to respond to the colonial governor, Franklin offered this word of caution to his colleagues and to future generations of Americans: "Those who give up essential Liberty to purchase a little temporary Safety, deserve neither Liberty nor Safety."¹⁹ The question for presidents and legislatures in today's climate of fear and anxiety will continue to be, "How much security is enough, and at what price?" And perhaps the larger question that will help determine the answer to that question is, "Will the American people know or care when enough security is too much?"

Notes

1. Selig Adler, *The Isolationist Impulse: Its Twentieth Century Reaction* (New York: Collier Books, 1961), 15.
2. Theodore Roosevelt, "State of the Union Address," December 3, 1901, in *The Almanac of Theodore Roosevelt*, at <<http://www.theodore-roosevelt.com/sotu1.html>>, 1-5. It was not until after President John F. Kennedy's assassination in 1963 that Congress finally enacted a law making it a federal crime to kill the President or those in line of succession (Public Law 89-141, August 28, 1965; 18 U.S.C. 1751).
3. Alexander Hamilton, James Madison, and John Jay, *The Federalist Papers* (New York: New American Library, Mentor Book, 1961), Hamilton, Nos. 23-29; and, Madison, No. 41.
4. Brutus, IX, "The Dangers of a Standing Army, *The New York Journal*, January 17, 1788, in *The Debate on the Constitution*, Part II (New York: The Library of America, 1993), 42.
5. Publius, "On the Posers of the National Government: An Analysis of Armies, Taxation, and the General Welfare Clause," *The Federalist*, No. XLI, *Independent Journal* (New York), January 19, 1788, in *Debates on the Constitution*, Part 2, op. cit., 48-49.
6. Ibid, 50.
7. Ibid, 53.
8. Jeffrey D. Brake, "Terrorism and the Military's Role in Domestic Crisis Management: Background and Issues for Congress," Congressional Research Service Report for Congress (RL-30938), Updated January 27, 2003, 12, 16.
9. Frederick L. Paxson, *American Democracy and the World War: America at War, 1917-1918* (New York: Cooper Square Publishers, Inc., 1966), 61-64.
10. Samuel Eliot Morison, *The Oxford History of the American People* (New York: Oxford University Press, 1965), 874.
11. Paxson, 64.

12. Morison, 883.
13. Ibid, 883-84.
14. Paxson, 219.
15. Paxson, 225.
16. Ibid, 226.
17. Thomas L. Friedman, "My Survival Kit," *The New York Times*, Week in Review (Section 4), Sunday, February 23, 2003, 11.
18. Maureen Dowd, "Ready or Not," *The New York Times*, Week in Review (Section 4), Sunday, February 23, 2003, 11.
19. Benjamin Franklin, Pennsylvania Assembly: Reply to the Governor, November 11, 1755, *The Papers of Benjamin Franklin*, ed. Leonard W. Labaree, vol. 6, 242 (1963).