

# Current Criminal Law



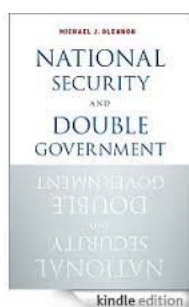
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By Michael J. Glennon ISBN  
Oxford University Press (2014)**



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**National security and double government**

**Michael J. Glennon**

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***Book review by Sally Ramage***

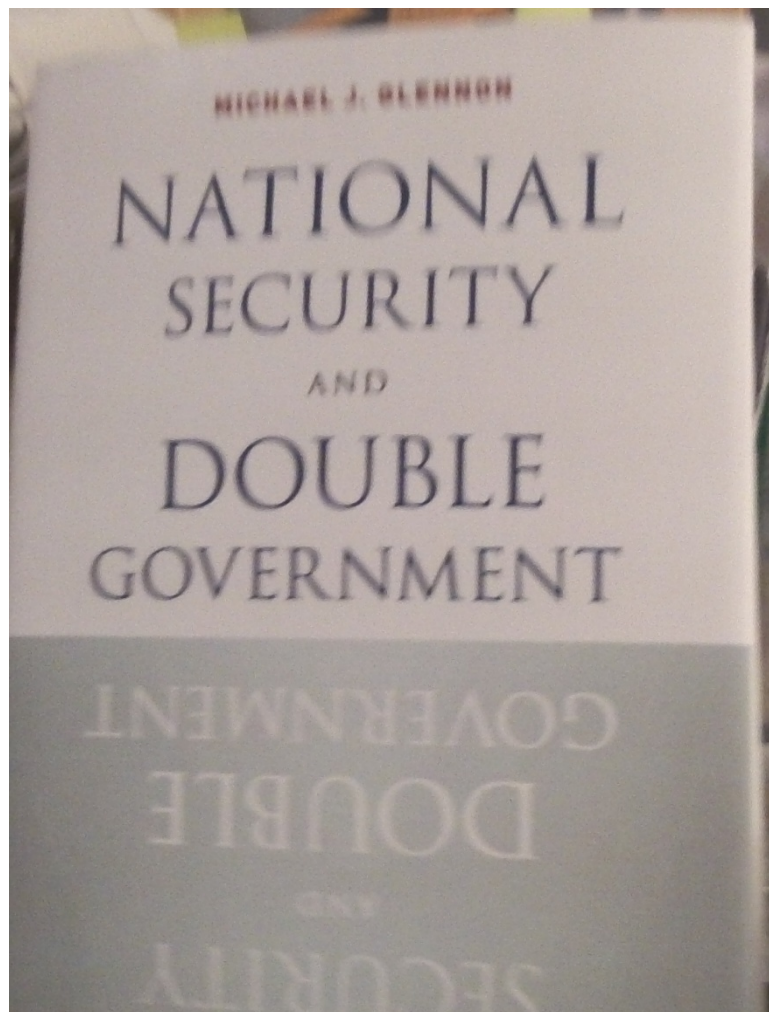


Photo by Sally Ramage

## Introduction

In the year 2002, Donald Rumsfeld, then United States Secretary of Defence, said in a news briefing on 12 February, something that rings true especially today in the United States of America:

*'As we know, these are known knowns.*

*There are things we know we know.*

*We also know there are known unknowns.*

*That is to say we know there are some things we do not know.*

*But there are also unknown unknowns, the ones we don't know we don't know.'*

Thankfully, President Barack Obama, an honourable and capable young president, saw fit to investigate the United States ('US') Central Intelligence Agency ('CIA') on allegations of much torture being practiced, and in December 2014, the whole world learnt what tactics and operations the CIA really did use on hundreds of arrested suspects in order to obtain national security intelligence. The world is naturally stunned at the torture methods which the CIA used.

## President George Bush was aware of CIA shenanigans

But let us, not for one second; claim that President Bush did not know that the CIA government organisation was perpetrating these inhuman deeds, in collusion with several

other countries. Former President George Bush was termed ‘slow’<sup>1</sup> and ‘thick, by newspapers during his time of office but George Bush was not slow as regards financial matters and the world is aware of his now well documented dealings with the *Osama Bin Laden* family.

### Glennon’s book

*National Security, Double Government* had started life as an article written by the author published previously in *Harvard Law Journal*,<sup>2</sup> and now published as a short book by Oxford University Press.

Whilst the beautiful way in which the author created his paper is to be admired and studied, it falls short of reality and should be shown to do so especially because US elections are drawing near and because of the recent news that George Bush’s brother Jeb Bush is considering running for president in the coming elections.<sup>3</sup>

### Presidents Truman and Madison

The theory of *Truman v Madison* way of leading the United States is just that: only a well written theory which all academics know how to fit the facts to please the beautiful academic

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<sup>1</sup> Editor, ‘Was George Bush a bad president?’, *Yahoo Answers, Politics and Government*, 2009. <https://ph.answers.yahoo.com/question/index?qid=20100204134848AAA7aWA>, accessed on 16 December 2014....’ *But that didn't stop Bush from using 9/11 and terrorism as the 21st century boogyman to basically scare congress into doing whatever he wanted "or else...9/11 will getcha!... Even when Hurricane Katrina hit, he didn't cut his vacation short even as 1000s were homeless and in need of immediate government action. Bush's educational policy, "No child left behind" has destroyed the education of a generation, and those effects will be felt for decades to come. Bush appointed his good buddies to top government positions without any thought as to whether they could actually do the job...’*

<sup>2</sup> See [www.harvardnsj.org/wp-content/uploads/014/01/Glennon-Final.pdf](http://www.harvardnsj.org/wp-content/uploads/014/01/Glennon-Final.pdf) accessed on 16 December 2014.

<sup>3</sup> Aaron Blake, ‘Jeb Bush just jump-started the 2016 election’, *The Washington Post*, 16 December 2014. The newspaper said that the ‘early maneuvering in a presidential campaign is all about securing the staff, donors, and big-name support that you will need going forward...’

theory. Some even call it a conspiracy theory and in fact Mickey Edwards who reviewed this book in the Boston Globe<sup>4</sup> on 18 October 2014 said this in his book review:

*'It has long been the prince of conspiracy theorists to claim that the real power of government is not wielded by the obvious practitioners of statecraft- presidents, members of Congress, the judiciary- but by secret or semi-secret entities, real wizards whose hidden machinations send us to war, sell us out to enemies, siphon public treasure into private hands. Depending on your talk show or paranoia of choice, these are the bankers, oil barons, one-worlders, war profiteers, Bilderbergers, Masons, Catholics, Jews, or Trilateralists. Our former institutions, in this scenario, are stage sets, Potemkin villages; our officials are puppets; we are an unsuspecting audience...'*

The present book review will not be so unkind to Professor Glennon, even though this above quoted paragraph from the Boston Globe's book review can be said to have '*tickled me pink*' because in many democracies we see the see-saw from centralisation and back as a newly elected president or prime minister puts his stamp on the country.

Sadly, Michael Glennon swept aside any real discussion of effective rule of law (apart from a comment in his footnote number 67).. The United States is a federal common law state and of course the term *jurisdiction* is of utmost importance because in common law countries, the term *jurisdiction* is commonly used to describe the various forms of judicial authority whereas in civil law countries, the term *competence* is the preferred choice of term when

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<sup>4</sup> See [www.bostonglobe.com/arts/books/2014/10/18/review-national-security-and-double-government-michael-glennon/tUhBBds/8s0WW1HoWUf20M/](http://www.bostonglobe.com/arts/books/2014/10/18/review-national-security-and-double-government-michael-glennon/tUhBBds/8s0WW1HoWUf20M/), accessed on 15 December 2014.

considering, say, judicial authority. In the United States, the Constitution is the first port of call; in civil law countries and also in common law countries, other than the United States, the legislature is uninhibited by constitutional provisions and uninhibited in its freedom to extend as far as it wants to, the power of the courts to bind opposing parties. In civil law countries this is called *competence*. However, one can say that in modern times in the United States, Supreme Court Justices are increasingly in deference to Congress and to the Executive.

### **Madison v Truman?**

What is the origin of the theory of comparing President Madison and President Truman? President James Madison was the fourth president of the United States and President Harry S. Truman, the thirty-third president. Madison is known as the ‘father of the US Constitution’. Politically Madison was Democratic Republican and Truman was Democratic politically. They both became president in their late middle age, 57 years old and 60 years old respectively. They were both in office for approximately 8 years. The difference was, however, that President James Madison was a lawyer by education<sup>5</sup> and President Harry Truman had no more than secondary schooling.<sup>6</sup> Yet both found a legal route in life, President James Madison as Member of the Virginia Constitution; the Continental Congress; the Virginia Legislation; the Constitutional Convention; the United States House of Representatives and Secretary of State before winning the election for president. President Harry S Truman was a Judge in Jackson County Court; a presiding judge of Jackson County Court, a United States Senator and Vice President before becoming president. Both died in

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<sup>5</sup> Princeton University.

<sup>6</sup> William Chrisman High School.

their old age, 85 years old and 88 years old respectively. Madison was financially aware of the banking system whilst Truman brought in socialist policies to feed the ordinary masses. Truman ruthlessly bombed Japan whilst Madison warred with Britain and, despite few resources, eventually won. The dichotomy was that it was Truman who despite bombing Japan, saw fit to give generous aid to countries in need by way of passing the Mutual Security Act; increased taxes by passing the 1950 Revenue Act and assisted the poor by passing the 1950 Social Security Act, whilst Madison took the academic course of renewing the Charter for the Bank of the United States and replaced the Nonintercourse Act.

### **President Madison**

James Madison was from Virginia and became President (from 1809 to 1817). He is known as the author of the American Constitution. The English began to seize US ships in 1809 and the US declared war on England whose naval fleet totalled some one thousand ships, compared to the US' mere 20 ships. The US lost this war, defeated on land and sea. The Treaty of Ghent officially ended this war. Then came the War of 1812 when part of the US wanted to go to war with England and the other part of US wanted to go to war with France in Europe. This war brought the United States face to face with international law and international politics and President James Madison learnt the harsh lesson of unforeseen events which define a presidency.

### **The Madisonian model**

The theoretical model of Madisonian government concerns the use of Presidential powers and states that Presidential conduct adheres to the denoted powers of the executive branch in

the U.S. Constitution as exhibited by US President James Madison (Jnr) (1751- 1836).<sup>7</sup> The Madisonian model is a structure of government in which the powers of the government are separated into three branches, namely, the executive, legislative, and judicial branches. It was thought that this would prevent the imposition of tyranny by a majority or by a minority in that no single branch could have the power to sway the others - separation of powers brought about by laws passed by Congress, enforced by the President and interpreted by US Courts.

### **President Truman**

Harry S. Truman, from Missouri, took over the office of President on 20 January 1945 because President Roosevelt became ill. Truman was known as a plain-spoken businessman of much 'common sense'. Truman was known for calling 'a spade a spade' and he made politically controversial decisions. The first thing Truman did when he became President was to choose that the United States should drop the atomic bomb on Japan, (the Potsdam Declaration) and Japan surrendered and that called an end to World War II.

However, the USSR was still thought to be a problem by the US government, many seeing the problem as capitalism versus communism, much as today. In 1948 President Truman attempted to end racial prejudice in the military. The year 1948 was also election year and Truman campaigned fiercely and won a second term as President. Overseas, China became a communist country. Then there followed the Soviet nuclear war.

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Editor, 'Jeb Bush (almost) announces he'll explore candidacy', *Yahoo News*, 16 December 2014.

<sup>7</sup> President James Madison, from Virginia, was tutored privately by a Scotsman; then went on to study Law at Princeton University. He was the son of a tobacco plantation owner.. On his social side, he married a young widow who had one son and Madison had no offspring himself. His wife created the title of First Lady when the White House was completed. He was legally and financially astute. When he assumed office in 1809, the federal government had a surplus of over 9 million dollars and in one year the national debt had been reduced and taxes cut.



### **Past US Presidents' leadership**

However, should one consider all the past US Presidents singularly, one may stumble upon several other theories in this regard. The typical American might wonder that if such a theory holds true in that it can be proved, then why are neither President Truman nor President Madison represented in the sculptures by Gutson Gorbblum at Mount Rushmore in South Dakota, facilitated by the *Rushmore Bill*.

### **President Lincoln**

President Lincoln was known as 'the great emancipator'. But when after Lincoln's murder, Johnson succeeded, the new President Johnson turned to follow the leanings of the most racist president the US ever had, Andrew Jackson. He was no lawyer and was known as '*the tailor from Tennessee*'.

### **President Johnson**

In 1865, President Johnson had made a 'reconstruction plan' as regards the slave trade of the US. He favoured an amnesty for ex-Confederates, but did nothing to protect the human rights of newly emancipated slaves.

### **President Johnson's intransigence forced Congress' hand**

In fact he restored 29 of the laws which enslaved black people in the US: laws which Congress had repealed. In 1866, Congress passed the Civil Rights Bill and in 1867, Congress passed the 'Ten Year of Office Act' which President Johnson refused to veto and so Articles of Impeachment were drafted and Congress voted to impeach him in February 1868. A trial in the Senate voted to convict him and tickets were sold for this trial. He returned to him

home in Tennessee. It was his intransigence which forced Congress to play a stronger role than in previous times.

### **President Ulysses S. Grant and nepotism**

In 1869, Ulysses S Grant became President of the United States, the youngest president. Unfortunately his tendency to nepotism<sup>8</sup> became obvious, as he appointed his family and friends to high positions in government.

### **President Ulysses Grant's war against internal terrorism of Klu Klux Klan**

But his campaign slogan of 'Let us have peace' meant that black Americans liked him and voted for him. The Klu Klux Klan was strident at that time and President Ulysses S Grant launched the first 'war against terrorism' which crushed the Klu Klux Klan and 1872 was deemed the most peaceful year since the Civil War. However corruption and fraud scandals emerged. He was considered a failed administrator because he did not continue to deal successfully with the terrorist groups, although he did make steps towards black equality.

### **President Rutherford B Hays – a legal scholar**

In 1876 Rutherford B. Hays ran for president and won the elections. However his administration was considered fraudulent by some. Nevertheless he was, importantly, a graduate from Harvard Law School, a good education which equipped him with skills of leadership. His presidency was scholarly and legalistic and encountered the difficult task of dealing with the post-civil-war-reconstruction and the removal of the army from states. His was a paternalistic leadership.

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<sup>8</sup> Nepotism is a crime in law. Hart (1961) defined crime as 'an act or omission forbidden by law under pain of punishment', and the term used in major or minor offences, and the word criminal applied to all offenders who were punishable in criminal courts, those crimes including serious frauds. See H.L.A. Hart, (1961) *The concept of Law*, London: Clarendon Press.

### **President Chester Arthur**

Chester Arthur became the next President of the United States at a time of continuing corruption at the Customs House in New York State.

### **President James A. Garfield's fraud<sup>9</sup>**

In 1880 James A Garfield became president of the United States. He was known for implementing policy and his background was that he was a former College President and religious preacher. Garfield, too, succumbed to corruption and nepotism and gave government jobs to former colleagues, whilst the Port of New York continued in bribery and corruption. He was eventually to meet his demise when he was shot. President Garfield is remembered as a martyr to the civil service reform.

### **President Chester A. Arthur- corrupt and profligate**

Chester A. Arthur, the dismissed head of the corrupt New York Port then ran for president and won the election. He hailed from Vermont and continued in his lifestyle of lush profligacy. He did as little as possible but seemed efficient during the few hours he worked each day. He lived the high life, ate the best meals, partied much, wore the best clothes, and continued his profligacy by renovating the White House. In 1883 he passed the Pendleton Act and upgraded the US Navy with modern ships made of steel.

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<sup>9</sup> The word fraud here, as in the state of Illinois, for example, is not precisely defined, even today. Under Illinois law, for example, fraud is not a specified offence but is the term generally used for deception, not necessarily with the result of financial loss. Fraud includes the suppression of the truth, as well as the presentation of false information. Here, fraud is defined as anything calculated to deceive and it is clear and well-established Illinois law.

### **Obama, Harvard Law School graduate; Nobel Peace Prize**

In contrast, the current President of the United States, President Obama, rose from 'nothing to president' in a miraculous rise from being a mixed race child raised by his American mother and American maternal grandparents. He was a law graduate and a scholarship boy, an African American young married man, elected by the people in an incredibly important stage in American history.

### **Obama-only African-American child in his school**

When his mother and sister returned to Hawaii to live with her parents he was the only African American child in his school in Hawaii. He grew up, won a scholarship to Columbia University and borrowed to fund his course at Harvard Law School where he worked hard and became the editor of the Harvard Law Review. President Obama met his attorney wife whilst an intern one summer. After he graduated from Harvard Law School in 1991, he lived in Chicago where he married Michelle Robertson in October 1992.

### **Obama- Law Lecturer, Chicago University Law School**

He obtained a post at Chicago Law School and later became a professor. He then entered politics, running for state senator and eventually for presidency. His hard work and use of the new technology caused him to reach millions of people President Obama is known for is extremely calm and comforting manner, with everyone including the aristocracy of the United States and Royalty from the United Kingdom as was seen during his meeting with His Royal Highness Prince William during his recent New York visit with Her Royal Highness the Duchess of Cambridge. This is the future of American history, let us never forget this.

### **The author Michael J. Glennon**

As it happens, this book is a contemporary subject matter, published just when there is hot debate about the matters discussed therein. Oxford University Press is a very highly acclaimed global publisher. The author, Michael J. Glennon, has an impressive resume and presently, he is a Professor of International Law and former Legal Counsel to the Senate Foreign Relations Committee (1977-1980). Michael J. Glennon was a Fulbright Distinguished Professor of International and Constitutional Law, Vytautas Magnus University School of Law, Kaunas, Lithuania (1998); and a Fellow at the Woodrow Wilson International Centre for Scholars in Washington D.C. (2001-2002). Also, he was Thomas Hawkins Johnson Visiting Scholar at the United States Military Academy, West Point (2005); Director of Studies at the Hague Academy of International Law (2006) and *professeur invité* at the University of Paris II (Panthéon-Assas) from 2006 to 2012.

### **Glennon's other published books**

Michael J. Glennon's previous book, *The Fog of Law: Pragmatism, Security, and International Law* was published in 2010 by Stanford University Press and in 2001 he wrote a book titled, *Limits of Law, Prerogatives of Power- Interventions after Kosovo*, published by Palgrave MacMillan. In 1992 he wrote a book titled *When No Majority Rules: the Electoral College and Presidential Succession*, and this was published by CQ Press (Sage Global publishers) and in 1991 Michael J. Glennon co-authored a book titled *Constitutional Diplomacy*, published by Princeton University Press. These and his other works illustrate the depth and scope of this author's knowledge on the subjects of law and politics.

### **The main point in Glennon's *National Security: double government***

Taking the present United States government to task, Michael Glennon proceeded to compare this present government's achievements (with its promises in its election 'manifesto') to the former government, the Bush administration, and argues that the United States' security policy is not forged by the ideal of the institutions of 'the President, Congress and the courts' as per the academic 'Madisonian' theory, but rather that it is the 'Trumanite' theory that is at work, (that is, that the United States is instead a government by military, intelligence, diplomatic and police managers). Some would say that this resembles the United Kingdom's equivalent of Whitehall. Michael Glennon terms this schizophrenia of power; '*double government*' and the Boston Globe called it *conspiracy theory*.<sup>10</sup>

Perhaps Professor Glennon might centre his attention on President Madison's treatment of the US Banking Charter, unpacking the minutiae of that legislation, comparing those times with our present global banking crisis which began in the United States. Perhaps much might be learnt about strategy and policy for the global financial system, a quick glance of events as they panned out raises the question about the United States: is the cart leading the horse?

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<sup>10</sup> Ibid 4.

## United States financial system- timeline to calamity

10 July 2007-Turmoil reported in the US sub-prime market. US subprime market could cost \$100 billion, as per evidence given to the Senate.

17 July 2007- Bear Stearns two hedge funds are 'worthless', as per Ben Bernanke in evidence to the Senate.

18 September 2007- US Federal Reserve cut us interest rates to 4.75%.

30 October 2007- Merrill Lynch's Chief Executive Officer said that the bank had a \$7.9 billion exposure to 'bad debts'.

6 December 2007- President Bush outlined plans to freeze rates on subprime mortgages for 5 years to help those hit by the US Housing crisis.

11 December 2007-US Federal Reserve lowered the Fed Funds rate from 4.5 % to 4.25%.

22 January 2008 – US Federal Reserve cut interest rate from 4.25% to 3.5%, largest drop in interest rates for 25 years.

7 March 2008- US Federal Reserve made \$200 billion available to its major banks, to address liquidity pressures in the Funding Markets.

11 March 2008- US Federal Reserve lends \$200 billion of Treasury Securities for 28 days.

14 March 2008- JP Morgan Chase lends Investment Bank Bear Stearns some emergency funds.

17 March 2008. JP Morgan Chase does an acquisition deal for Bear Stearns for \$240 million, backed by \$30 billion of US Central Bank loans.

18 March 2008- US Federal Reserve cuts interest rate from 3 % to 2.25%.

2 May 2008- US Federal Reserve Term Auction Facility ('TAF') increased from \$50 billion to \$75 billion.

19 June 2008- FBI arrested 406 persons in a crackdown on mortgage frauds alleged to total one billion dollars.

13 July 2008- US mortgage lender, IndyMac in bankruptcy.

14 July 2008- US government 'shore up' its two largest mortgage finance companies, namely, Fannie Mae (Federal National Mortgage Association) and Freddie Mac (Federal Home Loan Mortgage Corporation). Fannie Mae and Freddie Mac have guaranteed half of all US home loans- to a tune of \$5 trillion of debt.

7 September 2008- Fannie Mae and Freddie Mac rescued by US government- the largest bail-out in US history,

10 September 2008- US Lehman Bros bank announced loss of \$3.9 billion for the 3 months to August 2008.

15 September 2008- US Lehman Bros bank filed Chapter 11 bankruptcy protection.

15September 2008- US bank Merrill Lynch Taken over by Bank of America for \$50 billion.

16 September 2008- US Federal Reserve has the Fed Funds rate at 2%.

17 September 2008- US Federal Reserve bailed out US insurance company American International Group ('AIG') with \$85 billion in exchange for 79.9% stake in AIG.

29 September 2008- US Federal Reserve had a total of \$620 billion of swap lines with overseas central banks.

3 October 2008- President George Bush passed into law its \$700 billion emergency bail-out of the US banking industry The US Treasury was then able to purchase distressed Mortgage-Backed Securities.

6 October 2008- US Federal Reserve increased its liquidity support to banks to \$600 billion.

14 October 2008- US government injected \$125 billion into 9 banks including Bank of America; Citigroup; Goldman Sachs; JP Morgan and Wells Fargo.

15October 2008- US Dow Jones Index fell by 9%.

1 December 2008- US officially confirmed to be in recession (by the National Bureau of Economic Research).

11 December 2008- Bank of America cut 15,000 jobs.

16 December 2008- US Federal Reserve cut interest rate from 1% to 0.25 %.

19 December 2008- US President Bush announced that the government loaned General Motors and Chrysler a total sum of \$17.4 billion.

18 March 2009- US Federal Reserve buys \$300 billion of longer-term Treasury Securities plus \$200 billion of Agency Debt plus \$1.25 billion of Mortgage-Backed Securities.

23March 2009- US Treasury purchased 500 billion of Toxic Loans and Securities and plans to purchase \$1 trillion of Toxic Debt in order to stimulate global economy.

9 June 2009- by this date, 10 US banks owed the US Treasury \$68 billion.

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