Forum Essay

PLURALIST DEMOCRACY: BALANCING PUBLICITY, PRIVACY, AND SECRECY

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In The Torment of Secrecy (1956), Edward Shils proposes a model for the ideal democratic state: an equilibrium among publicity, privacy, and secrecy. Although the relative emphasis among publicity, privacy, and secrecy can vary among democracies, if equilibrium is lost, the vibrancy and freedom of democratic life is threatened. Reflecting on the anti-communist hysteria which attacked the foundations of pluralist democracy in the post-World War II U.S., Shils argued that wide-spread fear, augmented by politicians seeking electoral advantage, stirred passions into demanding both increased secrecy for our information and publicity for those suspected of disloyalty, thereby diminishing privacy and eroding pluralism. Agencies charged with protecting our secrets and catching spies were set on a partisan agenda by political masters, an agenda marginal to true security needs and unjust in its treatment of victims. In post-9/11 America it may be helpful to revisit Shils’ argument to ascertain its current relevance.

SHILS’ THEORY

To maintain liberty, balance publicity, privacy, and secrecy. Shils describes the U.S. and Britain as pluralistic democracies, states governed by political systems with many centers of power that adjust to each other (1956, chap. 6). An effective pluralist democracy will feel no need for excessive publicity; privacy will be respected, and secrets relevant for security will be kept. Moderate publicity will arouse no fears, and privacy will not turn into secrecy (mandatory confidentiality). Because others do not pry, people feel no need to protect their privacy.

Hyper-patriots demand publicity for the private matters of others and, paradoxically, vigorously maintain their own secrets. Their own information is deemed important to national security, and must be kept confidential. Secrecy and publicity ratchet ever higher, reducing the domain of privacy. The
secrecy-publicity dynamic works against the principles of an open, pluralistic, civil society.

Hyper-patriotism thrives when people are unsure of who they are and where they are going, or they are unconnected to society's institutions (1956, chap.5). Legislators, concerned to be re-elected, think they must respond to the nativist fringe, and fear upsetting them. Hyper-patriotism is noxious to the functioning, and contrary to the nature, of a pluralist society. True patriotism is not worn on the sleeve, where sentiments fix on remote objects. When loyalties need not be total, when one can feel free to articulate opinions contrary to the dominant belief, publicity need not be total, and the right to privacy is recognized.

Total security is impossible, whether for an individual or a nation. Even in a relatively homogeneous, small, security-conscious society such as Israel, which locks down Palestinian cities at night, imposes curfews by day, occupies the country totally, and searches whomever it cares to at any time, Palestinians still manage to construct and set off bombs. A large, free, open, diverse society such as the U.S. is more vulnerable than Israel to attack by individuals or small groups. In reality, Americans are far more likely to be killed from a drive-by shooting, an armed robbery, or a drunk driver, than by a terrorist. A terrorist attack is a low-probability, random event. Total security for every citizen cannot be guaranteed, and to seek the chimera of total security destroys our privacy and our liberty.

THE PAST

In the 1950s the U.S. faced a real threat—an armed and dangerous Soviet Union with a leadership committed to spreading communism throughout the world. It was important for the U.S. to be vigilant internally and to work with other countries to counter Soviet attempts to undermine allies and independent nations. However, under the leadership of U.S. Senator from Wisconsin Joseph McCarthy, Americans who in the 1930s had been sympathetic to left-wing causes were investigated by Congress, fired from their jobs, and had their professional and personal lives ruined. Not a single individual was convicted of crimes from these investigations; yet spy agencies turned their attention from seeking to find and catch agents of the USSR to collecting background information on ordinary Americans. Prominent individuals also drew their ire. Robert Oppenheimer, who chaired the Manhattan project, that produced the atom bomb, was accused of disloyalty and fired from his position with the Atomic Energy Commission because he opposed developing the H bomb (Polenberg, 2002).

To employ the rhetoric of security does not make the nation safer. By focusing security on peripheral, or perhaps even unrelated, matters our nation became less secure. In the 1950s many new security agents were hired, thereby diluting the experience level and institutional memory of security forces. Responsive to Congressional directives, U.S. security officers reduced
their emphasis on uncovering foreign agents in order to investigate Americans. The combination of less experienced operatives, a re-directed emphasis to uncovering Americans who had tangential connection to the Communist Party, and an unwieldy security bureaucracy increased our vulnerability to spying efforts by the USSR. As a result, the heightened emphasis on security overall had the counter-intuitive effect of decreasing our national security.

The Torment of Secrecy (Shils, 1956) demonstrates how the actions of elected leaders trampled on the rights of U.S. citizens, ruined their lives and careers, and in the name of security rendered the U.S. less safe and secure, and less free. This paper will revisit Shils’ argument and apply his theory to our post 9-11 situation.

POST 9-11, EXTERNAL THREAT

In the early years of the 21st century the world faces an irritant, a scare from militant, fundamentalist Islam. The Islamic warriors the U.S. recruited from the Middle East and paid to fight against the Soviet Union in Afghanistan in the 1980s remained there after the war ended in 1989 and united with local Afghan Islamic fundamentalists, the Taliban. Weary of fighting among various warlords, and seeing the Taliban as less corruptible than the various competing factions, the Afghan people set themselves under Taliban rule. Local fundamentalist Islam had allied itself with small units of Arab Muslims, who saw their purpose as restoring the true faith to Saudi Arabia, Egypt, or Iraq, countries in their view governed by corrupt, pseudo-Islamic elites. Saudi Arabia, Egypt, and Jordan, supported by the United States, were viewed as oppressing those who wished to practice pure Islam. In their view the U.S., the hegemon, propping up enemies of the “true Islam,” symbolizes what is wrong with the world. Smashed into small units by the U.S. attacks on Afghanistan in 2001-2002, fundamentalist extremist Islam is now scattered into underground cells. Al-Qaeda cannot overthrow the U.S. government, but it may be able to assist other disaffected groups to overthrow the regimes of Middle Eastern countries.

THE SECURITY SITUATION, PRE-SEPTEMBER 11, 2001

The personnel constraints imposed on federal agencies commencing with the Carter administration, continuing under Reagan, Bush senior, and Clinton/Gore, appears to have caused a bureaucratic hunkering down and turf protection mentality within security agencies. The highly publicized, tragic events at Ruby Ridge and Waco brought negative attention to national security agencies, further depressing morale and centralizing agency decision-making in Washington. In August 2001, the FBI Minneapolis office had identified Zacarias Massaoui as a possible terrorist, and sought permission to go after him. The French intelligence agency confirmed Massaoui’s connection with
terrorist organizations. The FBI in Washington did not authorize a search warrant. After the bombing of the World Trade Center and the Pentagon, Rowley (2001) described the unwillingness of headquarters to authorize reasonable actions which might have minimized or prevented the events of 9-11. Headquarters had centralized decision-making, and erred by ruling against actions proposed by the field office.

**IMPACT OF 9-11**

Since September 2001, Americans seem driven by the desire to receive symbolic reassurances that they are safe. Personal safety appears to have risen to the topmost concern. A few hours after the World Trade Center attack a student telephoned me saying he would not be coming to class. He was afraid. He was serious; it was obvious in his voice. This fear has been converted into paranoia not obvious since the anti-communist rhetoric of the 1950s. White-skinned airline passengers in Minnesota refuse to allow a bearded, dark-skinned man to fly on an airplane with them, despite his being searched multiple times. American citizens of Middle Eastern descent are having their privacy invaded by police officers peering into their garages and poking into their garbage cans, and are subjected to incarceration without charge. Rumors of possible biological or chemical terrorism clear duct tape and plastic sheeting from the shelves of Wal-Mart and Home Depot. The Presidential bully-pulpit and media minions spoke symbols and innuendo in drumming up support for war against Saddam Hussein, despite the absence of credible information linking Hussein to al-Qa’ida or the 9-11 disaster. While these behaviors by U.S. citizens are an understandable response to airplanes crashing into the twin towers and killing several thousand people, it is arguable that some governmental leaders are acting in a way which, according to Shils’ theory, exacerbates the problem, and weakens rather than strengthens both our nation’s security and its democracy.

**U.S. SECURITY RESPONSE**

Here are a few of the U.S. Government responses, all of which reduce privacy rights and enhance government secrecy.

- Chief Immigration Judge Michael Creppy issues a memo to all immigration judges requiring the closure of all deportation proceedings to the public and press when directed by the Justice Department. **September 21, 2001**

- Attorney General Ashcroft issues a directive limiting Freedom of Information Act compliance and cites the threat of terrorism as justification. However, the directive actually covers all government information, much of which has no national security or law enforcement connection. **October 17, 2001**
• The USA PATRIOT Act grants the FBI—and, under new information sharing provisions, many other law enforcement and intelligence agencies—broad access to highly personal medical, financial, mental health, library and student records with only the most minimal judicial oversight. The court must issue a sub poena whenever the FBI states that it is for an investigation to protect against international terrorism. Right now the FBI can get the entire database of a credit card company or the records of everyone who has used a certain public library. It can obtain information on everyone registered at a particular hotel, hospital, or university. They do not need to show probable cause that a crime is, has been, or will be committed. And the recipient of the subpoena is prohibited from telling anyone that the FBI has asked for the information. The law expands the ability of the government to use so called “sneak and peek” and “black bag” secret searches. These searches, depending on the target, require either no notification at all of the person being searched, or delay notification until after the search has occurred. This means that physical searches of our homes, cars, computers, workplaces and reading materials can be conducted without our knowledge. These provisions apply both in anti-terrorism investigations and routine criminal investigations. October 26, 2001

• Attorney General John Ashcroft orders state and local governments not to release the names of people detained since September 11, stating that federal law supersedes any state or local claims to the information. In January, the ACLU of New Jersey sued, claiming the names of people arrested and held in New Jersey are public information under the state’s right to know law. A New Jersey court mandated that the names of immigration detainees in jails be released under the state’s open records law by April 22, 2002. Immediately, Ashcroft ordered state and local governments not to release the names. The ACLU is seeking the names to access how they are being treated and to provide access to legal representation. April 18, 2002

• President Bush designates U.S. citizen, Jose Padilla, an “enemy combatant” who is under military detention despite earlier assurances that U.S. citizens would not be subject to military jurisdiction. Padilla is suspected of plotting to detonate a so-called “dirty bomb” even though law enforcement officials concede that the plot may never have moved beyond the discussion stage. The Brooklyn-born Puerto Rican has been held in military custody since May 8 and has not been charged with any crime. On June 11, the Bush administration announced that Padilla may be held indefinitely without a trial. June 9, 2002
These actions are, naturally, intended to increase security. They do increase secrecy and publicity, at the same time disequilibrating the balance among publicity, privacy, and secrecy. As Shils argues, this disequilibrium may reduce rather than increase security. The following reasoning supports the contention of reduced security.

The greater danger is from skilled terrorist operatives, who are unlikely to be caught in a general dragnet.

By going through reams of information, the security agent’s focus is diluted. Due to the information overload, security officers may not know when they have found significant information.

These intrusive, restrictive measures are seen by those being targeted as ethnic profiling, picking on a particular ethnic group; victims are inclined to side with the “brother” and to resist cooperating with the U.S. government.

Broad-scale targeting, making an error or inadvertently injuring someone wrongly, which can easily occur, may discredit the entire counter-terrorist effort, which will make us less secure.

Note the following, sent by e-mail to a distribution list.

March 4, 2003

Well, yesterday was an exciting day in my small town. The FBI flew in 120 agents, fully armed in riot gear, on two C-17 military aircraft (I think—they were BIG planes) to Moscow Idaho (population 17,000 +/-) to arrest one Saudi graduate student for visa fraud. The raid went down in University of Idaho student housing at 4:30 a.m. in the morning, terrorizing not only the suspect’s family (he lived in student housing with his wife and three elementary school age children) but also the families of neighboring students who were awakened by the shouting and lights and were required to remain in their homes until after 8:30 a.m.

At least 20 other students who had the misfortune to either know the suspect or to have some minor immigration irregularities were also subjected to substantial, surprise interrogations (4+ hours) although none were detained or arrested yesterday. Now, however, a witch-hunt is on for additional unnamed suspects who supposedly helped the guy who was arrested.

The INS and FBI are working together using Gestapo tactics to question the students—threatening their immigration status (and hence their education) if they don’t answer questions, which are really aimed at the criminal investigation. They have also threatened their partners and spouses with perjury charges if they don’t talk.

I spent yesterday working with our immigration clinic director and local criminal defense attorneys to organize legal representation for the students who are being swept into the hunt for co-conspirators. We have reached out to our entire area (40-mile radius) to find enough attorneys.
Now I’m working on getting resources and support to them. The Saudi government is providing financial support.

Reading about this stuff is one thing. Having it in your backyard is another. The international students at the University of Idaho are terrorized and scared.

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On its face, the governmental action appears excessive and does little to build goodwill and cooperation among the agencies, the university, and the student community. I do not breathe easier that a Saudi student in Moscow, Idaho, living in married student housing with a wife and three children, has been apprehended. What work has been ignored in order to use these 120 security officials to question this Saudi? Would it not be possible for a few agents to take a commercial flight and to interview the gentleman during daylight hours? In a presumably short-staffed agency, is this a rational use of resources?

NATIONAL SECURITY

First, our nation was not defeated by Saddam Hussein, and will not be defeated by al-Qa’ida. At present, and for the foreseeable future, no country can defeat the U.S. militarily, and subjugate us. According to what I read, biological and chemical weapons can kill pockets of people, but converting bio/chem materials into stable, predictable weapons is difficult. Individuals and small groups can be killed, which is not nice, but the viability and security of our country is not threatened. Our fear is irrational, not rational.

As Franklin Roosevelt said at his inaugural address in 1933, “We have nothing to fear but fear itself.” Anthony Lewis (2002, p. 61) quotes a friend, “It is the spread of fear, much more than germs [referring to anthrax], that can undermine America as a democracy.” We are susceptible to terrorist attack. Not only the U.S., but every nation, is vulnerable, and the greater our individual freedom, the greater our vulnerability. Risk is a condition of freedom. We can reduce our risk in two ways, and they are somewhat incompatible:

1. We can increase security by trying and imprisoning those suspected of terrorist links. We are imprisoning, but not charging or bringing the cases to trial.

2. We can work to eliminate the conditions that inspire sociopathic behavior.

It is not clear that we are working to build trust for our government among citizens and residents, thereby creating an inhospitable environment for terrorism to grow. To build trust, treat people fairly, with respect, and give
everyone a seat at the table. I recall the Mexico City Olympics, and the black-power salute by some American athletes as they received their gold medals. I did not feel anger, but rather sadness that these athletes were emotionally rejecting our country. Disdain for white-dominated society by African-American citizens has diminished somewhat over the past 30 years, as we have worked on race relations, and as opportunities for minorities have improved. With the recent activities of the Justice Department, and now the Department of Homeland Security, brown people are targeted for investigation. Upon the signing of the Patriot Act, large numbers of Pakistanis living in the U.S. sought refuge in Canada. U.S. residents who have difficulty identifying with this changed America may not work energetically to forestall acts of terror.

Engaging cooperatively with the rest of the world can alleviate conditions that inspire socio-pathic behavior. Specific helpful activities with which the U.S. could become involved include the following:

1. Work for change abroad. Encourage norms of participation, seeking coalitions among groups with divergent goals, and being willing to lose gracefully and to support those elected to replace incumbents. Building democracy in foreign nations is not a “walk in the park,” a band-aid that can be applied to the body politic of a nation whose dictator has been removed, as implied by the U.S. President, or a machine in which the broken parts can be replaced. After the emotional rush of quick victory, the press currently estimates that we are in Iraq “for the long haul.”

2. Use the UN and other international bodies as instruments for confronting inappropriate behavior within or between countries. Learning the rules of social conduct is just as important for young countries as for young children.

3. The two primary territorial disputes threatening the international order (Palestine/Israel and Kashmir) need efforts at resolution.

4. Nuclear control issues have the world concerned about what is going on inside Iran and North Korea. If these countries can be persuaded to forgo a nuclear weapons option, the likelihood of nuclear proliferation—a great and uncertain danger to world peace—will be diminished, and greater local resources can be devoted to solving the immense domestic problems faced by their citizens. “Axis of evil” rhetoric does not serve to build a cooperative attitude.

5. Human rights are important, but difficult. There are too many definitions; national interests are threatened as countries use their definitions to criticize the perspectives of others. Countries ruled by demographic minorities are reluctant to open themselves to free
elections, for the electoral outcome is unlikely to benefit those minorities.

6. Poverty. Birth control can reduce population growth, a problem, which eats away at the potential for economic growth, as countries are unable to grow jobs as fast as they grow people. The U.S. reluctance to participate in population control programs works against our long-term interest of reducing world poverty.

Taking on the role of world policeman is expensive, dangerous, and debilitating. There is a natural resentment of authority figures, and the U.S. has adopted a high profile rather than low profile in the international arena. We have tried to dominate international arenas rather than work as a team player. Since 9-11 the U.S. has curtailed the rights of citizens and non-citizens alike, made our nation less hospitable to outsiders, and turned the wave of sympathy felt toward America by countries and people around the globe into resentment, enmity, and scorn. If today a French secret service agent were to come upon information would be of interest to the U.S. government, might that agent decide not to inform the U.S. government? The good-will we had after 9-11 has been dissipated; we are now often viewed less than favorably. Those governments who desperately need our financial support bite their tongues and acquiesce to our pressure; other governments criticize our policies. Our actions designed to enhance our security have the contrary effect—we are less secure.

CONCLUSION

In the 1950s, the McCarthy hearings turned our main focus from confronting international communism to fruitlessly digging up the pasts of American leftists; in 2003 we change our emphasis from an international terrorist ring, which is difficult to find, to a war on a weak country with a vicious, tin-horn dictator, formerly our ally against Ayatollah Khomeini. We threatened 20 million Iraqis with death for a situation that they are powerless to change. In the eyes of Arabs, Muslims, and much of the rest of the world, the U.S. demands vigorous enforcement of the 17 security council resolutions against Saddam Hussein; while ignoring the 54 security council resolutions calling for Israel to withdraw to its 1967 borders. We ignore the advice of Bertram Gross (1973) to adopt a low profile in working with other countries, and the words of Joe Nye (1992), that technology, education, and economic growth are more important bases of power than military force and conquest. Our polity degrades from a civil association, which encourages each person to pursue their own values, to a purposive association geared toward conquest and the subjugation of others (Spicer, 2002).

Shils’ argument for the balance among publicity, privacy, and secrecy as needed to maintain a pluralist democracy, and the resulting destruction of privacy when publicity and secrecy escalate, is borne out by the post 9-11
events. Middle Easterners and Muslims are explicitly targeted for surveillance, both legal and illegal, and are subjected to new laws and administrative interpretations, which cut substantially into their privacy. It is Shils’ hope / expectation that the persecutors in the end pay politically for abridging the rights of minorities. That remains to be seen.

Although we have an important and wonderful political culture to share, many in the rest of the world are resentful, viewing the U.S. as ramming half-cooked, inappropriate actions down their throats. By showing our cooperative face more clearly, by re-emphasizing our positive values and listening to their concerns and helping other nations work through their problems, we can restore our rightful position of respect internationally, and reclaim an equilibrium among publicity, privacy, and secrecy.

ENDNOTES

1. For example, Great Britain differs from the U.S. in a heavier emphasis on privacy and a lesser emphasis on publicity.

2. At the time of writing (April 21, 2003) the attack on Iraq is justified not because of a connection to al-Qa’ida, or because Iraq has weapons of mass destruction (which they may have, but which have not been found), but because Saddam Hussein needed to be replaced because he abused his people.

3. The information below is taken from the American Civil Liberties Union Website (www.aclu.org), Recent Legislation affecting civil liberties, and directly influenced by September 11.

REFERENCES


