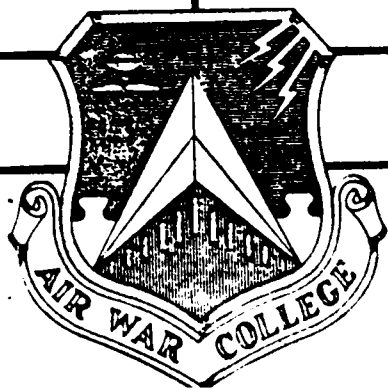


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# AIR WAR COLLEGE

## RESEARCH REPORT

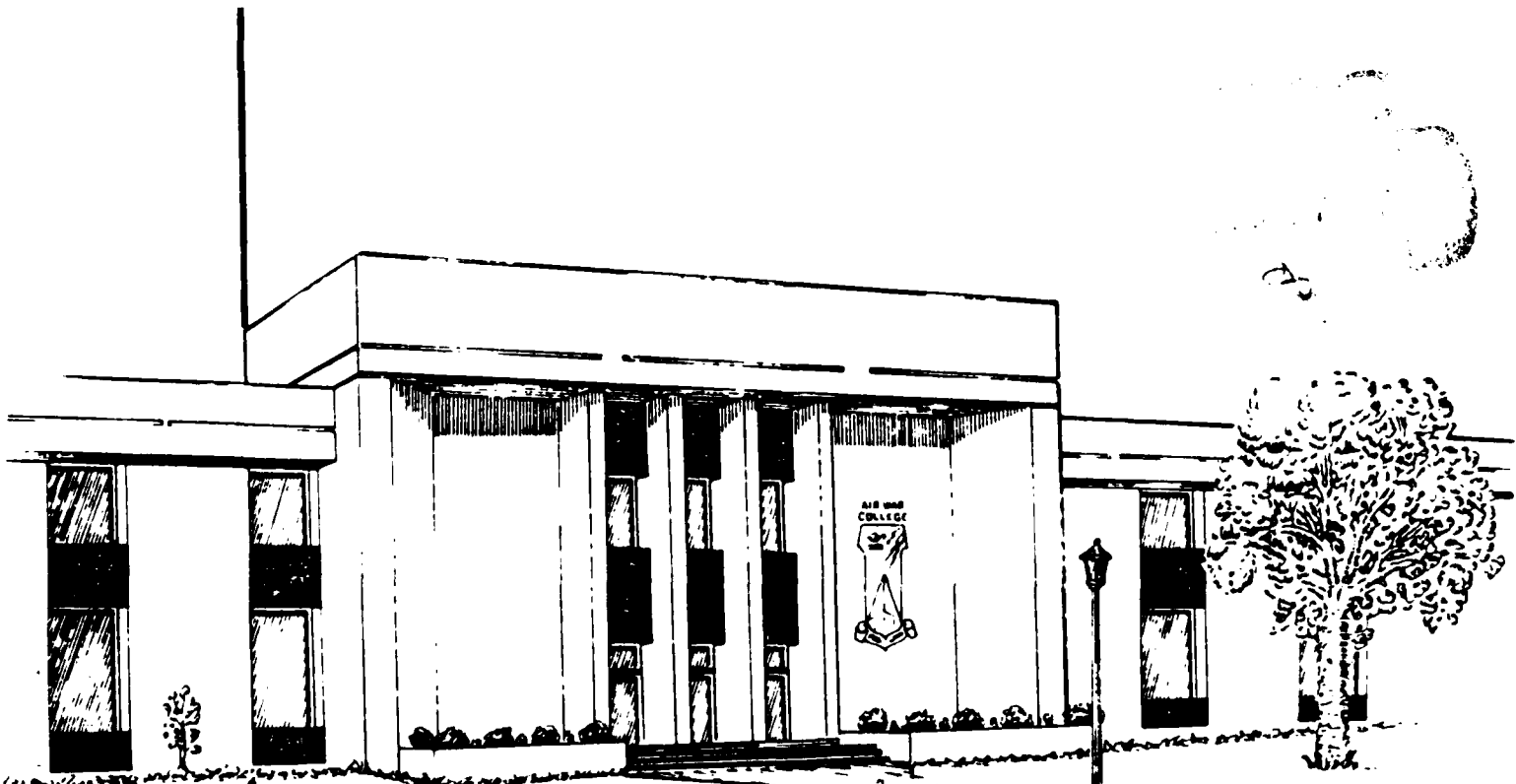
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THREATS TO DEMOCRACY-CIVIL-MILITARY  
RELATIONS IN AMERICA AND BRITAIN  
PRESENT AND FUTURE

By WING COMMANDER NICHOLAS C. RUSLING, RAF



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MAXWELL AIR FORCE BASE, ALABAMA

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AIR WAR COLLEGE  
AIR UNIVERSITY

THREATS TO DEMOCRACY-CIVIL-MILITARY RELATIONS IN AMERICA  
AND BRITAIN PRESENT AND FUTURE

BY

Nicholas C. Rusling  
Wing Commander, BA, RAF

A RESEARCH REPORT SUBMITTED TO THE FACULTY IN  
FULFILLMENT OF THE RESEARCH REQUIREMENT

THESIS ADVISOR: Dr William P. Snyder

MAXWELL AIR FORCE BASE, ALABAMA  
March 1987



AIR WAR COLLEGE RESEARCH REPORT ABSTRACT

Title: Threats to Democracy - Civil-Military Relations in  
America and Britain Present and Future

Author: Nicholas C. Rusling, Wing Commander, BA, RAF

In almost all countries the relationship between the military and civilians is complex and sensitive. It inevitably carries with it the possibility of disagreement and discord. The United States' and Britain's armed forces have a long tradition of subordination to civilian control. There have, however, been examples of minor infringements of this principle in both societies. In modern developed societies, however, military intervention in politics through open confrontation with the government is rarely the major problem. Nonetheless, this essay considers such a possibility and whether the armed forces of America or Britain might in any sense represent a threat to democracy by a different route. In this respect, the paper considers three future challenges to civil-military relations: British defense policy under labour, military intervention in domestic security and the "military-civilian"\* within American government.

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\*The military-civilian is an active-duty or retired military officer placed in a civilian policy role within the administration.

## BIOGRAPHICAL SKETCH

Wing Commander Nicholas C. Rusling (BA Hons Durham University) has been interested in civil-military relations since he gained his academic postgraduate diploma in 1973 from the Department of War Studies, Kings College, London University. He served, as a ground attack pilot, with the Sultan of Oman's Air Force in 1972-74. From 1974-82, he completed four assignments on Jaguar strike/attack squadrons serving in both UK and Germany as a flight commander. He is a graduate of the Royal Air Force Staff College and has served on the air staff within the Ministry of Defense. Wing Commander Rusling is a graduate of the Air War College, class of 1987.

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CHAPTER I  
INTRODUCTION

The United States' and Britain's armed forces have a long tradition of subordination to civilian control.\* Today, the average American or Englishman regards the possibility of military dictatorship in their societies with total disbelief. However, the prevalence of military coups and military governments in the Third World, especially in the last 30 years, should not lead us into thinking that direct intervention of the military into politics is a phenomenon confined to underdeveloped countries. In Europe since 1945, there have been military interventions in France, Turkey, Greece, Portugal and Spain. Britain and America have no special immunity; public imagination has been stirred more than once over the possibility of open confrontation between the military and the government.

There are examples in both societies of past civil-military tensions. During the American Civil War, the Administration's decision to remove McClellan in November 1862 caused an undercurrent of rebellion.

. . . evidence suggests that many officers and men at various echelons felt that the order should be resisted

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\*In Britain, the one minor infringement of this principle was the Curragh affair, 1914.<sup>1</sup> There is also some credence to the belief that government reaction to the Rhodesian UOI crisis in 1968 was tempered by rumors of military reluctance to intervene. In America, Generals Mitchell and MacArthur, on separate occasions, challenged the correctness of the Administration's policy decisions. Moreover, General and Flag officers Walker and Goldthwaite came close to challenging the Administration over desegregation in the late 1950s and early 1960s.

and that the Army should move upon the federal capital, displace the civil authorities and dictate national policy.<sup>2</sup>

During the Korean war, MacArthur challenged the Administration's policy and appealed to the legislature and the American people over the Administration's head.<sup>3</sup> In 1952 when Eisenhower was running for president there were reservations about whether a military man should hold the highest civilian office. It was an issue in the campaign.

In Britain during 1968, when the morale of Harold Wilson's government and the nation was at a low ebb, MI5 was obliged to take seriously a supposed plot to overthrow the government by military coup.<sup>4</sup> In January 1974, an American columnist wrote to the London Times stating that Britain was heading for a military take-over.<sup>5</sup> The fact that this was treated seriously by the Press indicated the level of political anxiety within the leading journals. In January 1980, BBC 1's film "War School" showed staff officers at the Army Staff College, Camberley discussing the technicalities of a military coup d'etat in Britain. The talk of a coup was interesting not because it was even remotely realistic, but because it marked the end of a very long period in which the question had never been raised at all.<sup>6</sup>

People in both countries have, therefore, at least considered the possibilities of open confrontation between the government and military. This attitude may be understandable

to a few, but is alarming to most others and it certainly invites a return to the question of whether armed forces represent a threat to democracy in politically mature countries?\*

In modern developed societies military intervention in politics through open confrontation with the government is seldom the major problem. Nonetheless, this essay considers such a possibility and whether the armed forces of America or Britain might in any sense represent a threat to democracy by a different route. First, the essay surveys the strengths of the military and their possible intervention into government. Secondly, it examines the constraints on military power and the reason for the military's acceptance of civilian control in both societies. Finally, the paper considers three future challenges to civil-military relations: British defense policy under a labour government; military intervention into domestic security within both societies; and the "military-civilian" within American government.

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\*Quis custodiet ipsos custodes?

CHAPTER II  
STRENGTHS OF MILITARY

British and American society is now more permissive and materialistic than ever before, but these changes in society are less pronounced in the military than elsewhere. Both countries' armed forces embrace traditional patterns of training and discipline and, unlike some European countries, neither has adopted unionization; furthermore, by training and by inclination military men tend to be conservative. There are, therefore, differences in attitude and standards between military people and civilians. Should the military ever be disposed, however unlikely, to intervene in politics as a result of increasing isolation and alienation from a permissive civil society they could rely on certain political strengths.

The American armed forces have recovered their self image, the loss of which reached crisis point in the aftermath of Vietnam. During the Reagan Administration, American society has become more tolerant of the military. This is reflected in several ways. First, military films and books are popular. . . . "Paramilitary weapons, dress, jargon, and values are assimilated into everyday American life."<sup>1</sup> Secondly, billions

of dollars have been spent to support the largest peacetime military build up and modernization in American history. Lastly, notwithstanding, the Iranian arms fiasco, President Reagan's security policy has helped to restore American pride and influence in world affairs.

In Britain, the armed forces are almost alone in Europe in not having been defeated on the field of battle or forced to surrender unconditionally, and have not been affected by civil war or revolution since the seventeenth century. In addition, the armed forces earned an enhanced reputation after the 1982 Falklands War. Thus they have an unbroken tradition and a considerable self-confidence.

Turning to organization, the military in both countries possess a centralized command, discipline, independent communications, esprit de corps and a near monopoly of weapons. Indeed, the military's capability in manpower, equipment and readiness exceeds that of any other institution in society.<sup>2</sup> In addition, both armed forces are highly professional and bureaucratic. They seem to be nearer solving the problems of large-scale organizations than industry. They can contract and expand with comparatively little friction because they are organized into manageable blocks which can be multiplied or reduced in numbers and assembled in different ways. Indeed the military are uniquely good at getting things done. The military staff system is strictly hierachical and designed for

execution.<sup>3</sup> Moreover, the military produce leaders. Military service prepares a person for leadership in the event of a crisis or emergency. One could imagine, should the situation arise, that people would look to a military man, renowned as a leader of men, to revive the national pride and restore public confidence.\* Also, the military values of courage, duty, loyalty, patriotism and the good image presented to the media and taxpayer may constitute additional political strengths.

Since World War II the US military has enjoyed huge budgets and unparalleled influence in Washington. On the other hand, World War II impoverished Britain and spending priorities were directed to areas other than defense.

. . . The danger that the military, through demands upon resources in the military/industrial complex, would exercise too powerful an influence over the state was never high in post war Britain. <sup>4</sup>

Nonetheless, the strengths of the military in Britain as well as America are impressive. The fact that military government or military intervention in politics has been the exception rather than the rule in Britain and America, therefore, needs further examination.

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\*The name of Earl Mountbatten of Burma was linked to the so-called "Military Coup" of 1968.

CHAPTER III  
INTERVENTION

As has already been stated, America has witnessed the increasing influence and strength of the military during the Reagan years.

. . . Militarism is on the rise in the United States. While a strong military posture is essential, over-emphasis on military power within the government and American society undermines our strength as a nation and jeopardizes the democratic process in the United States. <sup>1</sup>

The traditional level of military intervention upon the civilian government in both countries is the constitutional and legitimate one of discussion, persuasion and influence. Indeed, each country's military has a strong lobby internally and externally. Notwithstanding such tradition, it is possible that British or American troops could technically achieve the first stage of a military take-over. However, the military accept the fact that they are under political direction and that they should stay out of politics. Furthermore, for armed forces as disciplined as these to act unconstitutionally would require the development and escalation of political crisis to a degree and extent that seems impossible. Such a crisis could occur if an incumbent

government sought to prolong its life illegally without calling an election. Or, if a legitimate government decided to make major changes in the constitution, and to change the size, organization and status of the armed forces. In any event, however remote, by politicians for America's or Britain's system of government might be considered a military coup to save democracy. The military could take over but a free country could be run by the military alone. This is the case. Britain's and America's armed forces suffer from several constraints which prevent the military from ruling openly in their own name.

CHAPTER IV  
CONSTRAINTS

Resources

The armed forces are technically inadequate to rule either Britain or America by their own resources. Despite corporate and associational ties the American military institution is a subservient element of the power elite.<sup>1</sup> The interconnection between government departments and industry, finance, communications is both complex and sophisticated. Moreover, the military constitute only a part of the national organization for defense and are dependent on the civil, industrial and scientific organization for their power. Despite individuals' professional expertise and technical knowledge, to rule Britain or America the armed forces would need to reinforce military manning with specially trained administrators in law, finance, economics as well as many other fields of international activity. Inadequate resources is not the only constraint which prevents the military from ruling openly in their own name. A lack of political legitimacy and the ethic of non-involvement in politics are additional constraints.

### Political Legitimacy

The military lacks political legitimacy. A government must be widely recognized as lawful, otherwise a government that achieves power by force has to defend itself against one challenge after another. Civilian politics provide automatic links with the masses whereas military politics do not. It is possible that the public would remain passive, indifferent or even hostile to an illegitimate regime. Therefore, no military take-over could be successful unless it is one that would be welcomed by a majority or a very large minority of the people.

### Tradition of Non-involvement in Politics

Under the impact of the industrialization of war in the nineteenth century there was a tendency for officers in both societies to become so immersed in the new technical complexities of their profession as to lose a broader horizon, especially a political horizon. The logical consequence of this was for a professional officer corps to leave politics to the politicians. Indeed, a professional officer corps isolated from society ensured that the armed forces in both countries could concentrate on the art and science of war uncontaminated by civilian society, whereas civilians could rest easy that there would be no usurpation of power by an apolitical officer corps.

Once warfare became total so did the sphere of military affairs. Total war increased the integration of servicemen and civilians; the armed forces became much more closely interconnected with industry and technology and in the process they have influenced them as well as being influenced. The influence of civilianization on the American military is a current issue. There is a belief among the military reform movement that the civilianization of the officer corps poses a danger to society. Reformers argue that the officer corps has, owing to the influences of civilian management techniques and careerism, become incompetent and unprepared for war.

In Britain, military professionalism has not been weakened through civilian and military integration. There is a long tradition and experience of working in committee, of interservice cooperation and an organizational framework within which major decisions normally involve politicians, civil servants and military officers. Common social backgrounds and values help break down the barriers between these groups.

Although the impact of civilianization has been felt differently in each country, in general the American and British armed forces have maintained the same objectivity to civilian masters as has been traditional in both societies. This is particularly noteworthy in America where there has been a huge increase in the influence of the military establishment since World War II.<sup>2</sup> The military's deference to civilian

authority, however, owes as much to the military's belief in democracy as to the tradition of non-involvement in politics.

### Belief in Democracy

Unlike Third World countries of minimal political tradition, and unlike Latin American countries and some European countries of low or developed political tradition, Britain and America's level of political tradition is high.<sup>3</sup> There exists in the United States and United Kingdom a wide public recognition as to who or what constitutes the overriding authority and a corresponding belief that no other center of power is legitimate. The coups in Arab countries, in Africa and Latin America which have varied considerably as to their aim and their character have little relevance to an understanding of the situation in Britain or America.

The main constraint on military intervention in America and Britain today is probably the armed forces' belief in democracy and civil supremacy.

. . . Such a belief is essential since the military alone can neither define its mission nor fully supervise itself in the execution of approved policies and defense programs. Civilian control ensures that military policy and actions accurately reflect the wishes of US citizens and also provides a check on excessive military spending.<sup>4</sup>

Britain has no written constitution. The constitutional conventions, however, of custom, traditions, practices and understandings have become imbedded and play a

large part in the British system of government.<sup>5</sup> Indeed, everyone understands the concept of ministerial responsibility and the right of elected representatives to control and conduct the affairs of the nation. The constitution of the United States is a constitution in the narrower sense of the term.<sup>6</sup> The constitution distributes power over the military and its ascendancy over the other elements of society has ensured the unquestioned supremacy of the civil government over its military arm.

There are several reasons why the acceptance of civilian control has become so ingrained in the British and American armed services. In particular, there is a belief in upholding formal constitutional controls, and there are a number of personal loyalties which go against the enactment of a coup. In addition to constitutional limitations, restrictions have been imposed on the military by administrative practice, court decisions and statutes.<sup>7</sup>

CHAPTER V  
ACCEPTANCE OF CIVILIAN CONTROL

Legal and Constitutional Controls

In Britain the legal existence of Parliament depends upon the exercise of the Royal prerogative, and the governance of the British army is placed under annual Parliamentary sanctions. In addition, the legal authority by which an officer exercises discipline upon those over whom he has been placed is derived from Parliament. Furthermore, both societies accept that domestic law and order is not the responsibility of the national military. The details of the legal controls under which the serviceman lives are at appendix A.

Turning to constitutional constraints, in America the framers balanced civil and military power one against the other and fused them in the person of the President. The British system of government is unitary rather than federal in form. There is no principle of division of powers; there is no written constitution but rather constitutional conventions which the military understand and which have survived over the years. The constitutional constraints under which the serviceman lives are detailed at appendix B.

The legal and constitutional constraints are not the only ones under which the serviceman lives. There are a number of personal loyalties which mitigate against open confrontation.

#### Personal Loyalty to the Reigning Monarch or Constitution

Although members of the British and American armed forces are politically aware, there is no evidence of a decline in loyalty to the crown or constitution. On the contrary, loyalty is a quality which a recruit is taught to respect from the moment he swears allegiance. In America, loyalty derives its sources from the oath of office which binds each individual officer and his duty to the constitution.\* In Britain, the soldier's loyalty is explicitly to the monarch. The queen's commission binds each individual officer and his duty to the Queen and constitutionally through her to the government of the day. Furthermore, there is a strong personal connection between the Services and the reigning monarch or president. Both are head of the armed services and both keep in touch with the work and interests of the Services through regular visits to units of the armed forces.

There are other loyalties. In Britain regiments exact additional fidelity and have been a most effective means for preserving and strengthening the Army's cohesion and stability.

\*The author's only reservation concerns the ambiguity of the American system. In America, although an officer's allegiance is to defend the Constitution it is the President who bestows commissions exacting faithful devotion and fidelity from each officer. This situation which enshrines the principle of separation of powers could lead to a conflict of loyalty in the mind of the serving officer.

### Regimental Loyalty

Regiments were the administrative unit devised by Colonel Cardwell, the Secretary of State for War, as a way of ruling the Empire. Regiments fostered their own traditions and maintained a sense of difference from other regiments. This explains the Army's composure during the difficult withdrawal from the Empire. Whilst regiments continue to cultivate separatism there seems to be little prospect of any two of them making common cause against anyone but the Queen's enemy.<sup>1</sup> In addition, many of the regiments have members of the Royal Family as Honorary Colonels, and the sense of personal commitment to the regiment, and through the regiment to the reigning monarch, ensures that the government of the day can always depend upon the Army.

### Summary

In spite of the military's strengths and the massive expansion of the peacetime military following world war II, the American and British armed forces are a bulwark of the constitution rather than a threat to it. Direct military take-over is most unlikely because the legal and constitutional framework in both countries is strengthened by the attitude of professional military officers. Indeed, the acceptance of civilian control has been ingrained in the armed forces of both societies over several centuries. The loyalty of the

serviceman to civilian government has developed partly through legal and constitutional controls, partly through the bond that links the Services to the reigning monarch or constitution and, in Britain, partly through the regimental system. Indeed, the British and American military forces would be hurt and resentful over a suggestion that they might one day contemplate a seizure of power in their country.

This brings us to the question could the armed forces of America and Britain represent a threat to democracy by a different route? This paper, therefore, examines three future challenges for civil-military relations. First, there is, in Britain, the possibility that a sharp disagreement over defense policy could have the potential to trigger confrontation between a Labour government and its military advisers. Second, in these days of economic and political uncertainty the need to help the government of the day to restore law and order to society could bring about military intervention into the internal affairs of either country. Third, recent events in America suggest that the nature and propriety of the role of military officers within the NSC staff requires further examination.

CHAPTER VI  
FUTURE CHALLENGES

British Defense Policy

. . . In modern, developed societies. . . the central problem of civil-military relations thus becomes the relationship between the military professionals and the political leadership.<sup>1</sup>

It is possible that a sharp disagreement over policy would have the potential to trigger confrontation between a government and its military advisers. This is because, in their own minds, the military are convinced that defense should have priority over all things. This could lead to a differing of views between the career military and political leaders on issues affecting the security of their country. Today, one particular issue in Britain gives cause for military concern.

. . . Over the last few years, defense issues have come to enjoy a prominence in public discussion that has rarely been equalled since the war. Serious and informed discussion of defense and security issues is a vital part of any democracy, and I therefore welcome this debate. But there is one respect in which the background to this debate is now more sombre and sinister than it has ever been. There is emerging a categorical commitment among serious political parties in Britain, to tear up the long-lasting consensus strategy and launch into a wholly untried alternative.\*

Over the years, in Britain, there have been many

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\*The Hon George Younger MP, Secretary of State for Defence, speaking to the Royal United Services Institution in London in October 1, 1986.

differences between British political parties on defense matters. But all governments, of either party, have until now upheld the main basis of Britain's defense posture--the major commitment of British forces to NATO backed-up by the British independent strategic nuclear deterrent. This has now changed. Labour is committed to changing the political consensus in Britain over British defense strategies and to launching into an untried alternative that bans all American nuclear weapons from Britain and renounces not just Britain's nuclear umbrella but America's as well. The realization of such an alternative in Britain could generate a conflict between a Labour government and its military advisers. Confrontation would most likely occur through the military voice of the chiefs. Indeed, the principal military adviser, Chief of the Defense Staff (CDS), can exert some influence if he can be seen to call on the full support of his professional colleagues at the head of their own services.<sup>2</sup> The Chiefs as a body are the power base of the CDS. When the Chiefs as a body are united on an important and contentious issue which falls properly within their purview, "en bloc" resignation or the threat of resignation would cause serious alarm within a government.<sup>3</sup> Such action has never occurred collectively although there have been examples of individual resignations.\*

Even though it might deprive the nation of the services of able and devoted men, it is better that military leaders

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\*Admiral Luce resigned over the carrier issue.

should be guided by their conscience and resign their commissions rather than openly challenge the policy. Should the military go public to protest a policy issue--even an issue with wide public support--there is the danger that the military will be perceived to be challenging not the policy but the institution.<sup>4</sup> This, of course, would draw the military into constitutional conflict.

The danger for Britain, therefore, rests first on whether Labour will win the next general election and impose its declared defense policy. Second, if this is done, will the chiefs as a body accept labour's policy or allow their military voice to be heard through the threat of "en block" resignation?

#### Military Intervention into Domestic Security

This brings us to the second challenge for civil-military relations in these days of economic and political uncertainty. There is, I believe, the possibility that the need to help the government of the day to restore law and order to society during a future domestic conflict could bring military intervention into the internal affairs of either society.

#### Militancy in Britain

In Britain, we have witnessed during recent years massive unemployment, racial unrest and industrial militancy.

The danger is that desperation and resentment among militants following a Labour defeat at the next general election would reinforce the consideration that they have nothing to hope for electorally in the near future and thereby nothing to lose by abusing industrial muscle to superimpose their will on government policy.

If Parliament, though duly and democratically elected, was unable to protect the constitution and the liberties of the people against industrial militancy, then a situation, making normal life impossible for large numbers of people, could arise. Although the British armed forces have in some respect been taken out of political/industrial confrontation, with the establishment of an efficient and effective police force it is possible, even if improbable, that a situation could arise which would be beyond the power of the police to handle. Should this happen, the Army would be required to assist. Indeed, contingency planning since 1972 has been directed towards mitigating the consequences of industrial strength exercised during that year.<sup>5</sup> The situation in Ulster encourages us to accept what some years ago would have been unthinkable, the use of armed troops to enforce public order in a campaign at home.

#### Possible Military Intervention within Britain

Should the police authority, on the advice of the Chief

Constable, ask the home office for assistance from the armed forces either to break strikes or to assist the police in law and order duties this would be legitimate\* and the Army would assist to a point consistent with its operational capability to do so. Military Aid to the Civil Power MAC (P) is one of three categories of military assistance to the civil authority. The law does not permit drastic action by the services when employed on MAC (P). The guiding principle of MAC (P) is to employ only the minimum force that is necessary to restore the situation. There can be no question of the services employing pre-emptive violence and neither is punitive action nor excessive force allowed. Therefore, the powers of the armed forces are strictly limited.

There is always the danger that in times of grave emergency, normal constitutional principles may have to give way to the overriding need to deal with the emergency. In such a circumstance, the CDS might advise the Cabinet that the lives of troops and the operational effectiveness of the armed forces could not be guaranteed unless certain other measures were introduced. Such measures, essential to the security of the armed forces, could comprise the right to open fire, the imposition of a curfew or the imposition of martial law. It is conceivable that a government finding itself in a situation where military questions have become paramount would accept military advice. Consequently, the Army could find itself

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\*Legality would come both from the obligation under common law "to come to the aid of the Civil Power when so required" and from the Criminal Law Act 1967 (section 3).

deployed throughout the country in a partly operational and partly administrative role. Paradoxically, military intervention would have been reached by perfectly legitimate constitutional procedures.

Such a possibility raises two important questions. First, will events, and the nation's reactions to those events ever lead to a situation where the armed forces are called in by the Cabinet to aid the civil authorities in administering the country? Secondly, once that has occurred, would the politicians be able, with military assistance, to restore full civilian government and administration or would they, in a deteriorating situation merely become the puppets of the Chiefs of Staff? The whole notion is nearly inconceivable. But if the armed services might in any sense unwittingly represent a threat to democracy it might be by such a route.

#### Possible Military Intervention in America

In America the situation is different. There is a distinctive element of military force in the United States that has no exact UK counterpart. This is the National Guard.

#### National Guard

The National Guard is both the militia of the several states subject to call of their governors, and the National Guard of the United States subject to federalization by the

president. The National Guard provides an intermediate use of force between the police and the employment of the regular army.\* Indeed at the height of the civil disturbance between 1963 and 1968 very few of the numerous incidents of civil disorder involved federal forces.

#### Provisions in Law

The non-involvement of American federal troops in civil affairs has its roots back to the period shortly after the Civil War. In particular, ex parte Milligan 1866 and Posse Comitatus 1878 provide a basis in law. Nonetheless, such provisions in law have been the subject of judicial comment during the last twenty years and some have agreed<sup>6</sup> that new foundations have been laid for military intervention in the United States. These new foundations may provide a future challenge for civil-military relations.

#### New Foundations

Violence in the United States has included racial disorder in cities and anti-war disorder on college campuses. There is always the danger that a threat could materialize as civil disorder or insurrection of sufficient magnitude to completely frustrate the local state governments' ability to maintain law and order. There is, however, a deep rooted tradition of non-involvement of federal troops in law

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\*The division of authority over the National Guard is a current political issue, but this is outside the scope of this paper.

enforcement; the repudiation of military intervention in domestic law enforcement is the bedrock of "due process" upon which the American government was built.

However, provisions in the 1972 "Employment of Military Resources in event of Civil Disturbances" regulations increased the potential for domestic use of the national military. In 1981 the first significant amendment to the Posse Comitatus act in 100 years resulted in a modest expansion of the military role. In 1982 the regulations entitled DOD Cooperation with Civilian Law Enforcement Officials reassert the claims for military intervention outlined in the 1972 regulations. Therefore, some perceive that several new foundations for military intervention have been laid.

#### Way Ahead

The danger is that toleration of military intervention in any law enforcement circumstance ultimately portends the sort of military oppression we witness in other countries today. Only time will tell whether any edifice of oppression is likely to be built upon these foundations. The author's view is that such consequences for America are most unlikely; in fact, they are almost inconceivable. In a period of continuing military build-up, however, it is crucial that each change be carefully monitored and considered. Congress must be willing to make it their business to ensure that executive

contingency plans for emergencies conform to the Congress' will.

### "Military-Civilians"

Turning to the relationship between the American military and government, American armed forces have to endure a complex interplay of policy makers. First, Congress involves itself in the minute detail of military affairs and the recent proliferation of congressional staffers has increased the DoD workload. Secondly, the military deals with an executive branch in which policies, goals and procurement programs vary from administration to administration. Consequently, the career military sometimes find both policy matters and operational direction to be in a state of paralysis when these power centers are at odds.<sup>7</sup> Although this can be a source of discord, recent events suggest that the use of military officers with the NSC staff poses a more serious challenge to democracy.

### Constitutional Practice

British constitutional practice gives latitude to the executive, especially in foreign affairs but the limitations, though constitutional conventions, are still there. In America the conduct of executive-legislative relations in a regime based on separation of powers has often been surrounded by controversy.\* Because presidents rightly or wrongly have not

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\*The United States Constitution with its checks and balances is, arguably, ill-designed for the purposes of a superpower with a global network of interests and alliances--more especially, one confronted with a totalitarian adversary whose capacity to devise and carry out a coherent strategy is very high.

trusted the discretion of congressional leaders or have been determined to pursue policies upon which congress has frowned, presidents have entrusted their most secret dealings to the NSC staff.

#### Executive Staff Oversight

The danger, if there is a failure in executive oversight, is that a NSC staff can become independent and operational when it was only intended to be deliberative and advisory. Without prejudice to the Tower Commission Report\* it appears that during the "Iran-Contra" affair a mini-bureaucracy headed by Lt Col North operated independent of and parallel to the normal NSC machinery. Although this problem stemmed from a failure of civilian oversight it brings us to the nature and propriety of the role of military officers within the NSC staff.

#### Military Officers and NSC

The practice of including military officers in the NSC staff is not new. Alexander Haig served as Kissinger's deputy. Lt Gen Brent Scowcroft served under President Ford. Marine Lt Col McFarlane resigned as national security adviser in December 1985. More recently, Vice-Admiral Poindexter and Lt Col North, both active-duty officers, played key roles in the "Iran-Contra" affair. For several reasons, this is a practice

\*The Tower Commission comprised a 3-member board headed by former US Sen John Tower, R-Texas. The Commission's 3 month investigation into the "US-Iran arms for hostages" was published on 26 February 1987.

fraught with danger. The NSC staff is small and politicized, and a position on the staff is inherently a political position. A military officer serving on the NSC staff must, therefore, become a political animal; this is a burden no military officer should be asked to bear. McFarlane found no such example in the kind of direct and personal political combat that came his way in 1985. The cause it was outside his military training. The skills that allowed Vice Admiral Poindexter to perform well in the military restricted his knowledge of civilian politics and the larger geopolitical demands of national security and caused him problems as national security adviser. Lt Col North became too politically involved in the cause over the Nicaraguan rebels.

Second, since America's commitment to civilian control over the military is absolute, its national security adviser should be civilian. Especially since the civilian politician is more in touch with public and external attitudes than the military. He sees a broader picture and takes it into account. Of course some very able military people may be as good as civilians, especially in external affairs. Lt Gen Brent Scowcroft, who served under President Ford, had been a professor of political science at the USAF Academy, and apparently understood US civil-military relations more thoroughly than the others. There are, however, other reasons why the NSC is no place for military officers.

Third, a military officer is trained to be loyal to political directives; therefore, he is unlikely to challenge the judgement of his president/commander-in-chief if such a challenge is warranted. The professionalism of a military officer on the NSC will be affected by the need to serve his president's policy preferences.

Fourth, a military man is likely to be one of the best with operational experience and therefore it is desirable for the military to acquire primacy in shared endeavors. This is dangerous especially when military solutions are often inappropriate to most of the problems of international affairs today.

#### Way Ahead

It is a concern that the tradition of using active military officers is being continued on the new NSC. Lt Gen Powell is the new deputy. The effective cooperation between civilian and soldier is essential as a means to sounder and more coherent decisions. But the job of the military officer is to offer expert advice to his political superior. The distinction between professional experts and political responsible officials seems impossible to observe while serving on the NSC staff. Even though it might deprive America of the services of able and devoted men, it is the author's view that military officers should not serve on the NSC staff.

The "Iran-Contra" affair illustrates another facet of the problem. The executive must establish firm lines of control and accountability and must not misuse the military in such a way as to draw it into constitutional conflict under the separation of powers. Vice Admiral Poindexter and Lt Col North should not have been placed in a position where active military have to take the Fifth Amendment. It reflects badly on the military and the nation.

Finally, given the built-in differences between the executive and legislative branches, only the most careful consultation on all important initiatives can bring the strengths of the two into play. United action under the constitution is a fundamental element of American democratic power even if the perfection of American democracy results in the imperfection of American foreign policy. The "Iran-Contra" affair may have been a calculated attempt to separate American foreign policy from the inconvenient and contradictory pressures of democracy. But this, during the 200th anniversary of the Constitution, is not to concede the virtues of the American system or to suggest that the American Constitution is no longer adequate for the United States in peace and war. There is no absolute defense against presidential error,\* but it is possible to minimize mistakes with sound staff structure. The creation of a white House permanent secretariat to serve under appointed policy aides may be a solution. Even without

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\*During the "Iran-Contra" scandal, President Reagan used his NSC staff instead of the Secretary of State as his chosen instrument in the conduct of American foreign policy. In addition, President Reagan appears to have made some bad choices for important posts especially for a man determined to delegate so much responsibility.

institutional changes the American system appears to be self-regulating. Any administration that deliberately by-passes key cabinet officers and Congress can be certain, as in the "Iran-Contra" affair, that if and when things go wrong the political repercussions may be devastating. However, if Congress is to play its part it must resist the temptation to focus excessively on the minute details of military spending at the expense of its oversight responsibilities.

## CHAPTER VII

### CONCLUSION

The military's strengths of organization, communications and a near monopoly of weapons give it a notional capability to impose its will on civil government. However, there is widespread opinion that the idea of civil control over the military in Britain and America runs very deep, has a successful record and is unlikely to be challenged. There are several reasons for this belief. First, the military suffer from several constraints: an inability to rule either society by their own resources, a lack of political legitimacy and a professional outlook which encourages officers to leave politics to the politicians. However, the main reason has been the armed forces belief in democracy and firm acceptance of civil supremacy. The military's loyalty to civilian government has been ingrained in the British and American armed forces partly as a result of formal constitutional and legal controls, and partly through personal loyalty to the Monarch and Constitution. Furthermore, in the case of Britain, the regimental system exacted additional loyalties. Therefore, removal of the existing government in either society by the use or threat of force is unthinkable. This brings us, therefore,

to the question could the armed forces of America or Britain represent a threat to democracy by a different route?

This paper has considered three future possibilities to civil-military relations. First, it is conceivable that a sharp disagreement between a Labour government and its military advisers over British defense strategy could trigger confrontation. Under no circumstance should military leaders go public to protest a policy issue since this would draw the military into constitutional conflict. The question is will the chiefs as a body accept Labour's policy or allow their military voice to be heard through the threat of "en bloc" resignation?

Second, British forces have on many occasions come to the aid of the civil power; such aid is given within the framework of the law and it is always under the ultimate direction and control of the civil authorities. Should, however, a situation arise where the Army is sucked into the domestic arena it is possible the lives of troops and the operational effectiveness of the armed forces could only be guaranteed by the introduction of certain measures. If this were to happen, the Army could find itself deployed throughout Britain in a partly operational and partly administrative role. These circumstances might be seen by some as an affront to democracy.

In America there is a distinctive element of military

force--the National Guard--that has no exact UK counterpart. The National Guard provides an intermediate use of force between the police and the employment of the regular army. Furthermore, there is a long tradition of military non-involvement in civil law enforcement. Nonetheless, recent changes to Posse Comitatus and other provisions in law suggest that new foundations have been laid for military intervention within the United States. Only time will tell whether any edifice of oppression is likely to be built upon these foundations. Congress must ensure that executive plans for emergencies conform to the Congress' will.

Third, the necessity for military officers in the NSC staff requires further examination. The tradition of using active military officers is being continued in the new NSC. There are, however, several reasons why this practice should be discontinued.

A position on the NSC staff is inherently a political position and a serving officer must be protected from the pressures of politics. In addition, the national security adviser should be a civilian. The skills which prepare military men to perform well in their own sphere restrict their knowledge of civilian politics and the larger geopolitical demands of national security. Furthermore, a military man is likely to be one of the few with operational experience and it is, therefore, possible for the military to acquire

pre-eminence. This is dangerous especially when military solutions are often inappropriate to most of the problems of international affairs today.

The effective cooperation between civilian and soldier is essential as a means to sounder and more coherent decisions. But the job of the military officer is to offer expert advice to his political master. The distinction between professional experts and political responsible officials seems impossible to observe while serving on the NSC staff. Even though it might deprive America of the services of able and devoted men, active duty military officers should not serve on the NSC staff.

APPENDIX A  
LEGAL CONTROLS

In Britain, the legal existence of Parliament depends upon the exercise of the Royal prerogative. Therefore, the regime that the military are asked to obey as the government of the day has the sovereign's guarantee that its authority is legitimate. An attempted military coup would put the monarch in an impossible position. If the monarch disapproves, the army becomes a revolutionary force and illegitimate. If the monarch approves, her disregard for the constitution would in the end destroy the monarchy.

The declaration of Rights 1689 was the beginning of a series of acts which placed the governance of the British army under annual Parliamentary sanctions. Not only the governance of the Army but disaffection within the armed services was dealt with by Act of Parliament.\* In addition, the legal authority by which an officer exercises discipline upon those over whom he has been placed, is derived from Parliament. The Naval, Army, and Air Force Acts have been passed by Parliament; they are not special military-created systems of discipline. Therefore, military law is as much a part of the law of the land as any other law and can only be amended by due constitutional process. Moreover, Britain and America accepted that domestic law and order was not the responsibility of the

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\*The statute principally in use to day is the Incitement to Disaffection Act 1934.

national military. In Britain, the police are legally and constitutionally empowered to enforce law and order. They act on behalf of the people and the power they exercise comes from Parliament. In America, the repudiation of military intervention in domestic law enforcement is the bedrock of "due process" upon which American government was built. In 1866 in ex parte Milligan, the Supreme Court rejected the idea that the national military could be used as an alternative to civilian measures to enforce the law. In 1873 the Posse Comitatus Act prohibited military participation in enforcing any civilian law whether local, state or federal.<sup>1</sup> There is, therefore, a deep rooted tradition in both societies that civilian leaders of the country will utilize civil law enforcement agencies to maintain law and order.

APPENDIX B  
CONSTITUTIONAL CONTROLS

In America, the founders balanced civil and military power one against the other and fused them in the person of the President. The President as a civilian was made commander-in-chief; as an elected official he is subject to the will of the people. The military through the Chief Executive thus came under the popular will.<sup>1</sup> By making the President commander-in-chief and giving him control over both civil administration and foreign policy the founders provided unity in direction and civil control over military action. In addition, to prevent the danger of uncontrolled power, the Constitution distributed power in a system generally known as checks and balances. The President has to share power with Congress and both he and Congress share power with the Supreme Court. By giving Congress powers of appropriation the founders established a branch which would correlate the necessities of war with the limitations of public opinion.

The British system of government is unitary rather than federal in form. There is no principle of division of powers. The legislative, executive and judicial authorities are not vested in separate and independent hands as they are in the United States. In Britain, responsibility is concentrated in the "government." As long as the government commands a

majority in Parliament its power is practically unlimited and uncontrolled except by constitutional conventions and the fear of alienating public opinion and, therefore, losing its power at the next general election.<sup>2</sup>

In Britain there is no written constitution; however, the military understand two basic conventions. The first is that the military accept and practice the fact that they are under political direction. The second is that the Services stay out of politics. These conventions have survived despite the fact that ". . . authority for the defense of the realm can be described briefly as a shotgun marriage of the royal prerogative and legislative control through Parliament."<sup>3</sup>

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