

Is it time to reform the Insurrection Act?

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Donald Trump's threat to invoke [the Insurrection Act](#) to justify sending National Guard troops to Portland, Oregon and Chicago has focused attention on legislation that dates back to 1807 when Thomas Jefferson signed the bill into law. However, what we refer to as the Insurrection Act today is really a compilation of measures passed between 1792 and 1871 that delineate the role of U.S. military forces in civilian law enforcement.

Because of their experience with the British military prior to independence, the founders were wary of military influence over civilian life. In drafting the Constitution, they placed the military under strict civilian control, making the president, not someone within the military hierarchy, commander-in-chief.

While the Posse Comitatus Act prohibits military involvement in domestic law enforcement, the Insurrection Act provides for exceptions. However, in 230 years, [the Insurrection Act has only been invoked thirty times](#). Presidents Eisenhower, Kennedy, and Johnson invoked the Act to protect civil rights workers and African American students attempting to integrate schools in the South. The most recent use of the Act came in 1992, when President George H.W. Bush sent federal troops to Los Angeles following the acquittal of white police officers who beat Black motorist Rodney King.

Donald Trump threatened to invoke the Insurrection Act in 2020, following the murder of George Floyd by a white police officer. However, Mark Esper, his Secretary of Defense at the time, publicly opposed the move and the president backed down.

One of the biggest problems with the Insurrection Act is that it is not clear about what constitutes an emergency that justifies its invocation. In our current reality, "Is it to protect federal law enforcement personnel? To enforce immigration laws? To police crime? To stop nonexistent riots?" Also, the sole authority to decide what constitutes such an emergency rests with the president.

[In a recent article, Michael Waldman, president and CEO of the Brennan Center](#) for Justice at NYU School of Law said, "This coming year, we celebrate the 250th anniversary of American independence. At the time, Thomas Paine wrote, 'In America, the law is king.' In this surreal season of presidential overreach, we will find out if that is still true."