

Shadow Government and the Eclipse of Democracy By Clifford Bob

Review of *National Security and Double Government* by Michael J. Glennon (Oxford University Press, 2015)

Of all the constituencies disappointed by President Barack Obama, few are more disenchanted than civil libertarians. As Senator and candidate, Obama promised or suggested that he would end the national security excesses of the Bush administration. He vowed to halt torture, to close Guantanamo, and to avoid wars of choice. As the candidate of “change you can believe in” and as a relative newcomer to Washington, Obama appeared to offer the best hope for those who believed that, since 9/11, the country has fought too many wars at too high a cost in lives, rights, and money. With a strong mandate from the American people in 2008, a Democratic Congress, and supportive Western allies, a major shift in policy appeared in the offing.

But Obama dashed most of those hopes, continuing or deepening Bush administration policies. Although he repudiated torture and formally ended the Iraq and Afghanistan debacles (the latter after a years-long troop surge), the U.S. has in many ways remained on a war footing. Thousands of American soldiers, military trainers, and private contractors remain in both countries. The U.S. and European allies engaged in militarized regime change in Libya without Congressional authorization. Exceeding the terms of a UN Security Council resolution, they left an anarchical state that has destabilized neighbors and become a hotbed of regional terrorism. More recently, in the face of brutality by a ragtag band of criminals grandly proclaiming themselves the Islamic State, the President authorized airstrikes in Iraq and Syria without Congressional approval. From the start of his Presidency, Obama greatly increased the number and geographic scope of drone strikes aimed at suspected Islamic militants. As part of this, he has authorized the killing of Americans without judicial review. Many of these actions have been justified, albeit questionably, under the 2001 Authorization for the Use of Military Force (AUMF) directed against the instigators of the 9/11 attacks. Recently, the administration has proposed its own AUMF against IS and a broadly defined set of “associated persons or forces,” with powers to make war beyond even those in the 2001 AUMF. Meanwhile, from early in his administration, Obama championed a “don’t look back” stance toward the Bush administration, refusing to prosecute possible violations of laws prohibiting torture and other crimes. On the other hand, his Justice Department has prosecuted more journalists under the Espionage Act than all other administrations before it. And Obama has left the National Security Agency’s dragnet surveillance programs directed against American citizens largely intact.

What explains this gap between promise and performance? For Michael Glennon, the answer is the rise of “double government.” The country’s Madisonian institutions—the courts, the Congress, and even the Presidency itself—have ceded power on an expansively defined set of security issues to a Trumanite network composed of several hundred top intelligence and military officials. In *National Security and Double*

Government, Glennon names the highest of these and shows how they have coerced, intimidated, manipulated, or fooled Madisonian officials, including this and earlier Presidents, into giving them what they want: huge discretion to conduct the most important foreign and security policies in secret and with minimal oversight. Glennon collects many striking examples over several decades. As one well known case, he recounts the ways in which top intelligence agency officials, intent on implementing a variety of new surveillance programs after 9/11, acted in secrecy, skirted the law, and misled Congress and the courts. Another recent example concerns Afghanistan war policy, with President Obama complaining that military leaders presented him with only their own preferred option for increasing troop numbers in Afghanistan. Other options were “cook[ed]” to appear absurd, and top brass threatened resignations *en masse* if the President went against their proposal.

Glennon’s argument is powerful and troubling. Conceptually, it is loosely based on the ideas of nineteenth century British journalist Walter Bagehot whose book, *The English Constitution*, argued that political institutions may exist primarily as veneers, their power lost to “efficient” institutions that act largely behind the scenes. If Glennon is right about double government in the U.S., the real powerholders face no electoral accountability—and only limited control by Madisonian institutions that have the formal Constitutional power, but seldom the political will, to challenge the Trumanites.

Who is to blame for a state of affairs so dangerous to democracy? Double government has its origins in the Truman era, with enactment of the National Security Act of 1947 which established the CIA, National Security Council, and a unified military command. Along with Truman’s later creation of the NSA, the reasons for these moves included fear of Communism--and distrust of the American people. Top leaders such as Dean Acheson expressed contempt for the ability of ordinary Americans to grasp the gravity of the Cold War or to stomach the steps ostensibly necessary to mitigate it.

Once established, the Trumanite military and security apparatus perpetuated, enlarged, and empowered itself. Glennon refuses to see this as a conspiracy by national security elites to seize power. Instead, the bureaucratic imperative is at work, with agencies defending their budgets and prerogatives against all comers. They engage in pervasive fearmongering, often divorced from systematic risk assessment. They classify huge amounts of information, require confidentiality of employees, and prosecute whistleblowers. They cultivate a massive complex of media supporters and corporate hangers-on, feeding on government-approved leaks and contracts. Efforts to create internal checks and balances, such as inspectors general within security agencies, fall victim to institutional self-protection. Glennon’s detailed examination of these processes is superb.

What of the Madisonian institutions? In Glennon’s view, they survive primarily to obscure the real workings of power among the unelected military and security elite. The federal judiciary is populated with judges largely sympathetic to or having roots in the Trumanite network. Courts such as the FISC operate in secrecy, without real adversarial procedures, and with predictable results—rubber stamping executive branch requests for more surveillance. Congressional oversight has withered in the face of short-term electoral imperatives and security agency obfuscation. Most surprisingly, even

Presidents have little ability to restrain agencies and unelected officials whose longevity and supposed expertise lend their opinions legitimacy and weight. Only in exceptional cases, such as Truman's firing of General Douglas MacArthur or Obama's of General Stanley McChrystal, do Presidents exercise their full power. More typically, they bow to the arguments, preferences, and interests of security elites.

But, in Glennon's telling, it is sometimes difficult to identify who is a Trumanite and who a Madisonian. Where, for instance, did Truman fall? Or General Dwight D. Eisenhower, presciently warning about the military-industrial complex in his farewell address as President? The top echelons of the George W. Bush administration also appear to have inhabited both camps. Bush officials notoriously pushed CIA analysts to provide intelligence to support some of the flimsy arguments for war on Iraq. It is difficult to know whether Obama attacked Qaddafi, IS, and others because of pressure from the Trumanites or because he genuinely believed in these actions. This matters because if the problem lies with unelected security officials, as Glennon believes, strengthening the president's hand makes sense. But if an imperial presidency is a big part of the problem, then strengthening it further would be counterproductive. Glennon argues that the Trumanites do not always get their way, indeed that a few losses help maintain the illusion that Madisonian institutions are in control. He would doubtless agree that key figures such as Robert Gates move easily from bureaucratic to Executive posts. But this lack of clarity may also suggest that the problem lies elsewhere, perhaps in a paranoid style of American politics or in a pervasive ideology of American exceptionalism. Whatever the exact diagnosis of a problem that is clearly multidimensional, Glennon is devastating in his critique of Congressional weakness in checking Executive actions and overseeing military and intelligence agencies.

Nor have external checks fared better. Much of the press credulously reports overblown threat assessments and cheerleads military actions. Leakers and critical journalists are prosecuted or marginalized. Most fundamentally, the American public remain disengaged from foreign policy. In Glennon's view, our lack of civic virtue—our unwillingness to inform ourselves about the issues and to hold elected officials and in turn unelected security officials accountable—has allowed Madisonian institutions to atrophy. Yet, as Glennon acknowledges, it is rational for individual Americans to know little because their impact can be so limited. Just as important, to the extent that most Americans hear about foreign policy issues, it is through the lens of crisis, [ginned up by Trumanites](#). As a result, citizens often appear petrified by overseas events that have little chance of hurting them and that pose nowhere near an existential threat to the nation.

What is to be done? Glennon calls for revival of Madisonian institutions and civic virtues among the populace. But he is deeply pessimistic about the prospects, given the power of the Trumanite networks and the erosion of Madisonian forces. Whether or not it helps resuscitate American democracy or serves as an autopsy on its demise, *Double Government* is essential reading.

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Political science; law

[*Marketing of Rebellion: Insurgents, Media, and International Activism*](#) (Cambridge, 2005).