A Reasonable Expectation of Privacy?  
Secrecy and National Security in a Democracy

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Abstract. Citizens do not routinely agree to sacrifice their privacy. When cases come to light that the government has been spying on its citizens, there is outrage. Still, citizens’ fierce protection of personal privacy does not obviate their expectation of government to ensure national security. Public support for secret government operations is cyclical, self-interested, influenced by citizens’ knowledge of political affairs, and related to the public’s level of trust in its leaders and the perception of threats. Polls indicate that citizens are protective of their personal privacy but willing to give up a degree of control to trusted leaders.

Keywords: Secrecy; privacy, public opinion polls about national security, government, public preferences.

1 Introduction

When one works for the government, the phrase “no reasonable expectation of privacy” is part of every information systems security briefing and contract. This pertains to government employees at nearly all levels of seniority. In effect, employees affirm that they understand that every email, telephone conversation, or any other transaction is subject to monitoring and should not be considered private. Public awareness campaign placards tacked up in certain public areas within the company spaces state that “monitoring is for everyone’s good.” This understanding is considered part of the job.

Private citizens, however, do not routinely agree to sacrifice the privacy of their communications and activities. When cases come to light that the government has been spying on its citizens, people are outraged, watchdog groups spring into action and there is heavy media coverage. Still, citizens’ fierce protection of their privacy does not change their expectation for the government to ensure national security by an architecture that is based on secrecy. Public support for secret government operations is cyclical, self-interested, and influenced by the public’s level of trust in its leaders and their perception of external threats. Support for secret operations in the WWII years gave way to outrage in the mid-1970s when “allegations of abuse and improper activities” and “great public concern that the Congress take action to bring intelligence agencies under the constitutional framework” (US Congress Final Report of the Select Committee 1976, 94). The Church and Pike Committee reports, published in a multi-volume series, presented a litany of illegal actions taken by the CIA, the FBI,
and other government agencies and departments that included assassination of foreign leaders to spying on and plotting against American civil rights, and anti-war activists (US Congress Final Report of the Select Committee 1976, 101-755). Disclosure of intrusion into citizens’ personal lives galvanizes public opinion and illuminates the degree of ambivalence toward secrecy that there is in our society: it is one thing to spy on “enemies” in the interest of national security; it is quite a different matter to spy on Americans!

Despite whistleblowers’ accounts of government wrongdoing, public polls indicate that citizens continue to maintain trust in the government’s role to safeguard national security despite some tradeoffs in transparency. That leaves one to explore the threshold at which secrecy in government is acceptable. Legal and constitutional institutions address secrecy, however, interpretation and implementation of these measures are dependent on the political environment, the administration’s relationship to Congress, foreign policy issues and the tenor of public opinion. This paper discusses the paradox of secrecy in a democracy as a democratic government seeks to maintain national security for its citizens without overstepping the limits of personal privacy. It argues that citizens accept secrecy as a necessary means to protect national security and economic interests as long as personal privacy is sacrosanct, and that citizens maintain the right of oversight and consultation, even when those rights are limited, delegated to representatives, or perhaps not even practicable.

2 Review of the Literature

A survey of the literature about government secrecy and prevention of unlawful intrusion into the private sphere illustrates both the necessity and danger of the practice of secrecy within a democracy. While some quip that “intelligence is the second oldest profession”, one could argue that secrecy represents the ubiquitous dilemma a democracy addresses. To ensure strategic advantage, governments protect information and hide vulnerabilities. This creates a Byzantine system of limited accessibility to information, which may be necessary to a nation’s viability in a competitive world, but is nonetheless abhorrent to an open society. The next sections explore ideas relevant to various aspects of secrecy.

2.1 The Instrumental Role of Secrecy

Secrecy is part of human life. It allows persons to preserve personal thoughts, interests, and privacy. Our own understanding of why we wish to protect our own private elements makes us suspicious of others’ motives. It is natural, then, that citizens expect these same motivations to carry over into public life, especially when there are competitive interests at stake. Secrets are a protective mechanism, imperative for self-preservation, and thereby legitimate as a means to preserve security.

As individuals, we know our own secrets and why we need to hide them. Yet we have a certain discomfort with secrets held by our government. Halperin and Hoffman write that from the beginning of the US’ early democratic experience, the framers of