

# Do We Risk A Military Coup?

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The Insurrection Act is among the most fundamental of all federal laws. First enacted in 1807, it has been used repeatedly to carry out government's most elemental responsibility: that of ensuring domestic tranquility.

The Preamble to the Constitution lists the task of ensuring domestic tranquility among the five purposes for which the Constitution of the United States was created. Nothing is more vital than protecting the physical safety of Americans.

Military officials are sworn to defend the nation against all enemies, foreign and domestic. But today, as cities are laid waste by violent mobs, DOD seems reticent to defend America against these brutal domestic enemies.

On June 4th, 2020, the prominent publication, *Foreign Policy*, published a morning brief entitled, *Generals Denounce Trump's Protest Crackdown Plan*. The brief critiqued the president's threat to invoke the Insurrection Act, and subtly disparaged its relevance as "a two century-old law." But the law empowering the president to quell unrest, using military force, has been invoked 22 times since its first use in 1808.

Presidents Thomas Jefferson, Andrew Jackson, Ulysses S. Grant, Rutherford B. Hayes, Grover Cleveland, Woodrow Wilson, Herbert Hoover, Franklin Roosevelt, Dwight Eisenhower, John F. Kennedy, Lyndon Johnson, and George H.W. Bush, have all invoked the Insurrection Act to stop riots, enforce segregation orders, end military disturbances, break strikes, quell labor disputes, and crush Nate Turner's slave rebellion.

The Insurrection Act was last used in 1992, when federal troops under the command of the U.S. Army's 7th Infantry Division effectively quelled a murderous racial uprising in Los Angeles, following the beating and arrest of Rodney King.

President Donald Trump is the commander-in-chief of the armed forces, outranking every general and official in DOD. It is his duty to maintain domestic tranquility; he has both statutory and inherent constitutional authority to do so.<sup>1</sup>

Despite that clear imperative, generals and Pentagon officials have created doubt that the military chain of command will respond to lawful orders of the president. It is no longer clear that the defense establishment functions in a safe, responsible manner today.

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<sup>1</sup> <https://www.law.berkeley.edu/library/resources/disasters/Crockett.pdf>

*Defense One*, a military online publication, reported that two retired lieutenant colonels, John Nagle and Paul Yingling have written an open letter to General Mark Milley, Chairman of the Joint Chiefs of Staff (CJCS), urging him to employ military force to remove the President of the United States if he does not leave office on January 20, 2021. They wrote: "If Donald Trump refuses to leave office at the expiration of his constitutional term, the United States military must remove him by force, and you must give that order."<sup>2</sup>

It should go without saying that it is impermissible for retired officers to urge a coup to overthrow the government of the United States. And since President Trump has never hinted that he would not follow the constitutional plan for succession of power, it is doubly disturbing that their call for military insurrection is based on fanciful conjecture of what the president might do under various scenarios.

The idea of a military takeover has been percolating for some time. As early as August 18, 2020, *Defense One* had published an article by Thomas Crosbie, entitled, *Six Scenarios for Military Intervention After January 20th*.<sup>3</sup> After discussing six rather implausible scenarios, its author stated, "Coups . . . are nasty things, and discussing them in the American context is deeply distasteful. Nevertheless, facing these scenarios may help us understand the real dynamics general and flag officers will be forced to navigate in the coming months." The author appears to suggest that the generals must contemplate overthrowing the president on or after January 20, 2020 if the situation warrants doing so.

The lieutenant colonels' letter might be dismissed as delusional, however, other factors, including its prominent placement in *Defense One*, suggests that others are acting in concert to undermine the authority of the president as commander-in-chief of the armed forces.

The military is becoming dangerously politicized. In response to President Trump's threat to use military force to quell urban violence, retired generals and DOD officials savaged the president in a seemingly coordinated fashion.

General James Mattis resigned as Secretary of Defense on December 20, 2018, in a successful effort to block the president from withdrawing troops from Syria. On June 3, 2020, he issued a frightening denunciation of the president. After praising the rioters for their "wholesome and unifying demands," he denounced the president in scathing terms: "We are witnessing the consequences of three years without mature leadership," he said, "We can unite *without him*, drawing on the strengths inherent in our civil society."<sup>4</sup>

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<sup>2</sup> <https://www.defenseone.com/ideas/2020/08/all-enemies-foreign-and-domestic-open-letter-gen-milley/167625/>

<sup>3</sup> <https://www.defenseone.com/ideas/2020/08/six-scenarios-military-intervention-after-january-20/167777/>

<sup>4</sup> <https://www.theatlantic.com/politics/archive/2020/06/james-mattis-denounces-trump-protests-militarization/612640/>

What exactly did Mattis mean by saying “We can unite ‘*without him?*’” General Mattis brushed aside the widespread riots, looting, arson and murders sweeping America by saying, “We must not be distracted by a small number of lawbreakers.”

During the week of June 7th, 2020, retired General Colin Powell led retired military leaders in blasting the commander-in-chief. Powell praised other officers who had spoken out against the president in recent days. General Powell echoed General Mattis’ denunciations of the president, saying he agreed that Trump is the first president in his lifetime who is not trying to unite the country. <sup>5</sup>

The event that triggered General Mattis’ extraordinary denunciation of the president was Trump’s lawful use of national guard troops to clear the way for him to make a symbolic appearance at St. John’s Episcopal Church across from the White House. The president walked to the church, which had been torched by rioters and posed with the Bible, demonstrating his commitment to law, order, and religious freedom.

Many general officers sneered at the president’s actions and denounced him in a coordinated manner.<sup>6</sup> In a veiled swipe at the American electorate, retired Marine General John Kelly said, “I think we need to look harder at who we elect.”

Retired Marine Corps General John Allen arrogantly claimed, “Donald Trump isn’t religious, has no need of religion, and doesn’t care about the devout, except insofar as they serve his political needs...” He continued, “The president’s speech was calculated to project his abject and arbitrary power, but he failed to project any of the higher emotions or leadership desperately needed in every quarter of this nation during this dire moment.”

Navy Admiral Mike Mullen said, “It sickened me yesterday to see security personnel—including members of the National Guard—forcibly and violently clear a path through Lafayette Square to accommodate the president’s visit outside St. John’s Church.”

Air Force General Richard Myers said, “The first thing was just absolute sadness that people aren’t allowed to protest and that, as I understand it, that was a peaceful protest that was disturbed by force, and that’s not right.”

William Perry, former defense secretary under Clinton, joined in by saying, “I am outraged at the deplorable behavior of our President and Defense Secretary Esper, threatening to use American military forces to suppress peaceful demonstrators exercising their constitutional rights.”

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<sup>5</sup> <https://www.nbcnews.com/politics/donald-trump/colin-powell-calls-trump-liar-says-he-skirts-constitution-will-n1227016> It was General Colin Powell who famously waived a test tube mimicking sarin gas, deceitfully urging the UN to support the invasion of Iraq. His guile and deception led to the 2003 invasion of Iraq and the killing of two million innocent people.

<sup>6</sup> <https://www.cnn.com/2020/06/05/politics/military-leaders-trump-floyd-protests/index.html>

Finally, on June 5th, Leon Panetta and Chuck Hagel, former defense secretaries for Barack Obama, joined 87 former defense officials in an open letter published in the Washington Post on June 5<sup>th</sup> saying, "We are alarmed at how the president is betraying this oath by threatening to order members of the U.S. military to violate the rights of their fellow Americans."<sup>7</sup>

The declarations of these military officials appear calculated to undermine the president's authority to quell domestic disturbances. By suggesting that invoking the Insurrection Act is illicit, and by downplaying widespread urban terror, these officials have placed their imprimatur on violent, criminal behavior.

Article 88 of the UCMJ prohibits retired officers from using contemptuous words against the President of the United States.<sup>8</sup> It is difficult to legally justify many of these officers' comments. In many instances, the contemptuousness toward the President appears to violate criminal law.

Taken together, the coordinated release of scathing remarks by senior officials, coupled with publication of a letter advocating a military coup, suggests a deep sickness within the Pentagon and within our constitutional structure.

To my knowledge, neither the Secretary of Defense nor the service chiefs have taken action against the widely publicized talk of military insurrection. General Milley should refer the colonels' letter to the Legal Counsel to the CJCS to determine whether its publication violates the Uniform Code of Military Justice (UCMJ). Beyond that, Secretary of Defense Mark Esper should issue a grave warning against officers, both active and retired, who seek to overthrow the President of the United States.

Those retired officers who have published contemptuous words against the President of the United States should be issued permanent letters of reprimand, cautioning against criminal violations of Article 88, UCMJ. They should be reminded that Article 88 applies to retired officers and that the law was enacted because undermining the authority of the commander-in-chief presents a clear and present danger to the survival of our Republic.

The Department of Defense must act resolutely to restore public confidence. Americans deserve assurance that our nation will not be overthrown by a military cabal.

NOTE: Colonel Richard H. Black (Ret.) was a career judge advocate (JAG) officer and former Chief of the Army Criminal Law Division, Office of the Judge Advocate General, the Pentagon. He played a key role in deploying the 7th Infantry Division (Light) to quell the 1992 LA riots.

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<sup>7</sup> <https://www.newsweek.com/donald-trump-washington-post-letter-defense-protests-1509145>

<sup>8</sup> [https://www.google.com/search?q=article+88+UCMJ&gs\\_lvs=1#tts=0](https://www.google.com/search?q=article+88+UCMJ&gs_lvs=1#tts=0)