Statement of

Lindsay P. Cohn

Associate Professor of National Security Affairs

U.S. Naval War College

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Lindsay P. Cohn

Lindsay.cohn@usnwc.edu

Introduction

Mr. Chairman, Mr. Ranking Member, Senators, I am grateful for the opportunity to be here today to discuss this extremely important topic. While "civilian control of the military" may seem like a narrow issue, it is closely connected to the larger web of civil-military relations and, fundamentally, to democratic governance.

We have seen stark evidence over the last weeks that the principles of democratic governance are under strain in this country. Rule of law and trust in institutions have been deeply damaged. One of the most pressing problems for the incoming administration is how to begin to restore legitimacy and trust to our system of governance. That is one reason for being concerned about the implications of nominating a recently retired general officer to the position of Secretary of Defense. While it is only one position in a large structure, it is an important position, and its implications can be wide.

In my remarks, I will address five issues: first, the question of why this limitation exists in law, at all, and what it means to have "civilian" control of the military. Second, what I see as points in favor of Mr. Austin receiving the waiver and confirmation. Third, the principles at stake if Mr. Austin is granted a waiver and confirmed. Fourth, lessons to be drawn from the other two exceptions that have been granted, to George Marshall and James Mattis. Finally, what can be done to mitigate any harms that might result from proceeding with the waiver and confirmation.

Why Have this Law?

Civilian Control

Peter Feaver has described the civil-military problematique as "how to reconcile a military strong enough to do anything the civilians ask them to with a military subordinate enough to do only what civilians authorize them to do".[1] Over time, scholars have identified multiple possible mechanisms to deal with this problem, some of which are appropriate for democratic systems, others of which are not. Those appropriate for democratic systems include institutions that place civilians in positions of authority over the military, deliberate inculcation of a professional ethic of subordination to civilian political control, and systems of monitoring and punishment/reward that reinforce the ethic, among others.[2] While similarity of policy preferences is helpful, it is inappropriate to achieve that similarity through simply adopting the preferences of the top ranking military officers or placing them in political positions; reconciliation of views should come ideally from a relationship of respect, trust, and frankness between the political and military leadership.

[1] Peter D. Feaver, 1996, "The Civil-Military Problematique: Huntington, Janowitz, and the Question of Civilian Control", *Armed Forces and Society* 23(2): 149-178.

[2] Lindsay P. Cohn, 2011, "It Wasn't in my Contract: civilian control and the privatization of security", *Armed Forces and Society* 37(3): 381-398.

One of the mechanisms that is not appropriate for democratic systems is the practice sometimes called "ethnic stacking", which involves making the officer corps look like the political elite, in some way, whether that is through religion (as in Syria), class (as in more traditional monarchies), family/region/party (as in Hussein's Iraq), or language/ethnicity (as in the former Yugoslavia). This type of mechanism is designed to tie the military leadership's interests to the interests and fate of the political power elite, so that the military protects that elite. This is not appropriate for a democracy for the obvious reason that the military should serve the republic, not some particular party within it. As our country diversifies faster than our officer corps does, it would be well for us to remember this.

Civilian Control in the U.S.

In their debates over the draft Constitution, both the Federalists and the Anti-Federalists agreed that a standing army was a threat to liberty, partly because it could be used as an instrument of repression by a government, and partly because, as Alexander Hamilton warned,

> *The perpetual menacings of danger oblige [a] government to be always prepared to repel it; its armies must be numerous enough for instant defense. The continual necessity for their services enhances the importance of the soldier … The military state becomes elevated above the civil … by degrees the people are brought to consider the soldiery not only as their protectors, but as their superiors. The transition from this disposition to that of considering them masters, is neither remote nor difficult ….*[3]

In short, a standing army could be used by an aspiring tyrant, or the people might become seduced by its visibility and importance, and give up their freedom willingly. As the first line of defense against a military that might usurp the will or interests of the public, the founders agreed that the young Republic should not rely on a large standing military. Instead, it would have a system that mobilized citizens in the face of a threat. This is why Congress was required to re-visit the question of an army budget at least every two years.[4]

Furthermore, the framers thought that by dividing control of the military between the executive and legislative branches, they would reduce the chances of a tyrannical government using the military against the people.

It is important to understand that, at the time, the framers would have had little concept of a "career officer" being eligible for appointed office. Officers came in three versions: professional captain entrepreneurs, who raised their own armies and offered their services for hire – most of whom lived in Europe and would not have been candidates for office or appointment; men of the upper-middle or gentlemanly classes who had to make a living and chose the Army (especially engineers); and gentlemen-landowners who took officer billets when wars happened, but were

[3] Alexander Hamilton, Federalist 8

[4] Although the militia system turned out to be extremely impractical and highly variable in quality, so even the young Republic ended up with a small full-time Army.

essentially amateurs. They would not have needed to put any caveat in for the position of Secretary of War, because the idea of professional officers was still highly unusual.

Over time, however, officership became more professionalized, and by the 20th century, the public had begun to view soldiers, sailors, and their officers, with more respect than the average 18th or 19th century American had. After World War II, as the Cold War began, for the first time, the U.S. decided to maintain a large standing army of full-time personnel, who served for a specified contract period, rather than the duration of the exigency. In 1947 (amended 1949), Congress created a new framework that would significantly change the way defense, security, and foreign policy would be handled: the National Security Act.

This Act merged the Departments of War and Navy, to organize, manage, and direct a standing military establishment of a size and type the U.S. had never seen. The new secretary would preside over an establishment much larger than the Department of State, and would have to wrangle a number of competing interests among service chiefs and secretaries, as well as operational commanders. Secretary of War was a position that came into prominence only once a need arose; it had generally had a very limited political role. Foreign policy was handled entirely by State and domestic issues were handled primarily by the Attorney General. The creation of the Department of Defense, along with a large standing army, simultaneously gave the armed forces significantly more political power and broadened the secretary's role in policy. Out of a concern that this new defense establishment would be enormously powerful, Congress insisted that it not be headed by a military officer straight out of service, as this would presumably amplify the military voice too much.

Why a "Civilian"?

Civilian control of the military is accomplished through a web of mechanisms, including the military's own sense of duty, a legal system for holding them accountable to laws made by Congress, and an institutional structure that places people in positions of command by merit of the people's choice through election, rather than through the military's internal organizational choices.

The experience and expertise needed for this position are broader than military experience and expertise generally are. It is good (though not necessary) for a secretary of defense to have *some* military experience, but as Peter Feaver has argued, the two most successful post-Cold War secretaries (Perry and Gates) had only brief experience early in their careers.[5]

[5] Peter D. Feaver, 2020, "Why Generals Shouldn't be a Lock to Lead the Pentagon – and how Lloyd Austin can Ease those Concerns", *Politico.* https://www.politico.com/news/magazine/2020/12/09/generals-pentagon-defense-secretary-military-civilian-norm-443989

What makes a civilian?

There are at least three elements making up the "civilian" in "civilian control": one is about a person's main formative experiences and sources of expertise – whether they come from inside or outside of the armed forces. A second is about how that person got where they are – were they elected by the people? Or appointed on the basis of expertise in policy-making or management? Or were they judged on the somewhat narrower criteria of military promotion? But the last is the most important – it is whether they think using what Clausewitz called "political logic" versus "military logic". Some career officers are capable of this, but many are not, and it is important not to allow "military logic" to dominate either foreign or defense policy-making.

Military logic, according to Clausewitz, is when a person thinks according to the nature of war – when one's main concerns are military victory, which causes one to want overwhelming force, overwhelming resources, and unrestrained violence, once a decision for war has been made. Clausewitz argued that allowing such logic to dominate would be self-defeating for the state, because war or the use of force was always meant to serve a political end. The logic of war should never be allowed to dominate the logic of politics, which determines how much the political end is worth, and when to acknowledge that the ends must be revised, and how to use the situation on the ground to bargain for an acceptable outcome, once it appears the original aims will cost more than they are worth. Allowing military logic to dominate would often mean committing far more resources than the political end was worth. It is necessary, therefore, that the statesman have the advice that comes from military logic, but that political logic dominate the actual conduct of both policy and war.[6]

Why seven years?

There is of course no magic time period that turns a military officer back into a civilian. How long that takes depends partly on how long the person was in military service, partly on their character and beliefs, and partly on what type of work they take up after leaving military service. There is, however, still a logic to a cooling off period of at least six years:

First, it allows time for military assignments to rotate through at least twice, which changes the command relationships and the people in them. One of the main concerns, especially with a retired general or flag officer, is that they and/or other officers will fall far too easily back into familiar relationships and patterns of behavior. If all of the people the nominee worked with have moved on at least twice, the chances are lower that that will happen.

Second, it allows time for the person's network to expand, especially if they do not simply retire but enter some other line of work. This is beneficial, in that it helps to broaden their perspective and give them a somewhat more diverse network to rely on.

[6] Lindsay P. Cohn, 2018, "Political Realism and Civil-Military Relations", in the *Edinburgh Companion to Political Realism*, Miles Hollingsworth and Robert Schuett (eds), Edinburgh University Press.

These are important to mitigate the danger of the uniformed side of things – the Joint Staff, the services, the combatant commands – dominating the DoD's position and advice. The CJCS is the statutory military advisor; the Secretary of Defense is supposed to have a different and broader perspective.

Third, it is extremely important to avoid the perception that the Secretary of Defense is just a glorified or global combatant command job. Taking someone who has spent 30-40 years in the military at the highest levels of command, and then almost immediately putting them in charge of the Department of Defense, is too much like saying the Secretary's job is just like a combatant commander or theater commander's job: it implies too much continuity between what they were doing and what they will be doing. This is bad partly because it is not true (the job of Secretary includes an enormous array of concerns that commander does not), and if the nominee him or herself thinks it is, they will be very poorly prepared to do the job. But even if the nominee understands the vast differences, the public and other members of government may not, and that contributes to the misperceptions of military expertise (see below) as well as the misperceptions of what governance and policy-making require.

Secretary of Defense is not just being a global combatant commander. It is a policy-making job; it includes leadership and management of the entire civilian side of the Defense Department as well as all the military departments, Joint Staff, and combatant commands. It involves reconciling, bridging, and translating among not only these elements, but the rest of the cabinet, the White House, and Congress. The principle of civilian control indicates that it should be someone with authority derived from their civilian experience and expertise, not from a military career.

Why the difference between Secretary of Defense and other cabinet positions or elected office?

In elections, the theory is that the voters get to decide whether they think someone is the person they trust to carry out the job, and even then there are restrictions. Active duty officers who wish to run for office must retire or give up their commissions.[7]

With appointed positions, the Constitution and other statutes have laid out the requirement that the Senate advise the president and consent to his or her choices, or not, presumably on the grounds that some discretion in selecting the people to do the day-to-day work of governing is important to the health of governance. If the people want to select a recently retired officer to represent their interests, that's one thing. If that person were then to try to appoint his or her cohort of recently retired military colleagues to all the Undersecretary and Assistant Secretary positions, this chamber might not think that was wise.

But why should it be acceptable for a recently retired foreign service officer to be made Secretary of State, but not a recently retired military officer Secretary of Defense? Mainly

[7] Although reserve and National Guard officers, who are part-time volunteers, are not required to give up their commissions in order to serve in elected office.

because there is no danger of either a coup or a breakdown in military security coming from a too-incestuous Department of State. Also because there is a significant cultural difference between being a military officer and being a foreign service officer or other civil servant: the former is a far more centralized, hierarchical, and unifying culture; the latter two far less defined. In short, the danger of too much similarity is just much less outside of DoD.

Austin's Qualifications

First and foremost, he is the person the president-elect wants in this position. Mr. Biden seems to believe that he and Mr. Austin will have a good working relationship, at a time when that grease will be very important to the running of the wheels. Mr. Biden also seems to believe that Mr. Austin shares enough of his vision for foreign policy that implementation will be smooth – again, an important consideration at a time when the U.S. faces multiple serious challenges in the world.

Mr. Austin has a long history of distinguished service to his country, and experience both in managing large organizations and engaging in diplomatic efforts.

The importance of the fact that he would be a Black man in a very visible position of authority, trust, and responsibility, should not be underestimated. As scholars like Meg Guliford have noted, the national security world has thus far done a poor job of fostering the advancement of people of color to leadership positions, and of making it a world that is inviting to young people of color.[8] Systemic racism is also dangerous to democracy, and a lack of diversity at leadership levels hampers the U.S.'s ability to achieve true democratic legitimacy as well as depriving it of an enormous amount of talent.

The problems of racism and white supremacist beliefs within the military are serious and must be addressed. They pose dangers to the effectiveness of our armed forces, to their ability to recruit and retain an appropriate mix of people to deal with future defense and security challenges,[9] and to the larger challenge of pursuing justice in society as a whole. The U.S. military is made up of a fairly representative sample of Americans (except at higher levels of leadership), and it cannot pretend to be insulated from the social struggles that have shaken the country, particularly in the last five or six years. The military must deal with these issues, and must help their members process what it means to serve a society that is struggling over who belongs and who matters. If Mr. Austin can help with that, it will be a significant advantage.

What is at Stake in Civil-Military Relations?

[8] Meg Guliford, 2020, "What Lloyd Austin's Nomination Really Reveals", Inkstick (inkstickmedia.com/what-lloyd-austins-nomination-really-reveals/

[9] Lindsay P. Cohn, Written Testimony to the National Commission on Military, National, and Public Service, 16 May 2019. https://inspire2serve.gov/_api/files/270

Despite these important qualifications, there are still reasons to be concerned about Mr. Austin's nomination.

Weakening the Norm

Granting this waiver (or removing the statutory provision altogether) would weaken the tangible manifestation of the principle that civilians – those with a political rather than a military logic – should be in control of the Defense Department, which would very likely lead to more appointments of recently retired officers.

Politicization of the Officer Corps

If this became common, we might see senior officers angling for a Secretary of Defense nomination, might see them discussed in political circles as possible cabinet members, etc. Here it might be useful to differentiate two different meanings of the word, "political": one is the Clausewitzian meaning of approaching problems with a logic of achieving a political/strategic rather than purely military end; the other is specifically with respect to achieving political position or power within one's own partisan system. There is nothing particularly wrong with senior officers exhibiting the first kind of "being political"; there is significant concern with the second, because, again, it is important to try to keep the military as non-partisan as possible.

Even if every military officer maintained a personal ethic of staying out of politics until retired, both the public and elected officials might still *believe* that their actions were based on political ambition rather than judgment of the national interest.

Perceptions of Expertise

The problem here is a general misunderstanding – among the public as well as many members of government and the military – of the nature of security expertise, and a belief that military expertise is the same thing as security or foreign policy expertise. That is not the case – military experience can be a valuable part of security/defense/foreign policy expertise, but there is a reason the National Security Strategy is written by the National Security Council Staff and the National Defense Strategy comes largely from the civilian side of the Department of Defense. The reason is that the main form of expertise accumulated by high-ranking military officers is in understanding how the military works and what it can and cannot do. Some officers may get experience devising military strategy or engaging in delicate diplomacy or in combat, but that depends largely on the individual and their branch or community (keeping in mind that most officers who reach four star levels do so from combat arms or combat support branches). Generalized "military expertise", though, is mostly about how the U.S. military works and what it can do. That is important for a Secretary of Defense to know and understand, but that is also

why the Chairman of the Joint Chiefs, the service chiefs, and the combatant commanders are there to advise the Secretary.

National security expertise, foreign policy expertise, is far more about understanding how states behave, how political dynamics work, how domestic politics interact with international politics to constrain the options available to leaders, how bargaining and signaling work, how threat and violence work as part of a bargaining process, and so on. These are things a military officer may become proficient in, but it does not happen simply by virtue of military experience. Military expertise is not the same as security and defense expertise.

But when too many people believe they are the same, the result is too much deference to military advice, or worse, abdication by both the people and their representatives of the hard work of self-governance, policy-making, and oversight. In short, as Hamilton warned, if the people believe that only professional military officers understand how to protect them, it is a short step to the belief that only professional military officers know how to govern them.

Trust and Confidence

The US military enjoys high levels of public trust. That is good. What is not good is when the military is more trusted than the basic institutions of democratic governance, which, at this point, it is.[10] Choosing a recently retired general officer, and arguing that he is uniquely qualified to meet the current challenges, simply furthers the narrative that military officers are better at things and more reliable or trustworthy than civil servants or other civilians. This is hugely problematic at a time when one of the biggest challenges facing the country is the need to restore trust and faith in the political system. Implying that only a military officer can do this job at this time is counter-productive to that goal.

There is also a danger that elected officials may use the public's trust in the military – whether it is trust in their integrity, disinterestedness, expertise, or moral authority – to avoid the difficult parts of politics. But military personnel should not be used as shields for political choices. In order to restore trust and confidence in the system, elected officials must embrace the responsibility of making the public case for difficult choices. They should not seek legitimacy for their policies from an appeal to military authority. This administration will need to work to restore and build faith in our institutions of governance and in our system, in part by reforming the system, but also largely by working to earn the public's trust. Not borrowing that trust from the military.

What We Learned from Marshall and Mattis

[10] David T. Burbach, 2019, "Partisan dimensions of confidence in the U.S. military, 1973-2016", Armed Forces and Society 45(2): 211-233; James T. Golby, Lindsay P. Cohn, and Peter D. Feaver, 2016, "Thanks for your service: Civilian and veteran attitudes after fifteen years of war", in Warriors and Citizens: American views of our military, James Mattis and Kori Schake (eds).

Effectively, we learned that many of the fears that led to the creation of the waiting period were justified. While people can argue over whether Marshall and Mattis did well at the policy-making parts of their jobs, there is basic consensus that they either deferred too much to the uniformed side (Marshall) or melded with the uniformed parts of the department and sidelined the civilian parts (Mattis).

Truman wanted Marshall largely because the war was not going well (partly due to friction between Johnson as Secretary of Defense and Acheson at State) and Truman was having trouble controlling MacArthur. He seems to have hoped that Marshall would both boost his popularity (with Marshall's own popularity) and help him balance MacArthur (with Marshall's military authority/gravitas and personal relationship with MacArthur). Those are both signs of civil-military problems and ill health. Moreover, Marshall was not very successful at solving these problems for Truman. James Matray writes that "U.S. leaders understood that extending hostilities northward risked Soviet or Chinese intervention and therefore placed limits on MacArthur's advance northward. However, Secretary of Defense Marshall, new to his job, undermined Truman's emphasis on caution when on September 27 he sent an ill-considered cable to the … commander. Affirming his orders to invade North Korea, he elaborated that his superiors "want you to feel unhampered strategically and tactically to proceed north of the 38th parallel." He advised MacArthur against any advance announcement that might precipitate a vote in the United Nations."[11]

Marshall appears to have deferred almost entirely to MacArthur's views on how the war should be handled, and Truman was constantly forced to respond personally to MacArthur's over-steps, when it should have been Marshall reining him in. Far from helping Truman, Marshall largely stood by, then tried to dissuade Truman from firing MacArthur, before eventually, reluctantly, backing Truman.

Truman went on to drop out of the primaries, his low popularity due partly to his administration's mishandling of the Korean War. While Marshall was a capable statesman, it seems clear that, as Secretary of Defense, his military background and relationships damaged both civil-military relations and the actual conduct of the war.

In Mattis's case, most of the support for a waiver came from people who were concerned about Trump's lack of experience and the shallowness of the pool of people available to him after large numbers of Republican security and foreign policy experts publicly stated their opposition to his candidacy. Mattis was someone who would know what was going on, who would have the gravitas to perhaps guide an inexperienced and volatile person through the difficult early days of the presidency. And in many ways, Mattis did accomplish this. But he also relied heavily on his military networks to populate positions in his pentagon, and on the joint staff rather than OSD (due, admittedly, to the difficulty of finding appropriate civilians to put in OSD positions). Whether that was entirely Mr. Mattis's fault or not, the fact remains that it weakened the civilian side of the department vis a vis the Joint Staff.

[11] James Matray, 2016, *Crisis in a Divided Korea*, ABC-CLIO

Can the Downsides be Mitigated?

While I think the nomination, waiver, and confirmation of Mr. Austin are likely to make restoring the health of democratic institutions more difficult, there are a number of things that could reduce potential damage.

Congress

- Maintain the statutory ban and emphasize the specific and narrow reasons why a waiver is being granted.
- Be willing to vote against a waiver in the future
- Conduct oversight – ask hard questions, push the administration and the Department to consider broad concerns
- Help the administration put good civilians in important positions. This is already going fairly well – Dr. Hicks, Dr. Kahl, Mr. Blinken at State, and many others whom President-elect Biden has named are intelligent, ethical, deeply experienced people. One can agree or disagree with their policies, but they are clearly examples of civilian defense and foreign policy expertise.
- At his hearing, seek to establish whether Mr. Austin is willing and able to demonstrate an awareness that he would be a political, policy-making actor, not an "apolitical" military officer. He will need to be transparent with the press and with Congress, able to listen to multiple points of view and represent them to the president, able to debate policy with the president, and able to translate the president's vision and guidance to the myriad parts of the Defense Department.

Mr. Austin

- He should demonstrate a clear understanding of and commitment to the distinction between his role as a commanding officer and his role as a department secretary and cabinet member.
- He should be willing to sit down with the HASC and answer their questions – Mattis declined to do so, and that turned out to be fairly indicative of how reticent he was.
- He should empower his civilian staff vis a vis the Joint Staff
- He should insist on being called "Secretary" and "Mr." rather than "General"

Biden Administration

- The incoming administration should avoid using military personnel as props or political shields
- They should continue to name qualified, experienced civilians to important positions
- They should work to build relationships of trust and respect between civilians and their military counterparts and interlocutors

Conclusion

Fundamentally, scholars have identified a number of weaknesses in American democracy and civil-military relations, including too much deference to the military,[12] too little belief in the principle of civilian control,[13] worrisome trends in partisan polarization and identification with the military,[14] and a growing number of Americans who express little confidence in basic principles of democratic governance.[15] Civilian control, civil-military relations, and democratic norms are all fragile right now, and will require active efforts to rebuild and strengthen.

There are many ways in which granting this waiver and confirming Mr. Austin will make those efforts more difficult; should this chamber choose that path, it will be important to exercise oversight and ensure that the administration is doing what it can to rebuild civilian expertise and authority in the Department of Defense and the government more broadly.

In other ways, Mr. Austin may be the right person for the job at this moment. The president-elect will need his team to work together smoothly and seamlessly to deal with the extreme challenges they will face, both domestically and abroad. Mr. Austin's leadership could be a step in the right direction of diversifying the upper levels of the national security establishment.

Our country faces a difficult time, and the incoming administration must balance a number of competing priorities, central among them the need to restore the legitimacy of the principles and institutions of democratic governance. Mr. Austin's nomination will neither heal nor break American democracy by itself, but it is a critical node in the web.

Thank you, and I look forward to your questions.

[12] Golby, Cohn, and Feaver, 2016; James T. Golby and Peter D. Feaver, 2020, "Biden inherits a challenging civil-military legacy", War on the Rocks. https://warontherocks.com/2021/01/biden-inherits-a-challenging-civil-military-legacy/

[13] Ron Krebs and Robert Ralston, 2020, "Civilian Control of the Military is a Partisan Issue: too many Americans don't subscribe to a basic tenet of democracy", *Foreign Affairs* July 2020. https://www.foreignaffairs.com/articles/united-states/2020-07-14/civilian-control-military-partisan-issue

[14] Michael Robinson, 2018, "Danger Close: military politicization and elite credibility", dissertation, Stanford University.

[15] Ian Bremmer, 2018, "Is democracy essential?" https://www.nbcnews.com/think/opinion/democracy-essential-millennials-increasingly-aren-t-sure-should-concern-us-ncna847476