

BRUCE ANDREWS

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Privacy and the
Protection of
National Security
[1980]

PRIVACY AND THE PROTECTION OF NATIONAL SECURITY

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Perhaps it is a universal truth that the loss of liberty at home is to be charged to provisions against danger, real or pretended, from abroad.

James Madison to Thomas Jefferson
May 13, 1798

The relationship between privacy and national security is more tangled than most. In recent years, it has taken on a new complexity, as the claims of security have expanded to fill most crevices of national life and as new and more efficient means for infringing upon people's private lives have been developed. In the postwar American social order, privacy has been under vigorous attack, fueled by the alleged imperatives of foreign policy. Those imperatives, occasioned by the nature of the international environment and the character of America's enemies, have been thought to prescribe continuous vigilance. Abroad, they have suggested the need for an interventionist and hegemonic foreign policy; at home; they have accompanied the intrusions of the government into the private lives of its citizens.

These intrusions have been made possible by, and have helped to sustain, a widespread popular indifference or caution. In subtle and in not so subtle ways, a foreign policy has been able to generate one of its own domestic preconditions. The infringements on civil liberties, on the constitutional framework, and on established political institutions have therefore seemed all the more insidious. At times, of course, official policymakers acknowledge the trade-off between national defense and the protection of democratic liberties. Their rhetoric still induces the public to sacrifice some of the latter in order

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that the former might be better protected. But the general public has been less conscious of what or how much it is sacrificing. The corrosive impact which prevailing definitions of the national interest have upon a sensitivity to civil rights and civil liberties has not been fully acknowledged. Until recently, the public has accepted many of these trade-offs and many of these official definitions without a great deal of thought. Such a political somnambulism has been helped along by an atmosphere of confusion, secrecy, consumerist fulfillment, and Cold War hysteria. In the process, limits on state power and bulwarks against tyranny have been removed. The political changes engineered in the name of security have led to widespread personal insecurity. Political defenselessness and the cancellation of constitutional rights became the price of foreign policy achievement.

THE PROBLEM

Each aspect of this relationship between security and privacy bears examining. Because the record of secret state activity has finally been disclosed in recent years—if only by fits and starts—we can now begin to deal with it more openly and more analytically. The problem is not whether electronic surveillance and other attacks on privacy are legal or constitutional, but whether they are socially intelligible—whether they make sense in view of the society which spawned them. Also, the problem is not whether honorable men can strike a balance between national defense and constitutional restraints, but whether the requirements of a social system like that of the United States—in regard to a foreign policy aimed at advancing its interests, for example—will tend to sweep those restraints aside. A brief look at the empirical record of state activity in this sphere will therefore be helpful. Besides serving as a “negative role model” with a capacity for inducing shock and reform, it can set the stage for a discussion of the larger issues which need to be explored. These include: the use of security as a “totem” to justify police-like activity on the part of state actors; the connection between success in the foreign policy realm and the anesthetizing of the domestic public; the definition of national security and its relationship to a war in Indochina which was

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the occasion. in the Nixon years, for a dramatic increase in official invasions of privacy and attempts to stifle dissent. At the end, the connection between an interventionist foreign policy and the inhibition of democratic control will be considered.

EMPIRICAL RECORD OF STATE ACTIVITY

It may well be that the national security of this country could be aided by acts which violate our Constitution.*

CIA TECHNIQUES ADOPTED BY FBI

As the status quo at home and in the empire abroad met with increased domestic resistance in the 1960s, the role of America's intelligence agencies assumed greater prominence. They took their cue from the growing centralization of power in the executive branch and from an implicit theory of virtually limitless executive prerogative in the realm of foreign affairs. The Federal Bureau of Investigation (FBI), in particular, acted as the domestic counterpart of the Central Intelligence Agency (CIA), mimicking that agency's cloak-and-dagger operations with a campaign of surveillance, "counterintelligence," and covert activity all its own. No longer were operations limited to suspected foreign agents or violent criminals, although this was their statutory and programmatic rationale. Now they were directed against an entire spectrum of organizations and individuals opposed to official government policy, encompassing such civil rights groups as the Southern Christian Leadership Conference, free universities, the feminist movement, Students for a Democratic Society, the Jewish Defense League, the American Friends Service Committee, and a host of anti-war groups opposed to America's interventions in Southeast Asia.

Access to confidential sources of information was central to these operations and was acquired through contacts with college registrars and

* Department of Defense memorandum, supporting a motion for summary judgment in *Bennett v. Dept. of Defense*, 75 Civ. 5005 (LFM) (S.D.N.Y.)

deans, telephone company employees, banks, landlords, and the Internal Revenue Service (IRS). The FBI undertook *hundreds of thousands* of separate investigations of groups and persons who were placed in the “subversive” category. Although this should apparently imply a strong potential on the part of these subversives for planning or advocating actions to overthrow the government, no one has been prosecuted under the laws covering such crimes in the last 20 years. Nevertheless, the spying, the “trespassory microphone surveillance,” and the warrantless wiretaps continued. The attorney general could even claim, in retrospect in October 1974, that “the public record is sufficiently clear that there has been no serious abuse of discretion over the years of national security wiretaps installed for foreign intelligence purposes” (U. S. Senate Judiciary Committee, 1974b, p. 236). In a typical case revealed by the disclosure, through the communications media, of Pennsylvania FBI documents, a meeting of the pacifist Conference of War Resisters was watched to see if “it will generate any anti-U. S. propaganda.” These were the sorts of activities justified under the rubric of foreign intelligence purposes. No stone could safely be left unturned. A “preventive detention” list was maintained in FBI field offices specifying the people who might jeopardize the nation’s safety in a crisis situation. More than 200,000 names appeared. In all, 500,000 domestic intelligence files were gathered on more than 1,000,000 Americans (U. S. Senate Select Committee, 1976).

DOMESTIC EXPANSION OF CIA ACTIVITY

The CIA followed suit, spying on radical and civil rights groups and antiwar newspapers. installing wiretaps and engaging in break-ins without warrants, building close ties with state and local police, and infiltrating activist organizations of all kinds to solicit intelligence (Halperin, Berman, Borosage, & Marwick, 1976). Such domestic snooping and covert activity have always been excluded from the CIA’s legitimate functioning. Nevertheless, in the so-called “crisis atmosphere” of the late-1960s and early-1970s, such operations snowballed. The Domestic Contact Service expanded its coverage. Links with college communities continued to threaten the sanctity of academic freedom.

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Operation CHAOS, as it was called, managed to generate 13,000 files covering 1,000 domestic organizations, after its creation in August 1967. A computerized index of 300,000 names resulted. Along with the 100,000 entries in the army's intelligence dossiers, this information was used to discredit and complicate the work of student dissenters, as well as the draft resistance and anti-war movements.

Other violations of statutes and federal regulations continued apace. The CIA, in its secret HTLINGUAL operation spanning a 20-year period, became heavily involved in tampering with the mail. As many as 28 million pieces of mail sent by or addressed to Americans were screened; 2 million were photographed; almost a quarter of a million were opened and photographed. Another computerized index resulted—this time, involving nearly one and one-half million names. Howard Osborn, the CIA's director of security, agreed with the Rockefeller Commission report: "This thing is illegal as hell" (U. S. Senate Select Committee, 1976, Bk. 3, p. 605). Heavily shrouded in secrecy, the rather mysterious National Security Agency (NSA) added its own contribution. As part of its Project SHAMROCK, it intercepted all the private cables leaving the country, analyzing 150,000 messages a month, and distributing the information to other government agencies. Through the course of the post—World War II period, the NSA characteristically shifted its focus from suspected foreign agents to groups and individuals engaged in anti-war activities which supposedly were under the protection of the law. In Project MINARET, using a "watch list" of such names, it systematically scanned all their international wire, cable, and radio communications. Files on 75,000 Americans were maintained. The Fourth Amendment restrictions on illegal searches and seizures, which certainly applied in these cases, were expediently ignored.

COUNTERINTELLIGENCE: GROWTH TOWARD POLICE
STATE

But domestic surveillance alone did not satisfy the officials responsible for protecting the nation's defense and reproducing the social system. The

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actions of radical dissenters and anti-war activists were to be counteracted, inconvenienced, and disrupted. More and more sections of the federal apparatus devoted themselves to this task. “Counterintelligence” shifted into a manipulation of the domestic political process on an unprecedented scale. Much of the manipulation took its direction from the highest reaches of the executive branch; other actions were sanctioned by zealous officials at the middle levels. It is without any unwarranted melodrama to say that these actions reveal the basic contours of an authentic “American police state” (Wise, 1976)—one which was kept from its full flowering only by vigorous detection, unexpected disclosures, and administrative failure.

The illegal treatment of confidential tax returns provides another revealing example of this domestic thrust. In the Nixon years, groups and individuals involved in “leftist” dissent and “alleged peaceful demonstrations” were singled out for special treatment. As John Dean noted, the President specifically pressed for “the use of the Internal Revenue Service to attack our enemies”; for, according to a White House memo, “What we cannot do in a courtroom via criminal prosecutions to curtail the activities of some of these groups, IRS could do by administrative action” (cited in Lukas, 1976, pp. 29—30). Political criteria of an improper nature began to guide the IRS’s auditing of tax returns. Tax law enforcement became both selective and politicized—a weapon of harassment in the hands of the state, to be used against a secret list of adversaries. More than 8,000 individuals and almost 3,000 organizations found themselves in this category. Information gained through these improper investigations and field audits was then improperly distributed throughout the intelligence apparatus—to serve as a spur for additional political counterthrusts.

Grand juries provided another tool in this arsenal, and another officially sanctioned invasion of privacy. They offered an umbrella for the gathering of confidential information which could be more easily obtained under threat of subpoena or coerced from subpoenaed witnesses reluctant to be jailed for contempt. Nearly 2,000 people were subpoenaed in the Nixon years alone. Constitutional safeguards in these instances were held in abeyance, as the privileges of the prosecution were abused; an “accusatorial” system was

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subtly transformed into an “inquisitorial” one (Copelon, 1977; Mead, 1976). The constructive work of dissenters was derailed or undermined; whole categories of lawful political behavior and even interpersonal association were stigmatized. As with their functional predecessors—the congressional committees investigating “un-American” activities—an atmosphere of suspicion resulted.

Moreover, not all the contributions to this repressive climate originated at the federal level. As recent lawsuits reveal, state and local police formed home-grown “Red Squads” in order to spy on and harass local citizens engaged in political actions to alter the status quo, either at home or abroad (“Lawsuits against Federal, State and Local Red Squads,” 1977). Assisted in many cases by federal authorities, these squads provided the local counterparts of the disruption and surveillance undertaken by the CIA, FBI, NSA, IRS, and the Pentagon—in many cases “targeting on” the same individuals. The Mississippi State Sovereignty Commission, as one example, accumulated the names of 10,000 Mississippi individuals and 270 organizations in its “intelligence files”; Chicago police claim to have indexed over 200,000 names from the fruits of their local spying. What cannot be quantified, however, and what is devilishly difficult to gauge, is the contribution which these governmental programs made to inhibiting the movements for peace and for radical social change—for this, after all, was their purpose. The invasion of privacy served as a mere instrument.

COINTELPRO TACTICS

Still the most infamous of all these invasions were those which made up the FBI’s systematic Counterintelligence Program (named COINTELPRO, and pronounced in four syllables). Desirous of continuing and expanding the same “preventive actions” which had worked so well to hamper the Communist party, the FBI found that the mid- and late-1950s provided a less hospitable climate of opinion than the more virulent heyday of Senator McCarthy, the Smith Act, and the omnipresent Loyalty Boards. When COINTELPRO began, 20 years ago, it “transformed McCarthyism into an underground operation” (Halperin et al., 1976, p. 113; Atkins, 1976;

Blackstock, 1976; U. S. Senate Select Committee, 1976). In doing so, it sustained its coverage—against other Communist organizations, against groups advocating Puerto Rican independence, against the Socialist Workers Party—and then widened it to include the civil rights, student protest, anti-war, and radical movements of the 1960s and early-1970s. “The purpose of this new counter-intelligence endeavor,” as the Final Report of the U. S. Senate Select Committee noted (1976, Bk. 3, p. 5) was “to expose, disrupt, misdirect, discredit, or otherwise neutralize” these political activist organizations and individuals. To this task, the tactical virtuosity of the FBI was applied. Although the full record of evidence is only now trickling out in court cases and by means of the Freedom of Information Act, what is already revealed is enough to make the much more publicized crimes of “Watergate” seem rather pale by comparison.

Intensive surveillance of these domestic groups shaded over into harassment, burglaries, and theft (“second-storey jobs” and “black-bag jobs,” as they were called). More than 2,000 separate FBI COINTELPRO actions have been acknowledged. Besides the extensive burglaries and break-ins, these included the supplying of derogatory material (often of questionable accuracy) to fuel attacks by a compliant “free press” on specific groups and individuals. To show such things as the “depravity of the New Left,” “articles showing advocacy of the use of narcotics and free sex are ideal” (cited in Halperin et al., 1976, p. 128). They also worked to discredit political activists by means of anonymous letter campaigns to parents, employers, school officials, etc., and more direct pressure on employers to get their targets fired. At times, activists were “roughed up” in order to disturb and deter them. At other times, more direct intervention was utilized. Agents relied on forged documents and letters to discredit influential individuals *within* their own organizations—to mark them as informants, to destroy their effectiveness, to generate confusion. As one FBI official put it, “you can seed distrust, sow misinformation.” The family lives of certain activists became a governmental target. Some radical groups were turned against each other, occasionally by using them as quasi-official spies, occasionally as a way of provoking violence.

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Through the use of informers, the government infringed upon the sanctity of political association and even of judicial proceedings. Harassment became an *inside job*, a highly valued way of distorting the internal politics and interpersonal relations of groups in order to destroy them or orient them toward the sorts of public violence which might undermine their legitimacy in the eyes of the community. These contacts were officially designed, as the agency's "New Left Notes—Phila." memo of September 16, 1970 put it, to "enhance the paranoia endemic in these circles and further serve to get the point across that there is an FBI agent behind every mailbox."

As one official with the FBI's internal security section in San Francisco put it: "It's very nice to know that the people you're chasing are afraid to use telephones" (cited in Navasky & Lewin, 1973, p. 307). In the same context, reference might be made to the cynical remark of a top-ranking general:*

If any citizen of this country is so concerned about his mail being read or is concerned about his presence in a meeting being noted, I'd say we ought to read his mail and we ought to know what the hell he has done.

In another example, it was recently revealed that in a six-year operation against the Institute for Policy Studies, a prominent radical research organization in Washington, D.C., more than 60 paid informers were put in place. The Socialist Workers Party injunction against the more than decade-long FBI campaign of burglary, wiretapping, mail tampering, harassment, and the use of informers is also revealing (*Socialist Workers Party v. Attorney General* 73 Civ. 3160 [S.D.N.Y.]). The party's offices were burglarized at least 94 times during the 1960s, and up to 1,000 informers were used at various times to collect the 8,000,000 pages of files which the FBI admitted accumulating. In such cases, the protection of the Fourth Amendment (for example,

* General George Brown, Chairman of the Joint Chiefs of Staff, cited in *The Washington Post*, March 27, 1977.

the prohibition against general warrants which do not particularize the items to be seized) went by the boards.

Still more darkly, these paid informers took on the clandestine role of *agents provocateurs*. They supplied weapons and explosives, took part in violent crimes, and encouraged the internal *policies* of crime and violence which were supposedly what the government had wanted to quell. Entrapment and negative “public relations” resulted, or at the very least a diverting of these organizations into unproductive or self-destructive channels.

Informers were used in an attempt to destroy the Black Panther Party, even to the point of provoking violent confrontations and setting up key members for political assassination (Cantor, 1976). They were also involved in funding and arming the ultra-rightist paramilitary Secret Army Organization, which was active in threats, break-ins, beatings, bombings, and shootings intended to disrupt anti-war protest activities in southern California. Other recent lawsuits portray a similar range of activity: illegal surveillance and disruption of the Women’s Liberation Movement, the Vietnam Veterans Against the War, the use of undercover police agents as “students” in campus unrest, the attempted inducement of campus bombings at Kent State University, etc. One recent study persuasively concludes that “the hand of the secret agent was responsible for a great deal of the political conflict [and campus violence] of the last decade and a half” (Marwick, 1977). The salience of the targets which provided the rationale for these actions could be created by the actions themselves.

VIOLATIONS AT EXECUTIVE LEVEL

An expansion of the efforts involved in eavesdropping, wiretapping and bugging, illegal mail opening, the use of college campus informants, burglary: all these received the executive imprimatur with Richard Nixon’s approval of the “Huston Plan”—which “amounted to nothing less than a blueprint for a police state in America” (Wise, 1976, p. 154). In July 1970, presidential assistant Huston proposed that: “Present procedures should be changed to permit intensification of coverage of individuals and groups in the

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United States who pose a major threat to internal security” (Weissman, 1974, p. 321). On “surreptitious entry,” his famous memorandum stated, “present restrictions should be modified to permit selective use of this technique against other urgent security targets. ... Use of this technique is clearly illegal: it amounts to burglary.”

In spite of this admission of criminality, H. R. Haldeman soon informed Huston that the President had approved the proposal in its entirety. Only J. Edgar Hoover’s hesitation over the formal decision memorandum of July 23, 1970, led to the merely “piecemeal” implementation of the plan (Lukas, 1976, p. 49), using the techniques described above. Even so—or perhaps as a result—five years later, FBI Director Kellev could still say of the illegal break-ins: “I do not note in these activities any gross abuse of authority.” The Bureau, he felt, had “acted in good faith with the belief that national security interests were paramount.”

SOME SALIENT BROAD ISSUES

USE OF SECURITY AS A COVER

Dean: You might put it on a national security grounds basis.

Haldeman: It absolutely was.

Nixon: National Security. We had to get information for national security grounds. . . . With the bombing thing coming out, the whole thing was national security.

Dean: I think we could get by on that.*

Does this argument about the claims of national security let the government off the hook so easily? In their most familiar form, encountered with increasing frequency in the postwar period, the requirements of national security are said to be: (1) clear, objective, unproblematical; and (2) overriding many competing claims of personal freedom or civil liberties. Such an argu-

* Discussion in the Oval Room of the White House relative to the burglary of the office of the therapist Daniel Ellsberg, March 21, 1973.

ment has been *embodied* in the state practices cited above. Moreover, it attained prominence because it was used whenever the occasion arose for justifying those activities—whether in public or within the confines of the bureaucracy. The frequency of those occasions was not unrelated to the fact that the legal warrant for these practices was a house of cards. The secrecy which customarily enshrouded these matters of security also had an impact, as did the compliance of the media. It made these public accountings much less common. President Kennedy’s displeasure with the press over the handling of the Bay of Pigs invasion suggested one mechanism by which these public defenses might be avoided. As he argued on April 27, 1961 (cited in Aronson, 1970, pp. 161—162):

In times of clear and present danger, the courts have held that even the privileged rights of the First Amendment must yield to the public’s need for national security. Today no war has been declared . . . [nevertheless] Our way of life is under attack.... If the press is awaiting a declaration of war before it imposes the self-discipline of combat conditions, then I can only say that no war has ever imposed a greater threat to our security.

As foreign policy issues became increasingly “domesticated” in the late 1960s and early-1970s, the recourse *in public* to the claims of national defense did, of course, become more common. At the same time, it proved no less revealing. President Nixon even went so far as to use those claims to justify the Watergate cover-up: “since persons originally recruited for covert national security activities had participated in Watergate, an unrestricted investigation of Watergate might lead to an expose of those covert national security operations” (Lukas, 1976, p. 462). Without having those operations specified, one simply had to take on faith the idea that such an expose would be disastrous.

This account has a long lineage. Franklin Roosevelt’s original rationale for wiretapping, presented to the attorney general on May 21, 1940, limited it to “grave matters involving the defense of the nation” and “persons sus-

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pected of subversive activities against the Government of the United States.” In addition, he noted his agreement with section 605 of the Federal Communications Act of 1934 which had said, “Under ordinary and normal circumstances wiretapping by government agents should not be carried on for the excellent reason that it is almost bound to lead to abuse of civil rights” (cited in McClellan, 1976, p. 223). Yet times and foreign policies change, and, with them, domestic policies of this kind. As the Cold War unfolded, Attorney General Tam C. Clark requested on July 17, 1946, that the wiretapping procedure be extended to “cases vitally affecting the *domestic security*” (cited in Theoharis, 1974; emphasis supplied), thereby authorizing the surveillance of political dissidents. President Truman concurred. Even so, FBI Director Hoover had already informed an uncomplaining Congress as early as 1939 that the Bureau was compiling indices of people engaged in “any activities that are possibly detrimental to the internal security of the United States” (Halperin et al., 1976, p. 97). As time went on, Americans discovered just how broad and elastic this characterization could be.

Popular activities threatening the internal security: in this, we find the same category for which the Huston Plan sought “intensified coverage” over 30 years later. COINTELPRO, in addition, would disrupt those “subversive elements seeking to undermine our nation,” as Assistant FBI Director Sullivan put it in 1966. In the late-1960s, the Special Service of the IRS was also thought to be carrying on this “overall battle against persons bent on destruction of this government” (U. S. Senate Select Committee, 1976, Bk. 3, pp. 881482). Surveillance of the Women’s Liberation Movement was accounted for in a similar vein, as were the campaigns against Martin Luther King, Jr., the Black Panthers, the Socialist Workers Party, and dozens of other domestic groups pressing for social change—and sometimes for dramatic, though non-violent, transformations of America’s foreign policy and domestic status quo. The intelligence agencies characterized these groups as a “subversion force,” whose activities justified the officially sanctioned espionage and trampling of civil liberties. Legitimate political dissent seems to have become indistinguishable from the kind of subversive activity which truly jeopardized the nation’s military defense. That a distinction is in order may be recognized in

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the following statement of Chief Justice Earl Warren:

This concept of “national defense” cannot be deemed an end in itself, justifying any. . . power designed to promote such a goal. Implicit in the term “national defense” is the notion of defending those values and ideas which set this Nation apart. . . . It would indeed be ironic if, in the name of national defense, we would sanction the subversion of. . . those liberties which [make] the defense of the Nation worthwhile [In *United States vs. Robel*, 389 U.S. 258, 264].

CAN FOREIGN POLICY SILENCE ALL PUBLIC DISSENT?

When a conception of the domestic social order or the status quo had achieved something approximating a consensus among the ruling groups, a map of “the nation to be defended” could then be derived.* “The nation,” at that point, could be seen as a bundle of distinguishable characteristics. The idea of national security had acquired a specific social content. As I have remarked elsewhere:

In most cases, even considerations of national security are not intelligible apart from a specific conception of the domestic order which is to be protected or advanced. The international aims of a government, in other words, are very rarely either self-explanatory or ends in themselves. For a complete account, they must eventually be redefined as means toward a more inclusive set of social purposes [Andrews, 1975, p. 523].

National security thus takes on an instrumental form; it can be derived from the reigning conception of the domestic society which is to be protected or advanced. If the particular “moves” of policy can be seen and acknowledged as means toward the end of security, the idea of security itself

* For several treatments of the historical evolution of such a mapping in the American case, see Dowd, 1974; Johnson, 1968; Kolko, 1976; and Williams, 1961.

can be located in a deeper or “second order” relationship of ends • to means. But what is interesting for our present purposes is the fact that this “second order” derivation tends to go unrecognized. In postwar American policy, except in periods of crisis or dramatic transition, it has largely been taken for granted. With rare exceptions, the “official” conceptions of the valued status quo have not been an occasion for sharp political division. Nor have the broad conceptions of national security derived from them, at least insofar as we find them inscribed in America’s postwar international policy. Instead, domestic debate and political struggle have centered largely in the tactics to be used to protect those shared conceptions.

Because these deeper matters were not heavily politicized, they afforded the policymakers a great deal of leeway in particularizing their conception of the nation, in defining the potential threats to its defense, and in specifying the best means to meet or pre-empt them. Eventually policymakers came to mistake this leeway for the nation’s security itself; the maximization of state power, both at home and abroad, was identified with the minimal requirements of security. This was a logical extension of the prevailing official “mind set,” since domestic as well as foreign tactics could be derived from a taken-for-granted idea of security, as long as it was well elaborated. And in the American case, because it was a fundamentally conservative and expansionist social system which was being protected, the exertions of state power would have to be both vigorous and successful. This carried with it rather exacting preconditions of both an international and a domestic variety.

For example, acceptable limits of political opposition and dissent were entailed. Groups or individuals who crossed these limits—whether from a disagreement over the nature of the desired society or over the policies recommended to protect it—found themselves in a virtual no man’s land. They became a threat to “internal stability,” a source of unrest or, increasingly, a target for political redirection through the use of paid agents and counterintelligence disruption. As the consensus over the need for an interventionary foreign policy began to break apart in the 1960s (Andrews, 1976, 1977; Russett, 1975; Tucker, 1972, 1973), these threats loomed larger in the eyes of the arbiters of orthodoxy. As the army’s general counsel candidly put it in 1974,

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“the people on the other side were essentially the enemy” (U. S. Senate Judiciary Committee, 1974a, p. 16).

RESULTANT INHIBITION OF THE PUBLIC VOICE

Counteracting the threat required that the state apparatus be mobilized in quite a far-reaching manner, as we have seen. In particular, it began to involve the inhibition of citizens' willingness to exercise the political rights which were guaranteed to them. Not only did such things as surveillance and infiltration violate people's Fourth Amendment right “to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures,” but the chance of these same things occurring helped to create a climate of fear and paranoia which, in turn, undercut the guarantees of the First Amendment. The use of grand jury proceedings against the Vietnam Veterans Against the War may serve as a case in point, for certainly this was “part of an overall governmental tactic directed against disfavored persons and groups . . . to chill their expressions and associations”—as noted in a Fifth Circuit Court decision of V 1975 (*U.S. v. Briggs*, 514 F 2nd 794, 805—806). The chilling effect also occurred as the by-product of a politically conservative climate, one which did not evolve accidentally but was a conscious creation of the federal government and the ruling elites. From their point of view, such a creation could be regarded as another entailment of the claims of security.

Like the international policies which overarched it, the domestic task was grounded on a notion of *deterrence*. The social sources of discontent would not be relieved; instead, a more coercive strategy would be followed. Enemies at home and abroad could be inhibited or would engage in avoidance behavior when they found themselves facing the concerted efforts of the state. “Aversive conditioning” and “stigmatization” would be the predictable results (Askin, 1973). Boundaries of acceptable political behavior were to be redrawn, both by means of the intrusions of the government and also as citizens came to internalize the new rules of the game. As Justice William O. Douglas phrased it in the so-called Keith decision in 1972 (*U. S. v. U. S. District Court*): “More than our privacy is implicated. Also at stake is the reach

of the Government's power to intimidate its critics." Eventually, as the entailments of security expanded, this intimidation came to expand as well. In the end, the government targeted groups outside the established institutional nexus, but also seized upon the task of confronting the media, the Congress, and partisan opponents through officially sanctioned channels. This extension eventually brought down the wrath of the "establishment," as Nixon used to call it, just as it had undermined earlier political figures whose attacks had crossed a similar line: Joseph McCarthy and Henry Wallace, for examples from both sides. In the most recent case, the norms of electoral competition were transgressed by means of large-scale political espionage and disruption; harangues and planned threats of IRS investigation and anti-trust actions were to be effective in changing the views of the media; dissenters and foes in the Congress and the federal bureaucracy were assailed. John Dean's well-known memorandum of August 16, 1971, written at the request of the President's assistants, caught the spirit of this approach by discussing:

How we can maximize the fact of our incumbency in dealing with the persons known to be active in their opposition to our administration. Stated a bit more bluntly—how we can use the available federal machinery to screw our political enemies.

The isolated "commanding heights" had virtually declared war on all the lower levels of the political system, as if playing out the familiar script for a self-defined "crisis" situation. To combat a dangerous ideological adversary, in the eyes of state actors, appeared to mean that many of the covert tactics and repressive characteristics of that adversary would have to be adopted, at least in the short run. First incorporated into America's Cold War foreign policy, this lesson came to insinuate itself even more deeply into the fabric of domestic life. To combat the equally dangerous currents of social change and partisan opposition at home, these same lessons seemed appealing. When the response to domestic dangers would be wrapped in the flag, or tied to prevailing claims of national defense, the need for a determined counter thrust appeared all the more suggestive.

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NATIONAL SECURITY NEEDS MORE PRECISE
DEFINITION

PRIVACY AND THE
PROTECTION OF
NATIONAL
SECURITY

The maximization of executive power was ceasing to be merely a possibility, and certain statements of government officials were no longer naive slogans. Thus,

There have been—and will be in the future—circumstances in which Presidents may lawfully authorize actions in the interests of the security of this country, which undertaken by other persons or by the President under different circumstances would be illegal [Richard M. Nixon].

Everything is valid. everything is possible [White House Aide Tom Charles Huston, June 9, 1970].

Experience in Indochina. America's escalation of the war in Vietnam provided these enabling circumstances. By so doing, it brought many of these issues to prominence once again, as the needs of foreign policy seemed to warrant decisive domestic action—of a prophylactic sort. In the late-1960s, Lyndon Johnson had urged that the anti-war movement be investigated to determine whether the turmoil at home was being fomented from abroad—an interesting parallel to the Administration's "external" view of the conflict in Vietnam itself. Although no solid evidence turned up, the surveillance continued to grow. When Richard Nixon occupied the White House in 1969, the same domestic forces beset him and threatened to undercut his authority. The White House saw itself faced with a profound social crisis, one which might paralyze the government and endanger the security of "the nation" as it was officially conceived. Imagery of impotence abounded. But this time the threat would not be "appeased." Instead, it would be "managed," even if by techniques which did not respect constitutional limits and the niceties of the law. The gloves were off. As Egil Krogh, Jr. said at the time: "Anyone who opposes us, we'll destroy. As a matter of fact, anyone who doesn't support us, we'll destroy" (Lukas, 1976, p. 93).

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Yet *what* was in crisis? The abuses of surveillance and counter-intelligence cannot be put in a larger social context if we regard them simply as the deficient product of standard bureaucratic process (Halperin, 1975—1976, pp. 149—150) or of personal psychopathology at the top. They were not ends in themselves; nor did they unfold as a mere byproduct of bureaucratic autonomy and self-aggrandizement. Certainly the overall directions of domestic and international policy were intersecting and bringing with them the increasingly alarmist visions of American leaders. Speaking of the student rebellion and its opposition to the war on March 22, 1969, President Nixon claimed that: “It is not too strong a statement to declare that this is the way civilizations begin to die” (cited in Schell, 1976, p. 36). And we can regard this as a presidential way of speaking about America’s postwar empire or world leadership role and its exacting preconditions, as Nixon applauded Yeats’ insight: “‘Things fall apart; the center cannot hold.’ “ For the domestic turmoil faced by official Washington had come, in large measure, as a response to the continuing American war in Asia. And so it was the identification of national security with that continuing Asian involvement which helped to fuel the patterns of action under analysis: the expansion of state power into previously private spheres, the adoption of paramilitary tactics in the domestic arena, and the infringement of civil liberties. Those who opposed the established social order were undercutting the credibility of American foreign policy; those who struggled against that policy were doing the work of the enemy, whether they recognized it or not; those who were advancing the enemy’s cause deserved to be treated accordingly. If the war protected American security—and this was, of course, what the war’s critics refused to accept—then anything done to sap the opposition to that war would likewise help protect the nation’s security.

Or so the logic went, officially. In May 1969, America’s secret bombing of the supposedly neutral territory of Cambodia was revealed by *The New York Times*. The “violation of national security,” as Henry Kissinger would later characterize the publishing of such sensitive information, was not merely a diplomatic issue. Government officials also hoped to keep the anti-war movement at home from reawakening. This “extraordinarily damaging” disclosure (to use Kissinger’s modifiers) therefore precipitated a well-known

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series of warrantless wiretaps of 13 government officials and four journalists in an attempt to plug news leaks and quell the opposition. In several cases, the wiretaps were accompanied by what the attorney general called “the other business” (surveillance, etc.). As I. Edgar Hoover’s memo of a May 9 call from Kissinger records it, he “hoped I would follow it up as far as we can take it and they will destroy whoever did this if we can find him, no matter where he is” (Wise, 1976, p. 36).

By the time the Pentagon Papers were revealed and published in mid-1971, the anxiety of foreign policy officials simply added to an atmosphere of besiegement. Wiretapping had already been defended as a legitimate security action, designed to stop the public disclosure of information and to allow policymakers to play their cards close to the chest. A legal right would even be claimed for the wiretapping of groups whose activities jeopardized the smooth flow of diplomatic initiative, such as the Jewish Defense League’s harassment of Soviet embassy officials. COINTELPRO and the suppression of domestic dissent had been defended in a similar way, with a view toward the protection of “internal security.” Kissinger urged that the disclosure of the Pentagon Papers be kept from serving as a precedent, “at all costs.”

Sternier and more encompassing measures were to be tested out. In the summer of 1971, the White House set up the Special Investigations Unit or “Plumbers Unit,” taking its name from those other domestic professionals whose job it is to “plug leaks.” This allowed the men surrounding the President to skirt the hesitations of the intelligence agencies and move directly into political espionage. Among their other responsibilities, John Ehrlichman approved a “covert operation” to examine the medical files of Daniel Ellsberg’s therapist. “If done under your assurance that it is not traceable.” It was undertaken in September 1971; much later it proved to be traceable and its instigators found themselves open to criminal prosecution. Another, even more bizarre plan which was contemplated involved the theft of documents pertaining to the Indochina conflict from the Brookings Institution, a well-known liberal think-tank in Washington, D.C.—to be achieved by the planting of a fire bomb in the building and the retrieval of the documents “during the commotion that would ensue” (Wise, 1976, p. 157).

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And still the full record of the Plumbers' activities has not yet been revealed.

Constitutional limits infringed. Apparently these operations were regarded in much the same terms as the war in Indochina itself—exceptional, even distasteful actions which, however, were needed at the time to preserve America's interests. This at least helps to account for the positive ethical gloss which the nation's leaders were so intent on giving them. If need be, actions would be carried out *in the face of* established constitutional limits, rather than under their protective umbrella, for neither the public nor the guardians of legality could be counted on to understand the kinds of threats which officials saw all around them. As Donald Santarelli from the Justice Department observed in 1973, "Today, the whole Constitution is up for grabs" (cited in Schell, 1976, p. 314). It was as if the perspective of Dirty Harry, the Clint Eastwood character in Don Siegel's 1971 film, had become national policy—a violent individual at the center, butting himself up against legal restraints and attempting to protect an established social system from its own violent symptoms and contradictions.

Because of the endemic uncertainty of international affairs—and this has been a *leitmotif* in diplomatic thinking since the time of Thucydides — someone could usually build a case for aggressive action. When interventions into Third World countries were arranged (in Cuba, Cambodia, Chile, Angola, Zaire, etc.), and when their success depended on the American public's being either supportive or kept in the dark, special problems arose. In some ways, the issues remained constant throughout the postwar era, but the proposed solutions changed from time to time. By the late 1960s, the public depredations of McCarthyism and the more virulent strains of anti-Communism did not seem publicly acceptable. But if the enforced mobilization of the early Cold War period was no longer needed or even desirable in an age of limited wars and the "destabilization" of foreign regimes, an enforced silence or a lack of public scrutiny might yet prove exceedingly valuable. This was especially true as the priorities of the American public began to loosen up and show movement in the 1960s, and as a reluctance in the face of foreign interventions began to display itself (Andrews, 1976). At times, from the official vantage point, ignorance might still look like bliss. If information leaked

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out, on the other hand—to foreign audiences or to domestic enemies—U. S. leaders could claim that the high ground of diplomatic leeway had been encroached upon.

Not only did the uncertainty of foreign affairs have its counterpart in the uncertainty of domestic politics and civil liberties, the two were wrapped together. An inability to control the information process or to eliminate dissent would foreshadow an increase in a level of uncertainty which was already uncomfortably high. National insecurity would result. In these instances, someone could usually build a case for aggressive action—only this time on the home front as well. For, after all, without surveillance and occasionally some disruption of the “hostile forces” at home, how could one maintain the domestic preconditions for a foreign policy success with any certainty? How could one ever really know what breaches of security were occurring?

In 1974, thinking along similar lines, the Justice Department therefore argued that the warrantless wiretaps of journalists and former government officials had a counterintelligence dimension. Disclosures of “national security information” in the press enabled America’s enemies to obtain it without resort to spying—since foreign agents could simply read the newspapers! The way an unfettered free press operated might then be “tantamount to ‘foreign intelligence activity’ “ (Wise, 1976, p. 101). Similar motives lay behind the wiretapping of respected journalists in the foreign policy field such as Joseph Kraft, in 1969. Later on, Attorney General Levi noted that the burglary and “surveillance did not indicate that Mr. Kraft’s activities posed any risk to the national security.” Yet this was hardly the point; *for only the results of the surveillance* could indicate this in any definitive way.

Attorney General Saxbe testified in October 1974: “But as Voltaire said, ‘Has the hawk ever ceased to prey upon the pigeon?’ And I do not want to be the pigeon” (U. S. Senate Judiciary Committee, 1974b, p. 247). In these same hearings, Senator McClellan spoke of “disarming” the nation by outlawing electronic surveillance in domestic cases; FBI Director Kelley warned of “burning the house down to roast the pig,” and Saxbe claimed that it would be like “pulling the firemen off the ladder.” As I have said, in cases of uncertainty someone could always argue that the security risk outweighed the ille-

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gality. Moreover, the security risk could be determined only after the intrusion into citizens' private lives had occurred. The same was true of COINTEL-PRO, but here the dangers to domestic stability could always be contrived with the help of agents provocateurs to justify the counterintelligence operations.

CONCLUSION

Just as many had feared, the loss of liberty at home was charged, in the American case, to the efforts made against dangers from abroad. The civil liberties protected by the Constitution, the freedoms embedded in a democratic political process, the privacy of citizens: these would often prove to be luxuries in the face of national security claims. And these national security claims, in turn, would be said to hinge upon the imperatives of world politics, the nature of nuclear deterrence, the need for credibility, and the exacting price of freedom in a hostile world (see, for example, Schell, 1976, chap. 6).

These connections bear examining. For, as I have argued, these security claims—and the infringements of liberty to which they are tied—are not simply features of the international environment which can be taken for granted. Rather, they spring from the requirements of a particular social system or domestic “social paradigm” (Andrews, 1975, p. 524) as government leaders interpret them. The idea of national defense, like the equally opaque or “mythic” ideas of national security and the national interest, will still retain this reliance on a particular domestic *context* and a specific domestic *content*. By retaining these features, or by locating a foreign policy in this “second order” relationship, we can help to make intelligible the expansive foreign policies which go well beyond the needs of direct territorial defense or the protection of sovereignty. In the American case, this will prove especially useful, for it also helps to make intelligible the domestic patterns of surveillance and infringement of liberties which have been uncovered. The expansive international policies and the “restraining” of domestic dissent go hand in hand.

The idea of protecting “freedom” from external threat, for example, may be another way of talking about the international preconditions for

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reproducing a particular domestic status quo—and its most highly valued aspects of a political, economic, or cultural variety. As in the case of postwar America, those’ external preconditions may suggest the need for a hegemonic foreign policy, which entails a leadership role over a far-flung “Free World” alliance, the containment of ideological and military competitors, and periodic interventions throughout the system in order to safeguard a hegemonic control and access. In recent decades, this led first to an “imperial America” and then to official anxieties about the *domestic* preconditions of maintaining that hegemonic structure and that capacity for intervention. These foreign policy tasks have consistently been identified with the needs of national defense; the security claims which accompanied them helped to fuel the attacks on civil liberties. This was also true no matter how extravagant or wrongheaded those claims might be. In fact, the curbs on their extravagance—supplied by an active and critical public—were precisely what those security claims had helped to undermine in the postwar years. The depoliticization of the public and the depoliticization of “national security” were joined.

To get beyond the surface presented by the legal or constitutional issues involved in surveillance or wiretapping, we will have to recognize the links which connect foreign policy ambitions to their domestic requirements. In the American case at hand, this seems especially clear. Usually without their approval or even acknowledgment, a reluctant and often neo-isolationist American public has been encouraged to make dramatic sacrifices for such ambitions. The nation has sacrificed democratic freedoms at the altar of “credibility” and “defense,” without its being made clear just what is being advanced or defended, and without discovering if the public were willing to play its appropriate political role in sanctioning such an effort. Instead, we have witnessed the U. S. government behaving like the fabled Oroborus: the head devouring the body. Policies would be maintained “at all costs.” In the process, to protect a particular “paradigm” or concept of “the nation,” the body politic might be consumed. In this fashion, we can see that it would not be citizens’ privacy but instead the *privacy of state action* which would be secured.

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