## The Fog of War: Checks and Balances and National Security Policy Kenneth Ward

This essay contends that the constitutional system of checks and balances distorts democratic deliberation about issues of national security by integrating questions of security within a broader policy agenda. The relationship between security and other issues creates incentives that make it less likely that officials will provide people adequate information about the risks facing the nation and will, instead, encourage them to view security in terms of the policy package associated with competing security policies.

More particularly, the essay uses the fight against terrorism to illustrate how checks and balances distorts deliberation about security issues. It identifies political dynamics that would explain three shortcomings of public discussion of President Bush's security policies: (1) rather than specify Iraq's relationship to Islamic terrorism, President Bush has appealed to September 11<sup>th</sup> and the possibility of a nuclear Iraq to assert the high probability of more attacks with the potential to kill many more people; (2) his opponents have sought to undercut public support for the Iraqi war by emphasizing the high costs of the policy without addressing adequately Iraq's relationship to Islamic terrorism; and (3) both President Bush and his opponents assume that the fight against terrorism warrants a considerable investment without clarifying the likelihood and magnitude of future attacks.

In the aftermath of September 11<sup>th</sup>, Democrats had to maintain a patriotic silence in order to sustain the appearance of bipartisan unity. This is not to say that Democrats did not want to support the President as he defended the nation from a clear attack. But

they also recognized that the political strength that presidents gain when the nation unites has significant consequences for the broader partisan agenda, because presidents can use this strength to advance controversial programs that have little to do with the defense of the nation. And just as presidents might fight unjust wars to secure partisan ends, their opponents might challenge just wars for the same reason. We are all sensitive to the "wag the dog" problem, but it is easy to forget that tails wag in two directions.

Cynicism is bipartisan: if there is temptation for one side to engage in cynical behavior, the other side will have incentive to anticipate such behavior and engage in cynical behavior of its own. The current political context invites such cynicism; it is easy to believe that (a) President Bush fought a war in Iraq in order to sustain the popularity he gained in responding to the September 11<sup>th</sup> attacks and (b) Democrats are attacking his policies in order to reverse the partisan losses of the last six years and without regard to the dangers of Islamic terrorism. In so doing, we ignore important possibilities.

President Bush might have had good—non partisan—reasons for fighting the war, even if the war also served partisan purposes, and his opponents might be right in concluding the Iraqi war is a bad policy, even if they do so for partisan reasons.

Cynicism, then, does more than express suspicion of why an official pursued what seems to be a bad policy, it also indicates a deeper problem. Putting motives aside, we do not have adequate information to assess security threats, and the constitutional system of checks and balances gives elected officials various incentives to focus on the partisan implications of security policy. As a consequence, people tend to assess security policy in light of its costs, especially the lost opportunity to pursue other political goods, and without an adequate understanding of the threats themselves.

This is not to say that people will value these goods more than national security. We will see that although there are circumstances in which officials have reason to emphasize the high costs of security policy, there are also circumstances in which they have reason to emphasize, though not explicate, security threats.

To begin, we should not be surprised that the system of checks and balances encourages people to consider security in relation to other political goods. It is a structure of government that uses competition among factional interests to identify public goods that transcend those interests.<sup>1</sup> Each institution represents different constituencies and has various capabilities that allow it to block policies that conflict with the interests of these constituencies. Public goods, according to this view, are those that a broad consensus of people believe consistent with their other interests.

This system does not work well with security issues, however. People lack information about the nature and scope of the threats they face, information they must have if they are to effectively weigh security against other interests they might advance. Indeed, there would be no reason to put partisan differences aside and unite behind presidents when they defended the country, if we knew that those presidents were pursuing security policies that were against our interests.

More particularly, given that people have limited information about the dangers they face, officials will want to avoid the perception that their policies put the nation at risk. If we imagine the set of all possible policy packages that officials might advance, each official has reason to choose from the subset of packages that include a security

<sup>&</sup>lt;sup>1</sup> Because political parties have become the primary means for advancing factional interests, I do not distinguish between factions and partisan interests. The problem I identify is a consequence of how the Constitution deals with factions and would continue to be a problem even if there were no political parties. It is the design of the Constitution that gives officials incentive to build policy coalitions across issues.

component that will make at least a majority of people feel protected. Officials will have incentive to distinguish themselves by (1) convincing people that their opponents' policies are outside of the subset of acceptable packages<sup>2</sup>; (2) favoring packages with security policies that advance the interests of important constituencies<sup>3</sup>; and (3) favoring packages with non-security policies that advance the interests of such constituencies.

These incentives create various political dynamics that influence the type of information people receive about threats the nation faces and tend to distort public deliberation about national security. This essay will consider these dynamics in three different contexts: (1) the shorter term when the nation faces immediate threats; (2) an intermediate period in which those threats recede; and (3) the longer term in which people consider security policies more generally.

I. The Shorter Term: Presidents Incentives in Responding to Immediate Threats

In the face of immediate threats, <sup>4</sup> presidents are uniquely situated to defend the nation. Presidents have better information about the dangers people face and the

<sup>&</sup>lt;sup>2</sup> Ronald Reagan, for example, was able to exploit the public's perception that the nation's defenses were in decline, even as President Carter maintained military expenditures at a level that matched a high rate of inflation. O'Strom and Mara, APSR 819, 838-39 (1986); Hartley and Russet, Public Opinion and the Common Defense 86 APSR 905 (1992); Bartels, Reagan Defense Build Up 85 APSR 459, 461 (1991).

<sup>3</sup> During the early years of the Cold War, for example, Republicans and Democrats divided on the proper

<sup>&</sup>lt;sup>3</sup> During the early years of the Cold War, for example, Republicans and Democrats divided on the proper balance between nuclear and conventional forces, and this division corresponded to the interests of important constituencies. Benjamin Fordham, Democratic Politics, International Pressure, and the Allocation of American Cold War Military Spending 64 J. POLITICS 63, 65-67; Jacobs and Page, Who Influences U.S. Foreign Policy 99APSR 107, 121 (2005) Jacobs and Page suggests that internationally oriented business leaders have had considerable influence on American Foreign Policy.

<sup>&</sup>lt;sup>4</sup> John Mueller specified criteria for identifying events associated with rallying effects. They had to be international, involve the President, directly and had to be "specific, dramatic and sharply focused." Mueller, WAR PRESIDENTS AND PUBLIC POLICY p. 209 (1973) For purposes of my analysis, there need not be a clear line to mark when an immediate threat begins to recede. The distinction is meant to identify conditions in which openly partisan criticisms of the president are likely to be efficacious.

resources necessary to respond. This would explain why people rally behind presidents who combat such dangers.<sup>5</sup>

Although presidents gain short term popularity in responding to immediate dangers, this popularity is fleeting.<sup>6</sup> Sometimes the dangers themselves are fleeting and partisanship reemerges as ordinary politics returns.<sup>7</sup> In this circumstance, the popularity presidents gain in defeating a threat is not enough to sustain a presidency.<sup>8</sup> Without the stimulus of an immediate threat, security becomes a more general concern. People will vote against presidents that they believe not up to the task of defending the nation but will otherwise assess presidents in light of broader political considerations, ensuring that a president's partisan agenda will have great consequence for his or her political fortunes.<sup>9</sup>

On the other hand, presidents sometimes respond to immediate dangers that recede without being eliminated. Ordinary politics returns as people become inured to lingering dangers, at which point there is likely to be partisan debate about particular policies that address those dangers. Presidents have reason to anticipate these debates—presidents lose popularity as they pursue extended conflicts—and seek the partisan support that will help them to sustain their policies.<sup>10</sup>

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<sup>&</sup>lt;sup>5</sup> Mueller, Presidential Popularity from Truman to Johnson 64 APSR 18 (1970); DeRouen, Politics, the Economy, and the Use of Force 39 J. CON. RES. 671, 672 (1995)

<sup>&</sup>lt;sup>6</sup> Id. Marra, Ostrom, and Simon Foreign Policy and Presidential Popularity, 34 J. CONF. RESOLUTION 588 (1990)

<sup>&</sup>lt;sup>7</sup>These would include conflicts in the Persian Gulf War, Panama, Haiti, and Grenada. The immediate threat, therefore, need not be to the country as a whole. As Mueller suggests, there can be rallying effects when a president responds to circumstances that endanger the lives of American citizens.

<sup>&</sup>lt;sup>8</sup> Mueller APSA Paper p. 10 (2003)

<sup>&</sup>lt;sup>9</sup>There is evidence that suggests that when there is disagreement about a president's policy, the short term success of that policy can influence how people perceive the two parties over the longer term, in particular their ability to respond to potential threats. Norrander and Wilcox, Rallying Around the Flag and Partisan Change: The Case of the Persian Gulf War 1993 POL RESEARCH Q 759, 768.

<sup>&</sup>lt;sup>10</sup> Mueller San Diego Conference Paper, p. 2; APSA Paper 2003 p. 11-12 Mueller's examples include the Korean War and Vietnam. On the other hand, Mueller notes that presidents can pursue an extended engagement, such as a peace keeping mission so long as the costs remain low—for Mueller casualties are the most significant cost. There is also a cite about WWII, perhaps Roosevelt's losses in 42 election?.

While presidents have reason to formulate security policies with an eye to their partisan agenda, this does not mean that they exaggerate or manufacture threats in order to attract partisan support. But these incentives will lead presidents to take actions that make it difficult for people to fully understand the threats that face the nation. Consider two tendencies that would follow from these incentives.

First, rather than explain why a policy is appropriate given the nature or scope of a threat, presidents have reason to use the existence of the threat as a justification for the policy. Actual justifications would legitimate public discussion of that policy. And while presidents can control such discussion in the shorter term, when a united people will punish openly partisan behavior, over time a president's justification is likely to become the subject of partisan debate. As the threat recedes, a president's opponents can distinguish themselves on security issues by attacking particular security policies. And detailed policy justifications expose presidents to these attacks.

Moreover, presidents who anticipate the return of partisan politics will want to avoid wasting political resources on a policy that will already have broad support. They would, instead, use these resources to build alliances that would help them to stay in office and increase their power. By advancing a partisan agenda, they give people a greater stake in their presidencies, making it easier to sustain their policies.

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<sup>&</sup>lt;sup>11</sup>Some events seem to speak for themselves. The Soviet Union's explosion of a nuclear bomb, Berlin blockade and invasion of Czechoslovakia hardened public opinion in favor of the Cold War. And later events such as the Soviet invasion of Afghanistan and the Iranian Hostage Crisis created a similar sentiment for strengthening national defenses. Page and Shapiro Foreign Policy and the Public 1988 J. CONF. RESOLUTION 211, 225.

<sup>&</sup>lt;sup>12</sup> Posner and Vermeule identify strategies that a well meaning Executive can use to increase their credibility when they act in the name of national security. "The Credible Executive" But there is a deeper structural problem in that security policies will be associated with broader policy agenda whether or not those policies are well motivated, and people will have an incentive to assess those policies in partisan terms, even if they believe them to be well motivated. As a consequence, presidents who are well motivated still have reason to invest political resources in building partisan support for their policies rather than in convincing people of their good intentions.

And this suggests a second tendency that distorts public understanding of threats to the national security. As a president's security policy becomes part of a broader policy agenda, it becomes difficult for people to disentangle the policy package and consider the a particular security policy on its own merits, a difficulty that is compounded when a president has not provided an adequate policy justification. This is not to say that partisanship will make it impossible for people to detect flawed or failed security policies. But their stake in a president's success will lead them to be more favorably disposed toward those policies han they otherwise would or in some circumstances support those policies in order to preserve the president's strength to fight other partisan battles.

President Bush has used each of these strategies to sustain support for the Iraqi war. Rather than discuss the nature of the threat posed by terrorism and Iraq's relationship to that threat, he sought to associate people's recent experience of a terrorist attack with an unstable dictator who was either pursuing or likely to pursue weapons of mass destruction. He had reason to pursue this course, given the nature of the evidence necessary to justify the Iraqi war and the weakened position of his political opponents.

The link between Iraq and the war on terrorism seems to follow from inferences we might draw about (1) the relationship of instability in the Middle East to Islamic terrorism, (2) the relationship of Iraq to instability in the Middle East, and (3) the relationship of Iraq to Islamic terrorism. The justification for war in Iraq, according to this view, would depend on how these relationships influence the physical and economic

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<sup>&</sup>lt;sup>13</sup> People also can switch their partisan affiliation in response to changes in how they perceive the parties. Brody and Rothenberg, "The Instability of Partisanship" 18 BRITISH J. POL SCIENCE 1988

<sup>&</sup>lt;sup>14</sup> There is some evidence that partisans will switch positions as their parties do, especially when the issues are difficult. Page and Shapiro 1988 pp. 231-32 (?) Gerber and Jackson, 87 APSR 639, 654 (1993); Murray 1993 J.CONF. RESOLUTION (?)

security of the United States. A reasonable assessment would require a detailed understanding of how Saddam Hussein's regime contributed to Middle Eastern instability, including what we might have expected from an Iraq that while significantly weakened had begun to escape the shackles put in place after the first Iraqi war.<sup>15</sup>

More significantly, we should recall that in the aftermath of September 11<sup>th</sup> the Democrats were in a weak position to challenge the war on terrorism and that the best they could do was to question the strategies used to prosecute the war. By offering a detailed policy justification, President Bush would have invited public discussion that would make his policy a legitimate subject of partisan debate. And such a debate would have diverted the resources he used to advance the interests of important constituencies, including tax cuts, laws favorable to the energy industry and the appointment of conservative judges. These constituencies played an important role in his reelection and have subsequently helped him to sustain what has become an unpopular policy.

II. The Intermediate Period: Partisanship Returns in the Wake of a Receding Threat

Although there will be a different political dynamic as an immediate threat recedes and the danger becomes more speculative, it is a dynamic that reinforces the two problems we associated with the earlier time; (1) security policies are not adequately justified, and (2) people have reason to consider them as part of a broader policy package. The absence of an adequate justification will lead people to focus on the costs of security policies both in lives and resources. Moreover, by linking particular security policies to a

<sup>&</sup>lt;sup>15</sup> And there were such assessments at the start of the war Pollock book?

<sup>&</sup>lt;sup>16</sup> Gary Jacobson has commented on unusually deep partisan divides over both the Iraqi war and the Bush presidency, although the divide narrowed considerably after the September 11<sup>th</sup> attacks. President Bush, therefore, had reason to frame the policy as a response to terrorism so as to dampen partisan criticism and to a considerable extent this tact succeeded.

partisan agenda, presidents invite people to consider those policies in light of their opportunity costs<sup>17</sup>—whether the resources invested in those policies would be better invested elsewhere.<sup>18</sup> Countervailing political forces will move the status quo towards a policy package that encompass a broader range of interests as those left out of incumbent president's coalition pursue policies that take better account of their interests.<sup>19</sup>

A president's opponents will challenge particular security policies in a way that would not be tolerated while the nation was in immediate danger, and many people will assess these challenges in partisan terms.<sup>20</sup> While those with a stake in the president's success will be more receptive to his or her arguments or will have some reason to favor policies they would otherwise believe unjustified, there is likely to be a large number of people who would prefer a different policy package. The reason is that by initiating security policy, presidents form narrower coalitions than would have arisen if the same policy had been initiated by Congress.

<sup>&</sup>lt;sup>17</sup> Nincic, Domestic Costs, the U.S. Public, and the Isolationist Calculus, 1997 INT. STUD. Q. 593, 606-07. <sup>18</sup> The claim about the distribution of costs is not limited to monetary losses. For example, we know that strong proponents of a woman's right to choose are likely to vote against Republicans, and the association of the Iraqi war with the Republicans' domestic agenda will lead them to focus on the immediate costs of the war and reject the policy package as a whole. Although some might support the war if it were associated with different domestic policies, this is not likely given the nature of our two party system. The salience of a war makes it difficult to disassociate the war from the president who chooses to fight it. In this circumstance, people would have reason to view the President's ability to advance his domestic agenda as a cost of the war; in 2004, for example, pro-choice voters who supported the war in Iraq, knew that supporting the war increased the likelihood that president Bush would be able to appoint pro-life judges. <sup>19</sup> My argument resembles Almond's criticism of a fickle public that overreacts to immediate events and then loses interest in international affairs once those events recede. Gabriel Almond, The American People and Foreign Policy, Praeger 1960. But this is only a superficial resemblance. I do not argue that the public loses interest in international events or that it assigns too much weight to domestic affairs. My argument is consistent with the considerable literature that refutes Almond, including Page and Shapiro's claim that the public is not capricious and acts rationally, given the information that it has received. I attribute the inadequacy of this information to incentives created by the system of checks and balances. These same incentives would explain the findings of both Mueller and Nincic, each of whom claims that the public assesses security policies based on the costs of those policies. Page and Shapiro, Foreign Policy and the Public, 1988 J. CONF. RESOLUTION; Nincic, Domestic Costs, the U.S. Public, and the Isolationist Calculus, 1997 INT. STUD. Q. 593, 606-07.

<sup>&</sup>lt;sup>20</sup>Ostrom and Simon, "President's Public" 1988 AM.J.POL SCIENCE 1096, 1101; 1982 AM.J.POL SCIENCE 312, 322-24

Recall that the system of checks and balances is committed to broad based policy making. The legislative process reflects this commitment in that it contains various veto points at which people can block policies that threaten their interests, thus broadening public support for government policy. Presidents avoid this process when they initiate security policy and thereby sever the question of whether to pursue a policy from the question of how to pay for it. Legislators, as a consequence, do not have an opportunity to assess a president's policy in light of its effect on the budget of competing programs that are important to particular constituencies. Given that legislation tends to require larger majorities than it takes to elect a president, it is likely that Congress would not have approved a president's security policy unless it had been part of a different policy package. And once people have a clearer sense of both the costs of a security policy and also the distribution of those costs, namely the government programs that have suffered budget cuts in order to pay for the policy, there is likely to be a coalition of interests to defeat the policy package that contains the president's security policy.<sup>21</sup>

It would seem that in these circumstances presidents would have incentive to bring forth more information to justify their policies. But such information is likely to be less effective rhetorically than a renewed appeal to people's fleeting memory of a past but very real danger. The problem is that any justification would be speculative in that the danger might never arise again or that it will have disproportionate affect on some people over others—younger people, for example would be far more likely to suffer than older

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<sup>&</sup>lt;sup>21</sup> In addition Mueller cites, including 1970 minorities coalition thesis to explain why Presidents popularity declines in time. Bound to alienate constituents on important issues another way of saying that there will always be a coalition to defeat the current one . Kernell 1978 (time variable conflating particular actions that lose support)

people. By contrast, a president's opponents can point to the immediate costs of the policies that combat that danger.

Consider an analogous case: the government's difficulty in responding to impending environmental catastrophes. In the absence of immediate experience, it is hard for people to grasp good evidence about the likelihood of disaster, especially when many people have reason to think they can avoid the danger. And though immediate weather events—such as a recent trend of stronger and more frequent storms—have limited evidentiary value, they are more likely to convince people of the dangers of global warming than scientific accounts of a looming environmental calamity, and this continues to be the case even as the memories of those events fade. The problem is further complicated, because those with interests opposed to remedial policies have both incentive and ability to make the costs of those policies clear.

This is not to say that a president's policy is deficient because it lacks the broader support demanded by the system of checks and balances. Indeed, our instinct to unite behind presidents in the face of danger suggests that we value security more than other goods and thus have reason to consider security policy in isolation from these partisan interests. And one reason to do so is that our deliberations about security become distorted when people receive better information about the costs of particular policies than the dangers those policies seek to address.

We see this problem as Democrats challenge President Bush's policy in Iraq.

Recall that the September 11<sup>th</sup> attacks placed the Democrats in the position of a loyal opposition. To regain power, they would have to wait for the President to make a mistake in prosecuting the war or for the return of ordinary politics, a time when they

could win elections by distinguishing themselves from Republicans on issues not related to security. President Bush, therefore, had reason to avoid a detailed justification for the Iraqi war. Such a justification would legitimate partisan discussion of security policy and thereby divert political resources from partisan ends that would, over the longer term, strengthen his presidency and thus help sustain a broader political agenda that included the Iraqi policy itself.

Time has proved that President Bush needed partisan support to sustain what has been a costly policy. Democrats have made gains by emphasizing these costs, and we see that to a considerable extent people's assessment of the policy corresponds to their partisan preferences. More significantly, while the 2006 election looks as if it will mark the beginning of the end of the Iraqi war and perhaps also reverse whatever partisan advantage President Bush was able to secure from the policy, we should consider how much our deliberations have been shaped by the costs of the policy and how little attention we pay to the relationship among events in Iraq, instability in the Middle East, and the threat of Islamic terrorism.

It would seem that President Bush would have had greater incentive to justify the Iraqi war as the costs of his policy mounted, but this is not the case. Whether or not we believe that the Iraqi war is good policy, we can see why President Bush would avoid making his justification a subject for debate. Our struggles with environmental policy suggest that convincing evidence has much less influence when processed through a partisan filter, and, by its nature, the evidence that would support the Iraqi war is much

<sup>&</sup>lt;sup>22</sup> Mueller Foreign Affairs suggests that partisanship surrounding the Bush Presidency made it inevitable that he would lose support for this policy.

more speculative than the evidence about environmental dangers. Rather than probabilities derived from facts, we are faced with competing interpretations of history.

Both Republicans and Democrats are likely to view the justification through partisan lenses, given that they are interested interpreters of such evidence. Democrats, however, have an advantage in making their case to non-partisans; they can point to high costs that are readily apparent, while Republicans can only offer theoretical conclusions about highly contestable evidence. Moreover, the September 11<sup>th</sup> attacks continue to be a significant if receding presence in the public psyche. President Bush seems to have decided to avoid a debate that will bring added attention to a costly policy. This strategy will prove sound, if divisions among the electorate and the partisan gains of the past six years help him to sustain the policy.

## III. The Longer Term: Overinvestment in General Security Policy

The Democrats have challenged the Iraqi war by pointing to the high costs of President Bush's policy. By contrast, they have done comparatively little to challenge the President's decision to fight a war against terrorism, and the lack of discussion of this more general policy commitment is noteworthy. It is indicative of a third political dynamic that characterizes longer term security policy; checks and balances create an institutional bias that leads partisans of all stripes to spend too much on national security.

In the absence of information about the immediate costs of a particular security policy, it becomes harder for people to see the trade offs between the resources allocated to security and those allocated to other political goods. People know that savings from security can be used to advance other interests, but they disagree about how to distribute

the savings from security cuts. More significantly, they also believe that that the overall budget contains programs that should be cut before security, though they disagree about which programs to cut.

As a consequence, proponents of defense spending can focus the debate on the narrower question of which programs should be cut before security and thereby avoid the broader question of whether we are spending too much on security, whether we would be better off redistributing money from security to all other programs.<sup>23</sup> This strategy is made more effective, because politicians can use real if uncertain threats to reinforce people's tendency towards caution and can point to the absence of an immediate threat to prove the efficacy of existing security policy.

Moreover, both presidents and legislators have incentive to overvalue security. Presidents have institutional reasons to be risk averse in that they play a primary role in the formulation and implementation of security policies and that voters hold them responsible for those policies.<sup>24</sup> While legislators will also seek to avoid a reputation for being weak on security,<sup>25</sup> they also have a partisan reasons for supporting the security choices that presidents make. Presidents have considerable influence over the national policy agenda and can link their security policies to partisan goods that have great significance to legislators' reelection.

Over time, therefore, the dynamics of elections should create upward pressure on security spending.<sup>26</sup> We have seen that presidents have incentive to choose from the set

<sup>&</sup>lt;sup>23</sup> This would explain Russet's finding of few tradeoffs between military and domestic spending. Russett, 76APSR 767 (1982)

<sup>&</sup>lt;sup>24</sup>Tyler, 1982 POLITICAL BEHAVIOR

<sup>&</sup>lt;sup>25</sup> Bartels, Reagan Defense Build Up 85 APSR 459, 461 (1991).

<sup>&</sup>lt;sup>26</sup> This is not to say that defense spending will never go down. Events such as the collapse of the Soviet Union or the end of the Vietnam War can lead to periods in which people's perception of external dangers can lead to adjustments in defense spending.

of policy packages that will not make them vulnerable to attack for being weak on security. But that set is likely to be fluid, given that there will be times in which presidential candidates can identify plausible threats to justify policy packages weighted more heavily to security. In so doing, they place their opponents in the difficult position of having to prove the absence of danger or risk being perceived as weak on security. While these opponents are likely to reject the new policy package, they will want to undercut the distinction that the other candidates are trying to draw and will do so by advancing policies that invest more in security than the policies they otherwise would have favored.<sup>27</sup> At this point, presidents will have to choose from a set of policy packages that is more heavily weighted to security than the original set.

Consider again how deliberations about the Iraqi war have been characterized by almost no detailed discussion of the nature of the threat terrorism poses or how it compares to other dangers the government might address.<sup>28</sup> In challenging President Bush's policies, the Democrats have questioned the Iraqi War and some limited costs associated with the broader war against terrorism, such as particular policies relating to domestic surveillance. But Democrats have shown little inclination to question the need for a war on terrorism as a response to the September 11<sup>th</sup> attack, even though this is a war that will entail significant costs for the foreseeable future.<sup>29</sup>

It would be surprising if either Democrats or Republicans did so. In challenging the war on terrorism, politicians would have to make contestable and speculative

<sup>27</sup> See supra cite about Reagan security build up and Republican support for these expenditures

<sup>&</sup>lt;sup>28</sup> Mueller APSA paper p. 6 suggesting the public overreacted to the September 11<sup>th</sup> attacks and noting the lack of any comparative calculus of the danger terrorism poses.

<sup>&</sup>lt;sup>29</sup> Balkin and Levinson p. 54, 56 bi-partisan view of what they call National Surveillance State, as response to terrorism and other social forces all of which pre-date 9/11. My argument identifies structural phenomena that explain this tendency.

arguments. In so doing, they would expose themselves to opponents who will be eager to emphasize the high costs of terrorism to a risk averse electorate. Indeed, we already know that they will draw on the example of September 11<sup>th</sup> to do so and will say next to nothing about why they think a similar or more dangerous attack is likely. Moreover, given the likelihood that there will be terrorists attacks regardless of the security policy officials implement, all officials have an incentive to appear aggressive in combating terrorism, if only to inoculate themselves against future attacks from partisan opponents. There will always be ambitious politicians willing to reinforce people's fears, by encouraging doubt about the adequacy of existing security measures. As a consequence, we should expect officials to remain bullish on the war on terrorism. But it will be surprising if they justify the investment.