

ABSTRACT

Title of dissertation: OFFICIAL SECRECY: SELF, STATE AND SOCIETY

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In meeting the threat posed by terrorism, the democratic state also faces a paradox: Those practices best suited to defending the state are often least suited to democracy. Such is the case with official secrecy, which has received renewed attention. Military and intelligence operations frequently depend on secrecy for their success. At the same time, democracy depends on openness, a fact too often neglected by democratic theory.

Democratic theory presumes that citizens are at least minimally capable of making decisions to steer the ship of state, a presumption that requires citizens not only to have the skills necessary to make political decisions but to have the information necessary to make those decisions competently. However, in many areas of the most vital public interest (e.g. foreign policy, nuclear weapons, decisions regarding war and peace), the state intentionally conceals information from citizens. While other factors, such as high information costs, may work against an informed citizenry, official secrecy is

qualitatively different and uniquely damaging to democratic governance, even granting that in some instances it may be a necessary evil.

Official secrecy subverts the very democratic values it is frequently designed to protect, denying citizen competence, reducing accountability and diminishing the legitimacy of the state, as well as distorting the historical record and creating fertile ground for paranoid-style thinking. Democratic theorists have not been unaware of the importance of information to democratic citizenship. Indeed awareness has promoted the defense of the institutions of free expression as the best means for ensuring that necessary political information is accessible. However, that is no longer enough, as the last century has seen states become producers and repositories of information on a never-before-seen scale. The task for democratic theory now is to recognize this change in the information environment and recognize the importance of this new locus of political information. Understanding and minimizing the impact of official secrecy is a necessary part of this process.

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by

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Chapter 1

Understanding Official Secrecy and Democracy

It may be democracy's best-kept secret: Citizens must have access to information in order to govern themselves effectively. It may be democracy's biggest unacknowledged failure. Even in the most democratic of societies, the state prevents citizens from gaining access to information they need to make the best decisions for themselves and their communities. In normal times, official secrecy lurks in the background, an unavoidable but equally undemocratic ingredient in statecraft. But in times of national crisis and transformation, official secrecy becomes a priority for policy makers. The current crisis provoked by the Sept. 11 terrorist attacks is no exception. As occurred with the U.S. entry into World War I and the beginning of the Cold War, a new, unstable international situation sees policy makers turning to official secrecy as a way of enhancing national security. In practical terms, this means that secrecy policy is made at times when security concerns are paramount and seemingly esoteric questions of democratic theory are pushed even further into the background than usual. By the time the situation has stabilized, new, more restrictive policies tend to be in place, and secrecy policy is off the national agenda, at least until the next crisis. Without a new way of looking at secrecy that explicitly acknowledges its anti-democratic character, this pattern likely will repeat itself yet again.

As John F. Kennedy said, "The time to repair the roof is when the sun is shining" (quoted in the Report of the Commission on Protecting and Reducing Government Secrecy 1997, p. 67). Unfortunately, the pattern in American secrecy policy has been to wait until a storm, hurriedly put out buckets and makeshift patches and then forget about them until the next storm. The results for the United States have already been costly, even

disastrous (Moynihan 1998), and the mistakes of the past seem ripe for repetition now that the sun is no longer shining. It is not that policy-makers are overtly or consciously hostile to democracy or that their security concerns are illegitimate. But lacking a democratic-theoretical perspective on secrecy, it is likely that again measures meant to enhance national security will again subvert democracy, while only appearing to provide protection against future threats. This is no small matter. Citizens expect quite reasonably to be protected, but they also have an important role to play in participating in government, one that official secrecy forecloses. That debates on secrecy rarely hinge on this point is not surprising, given the ad hoc nature of policy-making in this area. Democratic theory is not blameless either, as it has provided precious little direction in this area. That must change if democratic theory is to continue to be relevant, and this dissertation aims to change the terms of the debate to carve out a much needed place for citizens in secrecy policy.

It is no exaggeration to say that information is born free, and everywhere it is in chains. While some uses of secrecy are necessary and legitimate, others can never be justified, except by the basest of reasons. The chains of official secrecy all subvert citizen autonomy. The effects of this subversion can be felt throughout the state and society.

Consider, for example, a few examples from the American experience:

- The book *Body of Secrets* (Bamford 2001) revealed that following the failure of the Bay of Pigs invasion, the Joint Chiefs of Staff approved “plans for what may be the most corrupt plan ever created by the U.S. government” (p. 82). Operation Northwoods called for acts of terrorism, including hijacking planes, to be staged in Washington, D.C., Miami and elsewhere as a pretext for a war to remove Fidel Castro from power in Cuba.

The plan was never put into operation, but it has had a lasting impact nonetheless.

Conspiracy theorists today cite Operation Northwoods as evidence for the plausibility of their claim that the U.S. government staged the attacks on the World Trade Center and the Pentagon. While their accounts make for lousy fiction and even worse history, the existence of such abuses as Operation Northwoods offers conspiracy theorists ammunition and a veneer of credibility they would not otherwise have.

- In a case argued before the U.S. Supreme Court, Jennifer K. Harbury argued unsuccessfully for the right to sue Clinton administration officials who she says cost her husband his life and then denied her access to the courts when they falsely told her that his whereabouts were being investigated in 1993 and 1994. Her husband, Guatemalan rebel leader Efraim Bamaca Velasquez, was captured by the U.S.-allied Guatemalan military in 1992. A colonel involved in questioning Bamaca was also a paid CIA informant. Bamaca was reportedly tortured before dying in Guatemalan military custody. U.S. officials argue that they must have the option of lying in cases such as Bamaca's because in some instances deception may be the only way of protecting national interests. In an amicus curiae brief, Solicitor General Theodore B. Olson wrote, "The perhaps unfortunate reality is that the issuance of incomplete information and even misinformation by government may sometimes be perceived as necessary to protect vital interests" (Lane 2002).

- Due to fears about its potential usefulness to terrorists, the Environmental Protection Agency has removed from its Web site information about chemicals used at 15,000 industrial sites. While that information is still available at reading rooms, critics argue that limiting access to the data may prevent families from learning whether schools

or day-care centers are adjacent to sites where dangerous chemicals are used (Toner 2001).

While democratic theory for the most part ignores it (Moynihan 1998, Converse 1985), official secrecy creates serious problems for the practice of democracy. In creating a class of information to which citizens are forbidden access, official secrecy limits citizens' ability to make decision best for their own private interests as well as for the common good. In subverting citizen autonomy, official secrecy violates one of the key presuppositions of participatory democratic theory. This subversion has wide-ranging effects, undermining democratic practice through negative impacts on the self, the state and society. As the same time, official secrecy is not merely an aberration or a problem that can simply be solved. It is an entrenched part of how states conduct themselves and appears to be as indispensable as it is dangerous, particularly in this new age of global terror. As such, it provides a challenge democratic theory must address. This dissertation takes on that challenge, explaining in a systematic manner the ways in which official secrecy damages democratic citizenship, and thus the state and society as well, paying particular attention to the experience of secrecy in the United States. In so doing, it offers a means by which democratic theory can take this phenomenon into account and defend the principle that what is political should be public.

Secrecy as security

Arguing for openness is no small task. Proponents of official secrecy in the United States have been particularly vocal in the wake of the Sept. 11, 2001, terrorist

attacks. At a press conference on Sept. 12, Secretary of Defense Donald H. Rumsfeld turned to the issue of secrecy immediately and at length after briefly addressing the estimated death toll at the Pentagon. A leaker, according to Rumsfeld, is “a person who’s willing to violate federal criminal statutes, and willing to frustrate our efforts to track down and deal with terrorists, and willing to reveal information that could cost the lives of men and women in uniform” (Rumsfeld 2001). Never mind that leaking is not necessarily a criminal activity¹, or that Rumsfeld himself stated that leaks of classified information had not played any role in the attack. As will be discussed in Chapter 2, there are certainly reasons that a secretary of defense would worry about leaks — some disclosures could truly be harmful to national security. However, serious damage is rare, and despite previous anti-leak campaigns, such disclosures are a common part of the landscape. In fact, high officials such as Rumsfeld appear to be the sources of most leaks in Washington. As John F. Kennedy noted, “[T]he Ship of State is the only ship that leaks from the top,” (Moynihan 1998, p. 168). What is noteworthy here is that the secretary of defense sees official secrecy as having such value and being so fragile that he was willing to spend a significant amount of time on the issue, even as the fires at the Pentagon still smoldered.

Classified information has not been the only target for security efforts. Although there are reports that some libraries ignored the requests, federal repository libraries have

¹ While the distinction is not made in some countries that have official secrets acts, leaking is distinguished in American legal practice from espionage, which involves revelation of secret information with the intent of aiding a foreign adversary. Leaking, particularly when the official involved intends to serve the public interest with that revelation is essentially immune from criminal sanction. Outside of espionage cases, only two U.S. government employees have received criminal sanctions for leaks, both of whom profited from the sale of secret information. Samuel L. Morison was convicted after selling three satellite photos to Jane’s Defence Weekly in 1984. He was pardoned in 2001 by President Clinton. Johnathan Rendel was sentenced to a year

largely complied with a request by the U.S. Geological Survey to destroy CD-ROMs containing unclassified water-supply data, due to fears of how that information could be used by terrorists (Cha 2002). This is not the first time that the federal government has moved to restrict access to unclassified information (Adler 1985, Chalk 1986, Kalven 1989). What is noteworthy this time, though, is the general cooperation of groups, such as research librarians, that are generally favorable toward the free dissemination of information, as well as the cooperation of private groups such as the Federation of American Scientists, which removed about 200 pages from its Web site (Gerstein 2001). More generally, the Bush administration has been especially secretive compared to its predecessors (Cha 2002, Nakamisha 2002), in particular issuing an executive order for the implementation of the Presidential Records Act that is openly hostile to the act's intent.

Although officials frequently do abuse secrecy to hide incompetence, corruption or embarrassing information, it is not without utility and indeed sometimes may be necessary to ensure the security that citizens value. And citizens are justified in valuing security. No one who was in New York or Washington on Sept. 11, 2001, could seriously argue that such atrocities are a cost that democracies must bear from time to time. Democracy surely requires a minimum level of security to function, and citizens are right to demand it if democracy is to live up to its promise of providing an arena in which they can make the best possible choices about their own lives. "Give me liberty or give me death" is a fine motto for a hero but an unfair demand to make of citizens. This dissertation does not aim to refute all the arguments for secrecy, for many of them are

in prison for selling "restricted federal information." Rendel was an intelligence officer at the Drug Enforcement Agency.

legitimate. Nor is its aim limited to showing that even perfect secrecy could never provide total security. Rather it is to show that official secrecy, even when fully justified, inevitably comes with serious costs, and that open access to officially held information is a necessary condition for democracy. Some compromises are inevitable, and democracy must co-exist with official secrecy, but that co-existence cannot and should not be a comfortable one. While the aftermath of Sept. 11, 2001, makes this argument more difficult, it also makes its success more important than ever for the continued vitality of democratic theory and practice.

Official secrecy presents a serious political problem only to the extent that democracy is valued as a good. The term “democracy” refers to a political system in which citizens govern themselves. Obviously, the states referred to today as democracies do not involve citizens in every instance of political decision making, and it might be argued that to do so would be a recipe for crippling inefficiency for the state and extreme annoyance for the citizens. However, whatever compromises are made in the name of representation and administrative efficiency, at the core of the democratic ideal lies the notion that the power of governing ultimately lies with those who are governed. In denying citizens the informational tools they need to participate effectively in the life of the state — even if those areas are small and clearly delineated, which is frequently not the case in practice — official secrecy subverts this ideal.

What is secrecy?

Let us begin then with a definition. Official secrecy is taken here to mean the intentional concealment of state-held information by agencies or individuals acting under the purview of state authority. This borrows from Bok's (1984) definition of secrecy more broadly as intentional concealment. Bok's definition of secrecy "presupposes separation, a setting apart of the secret from the non-secret, and of keepers of a secret from those excluded. ... The separation between insider and outsider is inherent in secrecy; and to think something secret is already to envisage a conflict between what insiders conceal and what outsiders want to inspect or lay bare" (p. 6).

The complex nature of secrecy is obvious: As a private, individual capacity, it has the potential to be empowering and indeed is necessary for individual autonomy. At the same time, as a capacity exercised by others, it is disempowering. When those others are acting on behalf of the state, the "separation between insider and outsider" and the disempowerment of the outsider citizen is a matter of serious concern for democratic theory. The distinction between secrecy as used by individuals and as used by the state is a significant one, then, as many of the psychological arguments that justify individual secrecy do not apply to the state. The place of secrecy in individual psychology and its relationship to official secrecy is worth noting briefly here.

In addition to official secrecy, Bok's definition encompasses many non-official forms of secrecy, including some that could be considered beneficial for democratic citizenship and self-development in general. The possibility of holding something back,

of keeping secrets about oneself, is a necessary part of defining ego boundaries.

According to Laing (1969):

We have our secrets and our needs to confess. We may remember how, in childhood, adults at first were able to look right through us, and into us, and what an accomplishment it was when we, in fear and trembling, could tell our first lie, and make, for ourselves, the discovery that we are irredeemably alone in certain respects, and know that within the territory of ourselves there can be only our footprints. There are some people, however, who never realize themselves in this position. This genuine privacy is the basis of genuine relationship; but the person whom we call "schizoid" feels both more exposed, more vulnerable to others than we do, and more isolated (p. 370).

At the individual level, the experience of being unable to keep secrets about oneself is pathological. The self requires secrecy to create a healthy private space. The same cannot be said of the state. Where the ability to keep secrets is absolute for the individual, for the state the need for secrecy varies, conditioned by the environment in which it operates.

At the interpersonal level the ability to keep secrets about oneself is a necessary part of individual autonomy. According to Bok (1984):

To be able to hold back some information about oneself or to channel it and thus influence how one is seen by others gives power; so does the capacity to penetrate similar defenses and strategies when used by others. True, power requires not only knowledge but the capacity to put knowledge to use; but without the knowledge, there is no chance to exercise power. To have no capacity for secrecy is to be out control over how others see one; it leaves one open to coercion. To have no insight into what others conceal is to lack power as well (p. 19).

The connection between secrecy and lying is no mere coincidence. Secrecy is a necessary part of lying. Without the possibility of concealing truth, lying would be pointless and ineffective. Whether institutional or individual, secrecy offers three possible methods of protecting concealed information: 1) Information can be concealed so effectively or fortuitously that no one ever thinks to inquire about it, 2) information can

be concealed, and all inquiries can be rebuffed with a refusal to answer or 3) information can be concealed, and inquiries can be met with a lie. Historically, in U.S. foreign policy, the doctrine of “plausible deniability” has meant that should method 1 fail, officials have method 3 as a fall-back position. When the Soviet Union shot down Francis Gary Powers’ U-2 spy plane, President Eisenhower attempted to use method 3, only to learn that due to what the Soviets already knew, his denial was not plausible. However, as the Iran-Contra scandal and the Guatemala case demonstrate, the doctrine’s failures have not led to its abandonment. The U.S. government’s amicus brief in the recent *Christopher v. Harbury* case (Lane 2002) demonstrates a continued commitment to the idea that the government must be allowed to lie at times to citizens, a key principle underlying the doctrine of plausible deniability.

The use of secrecy to make lying possible is the most obviously anti-democratic of the three methods of concealment. Where intentional deception of citizens or subjects plays a significant, positive role in some strains of political thought — Plato’s “noble lie” comes to mind — any democratic theory that takes citizen autonomy seriously must evaluate official lying negatively. Even when actual lying is not involved, though, official secrecy has a strong anti-democratic strain. As will be shown, methods 1 and 2 also have negative consequences that must not be ignored.

While the available methods of concealment are identical for official and individual secrecy, the significance of that concealment is quite different. For the individual, the ability to keep secrets is a good. Likewise with the potential for telling lies, although the actualization of that principle can be ethically problematic. Total transparency for the individual is a disaster. It is the seeming impossibility of

concealment that makes the schizoid experience him- or herself as being exposed and vulnerable. The same cannot be said for official secrecy. The state cannot experience schizoid feelings or any others. Official secrecy can perform other functions — protection of national security is a frequently cited one — but secrecy is not the absolute existential necessity for states that it is for individuals. Rather it is situational. Conditions of hostility, weakness, etc., might be seen as necessitating official secrecy, but those conditions predicate the need, and absent those conditions, the need ceases to exist. It is possible to at least imagine a set of conditions under which official secrecy is unnecessary. The same cannot be said for individual secrecy.

As with secrecy, the idea of concealment encompasses a broader scope than is of immediate concern here. Whereas intentional concealment, by definition, involves secrecy, there are other recognizable forms of concealment that are something other than secrecy. Information can be stored and indexed so poorly that it is for all intents and purpose inaccessible. It can be of such a technical nature that it is incomprehensible to the layperson, should he or she have occasion to encounter it. The sheer volume of information can be so overwhelming that citizens find themselves unable to comprehend all that is available to them. When practiced by the state, these forms of concealment certainly can create problems for democratic citizenship, but they are something other than official secrecy. There is a qualitative and significant difference between a situation in which citizens due to their own shortcomings are unable or unwilling to acquire state-held information, and a situation in which the state intentionally conceals information. The latter, without exception and even when “necessary” or “justified,” undermines citizen autonomy, which is why it is the focus of this project.

Secrecy in the United States

While the practice of official secrecy appears to be universal, the experience of the United States will be of particular interest here. Certainly, totalitarian or authoritarian states could provide more dramatic examples, but they would not be particularly relevant to a study of democracy. The United States, however, is generally recognized as a democratic state, and for that matter a very open one. Other industrial democracies have varying policies. Great Britain's series of Official Secrets Acts have historically created a presumption of closedness, unless the state acts positively to make information public.² At the other end of the spectrum, Sweden has the longest experience with openness, having established a statutory right to public access in 1766 (Relyea 1986). As a major power with global involvement and global security interests, the United States exemplifies a state that many would argue is situated to require secrecy for its continued security. At the same time, as an exemplar of democracy, the United States should elicit expectations of a high degree of openness.

At the federal level, the American information regime generally operates with a presumption of openness. The individual states also operate under a variety of openness or "government in the sunshine" statutes, with the most effective clearly stating openness as a goal and including a credible enforcement mechanism (Wickham 1973). The federal government's 1946 Administrative Procedures Act and the original 1966 Freedom of Information Act were enacted with the goal of establishing greater openness, but it was

only the 1974 amendments to the act that effectively opened the door to public access to information held by the federal government (Feinberg 1986). While there is a general presumption of openness in the United States, there are exceptions, lots of exceptions, actually.

While the Freedom of Information Act remains “the most generous of information access policy pronouncements in the world” (Relyea 1986), officials can still intentionally conceal information covered by the nine fairly broad exemptions to the Freedom of Information Act. Of particular concern is the national security exemption, which essentially gives presidents and their agents license to withhold information as they see fit (Cheh 1984). Other constraints on openness in the American information environment include laws enacted in the 1980s limiting the dissemination of “unclassified nuclear information” and unclassified Defense Department data with potential military or space applications (Adler 1985), as well as more recent moves to limit access to unclassified information. The Atomic Energy Act of 1946 (updated in 1954) also goes against the grain in creating the presumption that information related to nuclear weapons or energy is “born classified” at its discovery, forbidden to those without proper clearance unless a positive action is taken to remove it from the restricted classification (Green 1981, Hewlett 1981). Other democracies also employ classification systems as part of their information policies, whether access to state-held information is generally presumed to be open or closed.

The American combination of presumed openness and exceptional secrecy (with security concerns being the most common justification for the exceptions) and the

² The U.K. Freedom of Information Act, which comes into effect in 2005, can be expected to alter this presumption to some extent, although it should be noted that this law does not replace the

mythological role as the “city on the hill,” lighting the way for other democracies to follow, makes the United States an especially interesting case. In states presuming closedness, such as Great Britain under the Official Secrets Act, problems found associated with official secrecy could be attributed to its extent, rather than to the phenomenon itself. However, if official secrecy can be shown to have harmful effects even in a state in which there is a general presumption of openness, that finding should be widely applicable and valid in more closed states as well.

Citizens, competence and democracy

The way in which we understand secrecy depends on what we understand democracy to be. Theories of democracy range from those of Pareto, Mosca and Schumpeter (thin models, with minimal space for citizen participation) to those of the realist models of Dahl and Schattschneider to the strongly participatory models of Pateman and Barber. These models can be placed on a continuum ranging from elitist to quite dependent on citizen participation and input. Secrecy causes the most harm if you take a participation-oriented view, but even the elite models of democracy necessarily sustain harm from official secrecy, as is discussed at greater length in Chapter 3.

As a condition of allowing the governed the power of governing, democracy must require that citizens hold at least a minimum level of competence. As Dahl (1989) notes, “Democracy — rule by the people — can be justified only on the assumption that ordinary people are, in general, *qualified* to govern themselves. For it seems self-evident that people ought not to govern themselves if they are not qualified to do so” (p. 97).

1989 Official Secrets Act, but instead will exist alongside it.

With regard to information, this means that a competent citizenry 1) is capable of using pertinent information in its making political decisions, 2) has access to the information necessary for making political decisions.

While Dahl leans toward a thinner version of citizenship than is favored here, at least two of his criteria for a democratic process — effective participation and enlightened understanding — cannot be met unless citizens are afforded access to the information they need for decision making. Effective participation requires that citizens “have adequate and equal opportunities for placing questions on the agenda and for expressing reasons for endorsing one outcome rather than another” (Dahl 1989, p. 109). Without access to information about the available options, citizens may be unaware of the possible outcomes of the decision-making process or of their full implications. Participation can thus be distorted or thwarted altogether. As for enlightened understanding — the principle holding, “Each citizen ought to have adequate and equal opportunities or discovering and validating (within the time permitted by the need for a decision) the choice on the matter to be decided that would best serve the citizen’s interests,” (Dahl 1989, p. 112) — absent sufficient information, it is impossible for citizens to determine with any degree of certainty what best serves their interests (or for that matter, the common good if that is the criterion).

The democratic citizen is expected to have relevant knowledge about the political world, including knowledge of the rules of the game. In Berleson’s (1954) words, the democratic citizen is “supposed to know what the issues are, what their history is, what the relevant facts are, what alternatives are proposed, what the party stands for, what the consequences are” (p. 308). Unfortunately, that is exactly the kind of knowledge that has

been found to be lacking in citizens. Especially since World War II, the findings of empirical social science have forced a rethinking about how citizens make decisions, the amount of political knowledge they have and their capacity for acquiring that knowledge. Seen in the worst possible light, these findings make it appear that George Bernard Shaw (1965) was correct in claiming, “Democracy substitutes election by the incompetent many for appointment by the corrupt few” (p. 182). Much of the theoretical reaction to this empirical reality has been to discount the value of citizenship in favor of a variety of other devices meant to salvage whatever is left of democracy. It is an unfortunate but understandable reaction.

Understanding, much less enlightened understanding, seems unlikely for the two-thirds of citizens who don't even know the name of their representatives in Congress (O'Connor and Sabato 2000). But as Delli Carpini and Keeter (1996) note, “As we read the existing research regarding citizenship in America, we find consistent support for the idea that given the appropriate information, citizens are capable of making rational political choices” (p. xii).

Still, the traditional ideal of fully informed and involved citizens making sound decisions about their government on the basis of their knowledge has taken a beating since the panel study of voters by Lazarsfeld, et al. (1948), in Erie County, Ohio. In pointing out the rationality of not seeking out information, Downs (1957) offers a theoretical basis for understanding why citizens would not fit the traditional ideal (although as Delli Carpini and Keeter point out, the notion that it is irrational to be informed becomes harder to swallow when faced with evidence that that most privileged and powerful Americans also tend to be the ones with the greatest levels of knowledge).

At any rate, early reports indicated that most Americans might not have sophisticated enough cognitive frameworks in which to fit any information they receive. In looking at open-ended explanations of how Americans evaluate candidates and parties, Campbell, et al. (1964), find just 3.5 percent with sufficient sophisticated explanations to be classified as “ideologues” and another 12 percent as “near ideologues.” It seems that voting decisions, which offer American citizens the most direct and routine methods of holding government accountable, typically stem more from psychological attachments to labels and images than from critical, reasoned evaluation. Converse (1964), too, finds a low level of sophisticated, well-integrated systems of political thought among members of the mass public.

Studies of voter sophistication (Nie, et al 1976; Nie and Anderson 1974) and analyses of how that concept is measured (Smith 1990; Smith 1980; Sullivan, et al. 1978; Lane 1962) have led to a re-evaluation of what is known about citizens’ belief systems since the dark picture painted by Conover (1964). To be sure, citizens in the United States tend not to be as knowledgeable or sophisticated as might be considered ideal, and they have not been especially well-served by their sources of political information (Ansolabehere, et al. 1993, 1994; Postman 1985). In short, while it is true that citizens have a tendency to be distracted by bright images and shiny objects on television, rather than being sophisticated users of complete, accurate political information, the argument here is not that their capabilities and characteristics are ideal. Instead, the argument is that their capabilities are good enough (and potentially improvable) for citizens to stake a reasonable claim to autonomy, a core value of democracy.

As Delli Carpini and Keeter (1996) note, “Debates over the importance of an informed citizenry are rooted in the collision of theory and practice. In theory, a democracy requires knowledgeable citizens to avoid becoming Madison’s ‘tragedy’ or ‘farce.’ In practice, it appears that a majority of people lack even the most basic political information.” (p. 22) This clash led from the beginning to skepticism about democracy, and democratic theorists have typically responded in one of three ways: 1) falling back on an elite-based theory of democracy that involves citizens in only the most superficial, tangential ways, 2) explaining away the need for knowledgeable citizens by turning to the utility and power of heuristics and 3) turning collective rationality to mitigate the impact of individual ignorance and irrationality, explaining that “the whole of citizen awareness is greater than the sum of its parts” (Delli Carpini and Keeter 1996).

Proponents of elite democracy range from those who are merely resigned to the fact that most citizens are incapable of participating fully in public life to those who celebrate that idea, seeing limited participation as offering stability and security against totalitarian impulses they see entailed by mass involvement in politics. The latter strain of elite theory holds that the masses are not merely incompetent but hostile to liberty.

According to Pateman (1970):

Michels with his famous “iron law of oligarchy” ... appeared to show that we were faced with a choice; either organisation, which in the twentieth century seemed indispensable, or democracy, but not both. Thus although democracy as the rule of the people by means of the maximum participation of all the people might still be an ideal, grave doubts, doubts put forward in the name of social science, appeared to have been cast upon the possibility of realising this ideal. ...

The collapse of the Weimar Republic, with its high rates of mass participation, into fascism, and the post-war establishment of totalitarian regimes based on mass participation, albeit participation backed by intimidation and coercion, underlay the tendency for “participation” to be

linked to the concept of totalitarianism rather than that of democracy (p. 2).

With this suspicion of participation, it is no wonder that efforts have been made to construct a theory of democracy that does not hold out mass participation as a democratic virtue. While it is held here, in agreement with Barber (1984), that mass participation in a strong democratic context is the best defense against tyranny, it is not surprising that the experiences of revolutionary France and Weimar Germany color elite democracy's view of participation. This fear finds clear voice in Sartori (1973), who, motivated by a fear that mass participation even in established democracies can lead to totalitarianism, extends Dahl's theory of polyarchy to argue that democracy involves rule by competing elites.

Schumpeter (1943) provides the cornerstone for the theory of elite democracy, defining democracy as a system based not on participation but on competition for leadership. Neither Schumpeter (1943) nor Lippmann (1965), who exemplify this orientation, trusts the citizens' judgments about their interests, but each believes leaders must determine those interests for them. Further, the elitists see the situation for the people as permanent and efforts to change it as futile. "How could a mass democracy work if all the people were deeply involved in politics?" asked Berelson et al. (1954, p. 318) in their effort to deal with the apparent paradox of a system in which individually citizens do fail to live up to the democratic ideal, while the system composed of those individuals remains democratic.

Schattschneider (1960) offers a version of elite democracy that is more sympathetic to citizens. While he defines democracy as "a form of collaboration of ignorant people and experts," he adds the caveat:

There is no escape from the problem of ignorance, because *nobody knows enough to run the government*. Presidents, senators, governors, judges, professors, doctors of philosophy, editors and the like are only a little less ignorant than the rest of us. Even an expert is a person who chooses to be ignorant about many things so that he may know all about one. (pp. 136-137)

To be sure, experts have a role to play in democracy, but as Schattschneider warns, they are not a substitute for the participation of citizens. The admitted shortcomings of citizens do not justify a call for a regime of philosopher-king experts to replace institutions of self-rule because 1) no such regime is possible and 2) even if it were possible, such a regime would not be desirable.

In attempting to construct an empirical description of democracy based on actual practice, the proponents of what Pateman (1970) calls the contemporary theory of democracy in fact implicitly offer a normative prescription in the form of a tautology: What is currently practiced under the name democracy is what democracy should look like because current practice is democratic. This prescription's chief concerns are stability and national institutional arrangements rather than participation. Dahl's (1966) protestations aside, contemporary, or elitist, theory "does not merely describe the operation of certain political systems, but implies that this is the kind of system we should value and includes a set of standards of criteria by which a system may be judged 'democratic'" (Pateman 1970, p.15).

The second response to citizens' lack of political intelligence or sophistication has been to turn to heuristics or "low-information rationality" (Popkin 1991) as a way to salvage democratic theory in the face of actual practice. This approach has its intellectual roots in Downs' (1957) *An Economic Theory of Democracy*, which explained the rationality of citizens making decisions with little information due to information costs

and low expected utility. (It also opened the Pandora's box of the rational voter paradox.)

Sniderman et al. (1991) offer the heuristic model in this manner:

Citizens frequently can compensate for their limited information about politics by taking advantage of judgmental heuristics. Heuristics are judgmental shortcuts, efficient in the double sense of requiring relatively little information to execute, yet yielding dependable answers even to complex problems of choice. ... Insofar as they can be brought into play, people can be knowledgeable in their reasoning about political choices without necessarily possessing a large body of knowledge about politics (p. 19).

Also consistent with this general school of thought is research suggesting that citizens make political decisions at the moment they receive information without retaining the decisive pieces of knowledge in long-term memory (Lodge, McGraw and Stroh 1989). The heuristic approach leaves a place for citizens in democracy, but in application that place tends to be shrunken compared to the traditional ideal of citizenship.

The third approach substitutes collective rationality for individual ignorance and irrationality. As explained by Page and Shapiro (1992), while individual-level ignorance and irrationality are not to be discounted, individuals' deviations from positions supporting their rationally determined interests are randomly distributed, meaning that the noise of irrational opinions and attitudes essentially cancels itself out. This leaves rationally determined positions to be expressed without interference. Random distribution is key here. If the rational voices left after ignorance cancels out ignorance are truly to speak for all, they must be reasonably representative of all (Miller 1996). Using Americans' political knowledge as a measure, it is clear that this condition does not hold. Among the most informed citizens, women, blacks, the poor and the young — in other words the underprivileged — are underrepresented, in large part due to structural reasons (Delli Carpini and Keeter 1996).

The position taken here is that despite the disturbing revelations about Americans' political competence since World War II, democracy's best and only hope is found in the active, meaningful participation of citizens. As Delli Carpini and Keeter explain: "The paradox of modern democracy cannot be resolved by eliminating the need for a broadly and equitably informed citizenry. In the end, the paradox itself is illusory — to the extent that citizens are uninformed, the system *is* less democratic" (1996, p. 49, italics in original).

Theorists of participatory democracy hold that political involvement does more than protect citizens' private interests, which is certainly not unimportant, but it also has an educative function. The protective function can be performed by elites or others representing the dormant masses, but for the educative function, nothing can substitute for participation. *Quite simply, the argument is that participation improves life for both the citizen and society in a way that nothing else can.* For participatory democrats, citizens are at least as important as institutions.

This position has its modern roots in the works of Rousseau and John Stuart Mill. For Rousseau (1978), participation's chief function is education, developing other-regarding citizens who, through their deliberations must take into account more than simply their own private interests. This deliberation process forces the individual to distinguish between his or her own impulses and other concerns. Participatory institutions for Rousseau guarantee freedom in a way counter to the way that non-participatory ones threaten it or put citizens "in chains." A second function of participation is it makes collective decisions more acceptable to the individual. Third, it creates a sense of belonging in the community.

Mill (1912) reinforces Rousseau's ideas of participation and moves them into the modern nation-state system. Mill adds that in a large nation-state, it is local participation that prepares people to be democratic citizens, that suffrage for occasional elections is not sufficient. Rather, participation even — or especially — in lower levels of the political system has an educative effect, creating attitudes and qualities within the self necessary for the maintenance of the democratic system.

Also in this tradition is Barber's (1984) idea of "strong democracy," which depends on "a self-governing community of citizens who are united less by homogenous interests than by civic education and who are capable of common purpose and mutual action by virtue of their civic attitudes and participatory institutions rather than altruism or their good nature" (p. 117). Likewise, Pateman (1970) and Thompson (1970) put participation and both its instrumental and non-instrumental benefits at the core of democratic theory. It is believed here that other efforts to deal with the realities of citizens' political knowledge and abilities, described above, give up too much, destroying democracy in order to save it. As Thompson says:

If citizens are so incorrigibly incompetent that their role must be limited, what *reason* (as distinct from cause) can be given for members of an elite to pay any attention to the results of elections? If the electoral verdict and other expressions of citizens' desires are not rational, a system which forces elites to heed such expressions is profoundly irrational. To justify injecting a dose of elitism into their democratic theory, these theorists paint such a pessimistic picture of citizens that any reason for retaining a strain of democracy disappears. When autonomy is not to some extent presupposed, participation seems pointless. (p. 25)

In a very real sense, despite the shortcomings of citizens and their institutions, participation, at least in some venues is as much a description of the American system as it is a desire of democratic theorists. According to Delli Carpini and Keeter (1996):

Such changes as the expansion of the franchise, the direct election of senators, and the growing role of public opinion and the mass media have increased the public's role in the selection of leaders and expanded the ways citizens can participate more directly. This extension of democratic input has increased the importance of an informed citizenry. This is true even if one focuses exclusively on the thin aspects of American citizenship, but it is especially true if one considers the full range of participation available to citizens (p. 41).

Given those empirical realities, either a descriptive or normative theory of democracy that attempts to displace citizens seems deficient, even if the quality of participation is dissatisfactory to both elitist and participatory democrats. [Fettweis asks what about secrets not related to basic interests (or available choices) of people? If we know more would we choose differently? Two possible related answers: 1) A slippery slope response. 2) Difficulty in determining the line between related and unrelated; and in a democracy, citizens should really be the ones making that determination

The anti-democratic character of official secrecy is virtually self-evident for participatory democracy. It is a fundamental contradiction to set up a system in which on the one hand citizens are supposed to govern themselves and on the other they are denied the information they need for self-government. Habermas (1984) makes the argument that one way of determining the extent of democracy is measuring the extent to which citizens are able to enter into public discourse from relatively equal positions with regard to information. In creating classes of information haves and have-nots, official secrecy makes a "ideal speech situation" impossible.

It can be argued that official secrecy is inconsequential for democratic theory because the information to which citizens are denied access is insignificant politically, and, as anyone who has ever dealt with large volumes of declassified material can attest, this argument is not totally without merit. But in practice, important information is kept

secret, and indeed, secrets can and are kept to gain political advantage. More importantly, even if decisions about secrecy are made without regard to domestic political advantage, the process still has an undemocratic tinge, as citizens are not able to participate in deciding what is and is not kept from them.

This argument is made from the perspective of participatory democratic theory, but it is not necessary to be a participatory theorist to see the costs of official secrecy. Even those strains of democratic theory calling for thinner forms of citizenship still implicitly require that citizens have access to information. Even if citizens' role is limited to choosing one or the other of a set of competing elites, they must make their choice on the basis of some kind of information. As Delli Carpini and Keeter (1996) say, "the heuristic model is based on *low* information rationality, not *no* information rationality" (p. 52, italics in original). Likewise, the models that hold that citizens are collectively, if not, individually rational, requires that at least some citizens have a sound basis of information for their decisions, even if the vast majority's expressed preferences are little more than random noise.

To be sure, the elitist, heuristic and collective rationality models do not require as much information as might be envisioned for the participatory model, but that does not make official secrecy any less corrosive. Whether citizens fail to seek out the information they need to act wisely or it is kept from them, as can be the case with official secrecy, they are vulnerable to being manipulated by those who would, in Hamilton's words in Federalist 71, "flatter their prejudices to betray their interests." Delli Carpini and Keeter (1996) find evidence "indicating that citizens came to the wrong conclusions based on information – often provided by the government and the media – that was misleading" (p.

99). And there are consequences to a misinformed public. In a study conducted during the Persian Gulf War, Jhally et al. (1991) found that Americans' knowledge of the Gulf region's history and politics was skewed in such a way as to favor the Bush administration's decision to go to war. The most accurately informed citizens were also least likely to support the war. Had the public been better informed, it seems likely that levels of support for the war would have been quite different.

When official secrecy comes into play, the danger of manipulation is multiplied. In fact one of the cardinal virtues claimed by secrecy proponents is the potential for getting adversaries to act on dangerously incomplete or incorrect information. However, the potential for the state to turn secrecy's manipulative power against its own citizens cannot be denied, and at times secrecy has been used in exactly this way. There seems to be no method certain to eliminate the possibility of this kind of abuse. When this abuse occurs, it thwarts citizens' democratic will, and even the potential combined with knowledge of past abuses creates suspicion – even paranoia – in the minds of citizens, undermining their efficacy and the state's legitimacy.

Even used with the most sincere of intentions and earnest of justifications, official secrecy is irrevocably hostile to democratic values. It denies citizen autonomy, and because of that denial, has negative effects on not just the self, but also the state and society. Therefore, it is held here that any complete theory of democracy must include the ideal that when it comes to state-held information, whatever is political should also be public. There is no shortage of ad hoc and even systematic justifications for official secrecy, nor is there a shortage of hue and cry about specific secrecy measures. What is

needed is an understanding in democratic theory of the centrality of openness in democracy and citizenship, and the costs imposed even by justifiable secrecy.

A realistic view recognizes that there will be exceptions to the principle of openness but is not resigned to or comfortable with those exceptions. Effective democratic citizens are competent, autonomous decision makers who are capable of participating in public life and whose participation betters not only their society but also their selves. In Millian terms, the autonomy of democratic citizens is necessary for human beings to be fully actualized (Mill 1969). Official secrecy denies the competence that democracy presupposes and undermines the autonomy that makes it possible.

Given that citizens are competent to govern themselves, it follows that they must be able to gather the information necessary for self-government. If citizens are competent to govern: “Implicit in this postulate are two bases for a right to gather information from a state: first, to govern themselves, citizens have a right to all information necessary to participate fully in decisionmaking, and second, only the citizens themselves can determine the limits of their search for information.” (“The First Amendment Right to Gather State-Held Information” 1980) This may not be a right that is in fact found in statute, but it is more importantly a necessary condition for democracy.

Democratic theory has concentrated on the ability of citizens to create and manipulate privately held information because historically the information needed for self-government has been in private hands but vulnerable to official controls on information. The cluster of rights that falls under the heading free expression could be expected to ensure adequate access to information. This is no longer the case. To be sure, governments have always had secrets, but not on the current scale. It is only after World

War I that states became the vast producers and repositories of information recognizable today. The role of state-held information was not recognized because it simply was not that significant. Democratic theory can no longer afford to discount the impact of official secrecy on citizenship, accountability and legitimacy.

Official secrecy limits the ability of citizens to act qua citizens — that is to participate — at all phases of the political process, from agenda setting to decision making to implementation and evaluation. This limitation is a fundamental denial of citizen autonomy, and thus even undertaken with the purest of motives, official secrecy is prima facie undemocratic. This is a cost that cannot be compensated for, even with experts or representatives standing in for citizens. Further, it creates fertile ground for suspicious, even paranoid thinking, as will be discussed in Chapter 4. The effects ripple outward to the state and society at large. For the state, official secrecy decreases legitimacy, via two related routes: the diminution in possibilities for accountability caused by secrecy and the increase in distrust, which is reinforced when abuses are revealed. On a societal level, necessary information flows are hindered, especially as the state increasingly becomes a creator and repository of more information than ever before.

The information environment has changed radically since the 19th century, and democratic theory can no longer afford to ignore the importance of state-held information and the pernicious effects of official secrecy. It can no longer be taken for granted that by guaranteeing free speech and a free press that citizens' need for information can be satisfied. Much larger amounts of information are held by the state than historically has been the case. Paradoxically, while this truly is an information age, it is also an age in which conditions of scarcity prevail, due to the phenomenon of official secrecy. There is

a great deal of information in official hands that can be found nowhere else, and access to it is limited. Those who control access to information wield a great deal of power, and it must be recognized that this power has the potential to distort, if not stifle, democratic outcomes. Even under the most felicitous of conditions, official secrecy subverts democratic citizenship. When abused — and the nature of secrecy encourages abuse — official secrecy's impact can be even greater. As part of a greater understanding of the role information must play in self-government, democratic theory must take into account the destructive effect official secrecy has on the democratic project. In the following chapters, the destructive effects of official secrecy — and its possibilities for coexistence with democracy — are explored in detail.

The benefits of official secrecy, which are quite real and important are the focus of Chapter 2, which examines the justifications used by secrecy's proponents and shows that they without exception involve something other than democratic values. Official secrecy may be a necessary evil for the survival of a modern state, but its necessity does not obviate its evil for democratic theory and practice. The nature of that evil, and its impact on democracy is the next focus here.

Because democracy is, at its core, about citizens, the impact of official secrecy on the citizen is examined first. Chapter 3 begins the discussion of official secrecy's negative impact on the self, showing how it diminishes citizens' autonomy and makes them less able to hold the state accountable for its actions. This discussion continues in Chapter 4, which focuses particularly on the distrust and paranoia engendered in individuals by official secrecy. Then moving from the individual to the state, the effects of official secrecy ripple outward, so Chapter 5 explores how official secrecy, by

undermining the citizen, also subverts the legitimacy and authority of the state through this diminished accountability and increased distrust. Not only the state, but society as a whole feels the impact, so Chapter 6 examines what official secrecy means for society, both in terms of limits on necessary information flows and the poisonous atmosphere created by distrust. Particular concerns in Chapter 6 include cases in which military secrecy is self-defeating, secrecy in the courts and the impact of official secrecy on science and history.

Although the impact of official secrecy has been neglected by democratic theory, there has historically been a recognition of the need for free-flowing information. The literature defending freedom of expression as a democratic value recognizes this need, although with a general presumption that the information required by citizens is privately held. Chapter 7 explores why official secrecy has been allowed to flourish essentially without comment and ties the need for openness to the justifications for free expression. Chapter 8 concludes the argument suggests policy implications of this research, as well as pointing out areas for future study.

Chapter 2 Why Keep Secrets?

“Knowledge is power.” — Francis Bacon

“Political power grows out of the barrel of a gun.” — Mao Tse-tung

Anyone who has ever played poker understands the utility of secrecy. And anyone who has ever played seated in front of a mirror understands how devastating disclosure can be. Assuming an honest game, the only influence a player has over the outcome is in manipulating the information other players have about the cards in his hand. Through judicious wagering, discards and even facial expressions, the player sends messages to the other players — and receives them in a like manner. Frequently, the messages are misleading, which is why a good bluffer — a player who is able to convincingly convey false information about the value of his hand — can win the pot with an inferior hand. Conversely, a player who inadvertently communicates accurate information about his hand, perhaps through a “tell,” may find himself winning smaller pots with good hands and getting his bluff called on weak ones. The most successful poker players communicate to their opponents a strategic mixture of truth, falsehood and noise in such a way that their opponents are unable to decipher what is true and what is not, at least until the cards are on the table. But without secrecy shrouding the actual cards players hold, the complicated interplay of truth and falsehood is moot, and poker is nothing more than a game of blind luck. With secrecy, poker is still a game of luck, but it is also one of Machiavellian intrigue, in which manipulating appearances can mean the difference between victory and defeat.

Poker is an extreme example in that the only power available to players is what comes from manipulating information. The political world is much more complicated.

Power comes in the guises of custom, money, status, legitimate authority and myriad other forms, including ultimately the potential application of lethal force. Knowledge and power are not synonyms; power does not come solely from the barrel of a gun. Rather, power is fluid, dynamic and situational, ranging along a spectrum of coercion from persuasion to authority to violence. Different forms trump at different times. Secrecy is not the whole story, but it is a significant piece of it.

Practitioners certainly know this. It was military force that won the Allies a beachhead on continental Europe on D-Day, but it was secrecy that made it possible for that force to be triumphant. Had German commanders been prepared to expect the invasion in Normandy, they could have marshaled sufficient forces to repel it. But secrecy in planning and a campaign of deception indicating an impending invasion in Pas de Calais offered Allied forces an advantage in military force (Brown 1975, Friedman 2001). The Sept. 11 hijackers used brute force and box cutters to take over four airliners and radically alter the world view of the West, but had their intentions not been secret, they would never have made it past airport security. In turn, the Bush administration has reacted to the attacks on the World Trade Center and the Pentagon by moving to restrict access to information that could potentially aid future attackers.

Even information available in the open literature arouses security concerns in the current environment. In a Washington Post op-ed piece, Dennis Pluchinsky (2002), a senior intelligence analyst for the Diplomatic Security Service, makes the provocative claim that the American news media are guilty of treason for running stories pointing out potential vulnerabilities to future attacks. Post-Sept. 11 news stories have highlighted security weaknesses of air charters, nuclear power plants and chemical plants, among

other things. “No terrorist group that I am aware of has the time and manpower to conduct this type of extensive research on a multitude of potential targets,” Pluchinsky writes. Why make their work easier, he asks, especially given that there is a history of terrorist groups using open-source information and news stories in selecting targets and refining their techniques. For instance, in 1984 the Belgian group Communist Combatant Cells sabotaged NATO pipelines, later disclosing that it had picked its targets by using the telephone book to find the location of every pumping station in the country. The statute creating the new Department of Homeland Security “exempts from disclosure any information about infrastructure security vulnerabilities that a private company provides to the government” (Guzy 2002) precisely because of concerns about the potential utility of that information to terrorists. The concern is real, even if the policy response is disproportionate.

According to Pluchinsky, if journalists uncover vulnerabilities, they should not publish them, but report them to the government for appropriate action. “I say the following with a heavy heart, but if there were an ‘Osama bin Laden’ award given out by al Qaeda, I believe it would be awarded to the U.S. news media for their investigative reporting. This type of reporting — carrying specifics about U.S. vulnerabilities — must be stopped or censored.” Even though the information is publicly available, putting it together in a news story reduces opportunity costs for potential adversaries. Furthermore, “if you put all the unclassified information together, sometimes it adds up to something that ought to be classified,” Pluchinsky quotes Richard Clarke, who was then head of the White House Office of Cyberdefenses, as saying. This argument about the potential danger posed by even unclassified information is merely the latest incarnation of the

“mosaic theory,” which holds that much unclassified but sensitive information is dangerous not for its own sake but because of its place in a larger puzzle (Raloff 1988). It was the mosaic theory that led to the Reagan administration’s controversial initiative to pressure commercial database firms to limit access for foreign subscribers, even for databases compiled solely from open sources.

Pluchinsky’s broadside against the press is mentioned here not because it is justified — it decidedly is not — but because it illustrates some very real benefits of secrecy and dangers of disclosure. In the Soviet Union, it used to be impossible to obtain an accurate street map of Moscow (Baclawski 1997). A disoriented invading army would have been at a disadvantage, but surely the potential advantage afforded there came nowhere close to the costs it imposed on Moscow residents. Likewise, had the Sept. 11 hijackers been unable to find their way to their airports, unprecedented atrocities could have been prevented. But it would be absurd to blame Rand-McNally or Mapquest for the attacks. Just as it would be a mistake to ignore the benefits of secrecy here, it is a mistake for proponents of secrecy to ignore the benefits of a free flow of information and the costs of stemming that flow.

The remaining chapters of this dissertation focus on the costs of official secrecy and its conflict with the values of democracy. Indeed, as a general rule, the benefits of official secrecy have nothing to do with democracy. But in terms of unalloyed power, secrecy has its benefits — if it did not, it would be unnecessary to point out its costs here. As it stands, the benefits are recognized and sought by many within government, all too often without reflection. The pattern with secrecy seems to be to practice it first and provide post-hoc justification later.

Secrecy acts not as an ideology or a philosophy but as a tool for exercising power, a characteristic that cuts across levels of analysis. For the individual, secrecy maintains a barrier around things to be kept private, a function necessary for ontological security (Laing 1969). Likewise, even as it protects the individual private space from invasion by the public sphere, secrecy also can be seen as forming a barrier to keep private things out of the public space. Gurstein (1995) laments the collapse of norms that once favored reticence over exposure, concluding that others' immodesty leads to a loss of privacy for the self and a loss of the ability to common ability to make decisions about the character of the public. One does not have to accept that others' immodesty curtails one's own privacy to see that secrecy (in this case, a perceived obligation to keep secrets about oneself) lay behind the power of Gurstein's "party of reticence" to control the character of the public space — and its loss enabled the "party of exposure" to triumph subsequently.

As an instrument rather than a philosophy, secrecy is not backed by a single, coherent justification — although defenders of official secrecy do tend to make their arguments in the language of state interests. Rather, secrecy finds its justification in a family of arguments. Indeed, secrecy has a different meaning depending on its location: For the individual, the capacity for secrecy is absolutely necessary for autonomy and ontological security. For the state, secrecy can contribute in such venues as security and efficiency. Individuals acting under the aegis of the state can also see their personal interests advanced by official secrecy.

Individual vs. Official Secrecy

The capacity for keeping secrets is most clearly beneficial for individuals. It is possible to imagine a world in which it would be unnecessary for nation-states to keep secrets. Such a world might be a utopian fantasy, but it is at least can be imagined without doing violence to the idea of the nation-state. The same cannot be said for individuals. It would require a fundamental change in human character for healthy individuals not to require the ability to decide whether to disclose or conceal at least a core of personal information. For the individual, secrecy offers protection of the self in the form of reinforcing identity and autonomy:

Control over secrecy provides a safety valve for individuals in the midst of communal life — some influence over transactions between the world of personal experience and the world shared with others. With no control over such exchanges, human beings would be unable to exercise choice about their lives. To restrain some secrets and allow others freer play; to keep some hidden and to let others be known; to give and receive confidences and to guess at far more: these efforts at control permeate all human contact.

Those who lose all control over these relations cannot flourish in either the personal or the shared world, not retain their sanity. If experience in the shared world becomes too overwhelming, the sense of identity suffers. Psychosis has been described as the breaking down of the delineation between the self and the outside world: the person going mad “flows out onto the world as through a broken dam.” Conversely, experience limited to the inside world stunts the individual: at best it leads to the aching self-exploration evoked by Nietzsche: “I am solitude become man. — That no word ever reached me forced me to reach myself” (Bok 1984, p. 20).

In short, secrecy makes possible the selective disclosure or nondisclosure of personal information, a capacity that touches virtually every aspect of human interaction. The intentional disclosure of intensely personal information can signify trust and create intimacy — thus it is a crucial element in romantic relationships. On the other hand, the

intentional nondisclosure of information can be quite beneficial, as in the case of bargaining for a used car, in which revealing the maximum price you are willing to pay can severely weaken your negotiating position. In either case, though, the information that is disclosed or not disclosed begins as a personal secret, and it is the capacity for keeping secrets that makes it possible to make a decision about what to reveal. Losing that capacity is devastating. For Laing (1969) a sense being transparent — of being unable to keep maintain any secrets at all — is characteristic of schizophrenia. But even a small breach rather than a total breakdown of the ability to keep personal secrets is sufficient to cause suffering, degradation or a loss of dignity, even if an intact sense of self is maintained.

Collectively held secrets are powerful, too, and there can be a danger in becoming privy to them, particularly when knowledge of some action confers complicity. The danger is implicit in the sentiment, “Don’t tell me. I don’t want to know.” During the Iran-Contra affair, Adm. John M. Poindexter claims to have attempted to insulate himself from knowledge that might have technically compelled him to act against an illegal diversion of funds to the Nicaraguan rebels. Asked if he knew of Marine Lt. Col. Oliver North’s role in the diversion, Poindexter responded that he intentionally did not seek details:

I had a feeling something bad was going on, but I didn’t investigate it and I didn’t do a thing about it. ... I really didn’t want to know. I was so damned mad at Tip O’Neill for the way he was dragging the Contras around, I didn’t want to know what, if anything, was going on. I should have, but I didn’t (Tower Commission Report 1987, p. 54).

Poindexter also claims to have attempted to protect President Reagan from the same kind of information:

Now, the reason that -- frankly, as Col. North has testified, I thought it was a neat idea, too, and I'm sure the President would have enjoyed knowing about it. But, on the other hand, because it would be controversial -- and I must say that I don't believe that I estimated how controversial it would be accurately -- but I knew very well that it would be controversial, and I wanted the President to have some deniability so that he would be protected, and at the same time we would be able to carry out his policy and provide the opposition to the Sandinista government.

Poindexter recognized that if Reagan were aware of the illegal diversion of funds to the Contras, he would be complicit in breaking the law. (Whether Reagan truly was unaware of the operation is another question entirely and will not be settled here.)

In addition to the dangers, there are also identifiable benefits of collectively held secrets for those "in the know." Secret societies can offer acceptance, growth, self-change and self-transcendence (Bok 1984). They can be politically significant, as well. Koselleck (1988) credits the secrecy of Masonic lodges in Europe with creating new spaces for discussion as alternatives to the political spaces shut off by the absolutist state. These alternative spaces were key to challenging the legitimacy of constituted absolute authority. Dean (2001) explains how secrecy empowered lodge members.

The lodges were ritualized enactments of nonfamilial, nonmarket relations outside of the state. They provided forms of association and experiences of connection beyond those delimited by absolutism. On the one hand, this freedom was established by new bonds of belief created by shared initiation into Freemasonry's arcana — the organization's ritual and hierarchy demanded that some believe in others arcane knowledge. On the other hand, the mysteries of Freemasonry imbued it with the aura of the unknown. This aura competed with the aura of the crown, countering the representational power of the sovereign with its own mysterious authority. Members were thus bound together through the secret as well as through their exceptional position in relation to the absolutist state (p. 633).

Ironically, the alternative loci of loyalty and authority that Dean lists as virtues of the secret societies in resisting the absolutist state are the very things that were cited as

vices by the 19th century anti-Masonic movement, which professed to be defending the nascent democracy in the United States.

As a secret society, Masonry was considered to be a standing conspiracy against republican government. It was held to be particularly liable to treason — for example, Aaron Burr’s famous conspiracy was alleged to have been conducted by Masons. Masonry was also accused of constituting a separate system of loyalty, a separate imperium within the framework of American and state governments, inconsistent with loyalty to them. Quite plausibly it was argued that the Masons had set up a jurisdiction of their own, with their own obligations and punishments, liable to enforcement even by the penalty of death (Hofstadter 1979, p. 16).

The anti-Masonic movement, which Hofstadter cites as a historical exemplar of the paranoid style, was hardly a bastion of reasonable thinking or democratic values, but criticism of secret societies also comes from more reasonable quarters, such as Bok (1984), who notes that secret societies may motivate individual members to act in ways they previously would have found unacceptable and absorb their identities:

In the long run, secrecy may help focus the emotion directed toward scapegoats and enemies, and end by brutalizing members and rendering them incapable of independent judgment

Secrecy is dangerous and debilitating when it draws initiates into malevolent or unjust practices, such as violence directed against religious or racial groups (p. 54).

As they run the gamut historically and philosophically from the ancient Greek Pythagorean Brotherhood to the Ku Klux Klan (Bok 1984), it is impossible to assign a single normative valence to secret societies — or the secrets that characterize them. In terms of democracy, collectively held secrets can be seen as aiding democracy — as Koselleck (1988) sees happening with the Freemasons in Enlightenment Europe — or hinder it — a la the Ku Klux Klan in the post-Reconstruction South. Similarly, the individual capacity for secrecy can be used for laudable or indefensible purposes.

Whether secrecy ultimately is beneficial in any particular situation depends not on secrecy itself but on the end toward which it is applied. What is most significant for the purposes of this discussion is that while secrecy is not the existential necessity for collectives that it is for individuals, insiders certainly do see collectively held secrets as being beneficial to their interests.

Benefits for the state

For the state, too, secrecy is justified in the language of interest. Obviously, state secrets are different from individually held secrets or those held collectively by groups outside the state. However, there are parallels, as individuals responsible for official secrets may find some psychological benefit to their privileged positions. Likewise, secretive bureaucracies may offer some parallels to secret societies. However, the unique position and character of the state also leads to unique justifications for secrecy — and also means that many of the justifications for individually or collectively held secrets simply do not apply. For instance, official secrets, while they may be necessary for state survival, do not hold the same level of existential privilege as individually held secrets for the simple reason that the state does not have a sense of self in the same way an individual does. The next part of this discussion deals with the benefits to the state of official secrecy.

Official secrecy in its current form is a relatively recent phenomenon, as states did not start becoming the massive creators and repositories of information familiar today until after World War I (Moynihan 1998, Feinberg 1986). While some statutes date back

to World War I, the American secrecy system did not really begin to take its current form until after World War II with the passage of the Atomic Energy Act of 1946 and the National Security Act of 1947. But while its modern form makes it a much more significant concern by dint of the sheer volume of information that is now kept secret, official secrecy itself is an ancient phenomenon. As Arendt (1969) notes:

Secrecy — what diplomatically is called “discretion,” as well as the *arcana imperii*, the mysteries of government — and deception, the deliberate falsehood and outright lie used as legitimate means to achieve political ends, have been with us since the beginning of recorded history. Truthfulness has never been counted among the political virtues, and lies have always been regarded as justifiable tools in political dealings. (p. 6)

It is even argued that secrecy is a necessary tool of states, democratic or otherwise, due to the ever-present potential for hostility in an anarchic international environment. Zolo (1992) argues this is the case:

Secrecy, for example, and therefore pretence and falsehood, are normal functional practices in relations between the inside and outside of political groups. Power does not exist without *arcana*, because transparency and complete openness renders it vulnerable to other, antagonistic, powers. (p. 42)

While it is argued here that at least as a thought experiment, it is possible for a state to exist without secrets, as a practical matter, secrets are a necessary evil. As in Hobbes’ natural condition of mankind, force and fraud remain the cardinal virtues in international relations, although they are not democratic virtues. Force itself requires no secrecy to shield it, but fraud must hide in the shadows. In short, democratic state must come to terms with keeping at least some secrets, and democratic theory must deal with this reality.

In the American experience, secrecy has been considered a necessary part of statecraft since the earliest days of the republic. In Federalist #64, John Jay cites the

potential for secrecy in international negotiations as a good in the constitutional design of the presidency. “It seldom happens in the negotiation of treaties, of what ever nature, but that perfect *secrecy* and immediate *dispatch* are sometimes requisite. There are cases where the most useful intelligence may be obtained, if the persons possessing it can be relieved from apprehensions of discovery” (p. 392). While Woodrow Wilson called for “open covenants openly arrived at” in the Fourteen Points as a principle of international relations, diplomacy continues to be conducted largely behind closed doors — for the very reasons Jay names in Federalist #64. For instance, in the Report of the Commission on Protecting and Reducing Official Secrecy (1997), Moynihan, a strong advocate for openness generally, notes that often diplomatic transactions are not even formally recorded, “because of the extreme sensitivity of the subject matter. What goes down on paper is more likely to come out in public, in inappropriate and harmful ways, harmful to the national interest” (p. xxxi), and it is noted in the main body of the report:

Secrecy is also essential to the effective conduct of diplomatic negotiations. The secret diplomacy that preceded President Nixon’s trip to China in 1972 provides one well-known example of how secrecy was maintained successfully with regard to a major diplomatic undertaking. More routinely, preserving the secrecy of the specific elements of ongoing negotiations is regarded as essential to their ultimate success (p. 6)

It would not be possible to gain optimal outcomes from negotiations without some secrets, such as fall-back positions on particular issues, just as one does not gain the best deal on a used car by revealing to the dealer the maximum one is willing to pay. This necessarily involves keeping secrets from both citizens and negotiating partners. In the United States, diplomatic secrecy is mitigated by the constitutional requirement that treaties be ratified by the Senate, but ratification exposes only the outcomes of successful negotiations, not the entire process.

A further benefit of secrecy is that states that might be embarrassed by the sharing of intelligence information or other forms of international cooperation may behave differently if they can be assured that their roles will remain secret. In arguing for a bill narrowing the scope of the Freedom of Information Act, D'Amato and Greenman (1982) highlight the utility of secrecy in international cooperation, saying that foreign governments are often reluctant to cooperate with the United States because of the act's far-reaching provisions.

Justifying secrecy

While diplomatic concerns undergird official secrecy in many instances, national security seems to be the most frequently cited justification. In addition to national security or diplomatic concerns, proponents of secrecy frequently justify it in terms of gains in efficiency or effectiveness in whatever area they propose shielding (Lewy 1983, Webster 1980, Sharp 1975) Official secrecy is also sometimes claimed as indispensable for Westminster-style parliamentary systems (Tant 1995, Cassidy 1986). The benefits claimed as arising from official secrecy may be important and even virtuous, but official secrecy, no matter how it is justified it is not a democratic virtue. At best democratic values can coexist with it uneasily but never welcome it or view it without suspicion.

Justifications given for secrecy in democratic states generally fall into one of three categories: concerns about the effectiveness of police or military power, concerns about candor in deliberations and protection of personal privacy or trade secrets. Although all of these categories can be stretched to include information that need not be kept secret by

any reasonable criterion, each readily calls to mind examples of intuitive, practical reasons why particular information should be kept hidden. Military operations are much less likely to succeed if an adversary knows the time and place of a coming invasion. A suspected mobster is unlikely to hold incriminating conversations if he knows his phone has been tapped. Businesses will be understandably reluctant to share proprietary information with the government if that information is then shared with their competitors. It even is conceivable that deliberations will suffer if officials know that provisional positions they take before reaching a decision will be subject to the same scrutiny as their final decisions, and changes in position may be taken as signs of inconsistency or hypocrisy, rather than the result of serious thought. That knowledge may create timidity and stifle honest discussion.

In a very limited number of instances, the concealment of information can even be seen as be a help rather than a hindrance to democracy. The secret ballot, for instance, has become virtually sacrosanct in modern democratic systems. However, Mill (1962) discusses the secret ballot in *Considerations on Representative Government* and is quite ill-disposed toward it, arguing that the secret ballot encourages voters to think of voting as an act for their own particular benefit, whereas in truth, “the voter is under an absolute moral obligation to consider the interest of the public, not his private advantage, and give his vote, to the best of his judgment, exactly as he would be bound to do if he were the sole voter and the election depended upon him alone” (pp. 206-207). That said, Mill admits that when citizens are of unequal power, public voting could tend more to expose voters to coercion than to make them take their responsibilities seriously:

It may, unquestionably, be the fact, that if we attempt, by publicity, to make the voter responsible for his vote, he will practically be made

responsible for it to some powerful individual, whose interest is more opposed to the general interest of the community, than that of the voter himself would be, if, by the shield of secrecy (sic), he were released from responsibility altogether. When this is the condition, in a high degree, of a large proportion of the voters, the (secret) ballot may be the smaller evil (p. 207).

Mill might not agree that such a situation exists today, but concern over the potential for voter intimidation continues to provide a philosophical underpinning for the secret ballot. Despite the public implications of voting, the private character of the ballot itself is seen as a net benefit for both the voter and the state.

Provisions for the protection of personal privacy more generally can also be seen as advancing democratic values, as the threat of exposure can be used to stifle dissent. The break-in at Daniel Ellsberg's psychiatrist's office during the Pentagon Papers case offers a perfect example of the state attempting to use exposure as a weapon against dissent. Personal privacy is the one venue at which individual-level needs for secrecy intersect with state-held information and is thus an area at which a rebuttable presumption of openness cannot be seen as an indisputable good. A state release of private information may not present the same threat to ontological security that a personal inability to keep secrets does, but it nevertheless can represent a serious violation of personal autonomy. Most citizens, for instance, would be very uncomfortable with the idea of the state making their financial or medical records available to all comers.

In a sense, privacy concerns differ from other forms of official secrecy in that they deal with issues of information collection, rather than dissemination. However, states seem to have a need to collect a certain amount of sensitive personal information as a matter of course, and the mere fact of its collection does not make it something of public concern. Personal information collected by the state, unlike classified information

created or discovered by the state, does not lose its private, individual character merely by being held in an official file, and because of that private character, it is not properly held to be political information. With this distinction in mind, the general argument of this dissertation — that state-held information should also be public information — does not extend to personal privacy.³

The various justifications for official secrecy all have a ring of truth to them and contain a certain practicality. It should be noted, however, that with the exception of a very limited set of personal privacy concerns, none of these justifications is based on concern for democratic values. And none alters the fact, to be discussed at length in the following chapters, that official secrecy is fundamentally anti-democratic, even when practiced in good faith and especially when its vulnerabilities to abuse are exploited.

National security concerns, which fall under the general heading of concerns about the effectiveness of police or military power, seem to be the most open to abuse in practice. According to Cheh (1984), the national security exemption of U.S. Freedom of Information Act provides presidents with a broad license to withhold information, given the courts' general deference to the executive with regard to classification decisions. In other words, given the courts' reluctance to review the appropriateness of classification decisions, the executive has broad power to withhold almost anything provided that the president's classification power under the National Security Act of 1947 is invoked.

That said, the other justifications are also subject to abuse. The General Accounting Office's lawsuit attempting to force Vice President Cheney to release documents related to meeting of his energy task force was motivated by a belief by critics

³ It is understood, however, that the boundaries of what is and is not private information dealing with individuals is contestable. It is simply beyond the scope of this dissertation to enter into that

that the documents are being withheld solely for reasons of political expedience. Cheney's defense fell squarely into the category of protecting deliberation: He said he was withholding sensitive documents so that people who advise the vice president in the future can offer candid opinions without fear of public backlash. Even the protection of personal privacy or trade secrets can be used to justify excessive secrecy. Critics of the statute creating the new Department of Homeland Security say the provision exempting sensitive infrastructure information from disclosure, while it is intended to extend protections of proprietary information in order to hamper terrorists, it may have the unintended consequence of making it much more difficult to uncover environmental scofflaws (Guzy 2002). To take a more absurd example, officials at the National Zoo refused to release necropsy reports on a giraffe that had died at the zoo, citing the animal's right to privacy. Critics of the decision suggested the actual motivation was to cover up neglect by the giraffe's keepers (Grimaldi 2002).

In American law, there is an implicit recognition of the anti-democratic character of official secrecy in the form of the Freedom of Information Act. While statutory authority for the classification system comes from the Atomic Energy Act and the National Security Act of 1947, it is in the nine exemptions of the Freedom of Information Act where one can see most clearly what is viewed in the American system as legitimate justifications for keeping secrets, ranging from reasons of national security (e.g. Exemption 1, records "to be kept secret in the interest of national defense or foreign policy"), to personal privacy (e.g. Exemption 6, "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy"). The application of those principles may be problematic, as are the occasional

debate.

efforts to expand them, but at their heart is a practical understanding of the kind of official secrets that are necessary, tensions with democratic values notwithstanding.

The justifications for official secrecy provide moral leverage in its service. The circumstances and character of a particular state determine how applicable those justifications are, which in turn determines the kinds of secrecy that are seen as legitimate. Sharp (1986) explains a decision early in his career to resign from the civil service, due to the leak of a budget report he had signed: “If documents of this kind were to become accessible, one of two things would happen. Either the civil servants would ask the ministers what they wanted by the way of advice so as to avoid a public conflict, or the advice would be given orally” (p. 572).

According to this argument, the protection of deliberations is seen as so vital as to justify a very tight control over all forms of officially held information. In Great Britain, however, a culture of leaking has rendered secrecy in deliberations largely a political fiction (Tant 1995). While it can be argued that simply the myth of secret deliberations is necessary for the maintenance of ministerial responsibility, experience in other Westminster-style systems calls even that into question, as Australia, Canada and New Zealand have had freedom of information laws, quite opposed to the British Official Secrets Act without any apparent ill effects (Hazell 1989). All the same, proponents of secrecy in systems following the British model are quite emphatic about their claim that deliberations are particularly in need of protection from public scrutiny, due to the unique character of the Westminster system.

The attractiveness of protecting deliberations is not limited to Westminster-type systems, though. The governing Board of Regents of the quasi-governmental

Smithsonian Institution⁴ has held its meetings behind closed doors since its establishment in 1846 (Ellington 2001b), a situation that Wesley S. Williams, chairman of the board's executive committee, says enhances the quality of debate and oversight by the board.

My personal view is that we are advantaged to have active dialogue on the part of the regents. In my experience, that active dialogue has resulted specifically as a function of the more free-wheeling, closed meeting where regents are not afraid to have false starts, to say things that they don't quite mean, to be informed as to what the facts are, then to recant and to have active dialogue. ... I think that really is a benefit that comes from a closed meeting (Williams 2001).

The attraction of encouraging candor and honest discussion by closing meetings extends to a variety of government agencies, too (although the advantages have not been felt to be so great as to prevent a patchwork of state and federal laws in the United States requiring open meetings).

Effective secrecy has proven indispensable to the functioning of government, serving the interests not only of the officials in power but of the governed as well. Secrecy permits policymakers to freely explore and debate different options, consider alternatives, and weigh the consequences of each; aids in providing the critical element of surprise with respect to a chosen policy; and protects individuals from the possible harm that could come from publicity (Commission on Protecting and Reducing Government Secrecy 1997, p. 6).

The downside to the candid, intelligent discussion encouraged by closed meetings is that no one on the other side of the doors can be certain that it is really going on. Problems of accountability and suspicion will be discussed in more depth in chapters 3 and 4, but an example is in order here.

In the case of the Smithsonian, there is a school of thought that the Board of Regents is little more than a rubber-stamp body for controversial Smithsonian Secretary

⁴ While more than 70 percent of the Smithsonian's operating budget comes from an annual congressional appropriation, the complex of museums and research centers is technically not a government agency but a trust administered by the United States government (Ellington 2001).

Lawrence M. Small. “I’ve been working here for 30 years and never had much impression of what they’re doing,” says Storrs Olson, a senior ornithologist at the National Museum of Natural History. Others, such as Paul Forman, curator of the modern physics collection at the National Museum of American History, are more strongly negative in their evaluations of the board’s actions:

Greater access to the board would reveal serious problems, Mr. Forman says.

Being “thoroughly insulated from information about the real life inside the institution,” the curator says, “The regents are, however well-intentioned, terribly ignorant. ... After all, they meet only three times a year for a very short meeting” (Ellington 2001a).

While those on the board, such as Williams (2001) insist that such criticisms are off-base, it is impossible to adequately evaluate any of the competing claims, due to the secrecy of the meetings being discussed.

While the credibility of those claiming to engage in serious deliberation may be questioned, secrecy in deliberation may allow officials to step back and engage in more reasoned discussion of the issues insulated from pressures of public opinion. Meeting in Philadelphia in 1787 to revise the Articles of Confederation, the Framers of the Constitution recognized these benefits when they decided to meet behind closed doors in Philadelphia in 1787. George Washington warned the delegates, “Nothing spoken or written can be revealed to anyone — not even your family — until we have adjourned permanently. Gossip or misunderstanding can easily ruin all the hard work we have to do this summer” (Williams 1970, p. 10). Indeed, it is unlikely that many of the compromises that came out of the Constitutional Convention would have been possible had the debates been open. The constitution resulting from those secret meetings is today generally regarded as a success, and the closed nature of discussions that brought it into being is

regarded either as a wise decision or merely a historical curiosity. It can be argued that the secrecy of the Constitutional Convention was acceptable because while the delegates deliberated in secret, they did not have the power to enact their decisions on their own. The ratification debate itself certainly was very public and democratic in character, even if the convention itself was not.

During that debate, though, the situation in which the Constitution was written became as much of an issue as the specific provisions of the Constitution. The Anti-Federalist Pennsylvania Minority described the climate that paved the way for ratification in most unflattering terms: “Whilst the gilded chains were forging in the secret conclave, the meaner instruments of despotism without, were busily employed in alarming the fears of the people with dangers which did not exist, and exciting their hopes of greater advantages from the expected plan than even the best government on earth could produce” (*The Anti-Federalist Papers* 1986).

Naturally the Federalists rejected this argument.

In the *Federalist Papers* James Madison says that: “Had every Athenian citizen been a Socrates; every Athenian assembly would have still been a mob.” This remark exemplifies the spirit of the Constitution. The Founders saw limits to a completely open democratic system, not because they thought the people were stupid or unworthy of political power but because they thought the institutional dynamics of an open system were inherently dangerous (Nichols 1988, p. 59).

One does not have to accept that the Athenian assembly was a mob to recognize that there are certain, limited situations in which there simply is no substitute for secrecy in serving the best interests of the people being governed.⁵

Secrecy's symbolic value

In addition to instrumental uses, official secrecy has great symbolic value. The *arcana imperii* identified by Arendt (1969) are valued not just for their immediate utility, but because their existence symbolizes state power and confers a kind of legitimacy on those to whom they are entrusted. This is a legitimacy based on trust or expertise, rather than the democratic legitimacy conferred by consent. Kalven (1989) describes the rhetorical power of secrets: Official secrecy: “enables officials to say, ‘If you knew what I know, you would agree with me, but I can’t tell you what I know, so you’ll have to trust me’” (p. 59). But just as secrecy can generate unwarranted trust, it can also work the other way. Introducing Moynihan’s (1998) *Secrecy*, Richard Gid Powers writes:

Symbolic secrecy ... proclaims that there are those who can be trusted with secrets and those who cannot. As such, it is a powerful tool, enabling dominant groups in government to delegitimize their opponents. But because official secrecy is such an obvious affront to the democratic principle of open government, it takes no great rhetorical skill to turn the weapon of secrecy against those who conceal their deliberations can be up to no good — that they, and not their critics, are the real conspirators against the public weal (pp. 18-19).

⁵ This, of course, assumes representative democracy, rather than the direct form found in ancient Athens. Official secrecy becomes more problematic if the people themselves rather than their representatives are doing the governing.

It is not without reason that today, just as 215 years ago, when skeptics see closed doors, they imagine, as the Anti-Federalists did, “gilded chains ... forging in the secret conclave.” As will be discussed in Chapter 4, secrecy frequently inspires misguided flights of fantasy by those excluded, but there is a kernel of truth to the wildest of imaginings: For much of the work done in intelligence, espionage and covert action, there is no substitute for secrecy; indeed there is nothing at all without secrecy. Necessary and useful though these activities may be, they are also distasteful and even arguably immoral.

It was this unseemly aspect those parts of government that must act in the shadows that led Secretary of State Henry L. Stimson to order a stop to spying operations by the War and State departments in 1929. Over 12 years, a joint operation called the Black Chamber (a predecessor of today’s National Security Agency) had decoded 45,000 telegrams from 19 countries. Stimson was horrified when he learned of the Black Chamber and ordered it closed down. “Gentlemen do not read each other’s mail,” he said (Holt 1995, p. 23).⁶

And he was right: Gentlemen don’t read each other’s mail. But in the anarchic world of international relations the population of gentlemen is so small as to be negligible, a fact that has been brought home dramatically by World War II, the Cold War and most recently the terror attacks of Sept. 11, 2001. If anything, the international environment resembles more closely an Old West saloon than a gentlemen’s salon. While behaving as a gentleman in a barbaric situation may offer a certain sense of moral satisfaction, it offers precious little security. It was a recognition of this problem that led

⁶ Stimson’s thinking evolved with the changing international situation, and he certainly did not take such a dogmatic anti-spying position as secretary of state during World War II.

to the rapid expansion of the intelligence community during and immediately after World War II. Gen. James H. Doolittle's 1954 report on American covert activities laid out the philosophical underpinning of this development:

It is now clear that we are facing an implacable enemy whose avowed objective is world domination by whatever means and at whatever cost. There are no rules in such a game. Hitherto acceptable rules of human conduct do not apply. If the United States is to survive, longstanding American concepts of "fair play" must be reconsidered. We must develop effective espionage and counter espionage services and must learn to subvert, sabotage and destroy our enemies by more clever, more sophisticated, and more effective methods than those used against us. It may become necessary that the American people become acquainted with, understand and support this fundamentally repugnant philosophy (quoted in Holt 1995, p. 239).

The philosophy Doolittle describes is "fundamentally repugnant" and has nothing to do with democratic values but is very difficult to dismiss out of hand. The international environment is harsh and un conducive to the flourishing of democratic values, which require at least a minimal level of consensus about the rules of the game and some mechanism by which to enforce them. Both consensus and authority are lacking currently. Conventions that would forbid efforts to "subvert, sabotage and destroy our enemies" are textbook examples of "covenants without the sword" and they remain "but words, and of no strength to secure a man (or a state) at all" (Hobbes 1958, p. 139).

Machiavelli's advice to the Prince seems equally applicable to the intelligence community today:

[A] prudent ruler ought not to keep faith when by doing so it would be against his interest, and when reasons which made him bind himself no longer exist. If men were all good, this precept would not be a good one; but as they are all bad, and would not observe their faith with you, so you are not bound to keep faith with them (Machiavelli 1950, p. 64).

It obviously would be unreasonable to expect a group like al Qaeda to “keep faith” with the United States, even if it were possible to find some element of common ground. Even more traditional adversaries can be expected to be faithless from time to time. Thus the move toward embracing a “repugnant philosophy” and away from squeamishness about reading “each other’s mail” seems like a pretty obvious one, but the appropriate application of that philosophy is difficult. Few would object to monitoring Osama bin Laden’s satellite telephone, as the NSA has been able to do in the past.

According to Bamford (2001):

NSA regularly listens to unencrypted calls from suspected terrorist Osama Bin Laden, in hiding in Afghanistan. ... According to intelligence officials, Bin Laden is aware that the United States can eavesdrop on his international communications, but he does not seem to care. To impress cleared visitors, NSA analysts occasionally play audiotapes of Bin Laden talking to his mother over an INMARSAT connection (p. 410).

On the other hand, the Pentagon’s abortive Total Information Awareness program raised vehement opposition based on the likelihood that it might ensnare innocent people and degrade privacy generally (Liptak 2002). Concerns such as these aside, much, but not all, of what goes on in intelligence, espionage and covert action by its nature requires secrecy.

Secrecy is of particular concern to the intelligence and national security apparatus of the United States, but many of those activities can be completely overt without any loss of effectiveness.⁷ For a great deal of intelligence gathering, the first step is checking what is available in open sources (Holt 1995), which can be as simple and mundane as

⁷ This is not to say that openness necessary prevails in those areas in which it would be entirely benign. For instance, Herring (1997) describes his tenure as a member of the CIA’s Historical Review Panel, in which a great deal of energy was spent in clearing such things as transcripts from the Foreign Broadcast Information Service. The FBIS monitors and reports on broadcasts

obtaining a subscription to a foreign newspaper. In other situations, particularly espionage, that is not the case. An agent planting bugs in a military conference room cannot be expected to do so both overtly and successfully. Secrecy can be used to obtain information that would not otherwise be available. Sources that would otherwise be noncooperative may open up when they are guaranteed that their cooperation will be hidden; frequently that also entails keeping secret the information those sources reveal. Official secrecy in these instances come at a cost not only to democratic openness but in an obligation to the source. As the Commission on Protecting and Reducing Government Secrecy (1997) explained:

In addition to keeping those secrets that could affect national security, the Government also has a solemn moral obligation to protect those individuals who provide information valuable to the United States, especially those who do so at risk to their lives. This obligation extends to protecting the methods used to gather the information as well as the sources, so that nothing points back to endanger them (p. xlviii).

Official secrecy has particular utility with regard to covert operations. The CIA-directed coup in Guatemala in 1954 offers a case in point. Whether the coup itself entailed sound foreign policy on the part of the United States is highly questionable, but there is no question that the success of the coup itself depended heavily on secrecy. On June 18, 1954, a rebel “army” of 150 people invaded Guatemala from Honduras while the CIA broadcast radio accounts of fierce but entirely fictitious battles.

If (Guatemalan President Jacobo) Arbenz (Guzman) had gotten a single aircraft in the air, he might have discovered the trivial size of the rebel “army” and the true outcome of the “battles.” Yet his aircraft, like his army, remained at home. How had the CIA achieved this coup de main?

Realizing early on that the linchpin of the operation would be control of Arbenz’s information, CIA propaganda broadcasts continuously reported defections of pilots from Communist Bloc nations, thereby

over public airwaves in foreign countries. Classifying FBIS transcripts is approximately equivalent to classifying a network news broadcast — while leaving it available from other sources.

planting the seeds of mistrust in Arbenz's mind and ideas in the minds of Guatemalan air force pilots. Eventually one Guatemalan pilot *did* defect. ... Fearing that all his pilots would fly off to Honduras, Arbenz grounded his entire air force. Thus blind, when rebel radio reported columns of well-armed insurgents converging on the capital, the beleaguered president believed them (Nutter 2000, p. 14).

Just nine days after the start of the insurgency, Arbenz fled at the demand of the army, victim more of the artful control of information than actual military force.

For covert operations, secrecy offers advantages in creating the capacity for lying, surprise and uncertainty. As discussed previously, secrecy makes lies possible. Thus secrecy was at the heart of plans for the Pentagon's planned Office of Strategic Influence, which was ordered closed after a firestorm of criticism arose regarding plans to use it to plant disinformation with journalists overseas. However, there could easily arise situations in which there would be an advantage to be gained from doing planting disinformation with journalists, just as the CIA found an advantage in misleading Arbenz about the size of the rebellion in Guatemala. Further, even when disinformation is not swallowed whole, as it was by Arbenz, it can still create enough noise to bring in uncertainty and complicate an adversary's decision-making process. Finally, at the outset of operations, secrecy preserves the element of surprise, as vital today as it was in the invasion of Normandy. As Friedman (2001) explains, "Surprise is the single most powerful tool in warfare. The essence of surprise is secrecy. It would therefore seem to follow that secrecy is the foundation of warfare."

Official secrecy also has more unambiguously ignoble uses in covering up corruption, incompetence or information that might simply be embarrassing. After the 1960 downing of Francis Gary Powers' U-2, President Eisenhower ordered a coverup, going as far as to order Cabinet officers to lie under oath. At least one did lie to the

congressional investigating committee, which suggests that Eisenhower was guilty of subornation of perjury. “The issue was never the protection of ‘our intelligence systems’ as Eisenhower told the NSC officials. It was covering up his role in the botched project. After all, the U-2 program had virtually no secrets left.” Public release of sensitive information was not an issue either, as the Senate Foreign Relations Committee regularly heard classified testimony in secret hearings. “Rather, what Eisenhower feared most was the leak of politically damaging information to the American public during a key election year” (Bamford 2001, pp. 58-60).

Wise (2002) fears that secrecy could serve the same purpose in the investigation of the Sept. 11, 2001, terror attacks, preventing embarrassment at the expense of truth. Wise’s experience suggests that a coverup of mistakes or incompetence would not be out of character for the U.S. intelligence community. While researching the Robert Hanssen espionage case, Wise learned that the FBI and CIA had spent three years investigating the wrong person, a CIA officer named Brian Kelley. But in writing the book, Wise was pressured by the CIA not to name Kelley, eventually asking his publisher to remove Kelley’s name. “It seems clear that the CIA attempted to censor the book merely to avoid embarrassing publicity,” Wise writes. “This episode shows just how far intelligence agencies will go to avoid scrutiny. If that was the case with my book, how much more intense would the instinct be to avoid divulging errors made prior to the terrorist attacks of Sept. 11?”

On one level, this use of secrecy to obscure rather than to protect appears simply to be abusive, but it also is important to understand that for those who use official secrets that way, they are simply protecting their own interests. Such self-interested behavior is

hardly considered surprising in other areas of politics. It should not be a surprise when official secrets are concerned either. Official secrecy *is* useful, and at times indispensable, but that utility does not come without cost, particularly to democracy. The remainder of this dissertation will illuminate the costs of official secrecy and suggest some ways in which democracy can cope with the dangers it presents.

Chapter 3 **Subverting Autonomy and Accountability**

Official secrecy limits the ability of citizens to act as citizens — that is to participate — in all phases of the political process, from agenda setting to decision making to implementation and evaluation. This limitation is a fundamental denial of citizen autonomy, and thus even when undertaken with the purest of motives, official secrecy is *prima facie* undemocratic. This is a cost that, while it may be unavoidable, cannot be compensated for, even with experts or representatives standing in for citizens. This is especially true of more participatory or strong forms of democracy.

Democracy is predicated on the idea that citizens should have the power to hold the state accountable for its actions. The mechanisms of accountability are simplest and most understandable where the state and its citizens are coterminous, e.g., the direct democracy of classical Athens or the vision of Rousseau in *On the Social Contract*, in which the citizens are united into one body politic and the general will is their mutual product. Indeed, Rousseau voices the democratic aspiration in its broadest form: “Find a form of association that defends and protects the person and goods of each associate with all the common force, and by means of which each one, uniting with all, nevertheless obeys only himself and remains as free as before” (Rousseau 1978). The democratic project today is largely a matter of salvaging as much of this as possible in a world in

which no citizen can remain “as free as before,” but in which the common force of the state is an absolute necessity.⁸

From Madison and Rousseau onward, the contemporary democratic state has been declared too large and unwieldy for the regular, direct involvement of the kind favored by the ancient Athenians. Still, democratic theorists agree that it is crucial for reasonably autonomous citizens to be capable of holding the state accountable in some measure for its actions, and contemporary states make use of such mechanisms as periodic elections. The devil, of course, is in the details, as democratic theorists offer widely divergent ideas of what it means to be *reasonably* autonomous or what is required for accountability *in some measure*. Participatory democrats set the bar much higher than do proponents of elite-based theory. It is argued here that participatory democrats offer a much more meaningful and complete vision of democratic life, but official secrecy should be a matter of concern for democratic theorists of all stripes. Official secrecy undermines democracy in whatever form it may take, as even those theorists holding the thinnest notions of citizenship have at least minimal requirements of state accountability. Thicker, more participatory visions of democracy are even more vulnerable to the depredations of official secrecy, as their citizens require higher levels of autonomy, and the requirements for state accountability are greater. Regardless, the bottom line is quite simple: More secrecy equals less accountability and less citizen autonomy — in short, less democracy.

⁸ Pateman (1970) describes Rousseau as “the theorist *par excellence* of participation.” For Rousseau, participation’s chief function is education, developing other-regarding citizens who, through their deliberations must take into account more than simply their own private interests. This deliberation process forces the individual to distinguish between his or her own impulses and other concerns. Participatory institutions for Rousseau guarantee freedom in a way counter to the way non-participatory ones threaten it or put man “in chains.”

Secrecy and diminished participation

The danger is clearer for democrats at the participatory end of the continuum than for elite theorists. Barber (1984) lays out this aspirational definition of “strong democracy”:

Strong democracy is a distinctively modern form of participatory democracy. It rests on the idea of a self-governing community of citizens who are united less by homogenous interests than by civic education and who are made capable of common purpose and mutual action by virtue of their civic attitudes and participatory institutions rather than their altruism or good nature (p. 117).

A participatory, self-governing community in which citizens engage in mutual action is clearly inconsistent with the practice of official secrecy, as that would undermine the basis of participation and make mutual action an act of faith, rather than one based on knowledge and educated competence. Other theorists of participatory democracy, such as Carole Pateman and Dennis Thompson, similarly define democracy in such a way that citizen access to information is implicitly understood.

In attempting to construct a theory of democracy based around citizenship and consonant with the findings of empirical social science, Thompson (1970) describes two presuppositions of a citizenship-based theory of democracy: 1) autonomy, that is that “citizens be treated as the best judges of their own interests” and 2) improvability, that is that “citizens be treated as capable of showing better political and social judgment than they do at any present time” (p. 10). With these presuppositions in place, the ability to participate meaningfully in politics becomes the *sine qua non* of democratic citizenship.

A primary function of participation is to help ensure that what some nineteenth-century democrats called the “sinister interests” of the rulers do not prevail over the interests of most of the citizens. Twentieth-

century citizenship theorists make the same point, sometimes writing about the “abuse of power,” or the danger of the “one or a few” identifying “their private good with the good of the community” (Thompson 1970, p. 55).

In blunting the ability of citizens to participate effectively, official secrecy leaves the door open for “sinister interests.” Of course, this is not to say that every instance will lead to an abuse, merely that all official secrecy carries with it that potential, for hidden power is not accountable, and unaccountable power is especially subject to abuse. Thompson continues:

A minimal criterion of whether citizens are protected against such a violation is the existence of adequate opportunities (e.g. elections) which would allow citizens to object effectively to what rulers do. ... As long as the citizens who do vote are informed about what the rulers do and are not controlled by rulers, a majority of *any* number of voters are a threat to rulers if an electoral result can remove rulers from power (p. 55).

This is a minimal criterion because voting is such a blunt tool for expressing popular will. Obviously not every potential revelation of a secret holds the likelihood of overturning an election, but even based on this minimal criterion, secrecy has the potential to cause great harm. Moving outward from voting to a broader notion of participation, as Thompson favors, compounds the harm official secrecy can cause.

Pateman (1970) outlines the significance of participation, not only for the well-being of democracy itself but for citizens:

The contemporary and participatory theories of democracy can be contrasted on every point of substance, including the characterization of “democracy” itself and the definition of “political,” which in the participatory theory is not confined to the usual national or local governmental sphere. Again, in the participatory theory “participation” refers to (equal) participation in the making of decisions, and “political equality” refers to equality of power in determining the outcome of decisions, a very different definition from that of contemporary theory. Finally, the justification for a democratic system in the participatory theory of democracy rests primarily on the human results that accrue from

the participatory process. One might characterise the participatory model as one where maximum input (participation) is required and where output includes not just policies (decisions) but also the development of the social and political capacities of each individual, so that there is “feedback” from output to input (p. 43, parentheses in original).

Obviously, for issues in which significant information is kept secret, the conditions of equal participation and political power described by Pateman are impossible to meet. Official secrecy imposes not only a distinction between insider and outsider, but sets it up as a hierarchical relationship. Those who know are positioned higher than the average citizen; their opinion means more because they know more. This is especially problematic in participatory democracy because it is not just policy or electoral outcomes that matter but the entire process and the enlarging effect that process has on citizens.

If outcomes are all that are important, then it is possible, using a Kantian “experiment of pure reason,” (Kant 1970) to find that in some instances official secrecy is not important for democracy because disclosure would not alter outcomes. Bok (1984) rightly objects that such a judgment would be suspect because “such experiments are open to all the vicissitudes of private speculation. If moral deliberation is intended from the outset to remain a mere thought-experiment, it allows secrecy to re-enter by the back door of bias and self-serving rationalization” (p. 114).

Setting that aside, however, in the participatory formulation, under no circumstances would an experiment of pure reason find official secrecy harmless, because in all cases it would stop the “feedback” described by Pateman. And without the maximum input of participation the development of individuals’ social and political capacities. Accepting this participatory formulation does not entirely foreclose the

acceptance of official secrecy in all cases, but it does raise the bar. Given the harm one knows it will cause in this understanding of democracy, official secrecy can only be justified in cases where it is preventing an even greater harm.

On the other hand, one does not have to accept this expansive a view of democracy to see danger in official secrecy. Pateman is highly critical of Robert Dahl as one of the chief proponents of the “contemporary theory of democracy,” with its lesser emphasis on participation. If Dahl takes a more moderate position, though, his theory of democracy is still vulnerable to disruption, particularly as regards citizen autonomy.

Dahl (1989) rejects the notion of an absolute right to autonomy.

Imagine that a democratic country were actually to declare political autonomy to be an absolute right. Granting such a right would make a state, or any coercive organization, impossible (or at any rate illegitimate), since any group facing coercion on any matter could demand and through secession gain autonomy. In effect anarchism would be legitimized (p. 196).

Autonomy still is important for Dahl, though it is conditional rather than a matter of absolute right. Dahl describes what he calls “the presumption of personal autonomy.

Under this presumption:

In the absence of a compelling showing to the contrary everyone should be assumed to be the best judge of his or her own good or interests.

The practical effect of this presumption is to deny that paternalistic authority can ever be legitimate among adults, in either individual or collective decisions, except for presumably rare exceptions. And conversely, all legitimate authority relations among adults must be consistent with — and that sense, must respect — the presumption of personal autonomy (p. 100).

While citizens may be presumed to be the best judges of their own interests, official secrecy can seriously impair that judgment, and indeed a state that claims to know better than its citizens because it has ensured that it knows more is nothing if not

paternalistic. Serious national-security concerns (where they are not exaggerated) could provide the “rare exceptions” Dahl allows for, but again the bar is set high for accepting those exceptions. Paternalistic authority is not a matter to be taken lightly, particularly not by a free people.

Under Dahl’s formulation, too, simply saying that disclosure would not affect the outcome of a decision-making process is not sufficient to exonerate secrecy. “The demos must have the exclusive opportunity to decide how matters are to be placed on the agenda of matters that are to be decided by means of the democratic process” (p. 113). As will be illustrated below in the discussion of the *Progressive* case, official secrecy undermines citizens’ control of the agenda. Morland (1979) argues that official secrecy has kept nuclear weapons off the top of the public agenda. Even if it could be demonstrated that full disclosure would not lead to a more serious discussion of the issues that concern Morland, official secrecy is responsible for his perception and furthermore does weaken the position of him and like-minded people in vis-a-vis their efforts to change national priorities and start at least an discussion.

Official secrecy causes potential problems for even the most minimal formulations of democratic theory, such as the neo-elitist view. Schumpeter (1943) defines democracy as “that institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people’s vote” (p. 269). Schumpeter’s conception of democracy actually finds such normal forms of participation as lobbying one’s representatives to be inconsistent with democracy because this form of exercising power goes against the trustee form of representation he advocates. Schumpeter also sees as exclusion from the electorate

(which for him is synonymous with citizenship) on the basis of race, sex or gender as being potentially consistent with democratic principles.⁹ Yet even in Schumpeter's thin, competition-for-leadership model, in which autonomy and accountability are meaningful concepts only on election day, official secrecy has the potential to make mischief with democracy. That potential is less, certainly, than under more participatory models, where damage from official secrecy is certain, but it is not insignificant, and indeed it is an easy matter to imagine situations in which incumbent officials might use official secrecy as a tool to hold onto office.¹⁰

Schumpeter's model of democracy is essentially the use of electoral mechanisms to ensure the circulation of elites through popular means. At the far end of the spectrum from participatory models, one finds such theorists as Gaetano Mosca and Vilfredo Pareto, for whom democracy simply means any method that ensures a circulation of elites. Mosca (1939) does say that "the democratic tendency is in a sense indispensable to what is called 'progress' in human societies" (p. 415). By "democratic, Mosca says he means, "the tendency to replenish the ruling class with elements deriving from the lower classes" (p. 395). The existence of a ruling class, Mosca says, has been shown by history to be an inevitability. Circulation of new blood through that elite is crucial to avoiding

⁹ Schumpeter writes: "In a commonwealth of strong religious conviction it may be held — again without any absurdity or insincerity — that dissent disqualifies or, in an anti-feminist commonwealth, sex. A race-conscious nation may associate fitness with racial considerations" (p. 244).

¹⁰ Official secrecy can also work against incumbent power. Consider, for example, the 1960 presidential election in the United States. According to some accounts (Cramer 2002), Kennedy defeated Nixon in a close race largely on the strength of claims he made about the danger faced by the United States because of a "missile gap" with the Soviet Union. In fact, according to the secret intelligence estimates unavailable to the Kennedy campaign, there was no such gap. Whether the Eisenhower administration simply miscalculated in not releasing that information or whether the continued secrecy was based on scrupulous attention to protecting intelligence sources and methods, it has impossible to say. What is clear, though, is that official secrecy potentially affected the outcome of a presidential election. That secrecy might be expected more

societal stagnation, and democracy can provide an efficient way of maintaining that circulation under the right circumstances. However, it is the circulation of elites, not popular input into how it takes place, that is central for Mosca. At any rate, official secrecy because of its usefulness as a tool of power can be used by incumbent elites to solidify their positions, and thus, under Mosca's theory, lead to societal stagnation. If elite circulation is accomplished through democratic means, then the impact of official secrecy is indistinguishable from what was discussed regarding Schumpeter.

Pareto (1984), too, looks to historical patterns and sees a circulation of elites. Where Mosca sees the existence of a ruling class as an inevitability, Pareto sees the circulation of elites itself as being natural and immutable, although some cycles of change last longer than others. However, it is popular thought and action that helps determine the course of these cycles. According to Pareto, "Even a superficial view of present society reveals streams of opinion that manifest underlying patterns in sentiments and interests [rather than opinions about specific issues] are the forces at work in determining the character of social equilibrium" (p. 63, brackets in original). This social equilibrium does not appear to be vulnerable to *willful* direction from below, but it is not difficult to imagine how an existing elite might use official secrecy to manipulate sentiments and alter the duration of a historical cycle, if not its ultimate course. Indeed, absent an ethic of democracy, it is hard to imagine why an elite would not attempt to preserve itself in this way.

In short, where citizen autonomy and state accountability is concerned, official secrecy should be a matter of concern for democrats across the spectrum, from those who

often to work in the incumbent party's favor pales in importance compared to the realization that it may well alter election outcomes in some cases.

advocate a thick, participatory form to those elitists who advocate a thinner, more minimal form. Indeed, secrecy can be a matter of concern even for those elite theorists who do not especially prize democracy. Clearly, official secrecy presents the greatest problems for those democrats who prize participation more, but it should be a matter of concern across the board. As was shown in Chapter 2, official secrecy is a tool for exercising power, and as a tool that can be used by the state or agents of the state to exercise power *over* citizens, its bears close scrutiny and suspicion — much closer than it has received to date.

Citizen autonomy

Autonomy offers citizens the ability to make meaningful choices about the direction of one's life. For purely private matters, this means making a unilateral decision based on what is known about the available choices; for public matters, it is more complicated, as public autonomy involves consultation, persuasion and, by many accounts (Barber 1984), concern about the interests of others. However, public or private, autonomous decision making requires the individual to act upon what he or she knows — and by extension, to have at least some information about the likely result of his or her decisions. This does not dictate what choice the autonomous individual makes: One may choose to smoke, while another does not, but both are decisions made by equally autonomous people (although the addictive qualities of nicotine do cast a shadow on the continued autonomy of the smoker). But one cannot make an autonomous decision in the absence of information.

The state lottery provides another case in point. The decision whether to play is a matter of autonomous choice. One person may decide the fantasy of unimaginable riches and the tiny chance of actually winning are worth the \$1 cost of a Powerball ticket, while another decides not to play. Both are acting autonomously. But for the Powerball player, autonomy ends at the decision to play. The player who picks his or her own numbers is not exercising any more autonomy than the player who lets the computer choose a ticket randomly, as there is no advance information available about which numbers will be winners. In short, zero information means zero autonomy, and more information means more autonomy, although the limits of human information-processing capacity mean there does come a point of diminishing returns.

Currently, Americans are seeing their access to information, and thus their autonomy diminished. In response to the terrorist attacks of Sept. 11, 2001, the U.S. government has diminished or eliminated access to a wide variety of information, thus endangering citizen autonomy. Congress has already amended the Freedom of Information Act to allow agencies to withhold from public disclosure information such as maps of transportation networks. Other measures have involved regulation or discretionary activities by federal agencies, with a particular focus on the World Wide Web. The Information Superhighway, it is feared, runs through some bad neighborhoods. Among the responses:

- A letter instructed librarians to destroy a CD-ROM of water-supply data, titled “Source-Area Characteristics of Large Public Surface-Water Supplies in the Coterminous United States”;
- Visitors to the IRS reading room must be shadowed by an employee at all times;

- The National Imagery and Mapping Agency has stopped selling detailed maps over the Internet;

- Various other agencies “have been stripping their Web sites of such data as security plans of hazardous chemical sites and information about weapons of mass destruction or aviation accident reports”;

- The operators of the search engine Google have coordinated with the federal government to ensure that removed items are not kept in Google’s cache of Web sites (Cha 2002)

In October 2001, the Nuclear Regulatory Commission took down its entire Web site, which included technical data about nuclear plant operations, aerial photographs of nuclear plants and detailed blueprints of plant systems. Eventually a bare-bones site was put back up (Matthews 2002). None of this was classified information — it would not have been publicly available to begin with if it had been. But as Matthews puts it, “What has traditionally been public information — whether it’s personal data from court documents or information on hazardous materials compiled by the Environmental Protection Agency — is much more public when it’s online.”

The problem is that removing information from the Web does not only cut off potential terrorists from information — it also cuts off citizens with legitimate interests. Guzy (2002) describes the role that publicly available information had in a lengthy fight to make safer the District of Columbia’s Blue Plains sewage treatment plant:

For years, community activists and neighboring local governments called for the sewage agency to substitute more benign materials for the large quantities of liquid chlorine kept at the plant for disinfection. If the plant’s tanks were breached and chlorine released as gas, it could endanger the lives of thousands in the metropolitan area. Public information about the presence of this chemical was vital to these advocacy efforts, which,

finally, after the events of Sept. 11, 2001, succeeded in persuading the District's Water and Sewer Authority to eliminate use of liquid chlorine and use a safer, solid chemical.

The vulnerability of a sewage treatment plant to chlorine leaks is a prime example of what we might call "dual-use information." One of the most difficult problems in non-proliferation efforts is that of dual-use technology. It's an easy decision to prohibit the trade in items for which the only use is on the manufacture of chemical, biological or nuclear weapons. But dual-use technology is much more difficult. What should be done about a chemical that can be used in life-saving medical treatment or in the making of a deadly nerve gas?

Dual-use information presents a similar conundrum. In the case of the Blue Plains plant, information about its use of liquid chlorine could have made it a more attractive target for terrorists. But ultimately, that openness made the people living around the plant safer, both from terrorist attack and from industrial accidents. Without that information being public, they likely would have remained vulnerable to both — and ignorant of the danger.

Efforts to prevent terrorists from obtaining potentially damaging information have highlighted the ubiquity of dual-use information, most of which has historically been public.

- The Environmental Protection Agency has decided to remove risk-management plans from the Internet, a decision that troubles Gary Bass, executive director of the advocacy group OMB Watch: "If the toxic plume from a chemical spill would envelop a school or day-care center, 'don't parents have a right to know that?' he asked" (Matthews 2002).

- Danielle Brian, executive director of the Project on Government Oversight, had written to Secretary of Energy Spencer Abraham in October 2001, asking that the Department of Energy remove from its Web site maps showing the locations of storage sites for plutonium and enriched uranium. The department took her advice but also removed environmental impact statements aimed at allowing people around the sites to learn about potential dangers posed by the storage facilities, sparking a second letter, in which she wrote, “Hiding safety and security problems from the public does not make them go away. It leaves communities unable to prepare for and deal with potential problems” (Matthews 2002).

- Sean Gorman, a doctoral student in geography at George Mason University, has compiled a computerized map of every business and industrial sector in the United States, along with the fiber-optic network linking up businesses. While he created the map entirely on the basis of publicly available information, Gorman’s map has been described as a potential “terrorist treasure map,” and indeed Gorman’s research now consists of using the map to probe for vulnerabilities. “Some argue that the critical targets should be publicized, because it would force the government and industry to protect them. ‘It’s a tricky balance,’ said Michael Vatis, founder and first director of the National Infrastructure Protection Center. Vatis noted the dangerous time gap between exposing the weaknesses and patching them: ‘But I don’t think security through obscurity is a winning strategy’” (Blumenthal 2003).

Winning or not, it is the strategy that is being used in the case of Gorman’s dissertation. The Washington Post agreed not to print the results of Gorman’s research, at the insistence of George Mason officials, and Gorman does his work in a lab secured by

an electronic lock that only he and two faculty members working with him are allowed to open. “[T]hey even take out their own trash. When their computer crashed, they removed the hard drive, smashed it and rubbed magnets over the surface to erase the data.”

Gorman’s work offers an especially interesting problem. Because his map depends entirely on publicly available information, there is nothing to prevent someone with more malevolent intent from replicating his work. Yet there would be significant opportunity costs involved. After all, completing a dissertation-sized project requires a large amount of time and effort. Rather than formally classifying information, in all three of the examples above, efforts to deal with dual-use information have involved attempts to increase opportunity costs for terrorists, removing items from the Internet in the first two and shutting off access to outsiders in the case of Gorman’s research.

It may be that in some cases dual-use information is so dangerous, that there could be justification even for classifying it. Such a move would come at a cost, however, of limiting citizens’ ability to make informed decisions about their own lives and of public life generally. In other words, it would strike a blow against autonomy. Even in instances in which information could not conceivably be of any use to the general public, classifying it still robs citizens of the opportunity to judge for themselves the propriety of how that information is treated. While official secrecy is used under color of protecting citizens, those citizens are unable to hold officials accountable for questionable decisions precisely because the information necessary for accountability is itself secret.

Much of the current focus on dual-use information in the United States involves material that is already in the public domain, but much of what is classified also falls in the realm of dual-use information. It is precisely for this reason that official secrecy

should have been so worrisome for democrats, even before the recent efforts to extend official secrecy in the name of security. It is bad enough that citizens are, for obvious reasons, unable to independently evaluate classification decisions, but it is even worse that many state-held secrets would certainly be of some use to the citizens from whom they are withheld. New developments, such as the exemption of critical infrastructure information from FOIA disclosure requirements, make the situation much worse.

The *Progressive* case provides a striking example of this problem. The 1979 court battle over an article by Howard Morland purporting to explain how to construct a hydrogen bomb is best known for the still-unsettled constitutional questions it raised about the government's power to use prior restraint on publication to protect vital national interests. In issuing a temporary restraining order forbidding publication of the article, District Judge Robert Warren echoed the concerns of the government then and many proponents of secrecy now, writing, "If a nuclear holocaust should result, our right to life becomes extinguished, and the right to publish becomes moot" (quoted in Black and Bryant 1992, p. 538). In the actual case, publication of the same information elsewhere rendered the question of *The Progressive's* right to publish moot — and nuclear holocaust did not result.

The specifics of the court battle and questions about prior restraint generally dominate discussions of Morland's (1979) article, but beyond that, the article itself raises some interesting questions about the impact of official secrecy. According to Morland's account, in 1978 Rep. Ronald V. Dellums, who was a member of the House Armed Services Committee, sent a series of questions to the Department of Energy seeking a public explanation for why it was expecting a shortage of plutonium in its nuclear

weapons program. The department responded that it was not able to answer his questions in an unclassified manner and included a “secret/restricted” enclosure. The enclosure was a list of Dellums’ questions (Morland 1979).

Morland concludes that the most likely reason for the anticipated plutonium shortage was not a need for plutonium at all but tritium, a byproduct of plutonium production necessary for neutron bomb production. But because of the secretive practices of the Department of Energy, a potential debate over the morality of the neutron bomb was foreclosed. While this solitary instance in which the Department of Energy was able to, as Morland puts it, “confiscate the questions” was probably not in itself particularly dangerous to democracy, it does illustrate a broader pattern. “Secrecy itself, especially the power of a few designated ‘experts’ to declare some topics off limits, contributes to a political climate in which the nuclear establishment can conduct business as usual, protecting and perpetuating the production of these horror weapons.” (Morland 1979, p. 14) Fuller access to information would not have necessarily led the American public to turn against the “horror weapons” Morland decries, but policy outcomes are not the only concern here. This secrecy also limited citizens’ access to the mechanisms of agenda setting. The impact of secrecy in this instance is not only on the outcome of a discussion of nuclear policy, but on whether even to have a discussion — a serious problem, particularly for those democrats of a more participatory vein who believe that democracy is discussion.¹¹

More than two decades later, Morland insists that the *Progressive* case was not about whether to release information that could lead to dangerous proliferation and

ultimately nuclear war (or, today, nuclear terrorism). After all, he collected his information from entirely from open sources, and the real problem for states or non-state groups attempting to manufacture nuclear weapons is not information but access to materials. Indeed, for all but the most sophisticated state actors, a thermonuclear device of the type discussed by Morland remains out of reach, unless it were to be obtained already assembled. The materials and expertise, not the design plans, are the real obstacles. The greater danger comes from much simpler fission weapons. Writing about the Wen Ho Lee scandal, in which the Department of Energy accused Lee of providing nuclear secrets to China, Morland (2001) says, “As an interested party, of sorts, I watched the unfolding melodrama with a sense of disappointment. I thought I had revealed all the interesting H-bomb secrets some twenty years earlier in *The Progressive* magazine. One of my purposes then, as now, was to argue that nuclear bomb secrets are a hoax, and that public understanding of nuclear arsenals is a necessary step in the quest for nuclear disarmament.”

In other words, Morland argues, Judge Warren had the danger exactly wrong: Secrecy is more likely to drive humanity to nuclear holocaust than is an open, honest and complete discussion about the technology used in the most powerful weapons ever devised. In deciding to publish his article in 1979, Morland (2001) writes, “Certainly none of us had any intention of harming the United States or hastening the day of Armageddon. Despite our First Amendment right to do so, none of us would have published a story we thought of as irresponsible.”

¹¹ “Democracy is discussion” is a saying attributed to Tomas G. Masaryk, first president of Czechoslovakia. It also reflects the position of contemporary theorists of deliberative democracy. See, for instance, Myers (1996).

It is worth noting that the danger cited by Judge Warren, while certainly involving the highest stakes, is in the subjunctive mood, a tacit acknowledgement that it is speculative — “*If* a nuclear holocaust *should* result.” In contrast, the danger posed to democracy by official secrecy is anything but speculative. The true danger posed can be explained in the indicative mood: When the state keeps secrets, it reduces the autonomy of citizens and harms their ability to hold the state accountable. Morland makes a compelling argument that Judge Warren’s speculation is wrong, but that by itself is not sufficient to be fatal to the claims made by proponents of official secrecy. Even if in this particular situation, secrecy offers no benefit with regard to staving off human extinction, it is possible to imagine other cases in which it might.

For instance, the recent film “28 Days Later” offers a scenario in which a genetically engineered virus turns people into enraged, murderous beasts, resulting in large-scale destruction and a virtual end to civilization. Suppose that such a virus were easily created with readily available materials and that it would be absolutely incurable. There would be a clear benefit to keeping that information secret, even if that secrecy could not prevent malevolent groups from making the discovery on their own but could only slow them down.

Accepting this obvious conclusion is hardly a large concession for democrats. It is merely a recognition that the continuation of human life is a higher order concern even than democracy, because without living citizens, democracy is itself an empty concept. In that sense, Judge Warren’s reasoning is absolutely correct. If our “right to life is extinguished,” everything else becomes moot, including secrecy, democracy and indeed all of political science.

That said, there are precious few situations in which the choice is as clear-cut as in the hypothetical case of the clearly fictional virus, where making information about the virus public could not possibly contribute anything toward a treatment or a cure. The real-life concerns about dual-use information, particularly in biology are much messier. In 2002, *Proceedings of the National Academy of Sciences* published an article by University of Pennsylvania researcher Ariella Rosengard that explained how a protein from the smallpox virus made it so effective at evading the protections of the human immune system. While Rosengard's work had the potential of being useful for bioterrorism, it was intended to aid in finding ways to reduce rejection rates in organ transplants (Gugliotta 2003). That same year, other researchers in the United States published an article describing how they created a polio virus in the laboratory, using DNA material ordered through the mail; in 2001, Australian scientists reported on how that had accidentally created a "supervirus" that, instead of sterilizing mice, killed them with alarming efficiency (Cohen 2003).

An easy, knee-jerk reaction to news such as this would be to institute tight controls on the reporting of biological research. Indeed that has been the initial preference of the Bush administration, which at one point asked the American Society of Microbiology to eliminate from articles in its 11 journals details necessary for other researchers to replicate experiments, a proposal that would have undercut a key pillar of scientific research. "That takes apart the whole foundation of science," Ronald M. Atlas, president-elect of the society, said of omitting methods. "I've made it reasonably clear that we would object to anything that smacked of censorship. They're discussing it, and I wouldn't rule them out doing something'" (Broad 2003).

Editors of the leading scientific journals, including *Proceedings of the National Academy of Sciences*, *Nature*, *Science*, the *New England Journal of Medicine* and the *Lancet*, have adopted a broad, voluntary set of guidelines in an attempt to prevent publication of information that would be helpful to bioterrorists, but under the guidelines, articles will still be sufficiently detailed to allow the replication of experiments (Verrengia 2003). This self-policing approach has already been accompanied by more heavy-handed measures by the U.S. government. In February 2002, scientists receiving funding from the Department of Defense were told that their work would soon require vetting by the department before it was submitted for publication. Later in the year, the Department of Agriculture requested that the National Academy of Sciences not release a report on the potential for agricultural terrorism, despite the fact that it was based entirely on already public material (Cohen 2003). And in an especially absurd episode, in January 2003, the National Research Council gathered a group of top microbiologists, most without security clearances, to talk with the CIA's strategic assessments group about scientific openness. It was without a hint of irony that the CIA announced it was preparing to issue a classified report about the unclassified meeting (Brickley 2003).

What many scientists grasp that security specialists do not is that attempts at scientific secrecy often are futile, as the natural world is already out there simply waiting to be discovered:

“The model they instinctively reach for, the nuclear weapons model, doesn't hold very well for a lot of reasons,” Roger Brent, director of the Institute for Molecular Sciences in California, told *The Scientist*, explaining the position he took at the meeting. “Nuclear weapons were created by governments with immense resources that could be summoned only by governments. The governments owned all the scientists and kept them behind barbed wire.”

Not so with microbiology, which has few secrets and many skilled practitioners, the vast majority of them outside the government.

“In the future, if we want to deal with BW [biological warfare] defense, we cannot move forward in the same time-worn ways as we have with nuclear weapons,” said Steven Block of Stanford University’s departments of biological sciences and applied physics. “It’s simply not possible to control the information in the same way, and the kinds of control we use for nuclear weapons do not work against biological weapons.”

“For good or ill, there is very little about biology that, if you could keep it secret, would give you any measure of protection,” Brent said (Cohen 2003, brackets in original).

Of course, the nuclear-weapons model of secrecy offers little protection, even against the proliferation of nuclear weapons. According to the Reuters wire service (2003), the CIA removed from its Web site photographs of centrifuge equipment allegedly found buried under a rose bush in a Baghdad back yard, apparently because of concerns that the photographs revealed the dimensions of the equipment, information that could be useful to countries seeking to enrich uranium for their own weapons programs. However, with the physical principles behind nuclear weapons well known, the problem for aspiring nuclear powers is not how to build the weapons, but with what to build them, something that has been the case since early in the nuclear age. It is telling that one of the key arguments against prior restraint in the *Progressive* case is that much of the same information that the Department of Energy had wanted kept secret had already been published in an article by Edward Teller in the 1976 edition of *Encyclopedia Americana*.

Albert Einstein wrote in 1947: “The basic power of the universe cannot be fitted into the outdated concept of narrow nationalisms. For there is no secret and there is no defense; there is no possibility of control except through the aroused understanding and insistence of the peoples of the world” (quoted in Morland 2001).

In short, scientific secrecy, in practice, is largely futile effort, certainly in the field of nuclear physics and even more so in the case of biology, where the experts cannot be kept “behind barbed wire.” Even worse, scientific secrecy may be counterproductive to public safety, as secrecy measures may hamper efforts to forge effective defenses against new threats. “The one thing we have going for us is an infrastructure in biomedical research which is far ahead of the ability of the bad guys to use it,” says Sam Kaplan, chairman of the publications board of the American Society of Microbiology (quoted in Gugliotta 2003).

Scientific secrecy is a special case, though. When there is knowledge to be gained about the natural world, dependent solely on technical competence and the use of the scientific method, there is not enough power in the world to prevent its discovery. As the Commission on Protecting and Reducing Government Secrecy noted, “There was no real scientific secret to atomic fission; German scientists knew it. There are no secrets in science. Oppenheimer and his associates had ‘simply’ figured out the techniques and found the resources to build a bomb before our enemies did” (1997, p. A-27). For nonscientific secrets, however, the story is much different. In *Poor Richard's Almanac* in 1735, Benjamin Franklin pointed out the likelihood of a breakdown in the discipline of secrecy when he said, “Three may keep a secret if two of them are dead.” However, if discipline does not break down or prove insufficient, the information concealed in a nonscientific secret is absolutely invulnerable to independent discovery.

Imagine two partners planning a bank robbery. If one decides to turn informant, the plan is exposed; likewise if they discuss their plans on a phone line that has been tapped by law enforcement. Without some kind of breakdown in discipline or accidental

revelation, though, the robbers' secret is totally secure until they chose to reveal it to the world. It cannot be discovered independently through deduction or the application of the scientific method. Outside the realm of what is covered by the Atomic Energy Act, almost all official secrecy in the United States is of this kind. In some ways that suggests that for the most part official secrecy does not have to be an exercise in futility, as many people suggest is the case for the subcategory of scientific secrets. That official secrecy can be effective does not mean that it is not damaging. Quite the contrary, official secrecy, scientific or not, diminishes citizen autonomy and the ability to hold the state accountable.

Undercutting public debate

Regardless of the impact on security in any particular instance — positive, negative or indifferent — official secrecy directly undercuts the ability of citizens to debate and influence public policy. Echoing Morland, Halperin (1985) describes the impact of official secrecy on the ability of the public to debate and influence U.S. nuclear policy:

Clearly, the president has vast potential power to prevent or limit various forms of unauthorized disclosure of information related to nuclear war. He is unlikely to exercise that power unless public debate threatens to interfere seriously with the executive branch's view of what the national security requires. In a crisis, when there is extensive public opposition to administration policy, the temptation to use these powers might well be irresistible. (p. 117)

One might argue that U.S. nuclear policy is too important and complex to be subjected to the vagaries of public debate. This is an anti-democratic argument, though. The

importance of this policy area is precisely why citizens, if they are truly valued for their competence and autonomy, must be involved. During the Cold War, at least, it is difficult to think of a matter of greater gravity than that of nuclear policy. If the idea of self-government means is at all meaningful, surely it must include policy questions that are the most gravely important.

Experts, citizens and policy

The point about the complexity of the issues involved is well taken but is not sufficient justification to call for a substitution of expertise for citizenship. The average citizen lacks the know-how to construct a nuclear weapon, select targets or fill in the details on war-fighting strategy: Indeed the average citizen has no need for such skills. If it has been decided that official policy should include contingencies for the use of nuclear weapons, the details of how to carry out such a policy are best left to the experts. These issues are what Dewey and Tufts (1908) call scientific problems:

The problems which fall to the lot of proper organs of administrative inspection and supervision are essentially *scientific* problems, questions for expert intelligence conjoined with wide sympathy. In the true sense of the word political, they are political questions: that is, they relate to the welfare of society as an organized community of attainment and behavior. In the cant sense of the term political, the sense of conventional party-issues and party-lines, they have no more to do with politics than have the multiplication table and laws of hygiene (pp. 472-3).

The average citizen has no more business — or interest in — deciding the finer points of nuclear weapons design or strategy than he or she does designing roller coasters, but that does not mean that nuclear weapons do not involve political issues, which quite properly invite public participation. That the average citizen is not qualified

to participate in weapons design or military planning does not mean that he or she has no rational interest in nuclear policy. Quite the contrary. Citizens should be involved in debate over general direction of nuclear policy. For example, the layperson may not be the best person to ask *how* to design a new weapon, but in a democracy he or she should have a say over *whether*. The “how” is a scientific question, not a political one, but the “whether” is another matter entirely and should be the subject of debate. Barber (1984) makes the distinction clear:

Where there is certain knowledge, true science, or absolute right, there is no conflict that cannot be resolved by reference to the unity of truth, and thus there is no necessity for politics.

Politics concerns itself only with those realms where truth is not — or is *not* yet — known. We do not vote for the best polio vaccine or conduct surveys on the ideal space shuttle, nor has Boolean algebra been subjected to electoral testing. But Laetrile and genetic engineering, while they belong formally to the domain of science, have aroused sufficient conflict among scientists to throw them into the political domain — and rightly so. Where consensus stops, politics starts (p. 129).

Democratic politics traffics in uncertainty. It is the fantasy of certain knowledge that lies behind the idea of government by experts, from Plato’s philosopher-kings to modern technocrats. But there is a difference between accepting the inevitability of a certain amount of uncertainty and promoting it with a policy of official secrecy.

However, the climate Morland (1979) describes, in which technocratic elites can declare some topics off-limits, still holds today, and it stifles not only debate over the how but also over the whether. The result is that citizens are denied self-government in a policy area that secrecy proponents and opponents alike consider important, and the state becomes less accountable to its citizens.

Representatives might be expected to introduce accountability in areas in which the populace at large cannot. Indeed for proponents of thinner versions of democracy,

accountability through representation is desirable. In practice, though, accountability through representation has failed in policy areas covered by official secrecy, particularly with regard to national security and foreign affairs. For instance, the planning and implementation of covert action, which by definition must be secretive, involves a natural bias toward taking covert action rather than following some other course of action, due to the way the decision-making process is set up and the participants are chosen. Halperin (1975) offers the planning process for the Bay of Pigs invasion as an example of this phenomenon:

Cutting off many officials from the Bay of Pigs operation meant not only that officials knowledgeable about the Cuban scene were unable to comment and warn the President that the kind of uprising on which the plan depended was unlikely, but also the narrow circle meant that the President was not confronted with advice from those who could have pointed out the limitations of the different ways by which the presumed threat from the Castro regime could be contained. (p. 46)

Decisions for covert operations come in a necessarily decentralized, secretive system, which increases the chance the president will choose them, whereas other types of policy debate are prone to be more open and involve more potential critics or proponents of alternatives.

In the case of covert action, the doctrine of “plausible deniability” is set up specifically to avoid accountability. Reforms in oversight mechanisms following the revelations of the Church Committee in the 1970s did bring about changes but could not change the fundamental fact that the doctrine of plausible deniability is incompatible with accountability. The Iran-Contra affair, in which covert actions undertaken by the executive branch contradicted stated U.S. policy, is a notorious example of this problem with accountability. “While the new procedures have worked for the overwhelming

majority of covert actions, they have been most likely to be ignored by the executive branch in its planning and implementation of paramilitary operations, as the Iran-*contra* affair vividly illustrates.” (Johnson 1989) Accountability mechanisms that can be ignored at will cannot be said to increase accountability. Covert actions, by virtue of their very secrecy are unaccountable and can even be expected to contradict openly stated policy. Marchetti and Marks (1974) describe a situation during the Vietnam War in which William Colby, who was deputy ambassador to Vietnam and would later become director of central intelligence, was officially acting to shore up the Vietnamese economy while at the same time buying piasters on the black market to make the agency’s funds go farther. Thanks to the “clandestine mentality”:

[A] William Colby can with no legal or ethical conflict, propose programs to end corruption in Vietnam while at the same time condoning the CIA’s dubious money practices. ... This is the clandestine mentality: a separation of personal morality and conduct from actions, no matter how debased, which are taken in the name of the United States government and, more specifically, the Central Intelligence Agency. (p. 248)

This kind of contradiction in policy is the kind of problem that begs to be resolved through oversight, but even after the Church Committee revelations, even after the Iran-Contra reforms, oversight is not something that most members of Congress do gladly. Congressional intelligence committees are specifically designed to perform the oversight function, and all members of Congress are allowed to inspect those committees’ files, although in practice, very few actually do. Despite their mandate to perform oversight, members have lacked the will to do it adequately — and continue to lack that will (Sigal 1975, Holt 1995). Lack of curiosity bears some responsibility for the Iran-Contra affair, and there is no indication that congressional oversight has become more aggressive since then (Holt 1995), or for that matter since 1975 when Sigal noted that it was common for

members of Congress actually to wish to know as little as possible about official secrets. Indeed, since the attacks of Sept. 11, 2001, there has been a backlash against Church Committee reforms, with critics claiming that oversight has crippled the U.S. intelligence community.

There is also a great deal of informal communication about secret activities. Washington is a hotbed of official secrecy, but *actual* secrecy is much less common, as a great deal is communicated through informal channels. However, information communicated this way is not an effective way of promoting oversight, due to the difference between formal and informal communication. Regardless of its effectiveness, it also leaves citizens out of the loop. “Informal communication not only fails to satisfy Congress’ need for information in order to perform its oversight function, but also lessens the opportunity for senior officials in the executive branch to exercise control and monitor compliance with their own objectives.” (Sigal 1975, p. 87) As an example, Sigal cites the Manhattan Project and subsequent atomic bombing of Japan in which “official secrecy did not eliminate informal communication about the bomb, but it did limit formal discussion in official forums where knowledgeable participants might raise and evaluate options for its use” (p. 88). The bottom line is that formally, members of Congress tend to avoid knowing enough to perform an adequate job of oversight as representative of democratic citizens, and the greater amounts of information that are obtained informally are not useful for oversight.

Holt describes the situation for oversight succinctly:

The question was asked of a former chairman of one of the congressional intelligence committees: “How can an open society assert political control over activities which are necessarily secret?”

The answer came back like a shot: “It can't.” (p. 238)

Official secrecy is problematic for democratic theory and democratic citizenship even in situations in which information might be kept secret for legitimate national security purposes. In practice, though, the problem extends further. Official secrecy frequently goes beyond the bounds of what might be considered legitimate for reasons of national security. Overclassification, the practice of shielding documents from scrutiny to a greater extent than necessary remains rampant in the United States (Gries 1993, Moynihan 1998) and abroad (Goldman 1985, Thomas 1976) and seems to be endemic to bureaucratic environments in which there are formal mechanisms of secrecy (Halperin and Hoffman 1977).

In 1997, according to the Report of the Commission on Protecting and Reducing Official Secrecy, there were 2 million federal officials with classification power, along with another 1 million people in private sector involved in contract relationships with the federal government. “Apart from aspects of nuclear energy subject to the Atomic Energy Act, secrets in the Federal Government are whatever anyone with a stamp decides to stamp secret. There is no statutory base and never has been” (p. xxii.). Regardless, those stamps get used a lot and in many cases inappropriately. The Information Security Oversight Office has estimated that between 1 and 10 percent of all classified documents are being unnecessarily concealed. While it appears that overclassification is rampant, no one is quite sure how much information is classified, as classification actions can cover a wide range, and no other reliable statistics are available. It is not surprising that the extent, if not existence, of overclassification is also subject to controversy (p. 36). Quantifying overclassification is not necessary to understanding the scope of the problem, though. According to the Moynihan commission:

It may be more meaningful to recognize that the perennial problem of unwarranted classification attests to the continued failure of classifiers to engage in a rigorous assessment of the need for classification. For instance, in seeking to protect information about certain weapons systems (the classification of which has been permitted under successive executive orders), many of the support functions associated with these systems, such as information concerning logistical and administrative support, have also been classified even though it was doubtful that their disclosure could have caused any damage to the national security. In the Commission's review of one intelligence agency's documents, a memorandum to employees of the agency describing an upcoming "family day" in which family members could visit the agency was classified Confidential because the person who signed the memorandum was under cover. By simply omitting the name of that individual, the memo would have been unclassified. The entire agenda for a Commission meeting at one intelligence agency was classified because one word — not crucial to the topic being discussed — revealed a classified relationship. At other meetings, Commission staff inquiries as to why certain briefing slides were classified were met with responses such as "I'm not sure," or "This is just the way we prepare our materials" (p. 36).

Overclassification is problematic not only because it prevents citizens at large from gaining access to potentially useful information but because it also can keep

information from reaching officials who might be able to act directly upon it.¹² Arendt (1969) provides two examples in which information that did not come to light led to missed opportunities. In 1945 and 1946 Ho Chi Minh wrote several letters to President Truman seeking U.S. support for Vietnamese independence along the same lines of that of the Philippines. In another instance, Mao Tse-tung and Chou En-lai sought to avoid dependence on the Soviet Union by establishing relations with the United States. Neither instance, which contradicted the popular image of a monolithic world communism stretching from Berlin to Beijing to Hanoi, came to light until more than two decades later, after the United States had embarked on the disastrous Vietnam War. That U.S. decision makers were unaware of these developments is telling according to Arendt:

This sheds some light on one of the gravest dangers of overclassification: not only are the people and their elected representatives denied access to what they must know to form an opinion and make decisions, but also the actors themselves, who receive top clearance to receive all the relevant facts, remain blissfully unaware of them. And this is not because some invisible hand directly leads them astray, but because they work under circumstances and with habits of mind, that allow them neither time nor inclination to go hunting for pertinent facts in mountains of documents, 99 1/2 percent of which should not be classified and most of which are irrelevant for all practical purposes. (p. 30)

Still there are incentives for officials to overclassify. The ability of the executive to classify documents, which even under the U.S. Freedom of Information Act is

¹² The Pentagon's proposed Policy Analysis Market, which was shut down after widespread outrage over the possibility of trading in "terrorism futures," offers an interesting illustration of the importance of getting information to people who can act on it. Supporters of the proposal pointed to political futures markets, which have been able to predict the outcomes of elections with even greater accuracy than public opinion polls. There is a crucial difference that got lost in this discussion, though. Information necessary to predict election outcomes is, for the most part, public and available to traders. For the Policy Analysis Market, much more of the relevant information, would be classified, based on communications intercepts or other necessarily secret techniques. Even if intelligence analysts had been allowed to participate, compartmentalization of information would have left almost all traders in the dark. Such a market could have been expected to have about the same precision and accuracy as a market in predicting winning lottery numbers. Had the program been allowed to continue, its failure would have shown dramatically shown part of the price paid for official secrecy.

essentially unquestioned and unchecked, encourages abuse, especially when the executive can secure information that might be harmful to its political interests, irrespective of national security concerns. Further, selective classification and declassification can be used for spin, precluding a truly informed public from acting as a check on the executive. One solution proposed in the United States has been to allow the courts to rule on the propriety of classification decisions (*Harvard Law Review* 1990). This could conceivably remedy some abuses, but it would do nothing to remove the incentives that lead to overclassification to begin with.

All too often, information is concealed less for national security concerns than for purposes of domestic political advantage. For instance during the Congo crisis in 1960, in which the CIA plotted to kill Prime Minister Patrice Lumumba, the United States released information selectively that indicated that it was not intervening in the Congo and was actually acting to prevent intervention by other countries. This deception was for the consumption of American audiences rather than potential adversaries: The Soviet Union was already aware of American actions, as demonstrated by the reporting Pravda was doing on an American role in a plot to eliminate Lumumba (Gibbs 1995). More recently, when Chinese Gen. Zhang Wannian visited the White House in September 1998, the Pentagon refused to release an official biography of the general, saying it was classified. Timperlake and Triplett (1999) claim national security was a guise for the real reason for keeping the his biography secret:

What was so sensitive about Gen. Zhang's visit? Perhaps the White House did not want the American public to know that another "butcher of Beijing" was getting the royal treatment in Washington. According to a U.S. consulate general in Hong Kong all PLA (People's Liberation Army) military region commanders sent troops to Beijing to participate in the Tiananmen Square massacre of June 3-4, 1989. At the

time, Zhang was commander of the Guangzhou Military Region, and his 15th Airborne Army troops assaulted the square from the south, filling hospitals with dead and wounded. We can well understand why the administration would not want President Clinton's picture with such a man to circulate on this side of the Pacific.

There are even indications now that secrecy may have been used to mislead Americans into supporting a dubious case for pre-emptive war. It may well be that President Bush was entirely sincere when he said that the United States could not wait for a smoking gun on Iraq's nuclear weapons program because that smoking gun could be a mushroom cloud over an American city. But secrecy severely hampered the ability of Americans to evaluate fully the case for war. At this point, much of the evidence for an active nuclear-weapons program in Iraq has been shown to be overblown, and it appears that the stated case for war was based either on bad intelligence or bad-faith characterizations about what the U.S. intelligence community knew about Iraq. Either way, the arguments were based on secret information that was susceptible to selective disclosure.

[N]ew information indicates a pattern in which President Bush, Vice President Cheney and their subordinates — in public and behind the scenes — made allegations depicting Iraq's nuclear weapons program as more active, more certain and more imminent in its threat than the data they had would support. On occasion administration advocates withheld evidence that did not conform to their views. The White House seldom corrected misstatements or acknowledged loss of confidence in information upon which it had previously relied (Gellman and Pincus 2003).

The charge that the Bush administration withheld some evidence is especially disturbing, but even if the administration was completely forthright, it is troubling that the citizens of a democracy were put in a position where they were expected to choose

sides on a major policy issue — they don't get much bigger than the decision of whether to go to war — without a real opportunity to evaluate the evidence fully.

Admittedly, not all issues affected by secrecy are as consequential as this one, but it illustrates just how significant an impact official secrecy can have on the autonomy of citizens and their ability to hold their representatives accountable for their actions. Indeed, accountability in this case cannot be achieved without further revelations of what was known by the United States government and an accompanying explanation of either how officials were able to mislead the public or why intelligence efforts failed so badly. This accountability simply cannot be achieved in a climate of total secrecy; if national security does indeed require that disclosures about the lead-up to the Iraq war be limited, it may well be that accountability is impossible.

A recent political cartoon by Tom Toles depicts President Bush saying, "We can't release that information because it would reveal our 'sources and methods,'" along with a suggestion that sources could include "somebody said it," "wild guess" and "really cool dream," while methods could include "select convenient facts," "conversation with self" and "lie." In truth, the sources and methods protected by official secrecy could be perfectly legitimate, or they could be exactly the kinds of things Toles names. There is no way of knowing. But when there is an intimation that secrecy has been used to aid in dishonesty, all secrets become suspect. Toles provides a humorous example of the kind of suspicion can engender. The next chapter will show just how serious that suspicion can be. Even when used solely in ways that would be judged legitimate, official secrecy undercuts accountability and citizen autonomy; when it is coupled with the appearance of

misconduct, the harm becomes even greater, a problem that will be discussed in greater depth in Chapter 4.

Chapter 4

Won't Get Fooled Again: Secrets and Suspicion

In undercutting accountability and citizen autonomy, official secrecy already shows itself to be a fundamentally anti-democratic phenomenon. But the circle of damage it causes extends beyond those areas. Given the permanent place it has found in contemporary statecraft, it is vital that theorists and practitioners of democratic government understand the corrosive effect official secrecy has on democracy so that they can minimize its effects. Those effects are multifaceted and wide-ranging, but one has been particularly glaring in the wake of the terrorist attacks on the World Trade Center and the Pentagon. Official secrecy creates fertile ground for thinking in what Richard Hofstadter (1979) referred to as the “paranoid style,” potentially poisoning the relationship between citizens and the state.

For the United States, suspicion and paranoia¹³ are part of the inevitable legacy of half a century of Cold War secrets and lies. Indeed, any state that keeps secrets as a matter of course will foster suspicion among its citizens about its true actions and motives. For democracy, this is a particularly acute problem that is not addressed adequately either in theory or practice. It is not argued here that all suspicion or paranoia has its roots in official secrecy. Plainly, that is not the case, as in the American experience, the history of the paranoid style extends further back in time than the modern system of official secrecy (Hofstadter 1979). An enormous literature explores the roots of paranoia as a symptom of mental illness. But it would be a mistake to leave the study of

¹³ The terms ‘suspicion’ and ‘paranoia’ are frequently paired here, but there is a distinction intended. On a continuum extending from trust to distrust, suspicion and paranoia are both types of distrust, and paranoia can be seen simply as an extreme form of suspicion. A further distinction is useful, though. Whereas suspicion involves doubt and uncertainty about a particular claim,

the paranoid style (as opposed to clinical paranoia) to psychology and psychiatry alone, for the distrust that is part and parcel of paranoia extends beyond what is conventionally called mental illness and has enormous costs for democracy, particularly when that distrust is directed at the state. Nor is true clinical paranoia necessary for citizens to be taken in outrageous stories in the style of paranoid delusions. As Hofstadter explains: “In fact, the idea of the paranoid style as a force in politics would have little contemporary relevance or historical value if it were applied only to men with profoundly disturbed minds. It is the use of paranoid modes of expression by more or less normal people that makes the phenomenon significant” (p. 4). It is argued here that the phenomenon is very significant and that official secrecy makes paranoid-style accounts of state activities possible and makes belief in those accounts attractive.

Two narratives — one true, one false — illustrate how official secrecy aids and abets thinking in the paranoid style:

The first reads like a scenario from a Cold War novel, but it is based on solid historical research. On March 13, 1962, the Joint Chiefs of Staff presented Secretary of Defense Robert McNamara with a plan to remove Fidel Castro from power in Cuba. Operation Northwoods was to involve a series of staged incidents intended to be blamed on Cuba, thus providing a pretext for war and offering the military a chance to finish the job that was botched at the Bay of Pigs. The plan called for hijacking planes, sinking boats carrying Cuban refugees and orchestrating acts of terrorism in Washington and Miami. Whether McNamara explicitly rejected the Operation Northwoods is not clear, but within three days, President Kennedy had told Gen. Lyman L. Lemnitzer, chairman

paranoia involves both rejection of a claim and certainty about an alternative claim for which a reasonable person would see insufficient evidence.

of the Joint Chiefs of Staff, that overt military force would not be used to replace Castro. However, the Joint Chiefs continued planning pretext operations against Cuba for at least another year. The plans remained unknown until 2001, when James Bamford uncovered written documentation for his book, *Body of Secrets*. Bamford describes Operation Northwoods as possibly “the most corrupt plan ever created by the U.S. government” (p. 82).¹⁴

The second narrative reads like a sequel to the first, but it lacks any credible evidence for its claims. It is perhaps most kindly described as a piece of creative writing. On Sept. 11, 2001, an explosion at the Pentagon killed 189 people. While some initial reports indicated that a truck bomb had exploded, they were quickly followed by reports that a commercial airliner, American Airlines Flight 77, had crashed into the building. But according to French activist Thierry Meyssan, the untold story of that day is that the initial reports were probably correct. In the French best seller *L'effroyable Imposture* (*The Frightening Fraud*), Meyssan (2002) argues that after the attack the Pentagon exhibited far too little damage to have been hit by a Boeing 757. Instead, he says, the damage to the Pentagon was caused by a missile strike or truck bomb and then made to appear to be the result of a plane crash, all as part of a much wider plot by the U.S. government. If any of Meyssan's charges were true, the Sept. 11 attacks would easily surpass Operation Northwoods in terms of U.S. governmental corruption.

¹⁴ A detailed discussion of Operation Northwoods is found in *Body of Secrets*. A declassified memorandum from Lemnitzer on a portion of the plan is also available on line at the National Security Archive at <http://www.gwu.edu/~nsarchiv/news/20010430/>.

It is easy to dismiss Meyssan as a crackpot, but it would be a mistake to ignore him. The truly frightening thing about *The Frightening Fraud* is its popularity. Its first printing of 20,000 copies sold out in two hours, and in April 2002 it was at the top of Amazon France's best-seller list ("French Lap Up Pentagon Crash 'Fraud.'" 2002). Meyssan is far from alone in having found an audience for a such account of the Sept. 11 attacks, as conspiracy theories have proliferated on both sides of the Atlantic. Aside from a conspiratorial world view, all these accounts have in common the idea that the U.S. government is keeping an important secret, that it is hiding its true role in an attack on its own citizens. At first glance, this seems completely implausible, but bringing to mind Operation Northwoods carries such a plot closer to the realm of the believable. Here was an actual historical case in which every member of the Joint Chiefs of Staff agreed in writing to a plan that would have involved the slaughter of innocent American citizens in order to create a pretext for a war that otherwise would have been politically impossible. Only cooler heads in the Kennedy administration prevented the plan from being put into action. As narratives, Bamford's account of Operation Northwoods and the conspiratorial accounts of the Sept. 11 attacks are strikingly similar. The crucial difference is that Bamford's account is well-documented, whereas the Meyssan account and others like it are based on speculation and innuendo masquerading as serious research.

Not surprisingly, many who reject the obvious conclusion that the 19 al-Qaeda hijackers were responsible for the Sept. 11 atrocities cite Operation Northwoods as evidence for the plausibility of their claims that the U.S. government was actively involved in the mass murder of its own citizens.

- Carol Valentine (2001) claims, “There were no ‘suicide’ hijackers aboard those jets on September 11. Advanced robotics technology, not the hijackers, was controlling the jets when they crashed.” She goes on to cite Bamford, explaining, “In other words, U.S. allies and people within the U.S. military establishment are not opposed to killing U.S. servicemen and civilians, given the right goal.”

- Steve Grey (2002), claims the U.S. Air Force stood down to allow the attacks, writing, “If it is to be claimed that the evidence for collusion, is over-ruled by a belief that no country would do this to its own citizens, then it must be pointed out that the contemplation of terrorist attacks on US citizens by the CIA (sic) is a matter of public record. The previously classified ‘Northwoods’ document reveals that in 1962, the CIA seriously considered the possibility of carrying out terrorist attacks against U.S. citizens, in order to blame it on Cuba.”

- Jim Marrs (2002), who claims the attacks were planned as a pretext for a war in Afghanistan to clear the way for a new oil pipeline, also cites Bamford:

“The question becomes: Would any American allow an attack on fellow Americans just to further his own business or political agenda?

“The answer, unfortunately, appears to be ‘Yes.’”

These particular theories seem not to have gained as much currency in the United States as Meyssan’s has in France, but that does not mean that Americans are not suspicious that they have not been told the whole truth about Sept. 11. In October 2001, Louis Farrakhan, the controversial but popular leader of the Nation of Islam, called for the Bush administration to release proof that Osama bin Laden was behind the Sept. 11 attacks. “Don’t hide behind national security,” he said, adding, “They have lied before

and there's no guarantee they are not lying now" (Associated Press 2001). There was also the June 19, 2002, CNN report, subsequently picked up by the print media, that the National Security Agency had intercepted communications about the attacks on Sept. 10, 2001, but had not translated them until Sept. 12. Initial reaction suggested that many Americans find it entirely plausible that the U.S. government could have stopped the attacks but instead did nothing.

A history of suspicion

The terrorist attacks were a uniquely traumatic event for the United States, but widespread suspicion about the U.S. government having a hidden role in various events is nothing new. A 1964 survey found that only 36 percent of Americans accepted the Warren Commission's finding that Lee Harvey Oswald had acted alone in assassinating President Kennedy. By 1978, only 18 percent believed Oswald had acted alone, while 75 percent believed he had been part of a larger conspiracy. There has been little change in the numbers since then. According to 1997 CNN-Time survey, a similar number, 80 percent, "believe that their government is hiding knowledge of the existence of extraterrestrial life forms" (Moynihan 1998).

While official secrecy is not the only source of suspicion and absurd belief, it is not without blame in these cases either. As Moynihan (1997) notes:

[T]oday something like half of all Americans think the CIA was involved in the assassination of President Kennedy. There is even a Hollywood movie to prove it.

Nor can historians *disprove* it. The records are sealed. We have an Assassination Records Review Board that lets some things out; not much.

Greater openness might not silence conspiracy theorists, but it would at least reduce their appeal for a mass audience.

Park (2000) traces belief in a flying-saucer cover-up to the combination of garbled information and official silence to come out of the infamous Roswell incident in 1947. The Air Force confirmed in 1994 that the alleged flying saucer was, in fact, a weather balloon from Project Mogul.¹⁵

If there is any mystery still surrounding the Roswell incident, it is why uncovering Project Mogul in 1994 failed to put an end to the UFO myth. There appear to be several reasons, all related to the fact that the truth came out almost half a century too late. Rather than weakening the UFO myth, Project Mogul was pounced on by believers as proof that everything that everything the government had said before was a lie, and there was no reason to believe this was not just another lie. Government denials are by now greeted with derision (Park 2000, p. 179).

Nor is it just a matter of almost 50 years of silence about one incident that is responsible for UFO hysteria. The Air Force was actively if unintentionally complicit in perpetuating the myth. According to Park:

But if it was Project Mogul that started the UFO myth, it was another secret government program that kept it going. It was common during the cold war to create cover stories to protect secret operations, including flights of the U-2 spy plane over the Soviet Union. Initially, the U-2s were unpainted; that is, their skin was shiny, metallic aluminum, which strongly reflected sunlight, particularly in the morning and evening hours, when the surface below was dark, the U-2s would pick up the Sun's rays, becoming very visible. The CIA estimates that over half of all UFO reports from the late 1950s through the 1960s were secret reconnaissance flights by U-2 spy planes. To allay public concern while maintaining the secrecy of the U-2 missions, the air force concocted far-fetched explanations in terms of natural phenomena. Keeping secrets, we learn early in life, leads directly to telling lies (p. 180).

¹⁵ Project Mogul was a classified project for developing high-altitude weather balloons for use in detecting Soviet nuclear tests. Thomas (1995) offers a detailed comparison of debris found at Roswell with materials used in Project Mogul and pinpoints the test flight that was the likely source of the debris.

It is a serious problem for democracy when three-quarters of a country's citizens believe that their own government is lying to them on matters ranging from the most serious (the Kennedy assassination) to the fantastic (the existence of space aliens). It is also a serious matter for a democracy to have lied to its citizens, as the United States government did from time to time in waging the Cold War. As for citizens, their suspicions are understandable, even if frequently misdirected. They have been lied to time and time again, and it is only reasonable to doubt a government with a history of repeated lying, particularly when that government is known to have secrets it won't reveal — even if the reasons for secrecy in any given instance are perfectly legitimate. Little wonder then that according to Robins and Post (1997), paranoia is a “characteristic worldview of the late twentieth century” (p. 47).

Insiders and outsiders, secrets and lies

Based on Bok's (1984) definition of secrecy as intentional concealment, official secrecy has immediate consequences for the psychology of citizens, as it “presupposes separation, a setting apart of the secret from the non-secret, and of keepers of a secret from those excluded. ... The separation between insider and outsider is inherent in secrecy; and to think something secret is already to envisage a conflict between what insiders conceal and what outsiders want to inspect or lay bare” (p. 6). For the paranoid or the conspiracy theorist, that separation of insider from outsider is keenly felt. The conspiracy theory can be read as an effort to erase that distinction, to bring the outsider

inside by revealing what is hidden, even as paradoxically, the outsiderdom may become central to his or her identity.

The inside-outside distinction is significant in that it not only allows the insider to keep secrets, but to use that power in an abusive manner. Official secrecy can be used as a tool to blunt criticism or hide potentially embarrassing information. All too often, information is concealed less for national security concerns than for purposes of domestic political advantage. Obvious examples include U.S. actions in the Congo crisis in 1960 (Gibbs 1995) and the refusal of the White House in 1998 to release the biography of a visiting Chinese general (Timperlake and Triplett 1999), events that are both discussed in greater detail in Chapter 3. The key issue involved in these cases is secrecy. In terms of raising suspicions — probably rightly in this case — the contents of Zhang’s biography are less significant than the fact that they are being hidden.

Timperlake and Triplett’s article shows either a genuine abuse of secrecy or at the very least an illustration of the kind of suspicion official secrecy foments. The emergency landing of a U.S. reconnaissance plane on Hainan offers a more recent illustration. At an April 19, 2001, news briefing, Rear Adm. Craig R. Quigley refused to answer questions about whether or when reconnaissance flights would resume off the Chinese coast. Asked one reporter:

I mean, you and the secretary have both made a big point of saying that these are not spy missions because they’re done overtly and they’re not secret. So why are you now turning around and telling us that you can’t tell us anything about it because you don’t want to telegraph anything, if these are supposed to be done overt — if these are overt intelligence gathering and not secret spying?

Quigley ended up suggesting that the Chinese government be asked for a schedule of American reconnaissance flights. The reporter’s question is worthwhile because

presumably the flights are not secret from the Chinese military — in at least one instance, it was able to detect a flight with sufficient accuracy to cause a midair collision. It may be that Quigley refused to answer on the grounds that openly discussing the flights would irritate the Chinese government at a sensitive time in a way that remaining silent about them would not; this would be a realistic concern. However, to someone already dubious about the truthfulness of the U.S. account, this refusal to answer would be cause for further suspicion. Justified or not, this kind of suspicion is a very real perception for some citizens and at sufficient levels runs the risk of being corrosive to democracy.

Secrets and lies are close neighbors. Conspiracy theorists *know* they are being lied to because something is being hidden, but they go a step beyond mere suspicion in that despite the concealment they manufacture narratives explaining with precision and a great deal of certainty what is hidden. Official pronouncements about the propriety of what is being done in secret do not move them, just as Dorothy and her friends in *The Wizard of Oz* are not moved by the Wizard's plea to "Pay no attention to the man behind the curtain." At its most extreme, the paranoid style involves a mixture of extreme skepticism about the "official line" and equally extreme credulity with regard to one's own counternarrative, which holds together, if at all, only with the thinnest threads of evidence. Just as forest rangers think, "Fire," when they see smoke, political paranoids think, "Lie," when they see a secret. They are not entirely without justification in reacting this way. As Robins and Post (1997) note, "Paranoia — especially political paranoia — is seldom a complete delusion. It is typically a distortion of a truth" (p. 50). This distortion that is dangerous for democratic politics, but it is important to remember the kernel of truth being distorted. In this case, it is that secrets begets lies.

Beyond the passive protection of information that the holder may prefer not to reveal, secrecy makes it possible to manipulate proactively what others believe through selective disclosure, misdirection and outright lying — a potential that can have wide-ranging strategic consequences. Imagine, for instance, a poker game in which a player holding a pair wins the pot after bluffing out an opponent holding a full house. Through a combination of luck and misleading signals (drawing, betting, gestures, etc.), the player is able to win the pot with an inferior hand. Now imagine the same player trying that bluff with his or her cards face up on the table. The bluff succeeds in the first instance only because of the secrecy of the hand. The same principle that holds for the bluffing poker player also holds for the democratic state practicing official secrecy, the difference being that it is much more problematic for the democratic state to try to bluff its citizens. This is what President Eisenhower attempted to do in using a cover story to explain the 1960 downing of Francis Gary Powers' U-2 spy plane, in the hope of preserving plausible deniability. Only when it became clear how much the Soviets knew did it become obvious that he was essentially trying to bluff with all his cards showing.

Eisenhower's failure to sustain plausible deniability in this instance was a watershed event, as many Americans realized for the first time that their government would lie to them. A generation after the disaster in Vietnam and the revelations of Watergate, in an era in which one president parses the meaning of the word "is" and his successor is widely viewed as having started a war on the basis of a series of lies, the significance of this realization is difficult to appreciate. But for practitioners of the paranoid style, the enormity of the realization that their government has secrets and will lie about them is a source of unending irritation and an inexhaustible source for unending

theorizing. The U-2 crisis demonstrated for the first time the problems inherent in the plausible deniability (Holt 1995), but it did not mean an end to the doctrine. The Iran-Contra scandal offers a more recent example with yet another dramatic failure of plausible deniability, but executive-branch officials continue to insist that the possibility of lying to the public is a vital tool for national security, going so far as to defend the principle, as Solicitor General Theodore B. Olson did in an amicus brief for the Supreme Court in the 2002 *Christopher v. Harbury* case.

In addition to lies about covert operations, the United States used disinformation more broadly as an instrument of foreign policy during the Cold War, at one point going so far as to have the CIA produce a pornographic film starring an actor who resembled Indonesian President Sukarno (Zakaria 2002). Given the Bush administration's strong reaction against reports of plans by the Pentagon's Office of Strategic Information to plant disinformation with journalists overseas, the strategy may be falling out of favor. Secretary of Defense Donald H. Rumsfeld denied plans for a disinformation campaign, saying, "The Pentagon does not lie to the American people. ... It does not lie to foreign audiences" (Allen 2002). The office was eventually closed.

For those of a paranoid frame of mind, the denials are likely to be seen as yet another set of lies, and given the same administration's stand later in *Christopher*, some suspicion is understandable. At any rate, the United States has already racked up a storied history of disinformation campaigns at least as colorful as anything to spring from the mind of a conspiracy theorist. During the controversy over the Office of Strategic Information in February 2002, Reuters carried a story detailing past U.S. disinformation efforts, all of which were, of course, secret at the time. Among those campaigns:

- For several years, on the anniversary of the Soviet invasion of Afghanistan, the Central Intelligence Agency placed ads in newspapers in Muslim countries carrying the Soviet military seal and announcing a celebration at the Soviet embassy.
- Misleading radio broadcasts were used in the 1954 overthrow of Jacobo Arbenz in Guatemala and again against Salvador Allende in Chile in 1973.
- The CIA produced a pornographic film using an actor resembling Indonesian President Sukarno, although it's not clear whether the film was ever released (Zakaria 2002).

To be sure, disinformation has its uses, and not all of them are deleterious to the practice of democracy. The Allied invasion of Normandy in World War II owed a large measure of its success to a series of deceptions suggesting that the invasion was planned for Calais, prompting the Germans to allocate their resources in a manner advantageous to the Allies. The outcome was clearly desirable, and even had it not been, it is difficult to see where the deception itself was especially meaningful for democracy. Not all disinformation is so benign. One of the major dangers of disinformation is blowback, in which false information reaches not only its intended target abroad but citizens back home, and the increased interconnectedness of the world is making blowback a greater risk (Zakaria 2002). The short-term consequences of blowback vary. In practice, it shouldn't matter a great deal if Joe Sixpack falsely believes the president of Indonesia moonlights as a pornographic actor. On the other hand, there can be policy consequences,

as in the Allende case, in which efforts to discredit him in Chile might have affected American public opinion and support for the Nixon administration's Chile policy.¹⁶

Two more instances of disinformation demonstrate more dramatically the corrosive impact official lies can have, even in service of a defensible foreign policy goal:

In 1986, following retaliatory bombing raids on Libya, President Reagan approved a plan to create appearances of an anti-Gadhafi movement in Libya in hopes of getting him to respond by pressuring the army sufficiently to incite a rebellion that would overthrow him:

The disinformation first appeared in the *Wall Street Journal* on August 25, 1986. A front-page story reported that the Reagan administration was completing plans for "a new and larger bombing of Libya." The White House called the story "authoritative." Other newspapers and television networks picked up the story, but as reporters tried to learn more, the story began to disintegrate. By October, the broad outline of the truth emerged: the whole thing had been made up by the Reagan White House (Holt 1995, p. 141).

According to Holt, the Reagan administration defended the attempt to mislead Gadhafi, arguing that a distinction must be made between him as the target audience and the American people. In Holt's words, "The administration seemed to be saying that it was possible to mislead Gadhafi, through a story in a prominent American newspaper, without misleading the American people, who make up most of the newspaper's readership."

¹⁶ While the focus here is the meaning of secrecy for democracy domestically, it is certainly worth noting that in terms of foreign relations, the United States was actively engaged in undermining a democratically elected leader and manipulating public opinion in Chile.

The controversial Strategic Defense Initiative, or “Star Wars,” program was also the subject of a disinformation campaign designed to trick the Soviet Union into increases in military spending that it could not afford.

In 1993 it was revealed that SDI tests conducted in 1984 had been rigged to make the program look more successful than it was. As a result of these false tests, Congress appropriated more money to continue the program, and the Soviet Union spent more money to counter the program than it otherwise would have. This additional Soviet spending was sufficiently burdensome, in one estimate, to hasten the Soviet Union’s collapse by five years. Even before that, in the view of Robert C. McFarlane, President Reagan’s national security adviser during part of the Star Wars program, SDI drove the Soviet Union to serious arms control negotiations (Holt 1995, p. 142).

McFarlane’s interpretation is questionable, as it must be remembered that it was only Reagan’s insistence on keeping SDI that prevented an agreement in Reykjavik in 1987. Still, accepting McFarlane’s claim at face value, the duplicity surrounding SDI is disturbing, as it very likely distorted the outcome of a contentious debate over an expensive program. This is true whether one believes that the deception truly was designed as a clever ploy to fool the Soviet Union or whether one instead accepts Holt’s instead: “The basic purpose was to deceive Congress in order to receive more appropriations; deception of the Soviet Union was an afterthought” (p. 143).

There are long-term effects as well. Knowing the history of SDI, it is hard not to be suspicious of the Bush administration’s motives for exempting the projects related to the proposed national missile defense from “planning and reporting requirements normally applied to major acquisition programs.” This is particularly true given that the Pentagon has “announced plans to restrict information about targets and decoys used in flight tests of the most advanced option under development, the Ground-Based Midcourse Defense,” in the wake of the failures of two of the first three tests. It may well

be that the new tests are being conducted honestly, and that Lt. Gen. Ronald Kadish, director of the Missile Defense Agency, is right when he says, “The charge of excessive secrecy is wrong” (Graham 2002). But for a reasonably skeptical person, the Pentagon has squandered its credibility on this subject. For the paranoid, the renewed secrecy is nothing but further evidence of a renewed plot.

Official secrecy is tightly coupled with problems in accountability for the state, and when citizens already see their power to hold the state accountable diminished, official secrecy creates fertile ground for distrust of government in both its statements and deeds. That distrust is not necessarily misplaced, as previous instances of outright official lies demonstrate. But neither is it necessarily fruitful or well directed:

“Governmental secrecy breeds stupidity, in government decision making and in the thinking of some citizens. Secrecy helped produce Oliver Stone, the paranoiac whose 1991 movie ‘JFK’ found a mass audience for the notion that the assassination of President Kennedy was the work of a vast right-wing conspiracy” (Will 1998). Park (2000) names UFO true believers as a part of this phenomenon:

The real cost of the Roswell incident must be measured in terms of the loss of public trust. In the name of national security, every government in this troubled world feels compelled to grant itself the authority to hold official secrets. Those in power quickly learn to love secrecy. It enables the government to control what the public hears: bad news is squelched, good news is leaked. In the long run, however, episodes like Roswell leave the government almost powerless to reassure its citizens in the face of far-fetched conspiracy theories and pseudoscientific hogwash (p. 181).

Meysan and his compatriots must too be counted with those obsessed with the Kennedy assassination and UFO true believers as the latest intellectual heirs to the paranoid style, and their thinking fits the pattern of the paranoid as described by Robins and Post (1997):

His quest is like that of a scientist, but with a crucial difference. Seeking the truth, the scientist reasons both deductively and inductively and searches for an explanation of observations. The scientist tests his hypothesis, ready to disconfirm it if the evidence does not support it. The paranoid, in contrast, knows the ‘truth’ already and searches for confirmation. His is a fixed conclusion in search of evidence. Thus the paranoid is not working to prove or disprove a hypothesis; he knows that if he works hard enough he will find the evidence to prove his suspicions. In his preoccupation with finding evidence, he selects only that “evidence” that confirms his conclusion of danger (p. 8).

Official secrecy and the lies that it enables encourage thinking in the paranoid style. Brun (1995) incredibly claims that KAL 007 (discussed at length in Chapter 6) was intentionally diverted on an intelligence and provocation mission and that additionally there had been a battle between U.S. and Soviet military aircraft, with at least 10 aircraft being shot down. He claims the civilian plane crashed several hundred miles south of its purported crash site about an hour after the reported shoot-down. Brun’s evidence, for lack of a better word, includes debris he found on the Japanese coast years later. He also depends heavily on early newspaper accounts, taking discrepancies as evidence of a cover-up, rather than as a result of confusion at the time. Where radar and voice data don’t fit his hypothesis, he insists that they were initially misinterpreted.

Brun is easy enough to dismiss, but he is not alone in his suspicions. Some family members of the victims continue to believe that the whole truth has not come out.

According to Maier (2001):

[T]he continued secrecy (with regard to the existence of some unreleased documents) has fueled a cottage industry of conspiracy theories. Many of them stem from KGB disinformation, such as unproved allegations that former president Richard Nixon was booked and then warned off the jet or that spy gear had been placed aboard at Andrews Air Force Base in Camp Spring, Md.

“Look, we just want to know what happened,” insists (Hans) Ephraimson (father of a victim). “As of today, they still haven’t released all the files on the flight.”

Journalists such as Maier continue to give respectful, if not entirely credulous, attention to claims that the plane did ditched successfully, with the Soviets imprisoned the survivors.

The thinking of Brun (1995) or some of the people interviewed by Maier (2001) fit the pattern of the paranoid described by Robins and Post (1997), who selects only evidence that appear to confirm the existence of a plot. Brun's method of evidence selection certainly falls into this pattern. Even Hans Ephraimson, who seems to fit the pattern more of bereaved parent than political paranoid, is left with his imagination to fill in the blanks of documents he is unable to see. No matter how complete and compelling a story is told of the actual events in the shoot-down, the suspicions are here to stay, just as with the Roswell incident. The conspiracy genie, once it is let out of the bottle, is impossible to recapture.

In the preface to Brun's conspiratorial account of the 1983 downing of Korean Air Lines Flight 007, John Keppel tells of having worked as a foreign-service officer in Moscow during the U-2 crisis and having been part of a group that recommend President Eisenhower stick to the original cover story. "It is hard to realize today that when Eisenhower got caught in the lie we thrust upon him, it was the first time many Americans realized that a U.S. president would lie to them on an important subject. We had made our contribution to the erosion of truth-telling, on which democracy in large measure depends" (in Brun 1995, pp. xvii-xviii). They had also made their contribution to eroding the trust on which democracy depends, and the kind of thinking in the book Keppel prefaces is one of the consequences. One of the elements of paranoia identified by Robins and Post, fear of loss of autonomy, is exacerbated by official secrecy: In fact,

official secrecy does diminish autonomy of all citizens, certainly encouraging the delusions of the paranoid.

The claim here is not that there would be no paranoia if there were no official secrecy or even that official secrecy is a major contributing cause of clinical paranoia. Rather, the claim is that official secrecy creates an unhealthy climate of distrust of which paranoia is an extreme example. It is not even that distrust is without utility. It is distrust on the part of homeowners that forces burglars to pick locks or break windows instead of strolling in through an unlocked door. For the paranoid-style thinker, though, distrust is a constant companion. It leads to the rejection of the obvious as “too obvious” — as in the claims that the Pentagon was not hit by an airliner at all — and, even when there is ample ground for distrust, goes beyond reasonable skepticism to the construction of unfounded counternarratives to the “official line.”

The danger is that paranoid-style thinking can threaten the reservoir of trust that a democratic state requires to function effectively. For instance, legitimacy requires a well-founded belief that election ballots will be counted. Some distrust can be positive, as in the ballot example, where it might impel citizens to demand accountability measures in the counting process. But if distrust reaches the level at which citizens simply cannot believe that the process can be made to work honestly, there is no hope of salvaging legitimacy. Much of the ongoing debate on social capital has centered the importance of trust as an interpersonal and communal resource.¹⁷ Trust in the state and interpersonal

¹⁷ Putnam (1995), for instance, points to a strong correlation between social trust and civic engagement and calls for efforts to increase social connectedness in order to restore engagement and social trust.

trust are different but related phenomena,¹⁸ and just as a community requires a certain level of social trust to thrive, democracy also requires trust of the state. More than half a century of secrets and lies has contributed to a dangerous climate of distrust in the United States. The lies and abuses of the secrecy system have meant that a great deal of that distrust is warranted; the secrets themselves have created more that is not.

This is not merely the product of a unique set of circumstances but an inevitable result of official secrecy and the lies are secrecy's inseparable companion.

We live in a time when the harm done to trust can be seen first-hand. Confidence in public officials and professionals has been seriously eroded. This, in turn, is a most natural response to the uncovering of practices of deceit for such high-sounding aims as 'national security' or the 'adversary system of justice.' It will take time to rebuild confidence in government pronouncements that the CIA did not participate in a Latin American coup, or that new figures show an economic upturn around the corner. The practices engendering such distrust were entered upon, not just by officials now so familiar to us, but by countless others, high and low, in the government and outside it, each time for a reason that seemed overriding (Bok 1989, p. 27).

At best the result is citizenry alienated from the government that is supposed to be its instrument, a society always looking askance at an untrustworthy state, finding almost any story credible as long as it is not the official line. At worst, there is collapse. The paranoid style is dangerous not because of its appeal to the mentally ill but because of its universal seductiveness.

The would-be leader propagating a paranoid theme in a time of tranquillity will appeal to only a small audience. Even in a time of stress such an appeal will fail if the leader lacks conventional political skills. But when the politically skillful leader or propagandist with a persuasive paranoid message calls to an overwhelmed society, the conditions are ripe

¹⁸ Uslaner (2002) explains the difference: "There is no general syndrome of trust. Trusting other people makes you barely more likely to trust the government to do what is right. Trust in government reflects whether people have favorable impressions of the people in power and the institutions of government, as well as whether they agree with the policies of the current regime. Confidence in government is based on experiences. Trust in other people is not."

for a violent and widespread response. ... [B]ehind every destructive mass movement of this, history's bloodiest century, are the dark forces of political paranoia (Robins and Post 1997, pp. 301-302).

Official secrecy contributes to an atmosphere in which distrust, even paranoia, seems reasonable. The wide-ranging conspiracy theories, some more popular than others, regarding the attacks on the World Trade Center and the Pentagon illustrate this point dramatically, but they are far from unique. Distrust in the state is rampant. Large majorities of Americans believe their government is hiding the truth on subjects ranging from the Kennedy assassination to the existence of extraterrestrial life. Every lie hides behind a veil of secrecy, so many citizens imagine a lie behind every official secret. The paranoid style of thinking has a faulty syllogism¹⁹ at its core, but secrecy makes its conclusions impossible to disprove. This is the case regardless of the motivation for secrecy and its propriety, and a history of official lying only makes the situation worse. At best, a democracy overly dependent on secrecy leaves citizens looking over their shoulders at the state. At worst, secrecy sows the seeds of the democratic state's downfall. Particularly at a time when official secrecy is ascendant, democratic theory must take seriously the relationship between secrecy and suspicion because democratic practice has no choice but to deal with the consequences. To this point these consequences discussed have been the burden primarily of citizens. Chapter 5 discusses consequences that have a direct bearing on the functioning of the state, as it examines the impact of official secrecy on legitimacy and authority.

¹⁹ "All lies are concealed by secrets, therefore all secrets conceal lies."

Chapter 5

Pay No Attention to that Man Behind the Curtain: How Official Secrecy Undermines Democratic Legitimacy and Authority

Legitimacy is a concern for all states, especially for the democratic state, and so it the deleterious impact of official secrecy on legitimacy and authority must be viewed with a great deal of concern. Legitimacy is not a necessary condition for democracy, but rather democracy is a necessary condition for legitimacy. This is recognized as true not only in democratic theory, but in general practice, democratic or not. Even autocratic regimes frequently make their claims to legitimacy in democratic language, using such mechanisms as rigged elections to claim the democratic mantle, and, where even a veneer of democracy is impossible to maintain, present their states as “not ready” for democracy.

As Shapiro (2003) notes:

The democratic idea is close to nonnegotiable in today’s world. Liberation movements insist they are more democratic than the regimes they seek to replace. Authoritarian rulers seldom reject democracy outright. Instead they argue that their people are not ready “yet,” that their systems are more democratic than they appear, or that the opposition is corrupt and antidemocratic — perhaps the stooge of a foreign power. International financial institutions may be primarily interested in countries adopting neoliberal market reforms, yet they also feel compelled to call for regular elections and other democratic political reforms (p. 1).

The particular details of these claims are new, but the underlying recognition of democracy’s claim to legitimacy is not. With Europe already at war and the United States on the verge of entering the fight against fascism, Merriam (1941) noted a similar trend.

Even those hacking at democracy cannot escape its implications. In Germany and Italy today, why do they not abolish the vote? Why do they not abolish the forms of representation and consultation? Why do they profess their solicitous regard for reflecting the people’s will and interest? Why does Hitler speak of “a true Germanic democracy”? And why does Mussolini demand “an Italian proletarian democracy”? And why do the Soviets refer to “a true socialistic democracy”? These things are done or not done because the symbolisms of democracy, the attitudes of popular

rule, and the demands of popular welfare are by this time so deeply ingrained in the modern mind that they cannot be safely challenged, even by those who hold in their hands weapons that seem irresistible for the moment (p. 7).

The regimes change, the world system changes, but democracy retains its place, at least rhetorically, as the sole legitimate form of government. This is why prescriptive forms of democratic theory demand a voice for citizens. The reasoning, in general, goes like this: If there is to be a state with the power of constraining the actions of its citizens (and without that power, there is truly no state), the state's acquisition and maintenance of that power must be justified — that is, legitimated. This legitimization is important on two levels: 1) It strengthens the state by making citizens more accepting of power and thus less likely to attempt to overturn it; in short it confers authority upon the state. And 2) it brings a measure of justice, however that may be defined, into the mix, this being the process of legitimation. For those who prescribe democracy as the preferred form of government, such a system provides the state with legitimacy, and authority, in a way that no other form of government could.

In the Book I of *On the Social Contract*, Rousseau epitomizes this reasoning when he writes, “Man was/is born free, and everywhere he is in chains. One who believes himself the master of others is nonetheless a greater slave than they. How did this change occur? I do not know. What can make it legitimate? I believe I can answer this question” (p. 46).

What can make it legitimate? Democracy, that is, authorization by the popular will, can. Rousseau, of course, has his own particular brand of democracy in mind, but in a broader sense, this legitimation of the state is a central part of the project envisioned by all theorists who prescribe democracy as the single best form of government. There are

other accounts of what constitutes a legitimate state (e.g. natural law, the command of a sovereign, etc.), but for contemporary democrats, the inclusion of popular will is supreme. The choice is between a legitimate, democratic state and an illegitimate, nondemocratic one. For the most part, disagreements between democratic theorists do not touch this foundation, but instead center on questions of what criteria make a state democratic — and thus legitimate, or at least potentially legitimate. The harm caused by official secrecy is more immediately obvious under thicker, more participatory versions of democratic theory, but even the thinnest, most elite-based formulations are vulnerable. This vulnerability becomes acutely clear when the impact of official secrecy on legitimacy is considered. Some democrats holding to thinner, more minimal formulations may not be particularly disturbed by the opportunities for participation lost to secrecy, but all are concerned with legitimacy and authority. Whether the criteria are minimal and simple, a circulation of elites for instance, over more complex and demanding, as participatory theorists hold, the requirements of democracy are also necessary conditions for state legitimacy. By undermining democracy, as discussed in previous chapters, official secrecy also undermines legitimacy.

If a legitimate state is also a democratic state, and the democratic state requires accountability, citizen autonomy and access to information (all of which are undermined by official secrecy), one must conclude the official secrecy also undermines the legitimacy of the state. A state that engages in official secrecy is a state that undermines the autonomy of its citizens, that denies them mechanisms for holding their representatives accountable and them foments paranoia; such a state may hold some democratic characteristics, and it may maintain a measure of authority, but it is far from

exemplary of what democracy aspires to. This chapter has two tasks, to show in absolute terms the harm to legitimacy and to show the related damage to state authority. At their base, the two approaches are certainly compatible. For the state, official secrecy decreases legitimacy and authority via two related routes: legitimacy by the diminution in possibilities for accountability caused by secrecy, and authority by the increase in distrust, which is reinforced when abuses are revealed.

Chapter 3, with its discussion of how official secrecy hobbles mechanism of democratic accountability is also, by implication, an account of how official secrecy reduces the legitimacy of the state. In diminishing accountability by withholding the information necessary for citizens to act in an informed, responsible manner, official secrecy weakens the state's claim to legitimacy. A democracy can hardly be said to be living up to its promises if it intentionally denies its citizens the tools needed for self-government. Official secrecy encourages corruption (Bok 1984), shields incompetence and creates a bias toward particular types of policy. Likewise, in a society that is heavily dependent on the free flow of information, official secrecy not only offers bad symbolism, but with the state increasingly acting as a creator and repository of important information, may deny needed information flows. See, for example, Park (2000), Chalk (1986), Demac (1984), Cheh (1982) and Benn (1979).

Distrust of the state itself (as opposed to distrust of the potential for misuse of power) signals a loss of authority. This is not to say that distrust of the state is entirely negative, or without precedent in American political thought. The Founders had a healthy distrust of power, which finds expression repeatedly in the Federalist Papers, as well as in the institutions designed into the Constitution. Like the Founders, Tocqueville (1969)

feared democratic power precisely because of its effective authority. This concern underlies his discussion of majority tyranny. However, a project that seeks to limit the potential abuses of power is a far cry from the loss of authority that comes when citizens begin to have grave doubts about the legitimacy of the state itself.

Chapter 4, with its discussion of the suspicion and paranoia engendered by secrecy, tells a story of impaired authority. Citizens may indeed come to doubt the legitimacy of the state in ways that are absolutely pathological. But citizens do not have to embrace the paranoid style to see the state they are living in. As the Founders and Tocqueville recognize, power is necessarily subject to abuse. But citizens are not just a problem, as the language of majority tyranny suggests. As subjects and observers of state power (and not simply holders of power), they provide a significant check against abuses, thus official secrecy makes abuse easier, by removing them as observers. Official secrecy undermines the legitimacy of the democratic state, while in turn undercuts its authority. In other words, the state does lose legitimacy, and citizens experience that loss personally.

But when it is argued that official secrecy reduces legitimacy and authority, it is not merely a restatement of old concepts in new words. Loss of legitimacy is a serious problem for the state, and official secrecy has a great deal to answer for in causing that loss.

Power, perception and legitimacy

The well-known story of *The Wizard of Oz* is a useful, if fanciful, illustration of the problems official secrecy poses for legitimacy. In the climactic scene of the film, Dorothy and her friends have made their way back to the Wizard's palace in the Emerald City having disposed of the Wicked Witch of the West at the Wizard's behest. As he stalls on making good on his promises to them, the illusory nature of his power becomes apparent, when Toto the dog pulls back a curtain to reveal the powerful Wizard is nothing more than a little man manipulating mechanical apparatuses.

"Pay no attention to that man behind the curtain. Go — before I lose my temper! The Great and Powerful Oz has spoken," he declares into a microphone in a last effort to preserve the illusion.

Of course, he fails and is exposed as a "humbug," but he insists, "I'm a very good man. I'm just a very bad Wizard."

Indeed, he is a bad Wizard. Granted, everything turns out well — the Cowardly Lion ends up with his courage, the Tin Man his heart, Oz is liberated of a plague of wicked witches, etc. — but the Wizard's methods are highly suspect. He has made promises he cannot keep in order to manipulate Dorothy and her friends, and thus even before the discovery of "that man behind the curtain," he is on shaky ground. His secret — that he is not the powerful sorcerer he makes himself out to be — casts a shadow on his legitimacy, even before anyone else is aware of it.

The difference between legitimacy and authority is evident in the moment when the curtain is pulled back and the secret revealed. Before, the Wizard's secret deprives

him of legitimacy — and would even if it were never revealed. With the revelation, the Wizard also loses his authority in the eyes of those who see him as he is.

In citing this example, it is not intended to suggest that the Wizard is an archetypal democratic leader. He is not. But his use of deception and secrecy in the exercise of power illustrates the pitfalls for legitimacy posed by official secrecy in democratic systems.²⁰ These pitfalls are important because legitimacy is important. Citizens need the state to *be legitimate*, and the state needs to *seem* legitimate. In other words, legitimacy benefits citizens most directly while authority benefits the state itself (and in democracies, citizens as well, by implication).

Damage to legitimacy

Official secrecy damages legitimacy to the extent that theory holds that citizens should be involved to the maximum extent possible in making political decisions. Official secrecy has little meaning for the philosophical underpinning of autocratic regimes, at least those that do not cloak the right to rule in democratic language. But for democratic states, the impact official secrecy on legitimacy is unavoidable and potentially severe.

It is theoretical legitimacy that Richardson (2002) references in writing:

Government action comes under the burden of legitimation because it impinges on freedom. It does so in two ways. The liberal is rightly concerned about government action because it can undercut or violate fundamental rights. The republican is rightly concerned because it can put us under new duties and may do so arbitrarily. Because of these

²⁰ His exposure also highlights another truth: Secrets have a way of being revealed, frequently at a time of maximum inconvenience for the holder.

threats to freedom, government decisions need to meet strong requirements of legitimation (p. 23).

This process of legitimation requires that the state give reasons for its actions.

Because of the two ways that government action impinges on freedom, governments stand under a burden to justify or legitimate their actions. To justify or legitimate their actions. To justify or legitimate anything requires offering reasons for it. Government action without any reasons in support of it is arbitrary in an elemental sense, epitomized by the arbitrariness of K.'s judge in *The Trial*. ... The burden of legitimation entails that governments must not act in an elementally arbitrary way but must instead offer reasons for their actions. That government decisions must be made on the basis of reasons is the first premise of democracy. Since both the liberal and republican aspects of freedom that are impinged on are individualistic — pertaining, respectively, to the rights and the duties of individuals — an appropriate set of legitimating reasons must be addressed to, or must pertain to, the individuals impinged on (p. 27).

At first glance, much of what is covered by official secrecy might appear to pass muster. To be sure, this is not true of the most egregious cases, such as Operation Northwoods (see Chapter 4), which would have almost certainly involved the killing of innocent Americans had the plan actually been carried out. But what about a case like the Iran-Contra scandal, which involved the secret trading of weapons to Iran in return for the release of hostages, as well as the illegal diversion of funds to rebels in Nicaragua? While this episode is widely recognized as a case in which secrecy was abused in order to evade the will of the democratically elected Congress, it may not be immediately obvious which of Richardson's criteria for legitimacy were violated. No Americans' rights were violated by the secret program (although one might argue that many Nicaraguans' were), and no Americans were put under new duties, aside from possibly a negligible portion of their taxes dedicated to the operation. How, then, does one evaluate the secret support of the Contras as illegitimate?

One could answer on the basis of duties, that tax dollars were used to support the operation, but this is a thin thread on which to hang an argument about legitimacy, as it leaves no way of evaluating as illegitimate cost-free actions by the state, assuming they also have no impact on rights. The better answer lies in what Richardson refers to as the first premise of democracy, that the government must give reasons for its actions. Official secrecy precludes giving reasons, and reasons are necessary for citizens to be able to evaluate state actions. It is quite well to claim here that Americans' rights and duties were unaffected by the Contra operation, but that is entirely different than allowing citizens to evaluate that for themselves. Even more significantly, to accept what was done in the Iran-Contra scandal as legitimate is to accept the principle that the state may act legitimately without exposure to mechanisms of democratic accountability. As discussed in Chapter 3, to accept such a principle is to render those mechanisms discretionary and optional, making them likely to be used only in cases in which state actors can be reasonably confident of obtaining the outcome they desire.

There is no adequate substitute for the state offering reasons for its actions so that so that citizens may evaluate or seek to alter those actions. Bok (1984) explains:

Such deliberation about moral reasons cannot always *be* public, depending on time and circumstances; but in principle, it must at least be capable thereof. Unlike Mill, philosophers who have stressed publicity have tended to view it, following Kant, as a strictly theoretical exercise — “an experiment of pure reason.” But such experiments are open to all the vicissitudes of private speculation. If moral deliberation is intended from the outset to remain a mere thought experiment, it allows secrecy to re-enter by the back door of bias and self-serving rationalization.

To be sure, the thought-experiment is an indispensable first effort in evaluating a choice. If taken seriously, it will certainly eliminate some of the more blatant abuses. But if it is not capable of being put to the test — if it remains an “experiment of pure reason” — it bypasses the controls of the test of *actual* publicity: the necessity to articulate one's position carefully, to defend it against unexpected counterarguments, to take

opposing points of view into consideration, to reveal the steps of reasoning one has used, and to state openly the principles to which one appeals (pp. 113-114, italics in original).

Public officials are every bit as vulnerable to the “vicissitudes of private speculation, as are private individuals. Thus to truly ensure decisions that the public would support, that is, democratic outcomes, publicity is absolutely necessary. Furthermore, even if it could be definitively shown that secret deliberation would lead to identical outcomes as full, public deliberation, that does not ease the requirement for publicity. It is not just the outcome, but also the act of deliberating that is important. That it is also sometimes impossible does not alter this democratic imperative one bit.

Citizens should not simply be presented with government actions for their retrospective evaluation. Although, again, circumstances may make this impossible, all things being equal, citizens should have meaningful input into proposed state actions before they are implemented.

If the democratic project of self-government is taken to its logical end, it also is insufficient to protect citizens’ access to information about prospective actions alone. If citizens are to be offered a meaningful role in self-government, they must have the opportunity to propose policy and set the public agenda, not merely ratify or reject proposed items. This requires that they have access to state-held information even if it is not directly relevant to pending policy questions. First of all, citizens are the best judges of what is and is not relevant to them, and second of all, if they are full participants in the political process, they must have full access in order to be able to not only help make decisions, but also to help decide what is to be decided.

For democratic theorists, democracy and legitimacy are so intertwined that legitimacy does not get a great deal of attention in its own right — and understandably so. If what is legitimate is also what is democratic, and vice versa, by explaining what democracy entails, one is also explaining what makes a state legitimate.

Here, however, the concern is not only with what makes the state legitimate but also with what makes it *seem* legitimate. The distinction is an important one, as are both forms of legitimacy and authority (as founded on citizens’ perceptions) are important. Legitimacy is important as in democracy it directly benefits the citizens’ ability to control the actions of the state. It may also be threatened or diminished, even when citizens are unaware of that impact. The Joint Chiefs of Staff’s approval of Operation Northwoods undermined the legitimacy of the U.S. government in 1962, although its existence was undisclosed at the time. The secret funding of the Contras, in contravention of U.S. law, offered another instance of illegitimate action, even before the operation was revealed. In both instances, revelation of these secret operations then also undermined authority, that is, whether citizens *believe* the state has the right to continue to exercise power.

It should not be thought, however, that either legitimacy or authority is a necessary condition for the other. The following table shows how the two related concepts may combine, along with examples based on how an election might be run:

<p>Legitimacy Authority A free, fair election that is accepted by citizens as such.</p>	<p>Legitimacy Lack of authority A free, fair election that is incorrectly perceived as having been rigged.</p>
<p>Illegitimacy Authority A rigged election that is concealed sufficiently to allow citizens to believe it is free and fair.</p>	<p>Illegitimacy Lack of authority A rigged election that is perceived as such.</p>

It is, thus, only when citizens are able to discern accurately what the state is doing that legitimacy and authority coincide in value.

Undermining authority

While those who prescribe democracy as a political system would argue that legitimacy is a characteristic of democracy alone, authority is a concern for all states.

Zolo (1992) describes the significance of authority, or the perception by citizens that the state has a right to exercise power:

In complex societies the legitimacy of political decisions is not based on general criteria of political or juridical nature. Even less is it based, as contractualists aver, on a code of moral rules ideally subscribed to by citizens and used by them in order to evaluate the democratic legitimacy of procedures and decisions. On the one hand, legitimacy is generated by a situation of diffused social readiness to accept as legitimate the decisions made by the public administration, even if they are eventually held to be “unjust,” incorrect or disadvantageous — i.e. a presumption of legitimacy is accorded to democratic institutions on the basis of purely formal postulates. On the other, it arises from the administration’s ability to presuppose this generalized “readiness to accept” without particular reference to values, rational motives or collective outcomes which may precede or stand in an independent relation to political decisions (p. 131).

While the regimes were themselves illegitimate, the collapse of the communist system in Eastern Europe stemmed from a crisis in authority. It is authority to which Fukuyama (1992) refers when he writes:

On both the communist Left and the authoritarian Right there has been a bankruptcy of serious ideas capable of sustaining the internal political cohesion of strong governments, whether based on “monolithic” parties, military juntas, or personalistic dictatorships. The absence of legitimate authority has meant that when an authoritarian government met with failure in some area of policy, there was no higher principle to which

the regime could appeal. Some have compared legitimacy to a kind of cash reserve. All governments, democratic and authoritarian, have their ups and downs; but only legitimate governments have this reserve to draw on in times of crisis (p. 39).

The fact is that the communist governments of Eastern Europe *did* have a higher principle to which to turn in the variants of Marxism that officially formed the philosophical basis of their regimes. It was not a principle acceptable to democrats. More important in terms of the crisis they faced, though, was that they also lacked authority. By 1989, no one really believed in the philosophical underpinnings of these states, neither the people nor their rulers. Arguably, the crisis began to take coherent shape in 1957 with the publication of Milovan Djilas' *The New Class*, a scathing look from the inside at the cynical machinations of the Communist Party. If the leaders were unable to act like they believed in the sustaining myth of the state, all that kept the people acting like they believed was the threat of brute force. When that threat ceased to be credible, the lack of perceptual legitimacy of those states led quickly to their collapse.

As Fukuyama puts it:

The critical weakness that eventually toppled these strong states was in the last analysis a failure of legitimacy — that is a crisis on the level of ideas. Legitimacy is not justice or right in an absolute sense; it is a relative concept that exists in people's subjective perceptions. All regimes capable of effective action must be based on some principle of legitimacy. There is no such thing as a dictator who rules purely "by force," as is commonly said of Hitler. A tyrant can rule his children, old men, or perhaps his wife by force if he is physically stronger than they are, but he is not likely to be able to rule more than two or three people in this fashion and certainly not a nation of millions. ... Security apparatuses can themselves be controlled by intimidation, but at *some* point in the system, the dictator must have loyal subordinates who believe in his legitimate authority (p. 15, italics in original).

Authority is a concern for *all* states. In writing *Leviathan*, Hobbes was explicating a version of theoretical legitimacy, one that was based in contractual terms. But in urging

that his book be taught in universities, he was attempting to bolster the English state's authority. No matter how thoroughly he made the case for the legitimacy of a strong ruler, Hobbes knew it was for naught, unless the people *believed* the ruler was legitimate and acted accordingly.

In the American tradition, the core requirement of legitimacy is expressed in the Declaration of Independence in the statement, "Governments are instituted among Men, deriving their just Powers from the Consent of the Governed, that whenever any form of Government becomes destructive of these Ends, it is the Right of the People to alter or abolish it." This is at first glance a normative claim and a description of a criterion for legitimacy. Implicitly, however, it is also simply a statement of empirical reality.

Authority requires consent of the governed, at least implicitly, and absent that the regime will is likely to fall.

That is what happened to Eduard Shevardnadze's government in Georgia after obvious electoral fraud drove the masses into the streets in nonviolent revolt against the "re-election" of his government. Lacking authority, the regime lost the consent of the governed and collapsed. It should be understood that this is not an argument that regimes cannot survive without majority popular support. They obviously can and do, frequently on the basis of brute force. Even in those cases, though, as Fukuyama points out, "[A]t *some* point in the system, the dictator must have loyal subordinates who believe in his legitimate authority."

Authority is a practical concern for democratic regimes, as without it, citizens are likely to withdraw their consent. To the extent that it engenders suspicion, official secrecy thus undercuts the stability of the state. Ironically, official secrecy, the practice of

which is intended to defend the state from outside threats, as a side effect corrodes the internal supports that maintain the stability of the state. That is not to say that any one instance of official secrecy is likely to lead to regime change. Obviously that is not the case. But authority is not a dichotomous variable — it is not a matter of presence or absence, but one of “more” or “less,” and official secrecy creates a pressure toward less.

It can be a small pressure, driven by an essentially trivial incident. For instance, in September 2003, the Washington, D.C., metro area was struck by the remnants of a hurricane, leaving many people without power for days and leading to widespread criticism of area governments and power companies. In a letter to the editor of the Washington Post, Michele Dyson illustrated the impact secrecy had on an already frustrated and angry couple:

I talked to one couple who had no power for five days.

“Did you see what [Montgomery County Executive Doug] Duncan did today,” the husband asked.

“No,” I said.

“He closed the meeting with Pepco to the public.”

“Did he say why?” I asked.

“No.”

“Why do you think he did it?” I asked.

“So they could get their story straight, is what I think,” the wife said (brackets in original).

This is hardly a case of a couple ready to run to the barricades. They might even support Doug Duncan if he runs for re-election. But they nevertheless have the impression that something unseemly and illegitimate is going on behind closed doors.

Of course, as discussed in Chapter 4, Americans are suspicious of the government on much larger matters than coming clean about the response to a power outage during a major storm. Substantial numbers believe they are being lied to about everything from flying saucers to the Kennedy assassination — and they have been lied to about many

other significant details of U.S. policy. This suspicion, even when it does not rise to the level of paranoia — in fact, even when it is totally justified by the facts — casts a shadow on the authority of the state.

This raises another question, though: If so many people are so suspicious, how is it that in the United States, the federal government continues to survive, indeed thrive, with no serious alternative being posited that has any chance of being implemented? The answer perhaps lies in Fukuyama's idea of legitimate authority being a kind of "cash reserve." Despite its shortcomings, the United States government appears to have built up a substantial reserve of authority over the years. (This reserve is so large that many express their loyalty and belief in the system with the expression, "My country right or wrong," which is generally stated passionately and sincerely.) Suspicion that Lee Harvey Oswald did not act alone is not likely, 40 years removed, to inspire a substantial number of people to denounce an entire system of government as corrupt and unworthy. The issue is simply not salient enough to provoke that kind of reaction, particularly when there are other, more recent examples of state action competing for their attention.

That the reserve of authority is large, however, does not mean that it is inexhaustible. Official secrecy is not the only potential drain on authority, but it is potentially a significant one and should be recognized as treated as such. To this point it has been demonstrated that official secrecy comes with high costs both for citizens and the state in which they live. Its costs do not end there, though, as it also has negative effects in social institutions more broadly. Chapter 6 will address those costs.

Chapter 6

Further Costs of Official Secrecy

To this point, the focus has been on the impact that official secrecy has directly on democracy. But its impact is even broader than what has been discussed so far. By hindering necessary information flows, official secrecy also damages institutions that lend support to democracy and that more generally may be necessary for a good society. As the state increasingly becomes a primary creator and repository of information, this impact is bound to become more significant. Of particular concern here is the impact of official secrecy on decision making in the military and the intelligence community, its role in the court system, and its effects on science and on history. This is by no means intended to be an exhaustive list of areas affected by official secrecy, but simply to provide some instructive examples of that practice's costs.

This discussion begins with an area that is conventionally thought of as finding the effects of secrecy to be entirely salutary: the military. As long as external threats to the state exist, the military will remain necessary to help provide stability that democracy requires to function. Secrecy offers the military (and related security and intelligence apparatuses) a wide array of advantages. Indeed, as discussed at length in Chapter 2, the most significant justifications for keeping secrets are couched in terms of real national security concerns. However, even for the military, official secrecy does not come without a cost.

Bok (1984) describes what she calls "self-defeating military secrecy," "which can delay, entangle, and undercut military efforts to the detriment of the self-protection governments aim for" (pp. 194-195). Bok cites the failure of the 1980 mission to rescue American hostages in Iran as an example of the damage secrecy can cause to military

operations. Obviously, total transparency would have doomed the mission, by allowing Iran to learn of and prepare to counter the mission plan. However, the secrecy intended to safeguard the plan also helped to ensure its failure. According to Bok, “Secrecy prevented those who planned the mission from seeking sufficient advice during the five-month period that members of the task force were each told as little as possible about the mission and that so few helicopters were used” (p. 195).

Secrecy hindered not only the planning of the rescue mission but also in its execution. A review, commissioned by the Joint Chiefs of Staff, found that efforts to maintain secrecy during the mission also contributed to its failure:

The helicopter force planned and trained to operate in complete radio silence. Intraflight communication, where possible, was to be done with light signals. The absence of radio communication indicated to helicopter pilots that all was well and to continue the mission. Subsequently, when helicopter flight became separated in the dust cloud, each separate element lacked vital information. The lead helicopter did not know that #8 had successfully recovered the crew from #6 and continued nor that #6 had been abandoned in the desert. More importantly, after he reversed course in the dust and landed, the lead could not logically deduce either that the other helicopters had continued or that they had turned back to return to the carrier. He did not know when the flight had disintegrated. He could have assumed that they had become separated before he reversed course and unknowingly proceeded. Alternatively, they could have lost sight of him after turning and, mistaking his intentions, continued back to the carrier. Lastly, #5 might have elected to continue had he known that his arrival at Desert One would have allowed the mission to continue and that VMC [visual meteorological conditions] existed at the rendez-vous (quoted in Bok 1984, pp. 195-196, brackets in original).

The phrase “fog of war” is frequently used to describe the confusion characteristic the battlefield. Ideally, when a military uses secrecy, it is with the hope that secrecy will thicken the fog in which the adversary has to operate. However, as happened in Iran in 1980, operational secrecy can be equally blinding to the people who use it, at least in some situations. Maintaining secrecy about the beginning time for an offensive is

unlikely to diminish its chances of success, but when ongoing secrecy prevents people from getting the information they need to act effectively in the dynamic, ever-changing environment of the battlefield, it can easily be self-defeating.

As noted above, secrecy can also detract from planning phase, as it hinders deliberation, limits input to insiders and may create an atmosphere hostile to criticism and an echo-chamber effect, in which only proponents of a particular course of action have a voice. This phenomenon is not limited to the military (Tant 1995), but it is a particular concern there. In the case of the Iran rescue mission, Secretary of State Cyrus Vance, who opposed the plan due to its risks, was left out of the decision-making process that led to the final go-ahead (Bok 1984).

The Desert One debacle is not isolated or an anomaly: It is merely one example of official secrecy leading to unintended consequences. The Bay of Pigs is another well known example of a successful effort keeping secrets leading to disastrous consequences, as well a failure to reach policy objectives. Truth be told, the secrecy surrounding the impending invasion of Cuba was not as complete as U.S. officials would have liked. The New York Times actually uncovered the invasion plans ahead of time but was persuaded by the Kennedy administration not to publish a story for the sake of American national interests. Had the newspaper not given in, it could have scuttled the ill-conceived project (Pontuso 1990), although it is doubtful the officials involved would have greeted the revelation with gratitude, deprived as they would have been of an understanding of the disaster that awaited.

Secrecy damaged the Kennedy administration's planning process, as it limited the range and type of information available to decision makers. According to Halperin

(1975): “Cutting off many officials from the Bay of Pigs operation meant not only that officials knowledgeable about the Cuban scene were unable to comment and warn the President that the kind of uprising on which the plan depended was unlikely, but also the narrow circle meant that the President was not confronted with advice from those who could have pointed out the limitations of the different ways by which the presumed threat from the Castro regime could be contained.”

The use of secrecy in this kind of situation also privileges secret information over that contained in open sources, no matter how valuable open-source materials may be. Moynihan (1998) writes that in the Bay of Pigs invasion, this bias toward the use of secret information contributed directly to an inadvisable decision to go ahead with the invasion, despite evidence that the popular uprising planners were counting on was unlikely to occur.

The Bay of Pigs debacle could have been avoided if foreign policy experts in the United States had but paid attention to published research already available to them. In the spring of 1960, Lloyd A. Free of the Institute for International Social Research at Princeton had carried out an extensive public opinion survey in Cuba. ... The Cubans reported that they were hugely optimistic about the future; many dreaded the return of Castro’s predecessor, the dictator Fulgencio Batista. Free’s report ended on an unambiguous note: Cubans “are unlikely to shift their present overwhelming allegiance to Fidel Castro.” ... Free’s report, published July 18, 1960, was readily available in Washington. (Indeed, the Cuban embassy sent for ten copies.) It is difficult not to think that the information in the public opinion survey might have had more influence had it been secret. In a culture of secrecy, that which is not secret is easily disregarded or dismissed (pp. 222-223, parentheses in original).

Certainly, the existence of secret information does not require that publicly available information be ignored, but in practice that appear to be what happens all too often.

Official secrecy frequently damages the quality of deliberation and decision making, particularly when it comes to making decisions about covert operations.

Halperin (1975) identifies pathologies that have afflicted the decision-making process for covert action: Proposals tend to come from the organizations that will be responsible for programs if they are approved, and consultation is limited to a narrow circle of advisers.

The super secrecy of covert operations increases the chances the President will choose covert actions rather than other more desirable options which, given a free and open debate within the executive branch or through involving Congress and the public in the decision-making process, would otherwise have adopted. A major problem that faces an American president is that of multiple audience. Whatever the President does will be seen by the foreign country against which he may be directing his action, by leaders and active groups in other countries, and by a number of domestic groups in the Congress and the attentive public. One of the major attractions of covert operations is the ability to avoid the problem of multiple audiences. If something is to be conducted in secret, then one can avoid the fight over means and ends which erupts when other audiences discover an ongoing operation. Compared to alternatives, it is easier to obtain the necessary approval for covert operations. The President himself can usually authorize such operations without having to go to Congress for funds or to go before the American people to make a public justification.

The mechanism of decision-making also tends to bias the system toward choosing covert options. ... In a typical case there will be meetings to discuss the whole range of overt possibilities weighted against each other in an advisory procedure that will permit critics of one proposal to be heard while the proponents of that proposal are present. Covert operations will not be discussed at such meetings but rather will be considered separately at meetings from which both advocates of other proposals and critics of covert operations are excluded. Indeed, in meetings in considering other options, many participants are often not aware of the fact that there are other meetings in which covert alternatives are being considered (p. 49).

Decision-making mechanisms have not stood still in the time since Halperin's comments. Indeed, the situation he wrote about was kind of a worst-case scenario, in that Congress and the American public were finding out for the first time about the many abuses of power that had taken place shielded by official secrecy. Nevertheless,

Halperin's comments continue to be relevant. When significant policy decisions must be made in secret, there are costs. Conscientious officials may try to minimize those costs, and indeed some institutional arrangements are more useful than others in accounting, but in the end, the impact of official secrecy cannot be entirely eliminated. Protecting secrets requires minimizing the number of people on the "inside," which, as Halperin notes can lead to sycophancy and groupthink, not to mention potentially depriving decision makers of vital information, analysis or perspectives.

As Schattschneider (1960) explains, who is allowed to participate in a conflict goes a long way to determining how that conflict is resolved.

Every fight consists of two parts: (1) the few individuals who are actively engaged at the center and (2) the audience that is irresistibly attracted to the scene. The spectators are as much a part of the over-all situation as are the over combatants. The spectators are an integral part of the situation, for, likely as not, the *audience* determines the outcome of the fight. The crowd is loaded with portentousness because it is apt to be a hundred times as large as the fighting minority, and the relations of the audience and the combatants are highly unstable. Like all other chain reactions, a fight is difficult to contain. To understand any conflict it is necessary, therefore, to keep constantly in mind the relations between the combatants and the audience because the audience is likely to do the kinds of things that determine the outcome of the fight. This is true because the audience is overwhelming; it is never really neutral; the excitement of the conflict communicates itself to the crowd. *This is the basic pattern of all politics* (p. 2, italics in original).

In the case of planning for covert action, limiting the scope of the conflict also has the effect of creating disadvantages for those who favor other courses of action, in general excluding them from the audience entirely. Even more significantly, it can ensure that those who have superior insight or information are excluded and their proposals discounted. In simple terms, what this means is that official secrecy holds a significant risk for leading policy makers to choose risky courses of action because those who hold

the power do not fully understand the risks and those who understand the risks do not hold the power. At worst, what happens is like the Bay of Pigs invasion, where even the most staunch partisans of invading Cuba must have wished afterward that they had been a position to be forced to pay greater attention to analysis suggesting that the operation could not have worked as planned.

Understanding the risk of bad decision making posed by official secrecy does not provide officials with easy answers. There is a real trade-off between increasing access and effectively protecting necessary secrets. But at the very least, understanding how secrecy can negatively affect the quality of decisions can at least help officials guard against overconfidence, as well as to think carefully about how desirable secrecy may be and what benefits increased openness might hold. Encouraging officials to take this perspective does not offer any guarantees and is certainly no substitute for true openness, but it is a far superior approach to one that holds that secrecy and security are synonymous.

Not only does official secrecy alter the decision-making process by frequently stifling dissent and shutting off significant policy alternatives, but it also makes it much more difficult for decision makers and analysts to gain perspective on the big picture. Again, awareness of secrets does not logically require this outcome, but in practice, that is the consequence.

Even an insider with the proper security clearances does not necessarily have access to secrets held by the U.S. government. This practice is keeping with the understanding that the fewer people who have access to a particular piece of information, the less likely it is to be revealed.

In keeping with this principle, the CIA compartmentalizes intelligence — that is, officers operate in compartments separated from each other, and each is privy only to the intelligence that is directly related to his or her current assignment. This reduces the number of people who know any given fact, and thereby it reduces the possibility of exposure.

But it also reduces the possibility of relating one piece of intelligence to another piece. Excessive compartmentation sometimes hinders operational efficiency. Analysts may not see all of a picture. Some collection programs or covert actions may work at crosspurposes (Holt 1995, p. 116).

This failure to see the big picture can have devastating results, for example, consider the claims that the intelligence community failed to “connect the dots” that could have allowed U.S. officials to prevent the terrorist attacks on New York and Washington. The argument is that while various agencies within law enforcement and the intelligence community had valuable pieces of information, institutional arrangements prevented those bits of data from being shared in a way that would allow for meaningful interpretation. According to Sen. Richard C. Shelby (R-Ala.), “Sadly, the CIA seems to have concluded that the maintenance of its information monopoly was more important than stopping terrorists from entering or operating within the United States” (quoted in Loeb 2003).

If one accepts this argument, it follows that well-intended institutional arrangements meant to safeguard secrecy — and by implication security — in fact backfired. While horrific, this is hardly an isolated or unusual example.

Holt (1995) describes another related problem:

The intelligence directorate of the CIA once had a major internal dispute over an intelligence estimate of Soviet activities in the third world. The problem was that the Soviet analysts did not know much about the third world, and the third world analysts did not know much about the Soviet Union; yet all sides were proceeding in good faith without noticeable bias.

This type of difficulty comes from overspecialization. The problem is compounded when there is a failure to share intelligence. The

intelligence community is prone to compartmentalizing especially sensitive intelligence and limiting access to it. Once notoriously reluctant to share its intelligence, the National Security Agency (NSA) has become somewhat more forthcoming. The CIA's directorate of operations has not always told everything to the directorate of intelligence. Sometimes the directorate of operations does not recognize hot intelligence when it sees it (p. 82).

Compartmentalization has long been recognized as a double-edged sword, providing added protection for secrets, but at a cost to accountability and effectiveness. In its 1975 report to the president, the Commission on CIA Activities Within the United States, noted potential problems created by compartmentalization:

Even persons whose function it is to oversee or inspect CIA activities are sometimes denied complete access to operational details.

On the other hand compartmentation results in high-level, detailed approval of many activities — more so than in most government agencies. In addition, the secrecy of CIA activities creates additional problems for internal control. Individuals trained and accustomed to be secretive and to use unorthodox methods to perform their tasks may be tempted to employ this knowledge and experience to avoid close scrutiny (p. 83).

The commission went on to emphasize the importance of personal character of both front-line agency employees and top leadership in preventing abuses of secrecy, saying: “The sensitive and sometimes dangerous nature of the work of the CIA demands high standards of personal discipline, dedication and patriotism” (p. 82) and, “In the final analysis, the proper functioning of the Agency must depend in large part on the character of the Director of Central Intelligence” (p. 93).

The commission's analysis seems to be both unequivocally true and entirely unsatisfactory, particularly in the United States, with its tradition of relying on institutional solutions over reliance on the good intentions of those in positions in power. In Federalist No. 51, James Madison writes:

If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.

With that in mind, leaving the CIA's proper functioning to the good character of the director means that the agency is out of reach of the people and without much in the way of "auxiliary precautions."

Compartmentalization in particular has proven to be a particularly sticky problem. In his book *Secrecy and Democracy*, Stansfield Turner (1985), director of central intelligence under President Carter, finds compartmentalization to be at least partially to blame for at least two of the most notorious abuses committed by the CIA: the study supervised by CIA Dr. Sidney Gottlieb in which unknowing subjects received doses of LSD²¹, and the treatment of Soviet defector Yuri Nosenko, who was held in solitary confinement for more than three years because of unfounded suspicions by CIA counterintelligence officer James Angleton that Nosenko was a Soviet plant.

Turner writes:

I found the system of compartmentation eminently sensible. I couldn't help wondering, though, if it had been used deliberately to keep people from knowing what they properly needed to know to supervise the Gottliebs and Angletons. I found it difficult to believe, for instance, that DCI Dick Helms knew what was being done to Nosenko when he continued to approve his prolonged incarceration. As the pieces fell into place, I could see that Angleton had manipulated the system by constructing elaborate barriers around sensitive information. He had built a powerful empire within the CIA. If anyone challenged him, he could say or imply that there was other information the challenger did not have that justified his actions. He acquired such autonomy that even his superiors

²¹ One subject, Frank Olson, died as a result of Gottlieb's experimentation. Gup (2001) offers a thorough profile of Gottlieb.

sometimes could not find out what he was doing and in many cases were intimidated by him. Angleton's barony was not the only one built in the CIA by controlled access to knowledge, but it was the most harmful (pp. 46-47).

However, despite the reforms that followed the 1975 revelations, Turner continues to identify compartmentalization (and secrecy more generally) as a practice that can hamper intelligence analysis:

[A]cademics and journalists have one big advantage over CIA analysts: there is a good deal of sharing of views between them. In the CIA wide-ranging debate and exchange of ideas is not nearly so easy because of the necessary controls on the highly secret data CIA analysts use. CIA analysts are disinclined to test their theories and conclusions on people outside the Agency, who work from a less complete set of data. This problem of secrecy is genuine, but of more influence is an inherent reluctance in the CIA to go outside for second opinions (pp. 116).

These twin problems of compartmentalization and an analytical privileging of secret information over more useful information from public sources both continue. In early 2001, Robert D. Steele, president of Open Source Solutions Inc., wrote a letter to President Bush decrying the intelligence community's tendency to ignore publicly available information.

"Our *secret* intelligence community is spending \$30 billion a year focusing on the 5 percent of the information they can steal, while ignoring the 95 percent of the relevant information that is not online, not in English, and yet vital and very relevant to your strategic decisions," Steele wrote (Loeb 2001, italics in original).

As the president of a company that traffics in open-source intelligence, Steele obviously has an axe to grind, but his point actually echoes one made by Moynihan (1998), in calling for "Decisions made by those who understand how to exploit the wealth and diversity of publicly available information, who no longer assume that clandestine collection — that is, "stealing secrets" — equals greater intelligence.

Analysis, far more than secrecy, is the key to security” (p. 222, italics in original). There is no indication that Steele and Moynihan’s calls have led to significant action.

In 1999, Donald H. Rumsfeld, who later became secretary of defense, and who at the time was a member of a commission investigating threats from ballistic missiles, noted a problems caused by compartmentalization in a classified memo to the Director of Central Intelligence George J. Tenet.

As an example taken from his experience, Rumsfeld said at the end of a two-hour classified briefing on several countries’ ballistic missiles and other weapons, his group was told “that most of what we had heard was incorrect.” The reason, he said, was “the briefers did not have access to the information contained in the compartments that we were now to be briefed on.” ...

“We ended up getting briefed two or three or four times on the same subject because from the first two or three we didn’t get the correct information, not because people were lying to us, but because they didn’t know,” Rumsfeld said (Loeb 1999).

As discussed elsewhere Rumsfeld can hardly be called an advocate for openness²², but he is no doubt concerned about the effectiveness of military and intelligence operations, and in excessive compartmentalization, he recognizes a threat to effectiveness. That is significant. While most of this project focuses on the tension between official secrecy and democratic practice, there is also some tension between official secrecy and effectiveness of military and intelligence policy.

²² Ironically, as a member of Congress, Rumsfeld was a co-sponsor of the Freedom of Information Act and at one point said, “disclosure of government information is particularly important today because government is becoming involved in more and more aspects of every citizen’s personal and business life, and so access to information about how government is exercising its trust becomes increasingly important” (quoted in Tapscott 2002).

Secrecy and the judiciary

The American court system has an especially complex relationship with secrecy in that it must deal with both its own operations and with secrets held by the other branches of government. The courts have been notably reluctant to intervene to force the executive branch to disclose information if it is said to be held for national-security purposes. The Yale Law Journal (1980) proposed that First Amendment implies a right to obtain state-held information. However, this doctrine has not found practical application. Likewise, a call by the Harvard Law Review (1990) to amend the Freedom of Information Act to encourage judicial scrutiny of classification decisions met with no action. As Cheh (1984) notes, the national-security exemption of the Freedom of Information Act has essentially given the executive branch *carte blanche* to withhold information, with judges continuing to be almost entirely unwilling to examine the appropriateness of claiming that exemption.

The Commission on CIA Activities Within the United States found that at the time of its 1975 report there were only seven judicial decisions related to the agency, and “None operated as a substantial check on the CIA’s activities.” The commission also pointed out major obstacles to judicial oversight of the CIA:

[S]ince practically all of the CIA’s operations are covered by secrecy, few potential challengers are even aware of the activities that might otherwise be contested; nor can such activities be easily discovered.

The CIA is also specifically freed from statutory requirements which often constrain government activities and are enforced by the courts. For instance the 1947 [National Security] Act authorizes the Director to discharge employees whenever he deems “such termination necessary or advisable in the interests of the United States.” This discharge power has been held unreviewable. Accordingly, employees

have rarely initiated suits against the Agency for wrongful termination and have never successfully done so (p. 78).

In effect, the secret exercise of power has also been buttressed by measures ensuring unaccountability. The CIA has become increasingly involved in litigation — from its successful effort to confiscate royalties from a former agent who wrote a book in violation of a secrecy agreement with the agency (Medow 1982) to successful defenses against lawsuits seeking to compel disclosure of its total annual budget appropriation and even a German invisible ink formula dating back to World War I. What has not changed is the courts' unwillingness to review the appropriateness of executive-branch claims invoking the national-security exemption of FOIA. In fact, Halperin (1985) detects an increased willingness of the courts to defer to executive-branch decisions on what may be published, to the extent that the public's ability to debate national-security issues is threatened.

Anecdotal evidence indicates that the current climate with concerns about international terrorism has not made the courts any more willing to challenge executive-branch claims regarding secrecy. The Sixth Circuit Court of Appeals did rule in 2002 that deportation hearings for people detained in post-Sept. 11 terrorism investigations must be open, with Judge Damon J. Keith writing, "Democracies die behind closed doors. The First Amendment, through a free press, protects the people's right to know that their government acts fairly, lawfully, and accurately in deportation proceedings," (Lane 2002) in a ruling that echoed the reasoning of the Yale Law Journal's claim of a constitutional right of access to information. However, in a similar case, the Third Circuit ruled that the deportation hearings could be closed (Fainaru 2002), with the Supreme Court refusing to hear an appeal of that case (Walsh 2003). And early in 2004, the Supreme Court refused

to hear an appeal of a case in which the Center for National Security Studies, the American Civil Liberties Union and several media organizations unsuccessfully sought to compel the Bush administration to release the names of people detained in the post-Sept. 11 law-enforcement sweeps (Lane 2004).

A court set up by the Foreign Intelligence Surveillance Act known as the FISA court, did refuse in 2002 to grant the Justice Department new powers, only the second time it had ever ruled against the government, “saying the government had misused the law and misled the court dozens of times” (Eggers and Schmidt 2002). However, while the ruling was widely viewed as a setback for the Bush administration, Fein (2002) argues that such a view is an exaggeration: “The FISA Court balked, but then largely capitulated. It substituted for Mr. Ashcroft’s union of law enforcement and intelligence collection sweeping authority for the FBI, the Criminal Division, and the Office of Intelligence Policy Review to consult directly and to coordinate their efforts to protect against international terrorism or other grave hostile acts.” Capitulation or not, the FISA court’s action against the Justice Department soon became a moot point, as an appeals court set up to hear FISA cases, in its first ruling ever, overturned the FISA court’s decision (Eggen 2002).

In short, the courts in the United States are almost entirely content to allow the executive branch to keep secrets, provided it invokes national security in some fashion. Of course, executive branch secrets, significant though they may be, are not the only secrets worth attention here. The fact is that the court system keeps plenty of its own secrets, as well. Juries deliberate behind closed doors, grand juries hear witness testimony away from the eyes and ears of the public, and in some states, juvenile-court proceedings

are closed entirely. All of these measures of secrecy are defended with claims that they increase the efficiency of the court system and the likelihood that justice will be served, justifications that on their face seem at least plausible.

Jury deliberations are kept secret on the grounds that such secrecy will enhance the quality of deliberation and actually increase the perception of legitimacy of the outcome. Jurors are supposed to reach a consensus rather than bargain, and secrecy helps preserve the perception that this is always what takes place. Jurors are also spared public exposure of their moments of uncertainty or when the persuasion of others leads them to alter their positions. The idea of deliberation is generally accepted as a good one, but the actual process itself can be unsettling to watch particularly for a public that values highly the idea of principled people holding strongly to their stated positions. In shielding juries, it should be noted that the secrecy surrounding deliberations is strictly limited and circumscribed. Juries have their agendas set for them before they leave open court, and the results of their deliberations become public. It is not a form of creeping secrecy (like FOIA's national-security exemption) that threatens to become all-encompassing.

Bok (1984) explains:

Even where persuasive reasons for collective practices of secrecy can be stated, accountability is indispensable. The difference it makes is illustrated by the comparison between the practice of secrecy in two types of court proceedings: jury deliberations, and the secret tribunal or Star Chamber trial. Jury members are selected so as to be representative and without evident personal bias in the case. Their task is to arrive at a joint decision about an individual's innocence or guilt. Secrecy for their deliberation protects the members from attempts to influence them, increasing the likelihood of a fair decision; and it allows the resolution of difficult conflicts even when the evidence is ambiguous, generating a degree of confidence in the final result that otherwise might be unattainable. Full publicity to every aspect of deliberations might cast doubt on the most careful of decisions. The secrecy, moreover, is

terminated as soon as a decision has been reached, and the verdict itself is open to public scrutiny and to appeal (pp. 110-111).

It is only the collective nature of the jury that makes secrecy or publicity an issue at all. In a bench trial, the public will never have access to the total thought process of the judge in reaching his or her decision, nor does that seem problematic in the slightest. It is sufficient that the evidence and trial proceedings be open. With the strict boundaries around jury secrecy, deliberations can be seen as analogous to collective thought process of the jury, and similarly inaccessible to the thought processes of an individual judge.

Grand-jury and juvenile-court secrecy (where it is still practiced) are buttressed by similar arguments about the potential harm publicity could cause to justice. That is not to say that secrecy in these venues is universally accepted as a good thing. Stephen Rosenfield, former editorial page editor of the Washington Post called for greater openness in grand-jury proceedings after serving as the foreman of a federal grand jury. Rosenfeld (2001) is disturbed by the overwhelming advantage prosecutors enjoy in gaining indictments. “The prosecutor’s edge was memorably captured by former federal judge and convicted felon Sol Wachtler, who said a grand jury, if asked, will indict a ham sandwich.” While the prosecutorial advantage is portrayed as acceptable because of the defendant’s ability in to defend him- or herself in the actual trial, Rosenfield is unconvinced:

Indictment is the gateway to a broad spread of risks and penalties. To submit someone to these real hazards without according him at least some of the protections of the adversarial model of trial seems unfair.

These dilemmas might be eased, some believe, if the secrecy provisions of grand jury proceedings were relaxed. Our English legal forebears invented secrecy in the name of protecting the judicial process. No doubt even in America secrecy still has its uses to protect that process. But openness may better serve the same fundamental rationale. Having

watched up close for a year, I am convinced that the balance needs closer tending.

Likewise, Washington Post columnist Marc Fisher (2004) makes a compelling argument for the District of Columbia to join the 36 states that allow public access to juvenile court proceedings:

I have seen judges in juvenile court pat female lawyers on the rear, laugh at children who didn't understand the proceedings and fall asleep on the bench. I have heard judges in juvenile court shout insults at parents and ridicule children for their parents' shortcomings.

I saw none of this in the District of Columbia's juvenile courts because the public is not allowed inside those courtrooms. The management of the thugs-in-training who flow through our juvenile courts is largely a secret affair, conducted behind closed doors so that you and I cannot see if the kids are coddled, ignored or otherwise mishandled by an overwhelmed and understaffed justice system.

Fisher saw the abuses he describes in an open juvenile court system in Florida, where publicity was at least available to expose miscarriages of justice. Publicity, though, can have other consequences. Closed juvenile courts are justified by the idea that public exposure of juvenile crime could stigmatize young defendants and interfere with what might otherwise be a successful process of rehabilitation. But, Fisher says, "in states where reporting on juvenile court is permitted, news coverage tends to focus not on the evils of individual crooks but on the systematic problems that blossom in unwatched bureaucracies."

Perhaps juvenile court proceedings should be open everywhere, as Fisher suggests. And perhaps grand-jury proceedings could use a strong dose of sunshine. It may even be that there is a compelling argument to be made for opening jury deliberations (although that seems highly doubtful). Regardless, the secrecy practiced by the American court system does not pose the same threat to democratic values as the

secrecy imposed by the executive in the name of national security. Where national security threatens to become an all-encompassing rationale for secrecy, potentially stifling democratic discussion on matters of great public importance, judicial secrecy is in practice narrowly circumscribed and at most threatens private injustice. That is not to say that its potential abuses are unimportant — Fisher’s concerns about children being victimized are important — but the stakes are lower.²³

While an independent judiciary may exist in a democracy, it is debatable as to whether the courts themselves are democratic institutions. It has been argued that with the power of judicial review, courts can act as a check on majority tyranny, thus serving as vital democratic institutions due to their key role in preserving minority rights. Just a quick glance at *Plessy v. Ferguson* suggests that the courts are not always reliable in this role.

On the question of whether constitutional courts make a difference among democracies, in the United States there have certainly been eras when the federal judiciary has successfully championed individual rights and civil liberties against the legislative branch of government, that of the Warren Court being the most known. But there have also been eras when it has legitimated racial oppression and the denial of civil liberties (Shapiro 2003, p. 20).

²³ That is not to say that it is impossible for judicial secrecy to have a negative impact on democratic institutions. The case of Avner Cohen is instructive. Relying only on publicly available and legally obtained information, Cohen wrote s no reason to proceed. Since then, however, Cohen has been warned not to return to Israel because he faces interrogation and potential arrest there. Cohen has attempted to clarify his situation but has been unable to confirm whether he indeed still faces prosecution, and if so, for what. In this instance judicial secrecy in Israel is clearly being used as part of an effort to stifle public discussion of a serious political matter, the propriety and wisdom of Israel maintaining nuclear weapons.

American activists have complained of the use of judicial and police power to stifle dissent. However, their actual complaints have involved allegations of more general abuses and not of secrecy itself.

Even working precisely as its defenders intend, judicial review is troubling precisely because of its anti-majoritarian character. Dahl (1989) discusses judicial review as a type of “quasi guardianship”:

There is necessarily an inverse ratio between the authority of the quasi guardians and the authority of the demos and its representatives. If the authority of the quasi guardians were comprehensive, then the demos would alienate its control over the agenda of public affairs and the democratic process would be gutted. Even if the authority of the guardians were restricted solely to certain questions of fundamental rights and interests, on these matters the demos would necessarily alienate its control. On questions within a narrower range, the inverse ratio still holds: The broader the scope of rights and interests subject to final decision by the quasi guardians, the narrower must be the scope of the democratic process. Moreover, even within a restricted range the power of the quasi guardians may be more than merely negative, more than a veto of unconstitutional laws. As the experience of the U.S. Supreme Court shows (in school desegregation, for example), in seeking to enforce superior rights and interests a court may find it necessary to go beyond mere negative restraints and attempt to lay down positive policies, sometimes in great detail (pp. 188-189, parentheses in original).

Granting that judicial review may preserve rights fundamental to democracy, the actions of the courts are consistent with their role as preservers of democratic institutions only to the extent that they in fact act to protect fundamental rights, a proposition that is empirically shaky at best (Dahl 1997).

Shapiro (2003) argues that the view that independent courts are indispensable owes little to their character as institutions of democracy.

Indeed, there are reasons for thinking that the popularity of independent courts in new democracies may have more to do with the popularity of independent banks than with the protection of individual freedoms. They can operate as devices to signal foreign investors and international economic institutions that the capacity of elected officials to engage in redistributive policies or interfere with property rights will be limited. That is, they may be devices for limiting domestic political opposition to unpopular policies by taking them off the table (p. 21).

The American judiciary is unique among the branches of government in both its role as an interpreter of law and as a decider of fact. Indeed, it can be argued that in seeking truth, the courts are apolitical.

Politics concerns itself only with those realms where truth is not — or is not *yet* — known. We do not vote for the best polio vaccine or conduct surveys on the ideal space shuttle, nor has Boolean algebra been subjected to electoral testing. But Laetrile and genetic engineering, while they belong formally to the domain of science, have aroused sufficient conflict among scientists to throw them into the political domain — and rightly so. Where consensus stops politics starts (Barber 1984, p. 129).

In this formulation, politics involves acting in the face of uncertainty, whereas the courts in their truth-seeking function attempt to eliminate that uncertainty — or at least protect rights in the realm of the uncertain.

The uniqueness of the courts and the narrow scope of judicial secrecy make it in practice much less troubling than other forms of secrecy discussed here. However, there is yet one more problem to consider: Not all secrets involving the courts are imposed by the courts. The courts are in fact quite dependent on external sources of information. In bringing in evidence and witnesses (and to a certain extent in citing precedent and legal doctrine) opposing sides in a case are providing the court with the information it needs to arrive at the truth of the matter at hand. When that information is not forthcoming, it can create a real problem for the courts' functioning. In practice, this is where official secrecy causes the greatest problems with regard to the courts — in secrets that are maintained externally.

In an adversarial system, there is ample incentive for each side to deliver information that will assist in establishing its account of the truth as the correct one. A competent defendant need not be compelled to bring forward evidence of his or her

innocence. A prosecutor does not have to be told to present evidence of the defendant's guilt. With other kinds of information, a court does need to use a system of incentives or sanctions. A prosecutor may be reluctant to provide the defense with exculpatory evidence. In the interest of reaching truth, court rules make doing so mandatory. On the other hand, a truly guilty defendant would not voluntarily provide evidence of his or her guilt, and under the self-incrimination clause of the Fifth Amendment does not have to. However, the courts do have such powers as the subpoena to compel others to provide information that they might otherwise prefer not to. In general, these arrangements work with sufficient efficiency for the courts to receive the information they need. But in some cases, because releasing information to the courts is tantamount to making it public, officials are reluctant to release information that they claim could affect national security.

Particularly (but not solely) in espionage cases, court rules requiring that defendants have access to potentially exculpatory evidence have led to a phenomenon called graymail, in which the government must face a choice between allowing the release of classified information and allowing a defendant to be freed. The potential for graymail has also provided prosecutors with added incentive to offer plea bargains to defendants, perhaps unjustly. According to Philip Heyman, who was assistant attorney general at the time:

[Graymail] foster[s] the perception that government officials and private persons with access to military or technological secrets have a broad *de facto* immunity from prosecution from a variety of crimes. This perception not only undermines the public's confidence in the fair administration of criminal justice but it also promotes concern that there is no effective check against improper conduct by members of our intelligence agencies (quoted in Salgado 1988, p. 429, brackets and italics in original).

Dealing with the problem of graymail is a tall order as it requires resolving a tension between protecting a defendant's due-process rights and the interest of the government in keeping secrets. With the 1980 Classified Information Procedures Act, Congress set up a system intended to protect a defendant's right to discovery while keeping classified information out of open court. However, if large amounts of classified information are involved, the required procedures are cumbersome (Salgado 1988), and at any rate, the law has not put to rest all situations in which a defendant's right to exculpatory evidence comes into conflict with a the state's interest in keeping secrets.

The trial of Zacarias Moussaoui, who is been accused of having conspired with al-Qaeda in planning the Sept. 11, 2001, attack on the United States, offers a case in point. Moussaoui has sought access to accused al-Qaeda members in U.S. custody, including Ramzi Binalshibh, who is alleged to have planned the attacks. District Judge Leonie M. Brinkema, who is presiding over the case, has been highly critical of the amount of secrecy surrounding the case. "The court, too, is disturbed by the extent to which United States intelligence officials have classified [materials] ... and further agrees with the defendant's skepticism of the government's ability to prosecute this case in open court," she wrote in April 2003, in response to Moussaoui's request for an unclassified copy of a transcript of a closed hearing and a secret opinion issued by the court (Davis and Markon 2003). In October 2003, after government lawyers defied her order to produce witnesses requested by Moussaoui, Brinkema sanctioned the prosecution, barring it from seeking the death penalty for Moussaoui or from claiming at trial that he was linked to the Sept. 11 terrorist attacks.

Brinkema's decision sparked speculation that Moussaoui would not be tried in a civilian court. The Justice Department's defiance of a court order here is unusual and appears unjustified. But the Moussaoui case demonstrates more than the Bush administration's excessive use of secrecy or the difficulties inherent in trying terror suspects. It also shows how secrecy can hamstring a court. Faced with the government's defiance, Brinkema had a choice of allowing Moussaoui's due-process rights to be violated or dismissing the case against a defendant who seems quite likely to pose a serious threat to the United States. Brinkema's sanctioning of the prosecution is a not-altogether-satisfactory attempt the court's ability to seek the truth in the Moussaoui's case while being hobbled by external secrecy.

As with graymail, it is conceivable that there are situations in which the government has a legitimate interest in keeping information out of open court. Regardless, when the courts are denied the information they need for reaching the best possible decision in a trial, their functioning is inhibited. This is an unavoidable cost of official secrecy when the judiciary is denied access to information by another branch of government.

Secrecy and science

Secrecy has a somewhat ambiguous relationship with the court system, as well as with military or intelligence operations. In some situations, it can be helpful, even crucial, while in others it can be devastatingly unhelpful. Where science is concerned, however, there is no such ambiguity. Secrecy is bad. There may be scientific information that it

might be desirable to keep hidden, but in cases in which secrecy is desirable, that desirability never arises out of scientific rationale. Science values and depends on the free movement of information, and regulations impinging on that free movement, however nobly intended or necessary, do interfere with the scientific pursuit of knowledge.

The scientific rationale for disseminating knowledge as widely as possible is exemplified by the Prometheus myth. At great cost to himself, Prometheus defies the gods and brings fire to humanity, an innovation that, while it may be harmful if used carelessly, unquestionably improves the situation of humanity — and at no cost to anyone but Prometheus himself. It is an appealing image — particularly for scientists who see themselves making great sacrifices in order to help humanity — and one that leaves no room for secrecy. Prometheus never considered withholding fire from humanity. If in addition to light and warmth, it also brings danger and destruction, well, it will be up to its future handlers to decide the manner in which it is used. This is exactly the approach of science to secrecy. While scientific information may be kept hidden, as by the Atomic Energy Act, that secrecy is compelled by some external rationale, not a scientific one.

Denunciation of secrecy is ritualistic in science. Precisely because the conflict that secrecy creates is so strong, their declarations against it are in part efforts at conjuring away its power. Unlike other professionals such as lawyers or government officials, modern scientists have never staked out a rationale justifying practices of secrecy. They have held free and open communication to be the most essential requirement for their work (Bok 1984, p. 153).

Prometheus does not offer the only mythological account of what the creation and dissemination of new knowledge means for humanity. The story of Pandora embodies anxiety about the potential for inquiry to lead to devastating and irreversible results.

Despite warnings to the contrary, Pandora lets her human curiosity get the better of her and opens a box that consequently lets loose a host of plagues upon humanity.²⁴

Contemporary debates about cloning and the use of genetically modified organisms evoke the Pandora myth in critics' warnings about the potential consequences of such research.

It is important to note what the Pandora myth is and is not. Pandora warns us against inquiry altogether, for once the box is opened, its contents cannot be recaptured. It is not an argument for secrecy. Rather it suggests that some knowledge is so dangerous that that it should not be sought by anyone, not even a select priesthood. Secrecy on the other hand, as in Chapter 3's discussion of dual-use information, involves a recognition of the danger along with an aspiration to limit the danger by limiting the spread of knowledge.

As Bok (1984) points out, secrecy does find a place in contemporary scientific practice, for instance in the double-blind experiment²⁵, or in cases in which temporary secrecy about one's work is used for reasons of professional competition. It should be

²⁴ The Pandora myth is far from being the only story cautioning against inquisitiveness. In the Book of Genesis, Adam and Eve are expelled from the Garden of Eden only after defying God and eating fruit from the tree of knowledge of good and evil.

In the New Testament, Thomas doubts the other disciples have seen the resurrected Christ, saying "Except I shall see in his hands the print of the nails, and put my finger into the print of the nails, and thrust my hand into his side, I will not believe." Eight days later, Jesus indulges Thomas' doubts but chastises him, saying "Thomas, because thou hast seen me, thou has believed: blessed are they that have not seen and yet have believed" (John 20:25-29).

Mary Shelley's *Frankenstein* offers a modern caution against unfettered scientific inquiry.

²⁵ In a double-blind experiment, neither the subjects nor the researchers administering the experiment know who is receiving the experimental treatment and who is receiving a placebo. This method is used to ensure that confounding variables and psychosomatic factors do not contaminate the experiment.

noted that only the former is practiced for scientific reasons, as the double-blind experiment allows access to knowledge that would not otherwise be reliably available. The latter is secrecy practiced by scientists, but not for scientific reasons. And official secrecy stands altogether apart from these uses, as a restriction imposed from outside and accepted only with the greatest reluctance in a practice of science that is thoroughly Promethean in motivation.

Citizens or their representatives may decide that other considerations require the hobbling of scientific work, as in the moratorium on human cloning (although in practical terms, enforcement may be difficult). However, such a choice can only be made for reasons external to science. Officially imposed secrecy cannot help but be a burden on the scientific enterprise. Nor is that the only cost.

The secrecy surrounding much current scientific research makes it difficult for the public to consider such alternative directions for scientific work, and to evaluate the full burden of present research priorities. And secrecy likewise insulates scientists from examining their own role, and from accountability to the public. Many scientists have also testified to the personal and professional costs of working under secrecy restrictions: of having to take part in systems of classification, submit to research delays or outright censorship, and swear loyalty oaths; of fearing espionage; and of being themselves suspected when traveling or conversing with foreigners (Bok 1984, p. 170).

In short, the requirements of science are fundamentally opposed to the practice of secrecy.

Secrecy and history.

As with science, history has a reasonably unambiguous relationship with official secrecy in that secrecy and the enterprise of historical inquiry are fundamentally opposed.

Decrying the state of Americans' historical knowledge has become something of a parlor game for pundits and historians, even as the dangers of official secrecy for history are brushed to the side.

A typical example:

Ninety percent of eighth graders (in the 1994 National Assessment of Educational Progress in U.S. History) could recount nothing of the debates at the Constitutional Convention. Even when prompted by mentions of Yalta, Lend-Lease, and Hiroshima, 59 percent of the eighth grade were unprepared to say which conflict these references brought to mind (Hitchens 1998, p. 38).

This “don't know much about history” school of criticism points to a serious and seemingly intractable problem. Yet a certain optimism underlies the whole project: If only the curriculum were better ... If only Americans could be made to understand the importance of the past ... If only the culture could be reclaimed from the philistines who value Joe Millionaire over James Madison ... Then the scales of ignorance would fall away, and Americans would be prepared to apply the lessons of the past in making way for a brighter future.

If only it were that easy.

The criticisms certainly have merit. Citizens doubtless would be better off if they were better informed about history, and a shift in societal priorities and an improved curriculum would be beneficial. But a larger problem remains, for it is not just that Americans don't know much about history, but that they *can't*. Particularly since World War II, concerns about national security have created a growing class of information, much of it historically significant, that is off-limits to all but a privileged few, or available only through the most convoluted of channels. In the introduction to its 1997 final report, the Commission on Protecting and Reducing Government Secrecy

complained, “The secrecy system has systematically denied American historians access to the records of American history. Of late we find ourselves relying on the archives of the former Soviet Union in Moscow to resolve questions of what was going on in Washington at mid-century. This is absurd” (p. xlv).

More recent moves in the United States toward greater secrecy are worrisome on a number of fronts, and several recent measures are of particular concern to historians. For instance:

- In 2001, President Bush issued an executive order essentially countermanding the intent of the 1978 Presidential Records Act. Under the new executive order, the current president can order predecessors’ records kept secret, even if the former president in question has approved their release. Helen Thomas (2001) argues the motivation is to protect former President Bush and members of the current administration who served previously; the Bush administration claims its moves toward greater secrecy are part of an attempt to reassert executive branch power that has eroded over time (Nakashima 2002, Rosenbaum 2002). Regardless of the motives, the net result is to deny historians access to a potential treasure trove of documents. The Bush executive order came at a time when the Reagan library had approved 68,000 pages for release.

- In contrast to previous practice that encouraged officials to take an expansive approach to releasing information under the Freedom of Information Act, Attorney General John D. Ashcroft has sent out a memo that seems to favor the withholding of information. It reads in part, “when you carefully consider FOIA requests and decide to withhold records ... you can be assured that the Justice Department will defend your decisions.”

“‘The cumulative message from the White House and from Ashcroft is: Stall. Don’t release,’ said Tom Blanton, executive director of the National Security Archive, an access advocacy group. ‘They believe that the trend for 30 years has been to make the White House too open’” (Nakashima 2002).

- The administration has refused to release 4,000 pages of documents relating to President Clinton’s last-minute pardons of 140 people (Tapscott 2002).

In short, even more than previous administrations, the Bush administration is closing off access to information that could expand or even radically alter citizens’ understanding of the past. However, it is not as though a more enlightened approach to information would make the problem disappear.

There are two basic, interrelated claims at the heart of this discussion of the relationship between official secrecy and history: 1) Official secrecy interferes with citizens’ ability to know and evaluate what happened in the past. 2) The past matters; citizens need to understand a history of reasonable completeness and veracity in order to situate themselves and act in the present. If both of these things are true, then it stands to reason that what is currently being kept secret is probably distorting what can be understood about the past. Obviously, the exact nature of that distortion is unknowable for now, but previous revelations of secret information provide some idea of the damage caused by official secrecy.

Take, for instance, the downing of Korean Air Lines Flight 007 by the Soviet Union. The Reagan administration offered what appeared to be the definitive account of the incident at the time. In this account, on Sept. 1, 1983, a commercial passenger airliner accidentally strayed into Soviet airspace where a Soviet fighter pilot fully aware of the

civilian nature of his target, shot the plane from the sky, killing all 269 people aboard. Adding credibility to the Reagan administration account were incredible Soviet countercharges that the plane was actually on a spy mission and had been running without navigation lights. The U.S. government solidified its credibility with a dramatic presentation before the U.N. Security Council (the first ever using videotaped evidence) that used radar and voice intercepts to give what appeared to be proof that Soviets had knowingly murdered hundreds of civilians in cold blood that night. The American story carried the day and is probably still the version most commonly remembered. Unfortunately, that version is incomplete and inaccurate.

Snyder (1995), who created the tape as director of the Television and Film Service of the U.S. Information Agency, says he later learned he was working with incomplete materials. The voice intercept tape contained a crucial five-minute gap. Additionally, it included the Soviet pilot's side of the conversation but not the ground controller's side and, on top of everything else, was poorly translated. While the tape gave the impression that the Soviet pilot had a clear view of the plane from close up, "Nothing could have been further from the truth." (p. 61):

Our tape did not include pilot Osipovich's comment, "Unclear," at 18:10 GMT, in response to his ground controller's question, "805, can you determine the [intruder aircraft] type?" Osipovich had said it was too dark for him to see the intruder clearly. The full transcript would later show that Soviet pilot Gennady Osipovich had circled the intruder to get his attention and tilted his wings to force the aircraft down, after being asked repeatedly by his ground controllers to do so. Osipovich had also reported firing his warning bursts to get the intruder's attention. This comment was also not on the tape we were provided (Snyder 1995, p. 62, bracketed material is Snyder's).

While Snyder was unaware at the time, Air Force intelligence had actually reconstructed a reasonably accurate scenario attributing the incident to mistaken identity

even before Secretary of State George Schultz announced the loss of the plane. Schultz, however, presented what would quickly become the standard narrative, accusing the Soviets of intentionally shooting down an unarmed civilian plane (Hersh 1986). Before the Security Council meeting, the president muddied the waters further with a mixture of half-truths and exaggerations:

President Reagan had roundly condemned the Soviets for intentionally shooting down a civilian airliner. 'There is no way a pilot could mistake this [Boeing 747] for anything other than a civilian airliner.' Reagan had also claimed it was 'a clear night with a half-moon,' although actually there was less than a half-moon, and in the area of southern Sakhalin Island, where the plane was shot down, there was a low overcast, and scattered medium and high clouds." (Snyder 1995, p. 68, bracketed material is Snyder's).

By 1986, Hersh had done sufficient investigating to piece together what had happened and conclude that the Soviets mixed up the flight path of KAL 007 with that of a RC-135 surveillance plane doing intelligence gathering outside Soviet territory, and as Snyder confirms, were unable to visually identify the plane in the dark from the position from which it was shot down.

Taking into account the presence of a American surveillance plane in the same time and a history of intrusions into Soviet airspace by U.S. spy planes (Bamford 2001), it is unsurprising that the Soviets would have had their suspicions about KAL 007. The shoot-first-and-ask-questions-later approach that they took was certainly irresponsible, but it was hardly the premeditated act of murder represented by the American side. Yet, among those who are not conspiracy enthusiasts, how many now are aware of this more complete account, as opposed to the public-relations disinformation put out by the United States government immediately after the incident. Snyder's (1995) guess is not many, despite the publication of his book and his 1996 op-ed piece in the Washington Post:

The moral of the story is that all governments, including our own, lie when it suits their purposes. The key is to lie first. ... KE-007 was a victim of the cold war, and it proved this war could be very real and cold lead to human casualties. Another casualty, always war's first, was the truth. The story of KE-007 will always be remembered pretty much the way we told it in 1983, not the way it actually happened (Snyder 1995, p. 71).

KAL 007 is hardly an anomaly. Gibbs (1995) shows how initial U.S. misinformation about the Congo crisis led to later accounts of the events being garbled. According to a popular version of history, when Klaus Fuchs gave the Soviets information from a 1944 meeting at Los Alamos about the feasibility of the H-bomb, he made possible the success of their H-bomb program. Material declassified later reveals that while that might have been his intent, the model Los Alamos scientists were working on at the time was not capable of producing a working weapon. The Soviets, in fact gleaned their information from the fallout of American atmospheric testing. (Hirsch and Matthews 1990). But that is not likely to be what is recalled.

Post-World War II American history teems with examples of events in which initial accounts later proved to be wrong or misleadingly incomplete, not because of because of information that could only be unearthed later but because of state action in concealing that information. Whether that concealment was motivated by genuine concerns over national security or baser political motives, as appears to have been the case in the KAL 007 crisis, the end result was the same: History was damaged or distorted, perhaps irreparably in the public imagination.

The problem is not merely one of faulty memory or a failure to pay attention on the part of the public. Official secrecy continues to cast a shadow on historical fact long past what reasonable cautiousness would dictate. In the 1980s, the State Department published editions of the purportedly authoritative *Foreign Relations of the United States*

that neglected to mention the American role in instigating coups in Iran in 1953 and Guatemala in 1954.

Concerning Iran and Guatemala names and facts the whole world already knew about thus joined the disappeared: for reasons of plausible presidential deniability. These censored volumes remain a national disgrace. Over two-thirds of the material relating to Guatemala, which I and others got declassified were reclassified during the information slash and burn years of the Ronald Reagan administration. Now we need to pause here to note this unprecedented historical anomaly: *never before in U.S. history were records declassified and published, then reclassified and deleted.* The precedent impacts the historical record into perpetuity. Today's covert operations blind and distort our future history. We are being asked to build history on the sands of misinformation (Cook 1996, p. 286).

Blanche Wiesen Cook argues that it is better not to build at all than to build on such shaky ground. A history of the Iranian or Guatemalan coups that excludes the American role is like a history of the American Revolution that excludes George Washington. Iran and Guatemala provide dramatic examples, but not exceptional ones. In fact, secrecy has become so much a part of how the executive does business that Cook suggests a moratorium on the publication of scholarly editions of presidential papers until steps are taken to increase openness and recover from a national "secrecy mania." Such a move would be justified by the understanding that an awareness of ignorance is less dangerous than the illusion of being well informed.

George C. Herring (1997) who served as a member of the Central Intelligence Agency's Historical Review Panel, describes the panel's work as largely a public-relations gambit to create the illusion of openness. The panel wastes a great deal of time on work such as clearing transcripts from the Foreign Broadcast Information Service, information that is readily available to the public in other countries because it has been

broadcast over public airwaves or collected from other open sources. In dealing with actual secrets, too, the agency has dragged its feet:

Declassification of documents for the FRUS (Foreign Relations of the United States) series was at times excruciatingly slow, and the volume of documents released certainly did not live up to our expectations of the meaning of openness. ... The materials the CIA released to the archives were some miscellaneous documents and some articles from classified intelligence journals that didn't amount to a great deal substantively but not a single office file from any part of the Agency (Herring 1997).

Herring reports that out of 165 million pages of pre-1975 records, the CIA planned to seek exemption from declassification for 106 million, a decision that is hardly out of character for an agency that last year successfully defended itself in a lawsuit seeking the declassification of a formula for a World War I-era invisible ink ("Judge Upholds Secrecy of Invisible Ink Formulas" 2002).

The situation is getting worse, not better. In March 2003, the president issued an executive order that delays until 2006 the declassification of millions of documents that otherwise would have been released April 17, 2003, as well as expanding the power to reclassify information that has already been released (Milbank and Allen 2003). This comes at a time when events in the recent past are poorly understood, and efforts to change that are being hampered by secrecy. In addition to being starved for funds, the independent commission to investigate the Sept. 11, 2001, terrorist attacks has had its work delayed by difficulties in obtaining security clearances for its members and disagreements over how the commission will handle classified material (Eggen 2003). What is already known about the days leading up to the attacks is disturbing enough: President Bush was notified of a risk of al-Qaeda hijackings on Aug. 6, 2001, the CIA followed two hijackers to a meeting in Malaysia but was slow in passing on information

to the FBI, and the Minneapolis office of the FBI was repeatedly denied warrants that could have allowed the plot to be uncovered. Is it any wonder that in an atmosphere of stifling secrecy, conspiracy theorists find an eager audience? Misconceptions are found more broadly, too. Surveys find consistent majorities of Americans who believe Saddam Hussein was directly involved in the Sept. 11 attacks, a conclusion even the Bush administration has been unwilling to draw (Berman 2003). A credible, reasonably authoritative account of the events leading up to the Sept. 11 attacks is desperately needed, and official secrecy has gotten in the way.

Of course, all this discussion is predicated on the idea that history matters. The impact of secrecy on how citizens understand the past is much less significant for someone such as Keith Jenkins (1999) who argues that because historical accounts must necessarily be incomplete and constructed from a particular point of view, all such accounts are created equal and equally irrelevant:

[T]he idea of the historical past can thus be considered as just one of the many historical imaginaries we have fabricated to help us make some sense of the apparent senselessness of existence and to protect us from the possible trauma occasioned by having to face radical finitude. Of course, the past *per se* is not imagined in the sense that “it” didn’t actually occur. It did occur and in exactly the way it did. But it is an imaginary with respect to the historical meanings and understandings, the significances and purposes it has been deemed to have for us, both as a whole and in its parts (p. 14, italics are Jenkins’).

There is a serious, noteworthy argument behind this radical position, even though, taken to its logical conclusion, it would have us throw the baby out with the bath water — and then perhaps construct an equally valid counternarrative claiming that such an event never occurred. Historical accounts are necessarily incomplete and subject to

interpretation, thus making it possible for the same events to be used as supporting evidence for contradictory arguments.

In its untiring availability and promiscuity, the historical past has gone along with anybody who has wanted it — Marxists, Whigs, racists, feminists, structuralists, empiricists, antiquarians, postmodernists — anybody can have it. Having no meaning-full existence independent of historians' textual embrace, being constructed by them, the past constituted as historicized text has ultimately no choice but to go along with whatever purposes are desired (Jenkins 1999, pp. 14-15).

What this means is that those who would argue a particular stance or position cannot simply point to "history" and expect it to carry the day. But not all historical accounts are equal, and history is far from irrelevant. All other things being equal, an account of the 1954 Guatemalan coup that has the United States directing anti-Arbenz forces is better than one that ignores American involvement — not just different but better. History does matter.

It matters for democracy, and it matters for citizens, who make democracy a meaningful concept. While it may not make Dahl's (1989) list of necessary conditions for polyarchy, it performs a number of functions vital to citizens, as will be shown in the following sections. The understanding that comes from shedding history's light on the past can reinforce a sense of identity, instill humility and tolerance, and finally, it can spur citizens into action.

The role the past plays in identity may be at its most intuitively obvious on the individual level.

[T]he memories of the past that make up history constitute an absolutely crucial part of what we presently are. Without some autobiographical narrative, our identities literally disintegrate: they fall apart into unrelated fragments, and we are indeed in a nightmare situation, where anything might have happened and anything might; and that's enough to drive us crazy (Southgate 2000, pp. 40-41).

The myth of possessive individualism may hold that we are what we do, that our identities are nothing more than a function of our participation in a set of exchange relationships, but this notion of identity seems awfully hollow. As Wallace Gruner tells Saul Bellow's Mr. Sammler, "Everyone needs his memories. They keep the wolf of insignificance from the door" (1977, p. 190). We are not just what we do: We are what we have done, what has been done to us and what we have seen. There is a reason that refugees cling to family photographs despite their lack of immediate utility in enhancing the chances of survival. Photographs provide a tangible connection to a past that is felt as a part of their very being. A communal past matters in the same way when the individual has internalized group membership as part of his or her identity.

History is crucial to the formation and maintenance of a strong sense of identity, which in turn is necessary for citizens to act effectively in a democratic state. Strong identity, however, does not necessarily lead to democratic outcomes. In fact, some forms of identity, particularly those based on a sense of superiority and a marginalization of others, are profoundly anti-democratic. In the antebellum United States, white identity was based on on negation of the other rather than something innate to the self, on the idea of being not black, but in fact superior. In this way even the poorest, most disadvantaged white workers could find solace in the fact that they at least were "better" than slaves or even free blacks (Roediger 1991).

In short, the very strength of identity that is necessary to make citizens efficacious actors may turn toward anti-democratic ends if it is based on arrogance or a sense of superiority. In *The Burden of Southern History*, originally published in 1960, C. Vann Woodward (1993) detects a dangerous triumphalism in the American identity, rooted in a

history that essentially had seen no frustration, failure or defeat, but had seemingly never strayed from the path of unerring progress. The myth of the city on the hill, which holds that the United States has a special calling to act as an example for others to follow, also contains the seeds of a certain arrogance and encourages the disregard of others in a way that is impossible for those whose past includes failure and defeat. For Woodward, the most obvious place to look for such a history is the South.

Southern heritage is distinctive. For Southern history, unlike American, includes large components of frustration, failure, and defeat. It includes not only an overwhelming military defeat but long decades of defeat in the provinces of economic, social and political life. Such a heritage affords Southern people no basis for the delusion that there is nothing whatever that is beyond their power to accomplish. They have had it forcibly and repeatedly borne in upon them that this is not the case. Since their experience in this respect is more common among the general run of mankind than that of their fellow Americans, it would seem to be a part of their heritage worth cherishing (Woodward 1993, p. 19).

Furthermore, Southerners who are honest with themselves cannot lay claim to the sense of insufferable rightness and divine mission that is implied by the myth of the city on the hill.

Southerners have repeated the American rhetoric of self admiration and sung the perfection of American institutions ever since the Declaration of Independence. But for half that time they lived intimately with a great social evil and the other half with its aftermath. ... The South's preoccupation was with guilt, not with innocence, with the reality of evil, not with the dream of perfection. Its experience in this respect, as in several others, was on the whole a thoroughly un-American one. ...

The experience of evil and the experience of tragedy are parts of Southern heritage that are as difficult to reconcile with the American legend of innocence and social felicity as the experience of poverty and defeat are to reconcile with legends of abundance and success (pp. 20-21).

It is Woodward's goal to shatter these dangerous twin illusions of triumph and innocence and replace them with a sophisticated understanding of history that will not tempt the United States "to exert all the power she possesses to compel history to

conform to her illusions” (p. 193). The vehicle he sees as most likely to accomplish this goal is Southern history, but it is the goal, not the vehicle that is important here. Since 1960, as Woodward recognizes in later editions of *The Burden of Southern History*, the rest of the country has joined the South in having to come to terms with a burdensome history of loss and moral culpability. The peak came perhaps in 1975, with the finality of defeat in Vietnam and a series of revelations about abuses and crimes committed by the intelligence community in the name of fighting communism.

There is a real value in coming to terms with this shameful side of American history, namely that one acts differently when the possibility of shame and defeat is recognized. An idealized image of invincibility is impossible to maintain in the face of the fall of Saigon; a sense of moral arrogance falls apart in the face of revelations about murderous, corrupt actions committed by the intelligence community in the name of national security. These are painful revelations to be sure, and no one would want to return to 1975 to experience them again. But the memory of shame and defeat is enough to make citizens wary of actions that would cause a return to those actual experiences again.

These are not easy lessons to embrace, though, and when official secrecy is available there is a temptation to hide painful truths.

[O]ne of the ways in which information is controlled and democracy denied, is by the government withholding important documents from the public, or keeping secret their existence altogether, or censoring them (how we must struggle to get data about the Gulf of Tonkin, the Bay of Pigs, the bombing of Laos, CIA operations in Guatemala). And while the ostensible purpose of such secrecy is the physical security of the nation, the actual purpose is almost always the political security of those who run the nation (Zinn 2001, pp. 170-171, parentheses in original).

Indeed a CIA that is committed to keeping 64 percent of its 25-year-old records secret (Herring 1997) is not acting merely out of concern for national security. Genuine national security concerns may prompt continued secrecy about successful, justifiable covert actions, but absent that there are incentives for the state to reveal its involvement in actions likely to prove popular. But for the failures and obviously reprehensible acts, there is an additional incentive to keep them secret, and with no independent arbiter of what truly must be kept secret to protect national security, there is a real danger that the state will come to bury its mistakes. Furthermore, for those on the outside looking in, it is virtually impossible to determine whether the criteria for keeping necessary secrets are being applied honestly.

History should be available to help citizens navigate the twin shoals of despair and triumphalism, however reluctant they may in fact be to take on the task. Ultimately, the goal is for them to be inspired to act, for if democracy as rule by the people is taken seriously, it cannot mean that the people are passive. Studying history can lead into the trap of seeing past events as having been inevitable. But there is an alternative:

If the present seems an irrevocable fact of nature, the past is most usable as a way of suggesting possibilities we would never otherwise consider; it can both warn and inspire. By probing the past, we can counter myths which affect the way we act today. We can see that it is possible for an entire nation to be brainwashed; for an “advanced, educated” people to commit genocide; for a “progressive, democratic” nation to maintain slavery; for apparently powerless subordinates to defeat their rulers; for economic planning to be unaccompanied by restrictions on freedom; for oppressed to turn into oppressors; for socialism to be tyrannical; for a whole people to be led to war like sheep; for men to make incredible sacrifices on behalf of a cause (Zinn 2001, pp. 203-204).

Seeing the past this way, though, requires the availability of reasonably complete, accurate information. As the historian Howard Zinn notes elsewhere, “The chief problem

in historical honesty is not outright lying. It is omission or deemphasis of important data. The definition of *important*, of course, depends on one values” (2001, p. 51, italics in original). It is impossible to be outraged by the Ludlow Massacre or turn that outrage into useful action if one is unaware that the event took place. For Zinn and other historians, this means reopening debates over what is and is not important. But for events shrouded by official secrecy, even this kind of debate is impossible.

One more question remains regarding the impact of official secrecy on history: If history truly is important for democratic citizenship, and official secrecy distorts history, how much of a problem is this in the United States today? How much trouble is history in? The quick answer is no one knows. No one can know, for the very information that is needed to answer that question is secret. It is impossible to evaluate the damage caused by a secret with any degree of precision until that secret is revealed.

That said, there are indications that the danger posed by official secrecy is serious and growing. The current administration does not hold openness high as a democratic value, and indeed has been working feverishly to increase the scope of official secrecy, going so far as to embrace the principle that information that has been released to the public can be classified again. It seems likely that more secrets equal more damage to our understanding of history. Admittedly, this is only a rough calculus, but it seems a reasonable one and impossible to improve upon without actually examining what is kept behind closed doors.

Additionally, previous revelations offer some idea of the damage that has been done before. Other than possibly the war with Iraq, no event of the recent past cries out for understanding more than the terrorist attacks of Sept. 11, 2001. Yet, as with Iraq, it

seems that there is much about those attacks that is simply not understood, and some conventional wisdom may even be wrong.

For example, government data compiled by the Transactional Records Access Clearinghouse at Syracuse University after the attacks showed that U.S. attorneys nationwide had decided not to prosecute large numbers of terrorism cases referred by various law-enforcement agencies, including the FBI. According to an account in the Washington Post:

Such embarrassments apparently have continued to upset Justice Department bureaucrats. In March, Teresa Davis of the Executive Office of U.S. Attorneys wrote that monthly FOIA requests for data would be delayed to make sure releasing data did not “jeopardize the department's counter-terrorism efforts or threaten national security.”

Nevertheless, the Justice Department released the data in April. It wasn't a pretty post-Sept. 11 picture, at least not to Senate Judiciary Chairman Patrick J. Leahy (D-Vt.) and Grassley. “The information raises troubling questions about whether the FBI and Department of Justice are devoting sufficient resources to counter-terrorism efforts,” the senators wrote in June, “whether the FBI continues to dedicate valuable resources to crimes [such as bank robberies] that other agencies are equipped to handle; how well the FBI conducts terrorism investigations; and what the FBI is doing with its intelligence and analysis personnel” (Grimaldi 2003, bracketed material is Grimaldi's).

These are troubling questions indeed, but the Justice Department has taken steps to ensure it will not have to answer many more like them. It is no longer releasing information about ongoing cases to TRAC, despite the fact that the data requested are “so vague and incomplete that it would be impossible to ascertain any specific cases, suspects or investigations” (Grimaldi 2003). In short, the Justice Department is keeping secrets as a way of avoiding public accountability — hampering citizens' ability to understand the steps being taken in response to the Sept. 11 attacks.

Unfortunately, this is entirely keeping in character with a national-security state that is increasingly obsessed with secrecy. The resulting damage to history cannot be calculated with any precision, but it is undoubtedly real. Future revelations may someday repair some of the damage, but the fact is that once established in the public mind, accounts of history are very difficult to alter, no matter how inaccurate or incomplete they may turn out to be. For conspiracy theorists, official secrecy offers a golden opportunity to jump into the breach and use their vivid imaginations to explain what is being held back in the shadows. For everyone else, it means that all they can do is wonder, an entirely unacceptable position for democratic citizens who are supposed to be engaged in a project of self-rule.

Official secrecy has far reaching costs both in terms of direct damage to democratic institutions and in damage to other institutions. For military and intelligence operations, it can be desirable and even crucial, yet at the same time it is a double-edged sword having the potential in some circumstances to be devastating to military or intelligence objectives. For the court system, some forms of secrecy (e.g. closed jury deliberations) that are under judicial control are benign or beneficial. On the other hand, official secrets that are kept *from* the courts cast serious doubt on their ability to arrive at a just, reliable account of the truth. For science and history, the impact of official secrecy is much clearer: It is harmful and can only be justified by rationale external to those disciplines. Having now covered in some depth what official secrecy means for democracy and society, it is now time to move on to a related question: Given the broad and damaging impact of official secrecy, particularly with regard to democracy, why has

this phenomenon not attracted greater scrutiny from democratic theory. This question is the subject of Chapter 7.

Chapter 7

Bringing Official Secrecy Out of the Shadows

As shown in the preceding chapters, official secrecy creates a wide range of negative effects, particularly for the institutions of democracy. This being the case, it seems obvious to wonder why it has not received more rigorous attention from democratic theory. The answer lies in the newness of official secrecy as a phenomenon, at least in its contemporary form. Fortunately, democratic theory has dealt with analogous issues in the past, and those debates should offer some guidance in coming to terms with official secrecy.

On June 20, 1966, Donald Rumsfeld, then a Republican member of the House from Illinois, offered a powerful argument against official secrecy in a speech supporting the passage of legislation that was to become the Freedom of Information Act.

[D]isclosure of Government information is particularly important today because Government is becoming involved in more and more aspects of every citizen's personal and business life, and so the access to information about how Government is exercising its trust becomes increasingly important. Also, people are so busy today bringing up families, making a living, that it is increasingly difficult for a person to keep informed. The growing complexity of Government itself makes it extremely difficult for a citizen to become and remain knowledgeable enough to exercise his responsibilities as a citizen; without government secrecy it is difficult, with Government secrecy it is impossible (Rumsfeld 1966, p. 13654).

The Freedom of Information Act was passed and later strengthened, but more broadly, there has been a general failure to address the virtues of openness and the costs of official secrecy. FOIA establishes a legal presumption of openness in the U.S. federal government, but a significant portion of the story is found under the exemptions to that presumption, policy areas where secrecy is seen in practice not as a necessary evil but an out-and-out virtue.

While official secrecy has yet to receive the attention it deserves, to a limited extent, secrecy and openness have been addressed in the political realm for at least as far back as 431 B.C. In the funeral oration of Pericles, Thucydides reports an eloquent defense of the value of openness:

If we turn to our military policy, there also we differ from our antagonists. We throw open our city to the world, and never by alien acts exclude foreigners from any opportunity of learning or observing, although the eyes of an enemy may occasionally profit by our liberality; trusting less in system and policy than to the native spirit of our citizens. ...

Our public men have, besides politics, their private affairs to attend to, and our ordinary citizens, though occupied with the pursuits of industry, are still fair judges of public matters; for, unlike any other nation, regarding him who takes no part in these duties not as unambitious but as useless, we Athenians are able to judge at all events if we cannot originate, and instead of looking on discussion as a stumbling-block in the way of action, we think of it as an indispensable preliminary to any wise action at all (Harding 1973, pp. 58-9).

Obviously, the information environment of ancient Athens was far different than that of today, in which there was neither the will nor the ability to set up and maintain the massive institutions of secrecy that Americans would recognize today. Still, the democratic nature of openness and the dangers inherent in having the state keep secrets remain unchanged today.

Historically, democratic theory has concentrated on the ability of citizens to create and manipulate privately held information because the information needed for self-government has been in private hands but vulnerable to official controls. The cluster of rights that falls under the heading free expression could be expected to ensure adequate access to information. This is no longer the case. To be sure, governments have always had secrets, but not on the current scale. It is only after World War I that states became the vast producers and repositories of information recognizable today, and the trend

accelerated after World War II. The role of state-held information was not recognized because it simply was not that significant.

Sweden implicitly recognized the importance of access to state-held information by enacting the world's first freedom of information law (Relyea 1986), while Great Britain moved in the opposite direction in 1889 with the passage of its first Official Secrets Act (further significant action on this front came in 1911 and again in 1989, and will come again in 2005 when the U.K. Freedom of Information Act comes into force) (Griffith 1989). However, in both the British and Swedish cases, legislative action came well before official secrecy and government records more generally achieved the significance that they obtained in the 20th century.

In the United States, the federal government did not begin the collecting and generating records on the massive scale recognizable today until World War I (Feinberg 1986). Before that, maintenance of records was of so little concern that in *Democracy in America* Tocqueville (1969) writes that in American practice, "No method is adopted; no archives are formed; no documents are brought together, even when it would be easy to do so." (p. 208) Some American officials even gave Tocqueville original documents to keep.

Several historical developments in the United States led to radical changes in the information environment. American entry into World War I ended a period of relative openness with regard to what information was held by the federal government, as concerns about national security and military efficiency became paramount. Daniel Patrick Moynihan notes that "Indeed, much of the structure of secrecy now in place in the U.S. government took shape in just under eleven weeks in the spring of 1917, while the

Espionage Act was debated and signed into law (1998, p. 84).” The massive expansion of the federal government during the New Deal meant not only new programs but a vast increase in the amount of documentation involved in the business of governing — which necessitated decisions about how to manage that documentation.²⁶

The end of World War II brought two other developments that ensured that the practice of official secrecy would become a deeply entrenched practice: the near-simultaneous beginnings of the Atomic Age and the Cold War. The development of the fission bomb, by far the most destructive weapon ever devised to that point, quickly led to concerns that an increasingly hostile Soviet Union might duplicate the feat, and secrecy was seen by many as a defensive measure. Thus, the Atomic Energy Act of 1946 first created the presumption that all information related to atomic energy is “born classified” and that only positive state action could transform it into public information.²⁷ The idea that control of information is the best defense against nuclear proliferation did not go unchallenged. For instance, the August 1945 official history of the Manhattan Project noted that most of the information needed to build an atomic bomb was available in the open literature (Smyth 1945), and Howard Morland’s 1979 H-bomb article in *The Progressive*, which sparked an unprecedented effort by the Department of Energy to

²⁶ Congress took the first step toward addressing this issue with the Administrative Procedures Act of 1946. However, that law came to be widely regarded as inadequate, and ultimately it was superseded in 1966 by the Freedom of Information Act.

²⁷ This treatment of atomic-energy-related information is far broader in scope and restrictive than the classification systems, established by a series of executive orders, that are used by the military and the intelligence community. Military and intelligence secrecy require a positive decision to classify, rather than taking classification to be automatic. The idea of “born classified” has some unusual consequences. For instance, it is possible for a physicist who lacks a security clearance to make a discovery that he or she is not cleared to know about. The 1979 *Progressive* case offers a real-life instance of this happening. Using only publicly available sources, journalist Howard Morland was able to describe in sufficient detail the construction of an H-bomb, that the Department of Energy went to court to prevent his article from being published. After the same information was published elsewhere, the case was dropped before a final ruling could be made.

impose prior restraint on publication, had at its heart the argument that there was no secret, that the idea of an H-bomb secret was a “hoax” that had the effect of stifling public debate on nuclear policy. However, in the realm of policy and practice, the idea that there are atomic-energy secrets worth keeping has carried the day. As for the growing confrontation with the Soviet Union, it too contributed to an atmosphere in which secrecy was an attractive policy option, as instead of returning to a peacetime posture, the United States assumed permanent emergency footing.

The Cold War had come. Americans were used to secrecy during wartime. The date of D day, for instance. But now a distinction was being made between a “hot war” like World War II and a “cold war” like the one then under way (both terms date from the 1940s), and secrecy was being presented as essential to both. This was wholly new. Profound aspects of culture, even the nature of energy (the oldest of mysteries), were now to be known by a few but withheld from the rest. In a sense, it was the most primitive of arrangements in the most advanced of societies (Moynihan 1998, p. 141, parentheses in original).

It may have been primitive, but it was also a radically new arrangement, which raises the question of why it did not receive more comment — or indeed protest, given the high costs official secrecy exacts from democratic values. To be sure, official secrecy has had and does have its share of critics, but much of that criticism has been ad hoc in nature, frequently referring to a right to know (e.g. Theoharis 1998, Cantwell 1982, Kalven 1982, Rowat 1982, Halperin and Hoffman 1977).²⁸ While well-intentioned, this argument does not hold up well under close examination and fails to illuminate the high costs of official secrecy. A more systematic account and analysis of official secrecy is needed.

The Department of Energy’s case hinged on the argument that Morland had discovered restricted data while doing his research entirely within the public domain.

Taken by itself, the notion that the public has a “right to know” is as quixotic from an epistemological as from a moral point of view, and the idea of the public’s “right to know the truth” even more so. It would be hard to find a more fitting analogue to Jeremy Bentham’s characterization of talk about natural and imprescriptible rights as “rhetorical nonsense — nonsense upon stilts.” How can one lay claims to *know the truth* when even partial knowledge is out of reach concerning most human affairs, and when bias and rationalization and denial skew and limit human knowledge still further? And how can one claim a *right* even to all the limited insights that it might be possible to acquire? Even such limited knowledge can rarely be viewed as a matter of right: indeed, there are realms about which we recognize that we must claim no rights to knowledge: the personal letters other wish to keep private, for example, or their intimate relationships (Bok 1984, p. 254, italics in original).

At first glance, the idea of a right to know seems to offer a powerful foundation for an argument against official secrecy. Upon closer examination, though, such an argument is very vulnerable not only to philosophical attacks on the existence of such a right but to empirical evidence of citizens’ failure to acquire basic knowledge in such areas as politics, history or geography, to name a few (see Delli Carpini and Keeter 1996 for an analysis of Americans’ political knowledge). Rather than focusing on an inchoate and contested right that many seem disinclined to exercise to begin with, it is far better to take a more systematic approach to official secrecy, acknowledging the advantages it offers as a tool of statecraft, while also illuminating its many costs. What is at issue is in fact far more important than a right to know, for if citizens grow through participation in politics, official secrecy not only handicaps democracy but renders human experience less complete than it otherwise could be. To be sure, official secrecy is not the only obstacle standing between citizens and effective participation, but it is an especially pernicious one due to the intent with which information is withheld.

²⁸ In a related area, American legal theorists have also attempted to derive a right to gather state-held information from the First Amendment (*Yale Law Journal* 1980).

Again the question arises: Given the stakes, why has democratic theory failed to address official secrecy as the issue of central importance since World War II? The answer to that question is necessarily speculative, but it is well-founded, informed speculation. In general, political theorists try to take a long view and make claims of universal importance, but they also write based on the concerns of their times. One need look no further than the impact of the decline of Athens on Plato or the English Civil War on Hobbes or the Industrial Revolution on Marx to see this. Official secrecy would not have occupied a high place on the agenda for democratic theorists before World War II because even in the early stages of its development a generation earlier, it was simply not that significant a phenomenon. And as it gained significance after World War II, there were also other developments that became pressing concerns: explaining the popularity of fascism as a mass movement in Europe of the 1930s and 1940s, and coming to terms with empirical evidence from the new science of survey research, which suggested that citizens were neither knowledgeable nor sophisticated enough in their belief systems to form a foundation for a stable, just government. In other words, the mass of citizens looked less like an idealized “the people” than a dangerous, untrustworthy mob, and it was urgent that democratic theory react. Thus official secrecy slipped beneath the radar.

As Carole Pateman notes:

Thus, although democracy as the rule of the people by means of the maximum participation of all the people might still be an ideal, grave doubts, doubts put forward in the name of social science, appeared to have been cast upon the possibility of realising this ideal.

But by the middle of the century even the ideal itself seemed to many to have been called into question; at least, “democracy” was still the ideal, but it was the emphasis on participation that had become suspect and with it the “classical” formulation of democratic theory. The collapse of the Weimar Republic, with its high rates of mass participation, into fascism, and the post-war establishment of totalitarian regimes based on

mass participation, albeit participation backed by intimidation and coercion, underlay the tendency for “participation” to become linked to the concept of totalitarianism rather than that of democracy. The spectre of totalitarianism also helps explain the concern with the necessary conditions for stability in a democratic polity, and a further factor here was the instability of so many states in the post-war world, especially ex-colonial states that rarely maintained a democratic political system on Western lines (1970, p. 2).

Concerns about totalitarianism aside, the post-World War II years were also unhappy ones in the United States for research on citizenship. The traditional ideal of fully informed and involved citizens making sound decisions about their government on the basis of their knowledge took a beating with the advent of modern survey research techniques, starting with the panel study of voters by Lazarsfeld, et al. (1948), in Erie County, Ohio. Early reports indicated that most Americans might not have sophisticated enough cognitive frameworks in which to fit any information they receive. In looking at open-ended explanations of how Americans evaluate candidates and parties, Campbell, et al. (1964), find just 3.5 percent with sufficient sophisticated explanations to be classified as “ideologues” and another 12 percent as “near ideologues.” It appeared that voting decisions, which offer American citizens the most direct and routine methods of holding government accountable, typically stem more from psychological attachments to labels and images than from critical, reasoned evaluation. Converse (1964), too, found a low level of sophisticated, well-integrated systems of political thought among members of the mass public.

As Delli Carpini and Keeter (1996) note, “Debates over the importance of an informed citizenry are rooted in the collision of theory and practice. In theory, a democracy requires knowledgeable citizens to avoid becoming Madison’s ‘tragedy’ or ‘farce.’ In practice, it appears that a majority of people lack even the most basic political

information” (p. 22). This clash led from the beginning to skepticism about democracy, and democratic theorists have typically responded in one of three ways: 1) falling back on an elite-based theory of democracy that involves citizens in only the most superficial, tangential ways, 2) explaining away the need for knowledgeable citizens by turning to the utility and power of heuristics and 3) turning collective rationality to mitigate the impact of individual ignorance and irrationality, explaining that “the whole of citizen awareness is greater than the sum of its parts” (Delli Carpini and Keeter 1996).

This is not the place to recount the entire debate over the role of participation in democracy. Nor is it necessary to engage in a blow-by-blow account of the literature in citizen competence. The argument here is not that citizens’ capabilities and characteristics are ideal. Rather, it is that their capabilities are good enough (and potentially improvable) for citizens to stake a reasonable claim to autonomy. Concerns about totalitarianism and citizen competence are certainly serious, and with those concerns occupying space high on the agenda for political science, it is not surprising that the genesis of the age of official secrecy was largely overshadowed.

Ignoring official secrecy, however, is no longer an option. To do so is to court irrelevance. The past two-and-a-half years have seen an unprecedented move toward greater secrecy in the United States, with radical changes in the treatment not only of classified information but also with new efforts to control information that has already entered the public domain.

Among recent developments:

- Earlier this year, the Transportation Security Administration asked that two pages be deleted from transcripts of unclassified testimony in a congressional hearing on

airport security. The Federal Document Clearing House (an organization that is partially owned by the Associated Press and provides transcripts to news organizations) complied and passed along the request to clients that already had the transcript in question. It is unclear if any complied, but Congressional Quarterly refused (“Media Asked to Delete Security Testimony” 2004).

- The Freedom of Information Act has already been amended to exclude “critical infrastructure information” from its disclosure requirements. This measure may indeed be useful in concealing information that could be useful to terrorists, but that is far from its only impact. For instance environmental groups are concerned that this exemption will make it more difficult for citizens to learn about pollution or unsafe practices (Guzy 2002).

The Nuclear Regulatory Commission has refused to release Duke Power’s application for an exemption from new security requirements for several of its nuclear plants in the Carolinas, on the basis that it contains unclassified but “critical infrastructure information” (Smith 2004). The public, which has an obvious interest in whether plant security is breached, is thus denied the opportunity for meaningful input into the NRC’s decision.

The NRC also recently threatened to prosecute staffers at the Project on Government Oversight for a report in which they critiqued security arrangements for two nuclear reactors at Indian Point, N.Y. While the group based its critique on interviews with participants in security drills and publicly available information, the NRC declared it contained “safeguards information” that was illegal to disclose. However, when staffers

which information the NRC wanted deleted from the report, it initially refused to say and later only described the information in general terms (Smith 2004).

In short, official secrecy is casting a longer and longer shadow. This is sparking criticism, even from some unexpected quarters (Nakashima 2002). Rep. Dan Burton, R-Ind., has referred to President Bush as dictatorial, due to his administration's penchant for secrecy (Baker 2002). In his new book *Worse Than Watergate: The Secret Presidency of George W. Bush*, John Dean, who was White House counsel in the Nixon administration, describes the current administration as "the most secretive presidency of my lifetime" (Talbot 2004). Criticism of the new moves toward secrecy is welcome, but the problem not simply partisan, and is bigger than the current president. Democratic theory has an important role to play in offering a systematic analysis of the impact of official secrecy, which in turn can be used to minimize the use of official secrecy, manage it where it must be used and mitigate its damage as much as possible.

Where democratic theorists have evaluated the impact of official secrecy, they have noted the salutary effects of publicity and the dangers inherent to secrecy. Jeremy Bentham (1962) devotes an entire chapter in his "Essay on Political Tactics" to the importance of publicity for legislative assemblies, calling it "the fittest law for securing public confidence, and causing it constantly to advance towards the end of its institution" (p. 310). Among the dangers of secrecy Bentham cites is this:

To conceal from the public the conduct of its representatives, is to add inconsistency to prevarication: it is to tell the constituents, "You are to elect or reject such of your deputies without knowing why — you are forbidden the use of reason — you are to be guided in the exercise of your greatest powers only by hazard or caprice" (p. 312).

To be sure, official secrecy today is most commonly a tool wielded by appointed bureaucrats, rather than elected officials, but the basic objection still stands: It prevents citizens from effectively evaluating the performance of their government.

In *Considerations on Representative Government*, John Stuart Mill (1962) goes a step further, naming publicity as the primary function of a legislative assembly.

Instead of the function of governing, for which it is radically unfit, the proper office of a representative assembly is to watch and control the government: to throw the light of publicity on its acts; to compel a full exposition and justification of all of them which any one considers questionable; to censure them if found condemnable, and, if the men who compose the government abuse their trust, or fulfil it in a manner which conflicts with the direct sense of the nation, to expel them from office, and either expressly or virtually appoint their successors (p. 111).

In explicitly engaging the issues of secrecy and publicity, Bentham and Mill are unusual. However, it is not the case that democratic theorists are unaware of the citizens' need for information to be effective in public life. It is simply that with the information environment being what it was prior to the evolution of contemporary regimes of secrecy within democratic states, it was quite reasonably assumed that the information citizens required was generally held in private hands. Thus the emphasis was on ensuring that privately held information could be shared unimpeded. From Milton's (1918) defense of the institution of the free press in *Areopagitica* to Dahl's (1989) inclusion of a right to free expression as a necessary institution of polyarchy, it has been rightly recognized that citizens must be free to create and exchange information for democracy to function. What has been less completely integrated into democratic theory is the idea that in addition to access to information from each other, citizens must be able to obtain state-held information to be fully actualized as citizens. However, recognizing this fact does not require an enormous leap of logic. Much of the reasoning applied to justify free

expression is also applicable to arguments for publicity and against official secrecy. It is not possible to establish a right to know in the same way that a right to free expression is established. However, in examining the damages caused by official secrecy, many of them are analogous to damages caused by censorship, and it is certain that people who value democracy would desire to minimize those damages — and eliminate them whenever possible.

For instance, Gaetano Mosca (1939), who defines democracy so narrowly as to be little other than the circulation of elites, still holds that protecting public discussion of politics is absolutely essential:

People of our time have come to take for granted the advantages of a system in which all governmental acts are subject to public discussion. That alone can explain why superficial observers among our younger generations fail to realize at a glance the moral ruin that would result from the downfall of such a system. That ruin would take the form of a series of violations of juridical defense, of justice, of everything that we would call “liberty”; and those violations would be more pernicious than any that can be laid to the charge of even the most dishonest of parliamentary governments, let alone of representative governments (p. 257).

In *Democracy and Its Critics*, Robert Dahl (1989) cites free expression as part of a general moral “right to self-government.” “Freedom of speech, for example, is necessary both for effective participation and for enlightened understanding; so too are freedom of the press and freedom of assembly,” (p. 170), he writes.

Neither of these statements is especially surprising, and in the United States, there are few citizens or theorists who would seriously contest them. Indeed, there is a general understanding “that the first amendment is primarily designed to ensure citizen deliberation about public affairs. Under this view, the citizenry must have a significant role in government decisions, and the guarantee of freedom of expression is intended

above all to promote that role” (Sunstein 1986, pp. 889-90). While it has been rare for American courts to confront secrecy willingly and directly (“Keeping Secrets” 1990, Cooper 1986), it was this reasoning that carried the day in the Pentagon Papers case (*New York Times Co. v. United States* 1970), in which Justice Hugo Black wrote:

In the First Amendment the Founding Fathers gave the free press the protection it must have to fulfill its essential role in our democracy. The press was to serve the governed, not the governors. ... The press was protected so that it could bare the secrets of government and inform the people. Only a free and unrestrained press can effectively expose deception in government (p. 717).

If it is held that the free expression is intended to ensure deliberation, then free expression is valued not for a direct contribution to democracy, but because of its contribution to an intervening factor, that in turn promotes democracy. In other words, free expression is a necessary but not sufficient condition for the creation of a well-informed public. It is important, but upon further examination, it is apparent that the potential for “enlightened understanding” depends on other factors, as well. Benjamin R. Barber (1998) cites technological development as holding the potential to enhanced citizen knowledge and efficacy.

[D]emocracy is a form of government that depends on information and communication. It is obvious then that new technologies of information can be nurturing to democracy. They can challenge passivity, they can enhance information equality, they can overcome sectarianism and prejudice, and they can facilitate participation in deliberative political processes (p. 582).

The operative word here is “can.” There is no guarantee new information technology will create these outcomes, and in fact Barber recognizes it is unlikely to unless technological development is specifically guided and subsidized with these outcomes in mind. In short, new technology is neither necessary nor sufficient to create an informed public, but it has

the potential to be a valuable contributing factor. This is just one example of a factor above and beyond free expression that might be valued by democratic theorists because of its contribution to a potentially informed public.

Publicity is another, and that being the case, official secrecy obviously becomes a major concern. By no means does publicity guarantee that citizens will become informed. However, official secrecy guarantees that they will not, at least in the areas in which there are secrets. Openness, then, is another necessary but not sufficient condition for an informed public, and as Delli Carpini and Keeter (1996) note: “In short, the informed opinions, participation, and consent of citizens is by definition the best measure of what is in the public’s interest. And the opportunities provided citizens to make such informed choices is the best measure of how democratic a system is” (p. 6). And in preventing the formation of informed opinions, official secrecy actually makes the state less democratic. Uncomfortable compromises must be made in the name of security and even national survival, but those compromises are more likely to minimize the attendant damage to democracy if they are made with a full awareness of their impact. It is the task of democratic theory now to explore and explain that impact and to create that awareness.

The information environment has changed radically since the 19th century, and democratic theory can no longer afford to ignore the importance of state-held information and the pernicious effects of official secrecy. It can no longer be taken for granted that by guaranteeing free speech and a free press that citizens’ need for information can be satisfied. Much larger amounts of information are held by the state than historically has been the case. Paradoxically, while this truly is an information age, it is also an age in which conditions of scarcity prevail, due to the phenomenon of official secrecy. There is

a great deal of information in official hands that can be found nowhere else, and access to it is limited. Those who control access to information wield a great deal of power, and it must be recognized that this power has the potential to distort, if not stifle democratic outcomes. Even under the most felicitous of conditions, official secrecy subverts democratic citizenship. When abused — and the nature of secrecy encourages abuse — official secrecy's impact can be even greater. As part of a greater understanding of the role information must play in self-government, democratic theory must take into account the destructive effect official secrecy has on the democratic project.

That secrecy has been ignored for so long is likely attributable to simultaneous events in the development of democratic theory. The rise of elitist democratic theory has run historically parallel to the rise of the state as a vital collector of repository of information, due to doubts about to capacities of the mass public, doubts that were understandable in the wake of World War II and new evidence about citizens' political knowledge. For elite democratic theory, official secrecy is not such a great concern: As long as the right, competent experts can be found to handle secret information, its harm is not so great. Certainly, its negative impact on mass participation is not to be feared if participation is not especially desirable to begin with. For citizenship theorists, the challenge of elitist theory has been pressing, and it seems understandable that incorporating a theory of official secrecy would not be the most immediate priority.

However, the importance of state-held information, including secret information, seems exceedingly unlikely to diminish. At the moment, official secrecy is casting a longer and longer shadow. A realistic democratic theory must work with the understanding that citizens' access to access to state-held information will never be

perfect. At the same time, democratic practice must minimize the obstacles to open access and recognize that official secrecy is one of the greatest of these obstacles. It is time for democratic theory to account for the danger and challenge posed by official secrecy.

Chapter 8 Conclusion

There is a certain irony in a discussion of official secrecy such as this one. For all the real dangers its practice poses for democracy, official secrecy tends to be fleeting and is always difficult to maintain. As Benjamin Franklin (1974) noted, “Three may keep a secret if two of them are dead.” Truly keeping a secret is a formidable task, and it is no less difficult to keep a state secret than it is to keep any other kind. Examples used throughout this dissertation were at one time treated as secrets by the U.S. government. All eventually were revealed, through voluntary action of the agencies involved, by leaks or investigations or by some combination of these methods. The idea of an “open secret” — something that is treated as though it were secret although it is widely known — is hardly unusual. The CIA traffics in open secrets when it wastes time and resources declassifying transcripts from the Foreign Broadcast Information Service, which records and distributes material that was openly broadcast over foreign airwaves; for that matter, the ruse actually starts in classifying these transcripts to begin with (Herring 1997). The open secret is a recurring theme in recent, particularly where nuclear weapons are concerned, although certainly not limited to that realm.

Despite stringent measures intended to keep its existence a secret to the maximum extent possible, the Manhattan Project was well-known among Washington elites well before Aug. 6, 1945. “Most senior officials in the national security process — including many who did not qualify as having a ‘need to know’ — had at least a general awareness of the bomb’s existence, usually gained through private conversations with their colleagues. Secretary of State Cordell Hull, War Mobilization Director James F. Byrnes, and Treasury Secretary Henry Morgenthau all learned of the project this way” (Sigal

1975, p. 75). According to Sigal, word of the secret (and unauthorized by Congress) bombing campaign in Cambodia of 1969-1970 also got out in a similar manner and was well-known through Air Force ranks in Vietnam, as well as by at least eight members of Congress.

When Howard Morland (1979) explained the mechanism by which a hydrogen bomb achieves fusion, his objective was not to provide a blueprint to would-be bomb makers but to demystify the weapon and demonstrate that the physical principles involved were not *truly* secret at all. The federal government's reaction, which provides American jurisprudence with a rare example of prior restraint of communication, demonstrated the lengths to which it was willing to go not only to protect secrecy, but to protect even the *appearance* of secrecy.

Along with the theme of open secrets, there is also the recurring theme of the damage they cause. Morland's ultimate argument is not that the specific mechanisms of the H-bomb are particularly important for public discourse. Rather, he claims that by acting as if those mechanisms are secret, citizens mystify the entire area of nuclear policy, ceding it as a realm properly inhabited solely by experts. In short, acting as if there is a secret stifles debate in almost the same manner as true secrecy does. Avner Cohen (1998) makes a similar point about the Israeli nuclear program. Israel has adopted a posture of nuclear opacity. It is generally accepted that Israel has nuclear weapons, but the state refuses to acknowledge or deny a program for strategic reasons. This posture has had the side effect of creating a taboo against talking about issues of nuclear policy in all but the vaguest terms, so that even in the early days of its program there was no real debate about Israeli nuclear policy, *even among policy-making elites*.

For those few who did insist on debating the issue in public, the efforts of the military censor made it difficult to state the case properly. The taboo, however, was more self-imposed than imposed by law. It is among the most powerful societal sources of opacity, and it has endured to the present (Cohen 1998, p. 3).

The examples cited by Sigal (1975), too point to damage caused by acting as if a known fact were secret. Granted, knowledge about the Manhattan Project and the bombing of Cambodia was not widely dispersed. However, even for those officials who had received information through informal channels were constrained by the apparent secrecy of what they had learned. In the case of the Manhattan Project, “official secrecy did not eliminate informal communication about the bomb, but it did limit formal discussion in official forums where knowledgeable participants might raise and evaluate options for its use” (p. 88). The decision to drop the bomb on Japan may have partly been to demonstrate to Congress the money the project had received had not been wasted. In the case of Cambodia, “a preoccupation with keeping secret operations secret led to new operations of dubious legality, which then had to be kept secret too” (p. 89).

In short, efforts to keep official secrets, even when they are not totally successful, have serious consequences. In the preceding chapters, the consequences for democracy are outlined. As explored at length in Chapter 2, official secrecy has a great deal of utility as a tool of statecraft. Indeed, at times, it can be indispensable for concerns up to and including the very survival of the state. Therefore, despite the significant and indisputable harm that it causes to democracy, the simple and obvious answer of eliminating official secrecy altogether is just not tenable. This leaves the tasks of minimizing the use of official secrecy as much as possible and mitigating the harm when there is no alternative to keeping secrets from citizens. This burden falls on both policy makers, who have no

choice but to deal with official secrecy, and on democratic theorists, who would be well-advised to engage this pressing issue that has such enormous implications for their field. A coherent, complete account of what it means for democracies to keep secrets will provide a deeper understanding of democracy itself and will offer guidance on how the inevitable tension between the needs of democracy and statecraft can be managed. This dissertation begins the process of developing that understanding, particularly with its account of the damage official secrecy causes.

That damage goes across the board, affecting citizens, the society at large and even the state itself. In cutting citizens off from the information they may need for effective political action, official secrecy diminishes their autonomy and hamstring their ability to hold the state accountable. This lack of accountability, in turn, provides cover for incompetence and corruption. While it is certainly not the case that every secret hides a corruption or abuse, it is certainly the case that corruption and incompetence seek to cloak themselves in secrecy. And all too often they succeed, at least for a time. Revelations of past abuses further compound the damage, at best making citizens suspicious and draining the reservoir of trust on which the state depends and at the far extreme encouraging paranoid-style discourse and conspiratorial thinking, at a cost for both the individuals involved and the society at large. For the state, too, this loss of trust creates problems as it loses legitimacy and authority.

Recognizing these consequences is the first step toward minimizing and mitigating them, and this recognition should be reflected in policy, not just in the arguments of democratic theorists. It is one thing to create new secrets left and right when to do so is viewed simply as enhancing security. It is quite another to do so when taking

the broader perspective of understanding the costs as well as the benefits involved. And while their existence tends to be ignored today, the costs of official secrecy are every bit as real as the benefits claimed by secrecy's defenders. Understanding the tension between official secrecy and democracy will not likely lead to its resolution, for although they must lead an uneasy coexistence, the conflict between them is fundamental and unresolvable. However, understanding that tension can lead democratic governments to different, better policies than a partial understanding that treats secrecy solely as a security issue. The following principles stem from a more complex understanding of official secrecy in tension with democratic values. They are intended as exemplary, minimal guidelines, not as an exhaustive list.

- *Democratic states should have a presumption of openness or transparency for state-held information.* If information is kept secret, it should be because of a positive determination that releasing that information is likely to cause greater harm than secrecy will. This determination must be made with a full understanding of the deleterious impact of secrecy.

Theoretically, Western industrialized democracies fall somewhere along a continuum between Great Britain, which historically has had a presumption of secrecy established by the Official Secrets Act, and the United States, which, in general has a presumption of openness as established by the Freedom of Information Act. Great Britain's situation will change somewhat with the 2005 implementation of the U.K. Freedom of Information Act. However, this new law does not replace the 1989 Official Secrets Act but exists alongside it, a situation that is not unheard of in countries moving toward freedom of information (Tant 1990).

In practice, the continuum between secrecy and openness is much narrower than these statutory differences would suggest, for it is the exceptions to FOIA and the restrictive terms of the Atomic Energy Act of 1946 that define American policy toward official secrecy. A traditional deference by the courts (Harvard Law Review 1990) and the broad construction of the national-security exemption to FOIA (Cheh 1984) have combined to offer the American executive virtual *carte blanche* to keep secrets. When in May 2002, the court established by the Foreign Intelligence Surveillance Act rebuked the Justice Department for abuses and refused to grant it new powers for counterintelligence investigations, it was only the second loss by the government in the court's 23-year history (Eggen and Schmidt 2002), and even that decision has been described as not much of a loss. According to Fein (2002), "The FISA Court balked, but then largely capitulated."

Through the years, various reforms have been proposed (Halperin and Hoffman 1977, Harvard Law Review 1990, Commission on Protecting and Reducing Official Secrecy 1997) to correct the American tendency toward overclassification through stronger judicial review or congressional mandate. The specific details of a reform are less important than its ultimate success at creating a presumption of openness and removing incentives for overclassification. Indeed, the ultimate goal is for statutory changes to blaze a trail for changes in the official culture so that openness is seen as valuable. One thing is certain: The recent renewed tendency toward greater secrecy is unworthy of any state that calls itself a democracy.

- *Secrets must have shelf lives.* The British 30-year rule is a step in the right direction and is certainly worth emulating. In the United States, various executive orders

on classification have also set up guidelines for declassification, and the 1997 report by the Moynihan commission on official secrecy recommended adopting a “life-cycle” approach. Regardless, a tendency toward overclassification, inadequate funding and an official culture than emphasizes secrecy over openness have led to a situation in which secrets are essentially immortal and absurdity abounds. The CIA is currently has successfully defended a lawsuit to avoid releasing not only its total current congressional appropriation, but also its appropriation from 1947 on the ground that its release would endanger intelligence sources and methods. The same agency also won a lawsuit to avoid disclosing a recipe for invisible ink used by Germany in World War I (“Judge Upholds Secrecy of Invisible Ink Formulas” 2002). In 1997, the Moynihan commission discovered that weather reports used for the D-Day invasion were still classified. While this information is less likely to be of public interest than something like the CIA’s total budget, there is something pathological about keeping this kind of secret. Even granting the very remote possibility that Nazi Germany could somehow still pose a threat to American national security, surely the weather report from June 6, 1944, would no longer be helpful.

- *Accountability mechanisms must be especially strong when secrets are involved.*

Ordinarily, policy is made with accountability mechanisms in mind. While they may fail or be coopted, oversight committees, regulatory agencies, etc. are designed to ensure that laws are followed and the public interest maintained, with citizens themselves being the ultimate source of accountability. Secrecy removes citizens from this role, and while it is impossible to fill this void entirely, the nature of secrecy makes other sources of accountability more important, not less. Practically, this must include outside

consultations when the use of disinformation or covert action is contemplated, in order to obtain at least some semblance of an independent evaluation of a policy. In the American system, this also means that Congress must also be kept informed. The ultimately unsuccessful move by the Bush administration in 2001 to limit classified briefings to just eight members of Congress (Milbank and Slevin 2001) was a step in exactly the wrong direction.

- *Operational secrecy must be carefully distinguished from other types.* Classic examples of operational secrets include the movement of troop ships during wartime or the exact time and location of a planned military offensive. Operational secrets typically do not have a great deal of political content and do not require concealment for a great deal of time. Very little harm to democracy is likely to come from keeping an operational secret, and the state may benefit a great deal. However, it is crucial that this category be narrow in scope and not be allowed to extend to matters that are properly political concerns deserving of deliberation and citizen input. The planned location of the Allied invasion of France was a secret on June 5, 1944, and properly so. On June 7, it was not a secret, nor did it need to be. On the other hand, a secret decision to go to war, rather than limited-purpose secrecy regarding how the war was to be prosecuted would have been most troubling indeed.

- *Scientific secrets deserve special consideration, and scientific secrecy must be recognized as appropriate only under the most extraordinary circumstances.* Scientific information is uniquely vulnerable to discovery. The most carefully constructed classification system is no match for someone with the proper equipment and expertise. No one would think to attempt to keep the principles of gravitation secret. The principles

of atomic energy are analogously discoverable, and in fact at this point are similarly well known. Currently, the Atomic Energy Act of 1946 employs an archaic and restrictive classification scheme in the hope of preventing nuclear proliferation through the control of information, a policy that has enormous negative impact on public discourse and at the same time does nothing to counter the larger threat, which is the distribution of materials. Fortunately, nuclear weapons require fairly exotic, difficult-to-obtain materials and a great deal of specialized equipment and expertise to construct, and controlling access to those materials and equipment hold much more promise for nonproliferation than does an effort to control information that is doomed from the start.

Because of the nature of science, most efforts at scientific secrecy are doomed to de facto failure. However, there are rare instances in which perhaps it is worth an effort. Preventing potential terrorists from learning how to make the toxin ricin is a lost battle. That horse is already out of the barn, and even the most draconian measures could not bring it back. Any half-competent amateur chemist can make a batch with readily available materials, certainly a matter of concern, but not an appropriate area to be addressed by information policy. On the other hand biochemists who have succeeded in fabricating the polio virus using chemicals available through mail-order have created knowledge that is not yet widely dispersed and has the potential to cause great harm. In situations such as that one, there is certainly a professional responsibility to use care in how that information is disseminated. And in those rare instances in which both conditions — narrow dispersal and the potential for great harm — are met, it may even be appropriate to address legitimate public-safety concerns by policy or statute. Outside of those narrowly defined circumstances, however, scientific secrecy should be

recognized for what it is, a fruitless effort that has negative implications for democracy and for scientific innovation.

- *Care should be exercised in what information is collected to begin with.* This is an area where concerns over secrecy and privacy rights overlap. Briefly, official secrecy is only a concern for information that the state holds to begin with. With an understanding of the full implications of official secrecy, it becomes important to evaluate what kinds of information the state really needs to collect to begin with and what kind of obligations it incurs in collecting and holding information.

These principles are departures from previous practice, particularly in the United States, and they certainly break with prevailing notions about the importance of secrecy in the age of global terror. However, they are not radical, and they are not inappropriate for the times. At their core, these principles recognize the importance of citizens — without whom democracy is an empty shell of a word. At the same time, they are realistic, recognizing that the world remains a hostile place and that uncomfortable compromises are sometimes necessary for survival.

While the United States has certainly taken large steps backward in recent years in its use of official secrecy, the news is not altogether bad worldwide. In 1990, just 14 countries had freedom of information laws. Today that number has grown to more than 50, although those laws certainly vary in quality and application, but in general this is a promising trend.

And it is a trend that should be of great interest to democratic theory. Ad hoc movements toward openness are fine as far as they go, but the deep understanding that democratic theory can contribute is also vital, as only that kind of analysis can

demonstrate how inimicable are the values of official secrecy and democracy, and only that deep understanding can ensure that the inevitable tensions between citizenship and security are managed as well and carefully as possible. There is more work to be done, avenues not explored here, and areas worthy of further study. A few are especially noteworthy:

- This dissertation is situated in democratic theory, but in its examples it primarily focuses on the American experience with official secrecy. The United States is far from being the world's only democracy, and the the experiences of other states, perhaps from a comparative perspective, or extended case studies, would be worthy of examination.
- The issue of secrecy and paranoia discussed in Chapter 4 is especially intriguing and deserves extended study.
- While issues of privacy do not receive a great deal of attention here — due to clear conceptual differences between what is conventionally termed privacy and the forms of official secrecy discussed here — both privacy and official secrecy involve concerns about what might be termed information policy.
- The line between official secrets and privately held information is also blurring, with and increasing reliance on quasigovernmental agencies and nongovernmental contractors performing what have traditionally been state functions. The need for citizens to hold the state accountable is not diminished by this development at all, but an examination of how to handle information under these new arrangements would be a valuable contribution.

Official secrecy is here to stay, at least for the foreseeable future, and democratic theory must address to this reality. As a matter of survival, democracy must accommodate itself to the undemocratic virtues of force and fraud in order for them to

create a secure perimeter within which democratic life is possible. To the maximum extent possible, citizens themselves must decide how that accommodation is to be made. That process begins with a full account of what official secrecy means for democracy.

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