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David Coates

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MANAGING EDITOR Mary Arango

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somewhat more than Protestants. Fundamentalist and evangelical Christians, frequent churchgoers, parents with large families, older people, and rural residents tended to oppose the amendment. The amendment lost because it came to be linked with abortion (the Supreme Court decision in *Roe v. Wade* had legalized abortion in 1973), and could be portrayed as dividing women (homemakers versus women in the paid labor force). Its proponents failed to overcome objections that the amendment would force changes that most Americans disapproved (e.g., drafting women for combat in the armed forces). It stopped being a nonpartisan issue (the right wing came to power in the Republican Party with the candidacy of Ronald Reagan and withdrew the ERA from its platform), and it had to be ratified by states with fewer than 15 percent women legislators (in the states that did not ratify, 79 percent of the women legislators, but only 39 percent of the men legislators, favored the amendment).

Although feminists criticized it for detracting from other causes, in the long run the struggle for the ERA helped build the prestige and budget of NOW (its budget rose from \$700,000 in 1977 to \$8.5 million in 1982), making the organization the strongest independent feminist organization in the world, and putting it in a position to demand successfully that the Democratic Party run a woman for vice president of the United States in the 1986 election. The ERA struggle also helped build the feminist movement in the United States, to the point at which, by 1989, one out of three women in the United States was reporting to poll takers that she considered herself a "feminist"—about the same percentage as considered themselves Democrats or Republicans.

Argentina (1853) and Iran (1907) were the first countries to guarantee in their constitutions equality for "all inhabitants," including women. After 1945, when the United Nations (UN) Charter affirmed the "equal rights of men and women," many of the world's nations adopted similar clauses in their constitutions. In 1982, the Charter of Rights in Canada's new constitution guaranteed "the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination

based on . . . sex," generating litigation under that clause that has greatly extended women's rights. The impact of each of these constitutional clauses, including the "equal protection" clause of the US constitution, which now governs legislation affecting women in the absence of an ERA, must be judged by the policy decisions reached under it.

[See also Congress, US; Federalism; Feminization of Poverty; Gender and Politics; and Kennedy, John Fitzgerald.]

BIBLIOGRAPHY

- Berry, Mary Frances. *Why ERA Failed: Politics, Women's Rights, and the Amending Process of the Constitution*. (Bloomington, Ind., 1986).
- Boles, Janet K. *The Politics of the Equal Rights Amendment: Conflict and the Decision Process*. (New York, 1979).
- Mansbridge, Jane. "Whatever Happened to the ERA?" In *Women and the US Constitution: History, Interpretation, and Practice*, edited by Sibyl Schwarzenbach, pp. 365–378. (New York, 2004).
- Mansbridge, Jane. *Why We Lost the ERA*. (Chicago, 1986).
- Siegel, Reva B. "Constitutional Culture, Social Movement Conflict and Constitutional Change: The Case of the *de facto* ERA." *California Law Review* 94 (2006): 1323–1419.
- Soule, Sarah A., and Brayden G. King. "The Stages of the Policy Process and the Equal Rights Amendment, 1972–1982." *American Journal of Sociology* 111 (2006): 1871–1909.

Jane J. Mansbridge

EXECUTIVE PRIVILEGE

The subject of executive privilege is a convoluted one. The complications begin with the term itself. Although it is generally accepted that "executive privilege" refers to the president's right to withhold official information, there has long been a degree of uncertainty about *what* categories of information can be withheld under this heading, and from *whom*. When the term first entered into circulation in the early 1950s, it referred to the president's right to withhold, from both of the other branches of the federal government, information relating both to national security as well as the internal deliberations

of the executive branch. Since that time, however, the president's right to withhold classified information from the courts has come to be discussed under a different heading, namely, the "state secrets privilege." In addition, even though a number of presidents have invoked executive privilege to withhold information about internal deliberations and operations—most notably in the context of Senator Joseph McCarthy's hearings in 1954 and the Supreme Court's demand for White House tape recordings in *United States v. Nixon* (1974)—the president's right to withhold this category of information has begun to be discussed under a new heading, namely, the "deliberative process privilege."

Although these terminological developments complicate discussions of executive privilege, they are welcome for two reasons. First, using the term "executive privilege" to refer to the president's right to withhold both classified and nonclassified but confidential information invites analytical confusion, since the justification offered on behalf of the former differs from that offered on behalf of the latter. Indeed, it is not uncommon to encounter arguments that claim to vindicate "executive privilege," but that in fact defend the president's right to withhold only one of these categories of information. Second, the right to withhold information relating to internal deliberations, which is justified by concerns for the candor and privacy of officials, is not claimed by the executive branch alone; it is also claimed by a variety of other institutions including central banks, courts, and legislatures. Therefore, it is not clear why this right should be discussed under the heading of "executive" privilege. By contrast, the right to withhold classified information on grounds of national security is claimed by the executive branch alone. Hence, it seems more fitting to use the term "executive privilege" to refer to this right alone.

The complications surrounding executive privilege are not only terminological, but also substantive. In particular, there are deep disagreements over whether the president really has the right to withhold classified information from Congress. Broadly, three defenses have been offered. The first, put forward by successive attorneys general, and championed by Abraham Sofer and Mark Rozell, rests on precedent.

The emphasis here is on identifying instances, stretching back to the early Republic, where presidents have successfully withheld information from Congress. However, the utility of this evidence has been called into question by Bernard Schwartz and Saikrishna Prakash, both of whom have persuasively argued that Congress's failure to challenge the president cannot be interpreted as establishing the constitutionality of the practice. A second defense of executive privilege rests on claims about the intellectual and political context in which the Constitution was framed. The argument here, developed by Rozell again, is that the political turmoil associated with the post-Revolutionary period convinced the Framers of the Constitution of the importance of secrecy in government. Unfortunately, the contextual evidence in favor of this claim is thin. For instance, there is no discussion of the privilege in the debates of the Constitutional Convention. Furthermore, the diverse and often contradictory intellectual and political movements that characterized the late eighteenth century make it difficult to discern exactly how context affected the Framers. Thus, Raoul Berger has drawn on historical materials to argue that the Framers actually intended for Congress to exercise penetrating oversight. A third defense of executive privilege rests on the doctrine of implied powers. The claim here, put forward by David Crockett and Gary Schmitt, is that even though the Constitution does not explicitly authorize an executive privilege, this privilege can nevertheless be derived from the president's responsibilities as commander in chief and chief executive. However, this claim too has encountered stiff resistance. For instance, Louis Fisher has argued that Congress has an independent right to national security information because the Constitution vests it with its own national security powers and responsibilities.

There is little prospect of the debate over the constitutionality of executive privilege being resolved any time soon. The relevant materials—precedents, intentions, and historical texts—are simply not amenable to conclusive interpretation. To make matters worse, the courts have shied away from the issue, citing in *United States v. AT&T* (1977) the need to "avoid a resolution that might disturb the balance of

power between the two branches and inaccurately reflect their true needs." Given the circumstances, scholars have begun to focus less on questions about strict constitutionality and more on the general arguments for and against allowing the president to control the flow of national security information to Congress. Perhaps the most promising such argument in favor of executive privilege points to structural differences between the executive branch and Congress that make the former less susceptible to making damaging, unauthorized disclosures of classified information. This argument, made by George Calhoun and Stephen Knott, draws attention to the manner in which the hierarchical structure and more ideologically cohesive membership of the presidency make it less vulnerable to indiscipline (a point brought home by President Dwight Eisenhower's oft-cited warning to his Cabinet that any official who violated the confidentiality he wanted to protect "won't be working for me that night." This argument has been countered by the claim, made recently by Heidi Kitrosser, that executive privilege threatens the separation of powers. The idea behind the separation of powers is that governmental authority should be allocated to the political branch in a way that makes the exercise of power dependent on the mutual consent of the other branches. The point of arranging things this way is to prevent any branch from exercising unchecked power. It is not difficult to see that executive privilege threatens this arrangement because it complicates Congress's ability to mount an informed challenge to the president's policies.

Unfortunately, arguments about the broader merits of executive privilege have failed to provide a conclusive answer either. In the interim, a number of scholars, most notably Neal Devins and Peter Raven-Hansen, have drawn attention to the means by which Congress can obtain access to information regardless of whether the privilege is ultimately determined to be constitutional or not. These means include withholding appropriations, refusing to confirm nominees, and using Congress's subpoena power. In practice, though, there has been little need for such measures, because unauthorized disclosures from the executive branch have routinely brought wrongdoing to the attention of Congress, for instance

recently in the case of flawed intelligence on Iraq's purported weapons of mass destruction program. In other words, informal transfers of information have thus far precluded the president and Congress from demanding a formal answer to the question of whether executive privilege is constitutional or not. Whether scholars, lawyers, and judges will be forced to provide such an answer remains to be seen: it depends on whether the president and Congress can make their peace with the current arrangement, or if they decide to press for a resolution of the matter.

[See also State Secrecy.]

BIBLIOGRAPHY

- Banks, William C., and Peter Raven-Hansen. *National Security Law and the Power of the Purse*. (New York, 1994).
- Berger, Raoul. *Executive Privilege: A Constitutional Myth*. (Cambridge, Mass., 1974).
- Calhoun, George W. "Confidentiality and Executive Privilege." In *The Tethered Presidency: Congressional Restraints on Executive Power*, edited by Thomas Franck, pp. 172–195. (New York, 1981).
- Crockett, David. "Executive Privilege." In *The Constitutional Presidency*, edited by Joseph Bessette and Jeffrey K. Tulis, pp. 203–228. (Baltimore, 2009).
- Devins, Neal. "Congressional-Executive Information Access Disputes: A Modest Proposal—Do Nothing." *Administrative Law Review* 48 (1996): 109–137.
- Fisher, Louis. *The Politics of Executive Privilege*. (Durham, N.C., 2004).
- Kitrosser, Heidi. "Secrecy and Separated Powers: Executive Privilege Revisited." *Iowa Law Review* 92 (2007): 489.
- Knott, Stephen F. *Secret and Sanctioned: Covert Operations and the American Presidency*. (New York, 1996).
- Prakash, Saikrishna B. "A Critical Comment on the Constitutionality of the Executive Privilege." *Minnesota Law Review* 83 (1999): 1143.
- Rozell, Mark J. *Executive Privilege: Presidential Power, Secrecy, and Accountability*. (Lawrence, Kans., 2002).
- Schmitt, Gary J. "Executive Privilege: Presidential Power to Withhold Information from Congress." In *The Presidency in the Constitutional Order: An Historical Examination*, edited by Joseph M. Bessette and Jeffrey Tulis, pp. 154–194. (Baton Rouge, La., 1981).
- Soafer, Abraham D. *War, Foreign Affairs, and Constitutional Power: The Origins*. (Cambridge, Mass., 1976).
- United States v. A.T&T, 567 F.2d 121 (D.C. Cir. 1977).

Rahul Sagar

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illegally. State attorneys general have also been instrumental in securing regulations that have proved unattainable through the federal policy process. Out of a desire to secure greater restrictions on cigarette advertising and recoup health care costs associated with smoking, state attorneys general in four states reached individual settlements with major cigarette manufacturers; then, the remaining forty-six attorneys general negotiated a Master Settlement Agreement in 1998 requiring the companies to pay \$246.5 billion and agree to significant restrictions on their marketing practices. Meanwhile, in an effort to bring about various reforms of the financial services industry, New York Attorney General Eliot Spitzer relied on lawsuits to forge a \$1.4 billion settlement in 2003 between regulators and financial services companies that required investment firms to separate their research and investment divisions and disclose conflicts of interest between these respective divisions.

Conclusion. Despite the significant expansion of federal power in the twentieth and twenty-first centuries, states retain primary responsibility for policy-making in a number of prominent areas. Even where the federal government has taken the lead, states continue to play an important role in policy-making, because federal officials have frequently relied on states to implement federal statutes and have permitted states to exercise significant policy discretion. Additionally, state officials continue to issue rulings, enact statutes, and file lawsuits that exceed or challenge federal standards, in an effort to achieve goals unattainable through the federal policy process.

[See also Congress, US; Federalism; Judicial System, American; and No Child Left Behind.]

BIBLIOGRAPHY

- Council of State Governments. *The Book of the States, 2010*. (Lexington, Ky., 2010).
- Derthick, Martha A. *Up in Smoke: From Legislation to Litigation in Tobacco Politics*. 2d ed. (Washington, D.C., 2004).
- Dinan, John J. *The American State Constitutional Tradition*. (Lawrence, Kans., 2006).
- Ewald, Alec E. *The Way We Vote: The Local Dimension of American Suffrage*. (Nashville, Tenn., 2009).

Gardner, James A. *Interpreting State Constitutions: A Jurisprudence of Function in a Federal System*. (Chicago, 2005).

Gray, Virginia, and Russell L. Hanson, eds. *Politics in the American States: A Comparative Analysis*. 9th ed. (Washington, D.C., 2008).

Keyssar, Alexander. *The Right to Vote: The Contested History of Democracy in the United States*. Rev. ed. (New York, 2009).

Rabe, Barry G. *Statehouse and Greenhouse: The Emerging Politics of American Climate Change Policy*. (Washington, D.C., 2004).

Rosenthal, Alan. *Engines of Democracy: Politics and Policymaking in State Legislatures*. (Washington, D.C., 2008).

Teaford, Jon C. *The Rise of the States: Evolution of American State Government*. (Baltimore, 2002).

John Dinan

STATE SECRECY

“State secrecy” is the term used to describe the withholding of official information from the public for reasons of national security. It should be distinguished from both deliberative secrecy and operational secrecy, which involve withholding official information on grounds of fairness, privacy, and efficacy. State secrecy has attracted the attention of scholars because it poses a dilemma for democracy in America. The dilemma, as Dennis Thompson has put it, is that though officials can legitimately claim the need to withhold information in order to protect national security, citizens can also legitimately claim the need for information in order to hold officials accountable. What makes this dilemma especially acute is the fact that state secrecy tends to obscure precisely the sorts of politically or morally significant government actions (for example, prima facie violations of constitutional or human rights like warrantless wiretapping and waterboarding) that are particularly deserving of public scrutiny.

The obstacle that state secrecy places before democratic accountability has become the subject of intense debate in contemporary America. But it was not always this way. Although the *Federalist Papers* described state secrecy as an essential ingredient of

“energetic” administration, this aspect of presidential power attracted scant critical attention in the nineteenth century. Prominent commentators including Alexis de Tocqueville, Francis Lieber, and James Bryce noted the challenge that it posed for democracy in America, but concluded that the country’s relative isolation meant that there was likely to be little need for state secrecy in the near future.

The turning point can be traced to the early twentieth century, when many came to believe that secret diplomacy had been responsible for the outbreak of World War I. Though a number of public figures, including President Woodrow Wilson, responded by calling for “open diplomacy,” World War I actually provoked the United States to develop a centralized national security apparatus and to concomitantly institutionalize state secrecy, most notably in the form of the Espionage Act of 1917. In the decades that followed, political scientists including Edward Corwin, Quincy Wright, Carl Friedrich, and Harold Laski addressed fears about the growth of state secrecy by emphasizing that the separation of powers allowed Congress to rein in the president. However, these responses began to seem unsatisfactory, as the president’s control over official information grew rapidly during World War II and then expanded even further with the onset of the Cold War, culminating in the establishment of the classification system in 1951. As scholars like Harold Laswell, Robert Dahl, and Francis Bourke began to express concern about the impact of these developments on American democracy, influential members of civil society, particularly the American Society of Newspaper Editors, started to publicly urge that classification decisions ought to take account of the public’s “right to know” what officials were doing. This argument did find a receptive audience in Congress, which subsequently passed the Freedom of Information Act (FOIA) in 1966. But it is now widely accepted that this legislation has not been able to ensure that officials will strike an appropriate balance between secrecy and publicity. On the contrary, a steady stream of controversies—ranging from the disclosure of the Pentagon Papers in 1971 to the George W. Bush

administration’s use of “extraordinary rendition” and “black sites” following 9/11—have underscored how easily presidents can use their control over classified information to manipulate public opinion, and to hide potentially unlawful activities from public view.

Given this history, it is hardly surprising that contemporary scholarship on state secrecy has tended to focus on identifying how best to ensure that it will not be misused. These efforts have proceeded along two parallel routes. The first, favored by Hongju Koh, Louis Fisher, and Heidi Kitrosser, among others, has been to reinforce the separation of powers by insisting upon Congress’s right of unfettered access to classified information. Unfortunately, this approach has run up against presidential invocations of an “executive privilege” to withhold information from Congress. The other route, proposed by Sissela Bok, Dennis Thompson, and Daniel Moynihan, among others, has been to push for greater transparency in government by carefully delineating the circumstances under which the government may withhold information from the public. Unfortunately, this approach has been frustrated by the fact that the courts, which would presumably be awarded the responsibility of deciding whether the relevant criteria have been met, have tended in practice to defer to the president, on the grounds that the courts lack the expertise and even the constitutional authority to second-guess the president’s claims about the need to withhold official information.

It has become increasingly apparent that the challenges identified above, daunting though they are, have not always prevented the pursuit of democratic accountability. The explanation for this lies in the pervasiveness of unauthorized disclosures of classified information, which, as Cass Sunstein, Heidi Kitrosser, and Rahul Sagar have pointed out, allow lawmakers and citizens to become aware of misconduct that might otherwise have been shielded by state secrecy. This picture is complicated, however, by the fact that unauthorized disclosures infringe upon the constitutional authority of an elected president. Nor is it easy to justify such infringements, because unauthorized disclosures tend to be made

anonymously, making it difficult for the public to ascertain the true intent of a given "leak" (a point brought home by the controversy surrounding the publication in the *New York Times* of misleading information relating to Iraq's purported weapons of mass destruction program). This analysis suggests that the rough-and-ready path that Americans have found around the obstacle that state secrecy places before democratic accountability is itself not entirely consonant with democratic principles. This outcome is more than simply ironic, because it implies that the prospects of democracy in America depend heavily on the courage and good judgment of officials, reporters, and publishers. This dependence, which can easily backfire, reveals that state secrecy continues to exact a toll on democracy in America, albeit in a new and unprecedented form.

[See also Executive Privilege.]

BIBLIOGRAPHY

- Bok, Sissela. *Secrets: On the Ethics of Concealment and Revelation*. (New York, 1989).
- Bryce, James. *Modern Democracies*. (New York, 1921).
- Corwin, Edward S. *The President's Control of Foreign Relations*. (Princeton, N.J., 1917).
- Hearings on Availability of Information from Federal Departments and Agencies before the Subcommittee on Government Information of the House Committee on Government Operations*, 84th Congress, 2d session (1956).
- Hongju Koh, Harold. *The National Security Constitution: Sharing Power after the Iran-Contra Affair*. (New Haven, Conn., 1990).
- Kitrosser, Heidi. "Classified Information Leaks and Free Speech." *University of Illinois Law Review* 2011, no. 3 (2008).
- Pallitto, Robert M., and William G. Weaver. *Presidential Secrecy and the Law*. (Baltimore, 2007).
- Rourke, Francis E. *Secrecy and Publicity: Dilemmas of Democracy*. (Baltimore, 1961).
- Sagar, Rahul. "On Combating the Abuse of State Secrecy." *Journal of Political Philosophy* 15, no. 4 (2007): 404–427.
- Sunstein, Cass R. "Government Control of Information." *California Law Review* 74, no. 3 (May 1986): 889–921.
- Thompson, Dennis F. "Democratic Secrecy." *Political Science Quarterly* 114 (1999): 181–193.
- United States Congress, Senate Committee on Governmental Affairs. *Report of the Commission on Protecting and Reducing Government Secrecy: Hearing before the*

Committee on Governmental Affairs, United States Senate, One Hundred Fifth Congress, First Session, May 7, 1997. (Washington, D.C., 1997).

Rahul Sagar

SUDAN

See Darfur.

SUPREME COURT OF THE UNITED STATES

See Judicial System, American.

SYRIA

Syria has a geopolitical importance out of proportion to its relatively small population, size, and economic wealth because of its military power, independent foreign policy, and a location that gives it a central role in the Middle East's key disputes—particularly the Arab-Israeli conflict. Syria has one of the world's longest recorded histories, but the modern state was created only in 1920, by Western colonial powers; it remained under French colonial rule until independence was gained in 1946. Syrian political life is imbued with a powerful sense of grievance, owing to the partition of historic Syria by Western imperialism, with the truncated rump governed from Damascus seen by many of its citizens as an artificial state cut off from its southwestern hinterland by the Zionist colonization of Palestine. The emergence of radical Arab nationalism as the dominant identity of the country and dominant ideology of the ruling Baath Party is a direct consequence of this experience. In this heterogeneous country, in which, as of 2010, Sunni Muslims account for almost 75 percent of the population of 22 million and Arabs for over 85 percent—and in which one sectarian minority, the Arabic-speaking Alawis, enjoy disproportionate power while the main non-Arab ethnic minority, the Kurds, are only partly integrated—communal cleavages have, along with class, represented the main bases of political identity and