

How Republicans and Democrats Strengthen Secret Surveillance in The United States

Political Preferences
2019, vol. 25: 5-20
journals.us.edu.pl/index.php/PP
Submitted: 30/11/2019
Accepted: 22/12/2019

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Abstract:

The purpose of the paper is to assess the relationship between secrecy and transparency in the pre- and post-Snowden eras in the United States. The Author analyzes, from both political and legal perspectives, the sources and outcomes of the U.S. politics of national security with a special focus on domestic and intelligence surveillance measures. The core argument of the paper is that, due to the role of the executive which has always promoted the culture of secrecy, there is no chance for the demanded transparency in national security surveillance, despite the controlling powers of the legislative and judiciary. As the analysis proves, the United States in the post-Snowden era seems to be the most transparent and secretive state, at the same time.

Keywords: politics of surveillance, secrecy, transparency, national security, separation of powers, United States, Snowden

Preliminary remarks

On November 7th, 2018 the President of Warsaw, Hanna Gronkiewicz-Waltz, announced her decision to ban the National March planned for the centenary of Polish independence, arguing that the law enforcement agencies are not able to provide security in case of street riots and disorder (Agerholm 2018). The organizers of the march filed a complaint to the district court, which repealed the President's decision, as it violated one of the most important values in a democratic state: the freedom of assembly (Sandford 2018). Although the President appealed to the circuit court, she lost, as the verdict was based on the principle that security is important, but it cannot infringe on the basic freedoms of individuals in a democratic state.

The above-mentioned example is just one of many cases revealing the clash of two fundamental values of democracy: security and freedom. The clash of these values is nothing new in history, but, especially since 9/11, it has determined the character of public debate about democracy around the world, and, most significantly, in the United States (Johnson 2018; Keller 2017; Goldfarb 2015; Lester 2015; Posner & Vermeule 2006; Northouse 2006; Mania & Laidler 2004). The freedom-versus-security challenge plays a crucial role in surveillance studies, and the question which value prevails in the process of implementation of governmental surveillance policies seems to be deeply rooted in their character. Several studies focused on the scope of such freedoms as right to speak, to assemble, to be informed, to enjoy privacy, or the due process rights in the context of existing surveillance legislation and policies (Angwin 2014; Solove 2011; Farber 2008). Most of them showed Hobbesian approach towards the conflict of security and freedom: in order to achieve the first, the society has to give up the latter (Kuntze 2018). In other words, there is no place for the full protection of both values, as “any increase in security requires a decrease in liberty” (Posner & Vermeule 2006). This all-or-nothing argument is, in my opinion, disputable, as one could argue – following the Machiavellian approach – that there is no freedom without security, and “people desire freedom in order to be secure” (Coby 1999: 94). Not plunging deeper into the philosophical debate about the scope of freedom and security in governance, it is important to acknowledge, that the crucial conflict of values in the politics of surveillance, despite its clear reference to the security vs. freedom challenge, focuses on the relation between two other principles: transparency and secrecy. It is the key conflict, which determines the real scope of fundamental freedoms colliding with the idea of a security state.

According to Aftergood, the system of secrecy is “an ordinary, bureaucratic artifact” subject to pressures on many levels, such as “political, legal, sociological, international, and others” (2010: 841). The aim of the paper is to determine the scope of the U.S. secrecy system using two of the approaches mentioned by Aftergood – political, and legal – and to assess whether U.S. surveillance policies throughout history have been transparent enough to ensure functioning of a democratic system based on the rule of law. Assuming, that for an accountable government equipped in social trust it is necessary to act in a transparent way, I am aiming at defining the proper relation between transparency and secrecy thus determining the scope of governmental actions, which need to be held in secret. Such an analysis is especially necessary in the pre- and post-Snowden eras, during which the clash of values of security and freedom, and – more importantly – transparency and secrecy is not only visible, but it affects contemporary political debate and decision-making process at the highest political level in the United States. It

is important, therefore, to assess the possible future directions of government surveillance policies from the perspective of the tensions between openness and secrecy, focusing both on political and legal context, taking into consideration that in the said period the United States were governed by both Republican and Democratic administrations. It seems crucial to assess whether the politics of surveillance, and especially national security surveillance, were different under different administrations, or, maybe, referred to similar values and principles of security and secrecy.

Secret surveillance state

Despite the fact, that the concept of ‘Secret Surveillance State’ brings to mind communist regimes which existed in the 20th century Europe, it could also be applied to contemporary democracies which conduct broad surveillance policies (Svenonius & Bjoerklund 2018; Boersma et al. 2014). Surveillance, which should be understood as the “collection of information in order to manage control” (Lyon 2015: 3), has always been interconnected with the notion of “power and political struggle” (Parenti 2003: 3). Governments used their powers and resources to control the societies, and surveillance measures seemed to be an effective and successful way to achieve that goal. The rhetoric of safety or security served often as the legitimization of surveillance policies, and political leaders in democratic states strongly supported a vision that full security can only be achieved with surveillance measures (Green & Zurawski 2015: 22). In times of inner or outer danger, usually referred to as times of emergency, governments implemented broad surveillance programs which expanded their authority, thus potentially limiting the rights and freedoms of the people (Greenwald 2014; Farber 2008). And, what seems crucial, broad surveillance, in order to be effective, had to be achieved in secret, which was especially characteristic for surveillance conducted in the name of national security.

The analysis of U.S. surveillance policies and programs, which were implemented in 20th and 21st centuries, clearly indicates that contemporary United States can be named a Secret Surveillance State. Already after first major disclosure of secret surveillance measures imposed by U.S. government, which happened in 1970s as a consequence of investigations by two congressional committees led by Otis Pike (House of Representatives) and Frank Church (Senate), it became clear that several governmental agencies were involved in illegal eavesdropping and spying of American citizens (Arnold 2014; Prados 2014; Solove 2011; Theoharis 2011). The number and purpose of secret programs conducted by National Security Agency (NSA), Central Intelligence Agency (CIA), and Federal Bureau of Investigation (FBI),

showed existence of an uncontrolled system of surveillance aiming at collecting information about subjects who should not have been surveilled. Certain features of a Secret Surveillance State could already be observed in the times of Harry Truman administration (Glennon 2015; Prados 2014), and the secret character of surveillance allowed the leaders of the agencies to use governmental programs for abuses, like in case of J. Edgar Hoover's FBI (Robertiello 2017; Theoharis 1993). While exposing secret programs, the Church Committee stressed, that "too many people have been spied upon by too many government agencies, and too much information has been collected" (Solove 2011: 10). The reforms initiated by congressional oversight committees in the late 1970s focused on greater transparency of governmental surveillance programs and their institutional and legal check by both legislative and judicial branches (Glennon 2015). The new system, build on active control of the executive agencies by stable congressional committees and a special Foreign Intelligence Surveillance Act court (FISC), did not prevent the government from imposing active surveillance measures in the next decades (Edgar 2017). Things have gone even further after the 9/11 terrorist attacks, when Bush administration introduced several policies and programs aimed at limiting the terrorist threat during new period in American history, the 'war on terror' (Graham 2017; Glennon 2015; Parenti 2003). Most of these measures led to the creation of an unprecedented system of international and domestic surveillance, equipping the executive branch with unique powers, and holding the truth away from public.

The scale and character of U.S. surveillance was revealed to American society and the world in 2013 and 2014, when international journals and newspapers published articles based on nearly two million secret documents leaked by Edward Snowden (Graham 2017: 189). The substance of these documents revealed that the U.S. government was involved in collecting billions of data and pieces of information on foreign nationals, but also on U.S. citizens, who were not aware that such surveillance programs even existed. The Secret Surveillance State became a reality, which resulted from both the quantity and quality of collected data, changing ordinary surveillance into dataveillance (Lyon 2014; van Dijck 2014). Such a statement may be reflected by the statistics: the NSA intercepts nowadays about two million types of communication per hour (Kuntze 2018: 91), and collects several billions of items of information from electronic sources (Prados 2014: 341). Overall, the government is capable of storing various types of information about its citizens, such as public information from public records and Web sites; personal communications, internet and social media usage, location information, and other nonpublic stored information (Mills 2015:217).

Historically, the U.S. government often referred to national security paradigm as a justification for its policies affecting rights of individuals (Laidler 2011; Farber 2008; Dudziak 2000). Several presidential administrations, both Democratic and Republican, decided to announce the state of emergency, during which constitutional freedoms were limited and due process was not ensured (Akerman 2006). In his analysis of emergency powers of U.S. government in history, Akerman listed numerous measures the authorities imposed, such as “curfews, evacuations, compulsory medical treatment, border controls, authority to search and seize suspicious materials and to engage in intensive surveillance and data compilation, freezing financial assets and closing otherwise lawful businesses, increasing federal control over state governments, expanding the domestic role of the military, and imposing special limitations on the right to bear arms” (2010:96). There is no doubt that extended surveillance measures had played a significant role in the use of emergency powers by the U.S. government, and that national security arguments enabled the authorities to classify most of its operations in that respect.

During the pre-Snowden era there had been a lot of references made by governing administrations to the necessity of national security protection, which, in the scope of surveillance policies, focused on functioning of several secret government programs. Although the first U.S. president to use the national security paradigm was Franklin D. Roosevelt during World War II, it was President Truman, whose activity in that respect led to creation of certain legislation establishing the national security state with such institutions as Central Intelligence Agency and National Security Agency in its center (Theoharis 2011). Institutionally, all three major agencies, NSA, CIA, and FBI, were involved in the process of protecting national security during the Cold War era, and their activities were held far from public scrutiny due to imposition of a broad secrecy system (Edgar 2017; Masco 2014). It is important to acknowledge, that activities undertaken by the next presidential administrations led by Republicans Dwight Eisenhower and Richard Nixon continued the policies initiated by their Democratic predecessors. Furthermore, Republican presidents made NSA involved not only in counterintelligence activities, but also, in collaboration with both CIA and FBI, in sharing information about foreign and domestic threats to national security (Keller 2017). In the first two decades of the Cold War, a system of excessive secrecy was created governing the use of national security surveillance measures without any oversight or control from the legislative or judicial branches.

The investigations undertaken by two congressional committees in the 1970s revealed information not only about the existence of certain secret government surveillance programs, such as HTLINGUAL, MHCHAOS, Mockingbird, Minaret, and Shamrock, but also about their

unlimited scope. The reports prepared by the committees indicated that the executive agencies applied excessive secrecy in their conduct of surveillance programs in order to limit congressional oversight and the knowledge of the people, who were often targeted by government surveillance due to their political beliefs (Prados 2014; Theoharis 2011). A careful analysis of the reports provides clear argumentation for the support of the politicization of surveillance policies during the Cold War period, as both Republicans and Democrats promoted strengthening the powers of the executive at a cost of the other two branches. The idea of a Secret Surveillance State became a reality. It was justified by the state of emergency, as well as the fact, that majority of surveillance measures imposed by the government remained uncontrolled due to the absence of a system of oversight and transparency. Such a system was introduced in the aftermath of Church's and Pike's Committees investigations, leading to the creation of stable intelligence oversight committees and a special court controlling the scope of government surveillance policies (Glennon 2015). It seemed that the problem of excessive secrecy of the politics of national security had been solved. At least for two decades.

It came back to American political reality after the terrorist attack of 9/11, when Congress implemented anti-terrorist legislation, the U.S.A. Patriot Act. Interestingly, the Act, which expanded the investigative and surveillance powers of executive agencies, has been approved by the representatives of both political parties in Congress, almost without any debate (Smith & Hung 2010). The legislation turned quickly into the main source and legitimization of controversial executive actions of the Republican President, George W. Bush, including his Terrorist Surveillance Program (TSP). One of the key surveillance measures undertaken in the post-9/11 America, the Stellar Wind program, which forced telephone and internet providers to share metadata of potential terrorist suspects, was operated in secret until being revealed in the 2005 by the press (Fisher 2013: 251-252). It was legitimized by the Office of Legal Counsel's memorandum arguing for the necessity to keep the surveillance programs out of public and congressional reach, so they can serve the national security goals more effectively (Edgar 2017: 43). Similar argumentation was used to support the launching of a new surveillance program, PRISM, aiming at monitoring data (e-mails, chats, photographs, but also log-ins and stored files) of the most important internet providers, and leading to a collection of billions of data on U.S. citizens by government (Lester 2015). In contrary to Stellar Wind, however, the PRISM was authorized by Congress in 2007 and 2008, providing for a certain level of congressional and judicial control over the surveillance activities of the executive (Edelson 2016). It does not change the fact, that majority of activities undertaken by the Republican government in the name

of national security were kept secret, which led to a significant criticism from Democratic politicians, including the next U.S. president, Barack Obama.

Many supporters of Obama believed that he could change the national security surveillance system, and diminish the level of secrecy over executive surveillance programs (Olmsted 2018: 220). Actually, the president not only continued, but also expanded some of the surveillance programs initiated by his predecessor, thus proving a certain unity among American leaders concerning the politics of national security in times of emergency. His support for new legislation strengthening the government surveillance powers, as well as his promotion of the state secrets privilege in judicial cases in which Americans demanded greater transparency of surveillance programs, made Barack Obama a proponent of Secret Surveillance State, despite his anti-secrecy rhetoric (Graham 2017; Glennon 2015). Even if the Democratic president did not initiate new secret surveillance measures, he legitimized earlier existing programs by making them legal (Olmsted 2018: 221).

Similarly, after the disclosure of secret documents concerning the scope of surveillance programs conducted by the National Security Agency, Obama's rhetoric differed from the decisions undertaken by his administration. On the one hand, the President supported modifications to legislation regarding the scope of congressional and judicial oversight of executive surveillance powers, such as the Freedom Act of 2015, but, on the other, most of the institutional solutions resulting from the Snowden affair did not bring an effective system of oversight and transparency (Graham 2017: 198). As a confirmation of the differences between the rhetoric and activities of the presidential administration, despite several promises to support greater transparency, Obama's government denied access in the name of national security to several requests for information about government's actions (Keller 2017: 31). An analysis of the legal regulations governing the functioning of the oversight system proves that the scope of control of the surveillance measures depended on the will of the executive, which could easily be justified by the argument of national security. Even the publishing of annual transparency reports by the NSA (Alloa & Thoma 2018) did not change the fact, that in the first years after Snowden there was more rhetoric of openness rather than real transparency, which made the Secret Surveillance State stronger than ever before.

The election of Donald Trump for the U.S. President did not change anything in the scope of executive powers concerning surveillance. Yet, in the presidential campaign the Republican candidate referred a few times to the necessity to protect the United States and its citizens from terrorist threat even at the cost of limiting civil rights of Americans (Nelson 2018). Surprisingly,

however, it was President Trump who openly criticized the use of surveillance measures by executive agencies against him and the members of his campaign team. President's critical attitude towards FBI, CIA, and NSA caused the decrease of trust of the Republican voters towards national security agencies, whereas some Democratic voters showed their support towards national security surveillance (Nelson 2018: 181). Apart from such personal negative attitude of the President towards concrete investigation, Trump generally opted for the continuity of the culture of secrecy with regard to surveillance measures of the state realized both on domestic and international level. From that perspective, he proved to be another strong supporter of the Secret Surveillance State which has ruled the United States from the late 1940s (Glennon 2015; Theoharis 2011).

Why secrecy?

Secrecy had played an important role in American political system even since its creation. Secrecy seemed a value during the Revolutionary War, when it assured effectiveness of the government (Ginsberg 2016:7), and during the Philadelphia Convention when the Founders referred to the executive branch, which had to “possess the powers of secrecy, vigor, and dispatch” (Farrand 1966: 70). And it was the executive, which, from the very beginning, invoked the principle of secrecy as a guarantee of its proper functioning (Graham 2017). The growing impact of secrecy on the operations of U.S. government in the 20th century led to a notion, that there is a specific ‘culture of secrecy’ (Moynihan 1997; Theoharis 1998), manifested not only in the amount of classified information kept far away from the public's reach, but – above all – in a conviction that secrecy ensures effectiveness and accountability (Edgar 2017: 345; Ginsberg 2016: 7).

Surprising or not, that conviction is shared by the representatives of both sides of political scene, whose attitude towards secrecy varies depending on their political role. Generally, the majority of U.S. presidents since 1940s, shared similar vision concerning the necessity to effectively protect national security, and among the leading proponents of secret surveillance state there were Republicans (Richard Nixon, George W. Bush), and Democrats (Harry Truman, Lyndon B. Johnson). Members of Congress from both parties supported legislation which increased the powers of law enforcement and intelligence agencies, as well as initiatives aiming at effective control and oversight of these powers. The difference between Republicans and Democrats could be observed in their political rhetoric, but not in the politics of surveillance they conducted. The comparison of the Bush administration's secret initiatives expanding the powers

of executive and intelligence agencies, and Obama administration's anti-secrecy rhetoric which turned into the continuation of his predecessor's policy (Graham 2017) confirms that argument. Today it is very likely that presidents from two different political parties will agree to conduct similar politics of surveillance. Similar observations may be derived from the analysis of statements made by people responsible for heading surveillance agencies, such as NSA directors James Clapper and Michael Hayden (Kuntze 2018: 86), high-ranked governmental officers like Democratic secretary of state John Kerry (Edgar 2017: 28-29), as well as members of Congress – Republicans John McCain, or Dianne Feinstein (Glennon 2015: 69). Their political affiliation is not the main determinant of their argumentation, as they all present an approach supporting necessary secrecy of governmental activities relating to security issues, especially when they are undertaken by the executive branch.

It seems as if the culture of secrecy is deeply rooted in activities undertaken by the executive branch, or is a “product of the executive branch's very nature” (Kitrosser 2015:2). As she correctly observes, the executive, unlike the legislative and judicial branches, has more space to act in the shadow, because both Congress and the courts operate through publicly recorded legislation and written public opinions. Furthermore, the executive branch has also access to human and technological resources enabling it to act in broader secrecy than any other part of the government (Kitrosser 2015: 2-3). Even the analysis of constitutional provisions concerning functioning of the three branches of government leaves an impression, that the Second Branch was meant to be the most secret one (*U.S. Constitution, Article Two*). It all has led to the creation of various theories about the secretive powers of the executive, which aimed to serve as legitimization of surveillance policies of presidential administrations. Especially three of them – executive privilege, unitary executive theory, and state secrets privilege – have determined the character and scope of contemporary U.S. surveillance practices (Siegel 2015; Garvey 2014; Arnold 2014; Theoharis 2011).

All of these theories served as a justification and legitimization of certain policies, including imposition of often unlimited surveillance of individuals and institutions potentially endangering national security. Controversial character of some of these theories is even bigger when one realizes that the government has discretionary power to decide which information should be secret without thoroughly explaining the reasons of classification. However rational it would seem with regard to the intelligence community, which operates within the realm of secrecy (Edgar 2017:76), there is no doubt, that the executive has overused the use of theories, as well as principle of national security, and the status of emergency state. Whenever presidential

administrations or Congresses announced ‘times of emergency’, it meant automatic change in the scope of protection of basic civil rights, such as freedom of speech, freedom of assembly, due process of law, and the right to privacy (Farber 2008). Such an approach was usually supported by other branches of government, especially courts, which followed the rule, that in “times of emergency and peril” the scope of constitutional protection of basic rights and freedoms may be limited (*Korematsu v. U.S.*). The Surveillance State, though, could not exist without certain level of secrecy, justified by objective circumstances of emergency, as well as subjective beliefs of the executive determining the scope of information provided to the society.

Politics and the culture of secrecy

The culture of secrecy resulting in excessive classification of surveillance policies observed in contemporary U.S. political system, no matter how explained or justified, may bring a lot of negative consequences not only to political subjects, but also to the society, and the system in general. There are at least four counterarguments to secret surveillance: the potential of abuse, the lack of effective control and accountability, limitations of rights and freedoms of individuals, as well as the deterioration of trust.

The history of U.S. secret surveillance in the 20th century proves, that lack of transparency could serve to hide illegal actions undertaken by governmental officials, such as warrantless eavesdropping of political opponents, social activists, or organizations (Theoharis 2011). It may also lead to a paradox, that if secrecy serves to hide abuse, and abuses can weaken national security, therefore limiting secrecy could become a way to protect national security (Prados 2014:112). Excessive secrecy means that the system lacks transparent oversight of governmental programs and actions, or that the applied measures of control are ineffective and inefficient. In both perspectives the stable or ad hoc control is imposed marginally, as there is not enough information which can be revealed to the public. It seems that only the press or single whistleblowers could become the “sunlight” to which Justice Brandeis (1914: 92) referred 100 years ago when supporting the necessity of governmental transparency.

Furthermore, the culture of secrecy threatens the constitutional protection of fundamental rights and freedoms of individuals, including freedom of speech, the right to be informed, and the right to privacy (Keller 2017). In U.S. history administrations tried to restrain publication of secret documents (Nixon and *Pentagon Papers* case), hid behind state secrets doctrine in order to limit courts’ knowledge on the facts (principle confirmed in *United States v. Reynolds*), and violated the privacy of U.S. citizens by imposing several secret surveillance programs (NSA’s

operations Stellar Wind and Prism). The Secret Surveillance State also lacks democratic accountability, as the decisions concerning the implementation of surveillance policies are made in secret, and without any serious control from other branches of government. Congressional oversight seems more effective when carried out ad hoc, as a result of intensified control, rather than as a stable and thorough analysis of the legality of actions undertaken by executive agencies. Judicial check, if imposed, serves as a reaction to already implemented surveillance policies, and any efforts of preventive control come down to the confirmation of warrant requests. As Kitrosser argues, “insufficient checking breeds unnecessary, even counterproductive, secrecy” (2015: 2).

Lack of accountability leads to the deterioration of trust in government, by using non-verifiable arguments justifying excessive surveillance programs. According to the intelligence community officials, the measures undertaken by NSA in 21st century led to the detection of several terrorist plots, but the real number of successful operations limiting terrorist threats, as well as their real character remains classified. And even if the society understands the reason of keeping the statistics about NSA’s successful operations secret, there is no way these statistics could be verified.

The analysis of the legal and political consequences of the Snowden affair allows to argue, that in 2013 the United States faced similar reality as in the mid-1970s. There are, of course, obvious differences in the political circumstances in which the Church and Pike Committees operated, but the scope and character of challenges seems exactly the same. Arnold argues that contemporary secrecy regime is “at least as excessive as it was in the 1970s when Washington promised something new” (2014: 6). The shock caused by 1975 congressional investigations forced the political establishment to introduce various means of control which aimed at exchanging secrecy for transparency. The idea of an open government became the fundamental principle of political leaders aware of the social distrust in Washington (Solove 2011). Snowden’s revelations also raised questions and concerns about the legality of surveillance programs and – in a more general context – the state of American democracy. Even the critics of Snowden decision, as Attorney General Eric Holder admitted, that he “made public service by raising the debate that we engaged in” (Edgar 2017: 6).

Although the challenges faced by the 21st century surveillance are different from the ones present in times when electronic surveillance was only a dream, and the agencies collected less data, but the general problems concerning the legality of surveillance measures are the same. The main question arises concerning the adaptability of old laws to modern era. The Fourth

Amendment, which served as the basis for state surveillance, but also as a protection of the right to privacy, was written in 1791 and used in the 20th century to determine the scope of eavesdropping, telegram searches, or telephone wiretapping (Glennon 2015). As Edgar observes, “in an era of global mass surveillance, the inevitable consequence . . . is that the Fourth Amendment protects only a tiny fraction of the world’s data” (2017: 68). But even if the technological change has outrun the legal text, American judiciary has often actively interpreted the constitution to expand the meaning of its clauses (Laidler 2011).

Secrecy and transparency cannot fully co-exist at the same time, therefore the institutions responsible for the interpretation of the law should pose a concrete limit to both values. It seems that the limit depends on the state of mind of the society: in times of intensified press investigations or whistleblower leaks, of active operation of oversight committees, and of frequent judicial review, there is pressure for greater transparency. But in times of crises, wars, or terrorist attacks, secrecy not only prevails, but is treated as a value by both the authorities and the society (Fung et al. 2008: 106). Post-9/11 polls indicated that a lot of citizens were ready to give away some of their freedoms for stronger security, and that they were able to approve of the anti-terrorist measures imposed by the government (Parenti 2003: 184). The problem occurs when one realizes that the level of threat to security is not only determined by exterior factors (terrorist attacks) but also by the government. Numerous times in history the government declared times of emergency, thus expanding its powers, and the power of secrecy. Therefore, in the Secret Surveillance State it is almost impossible to enjoy broad transparency, as the government may always use the rhetoric of national security to limit fundamental freedoms of the people. And if, as a result, people do not trust the government, their choice during the electoral process is not determined by the politics of surveillance, which are similar in the Republican and Democratic governance. Secrecy knows no color, and it becomes a value for ‘red’ and ‘blue’ presidents.

The paradox is, that the United States as a Secret Surveillance State are at the same time one of the most, if not the most transparent country in the world. Analysis of the 20th and 21st century legislation proves high institutionalization of disclosure processes, which were legitimized by the reference to the First Amendment’s freedom of speech. Despite the fact that today these disclosure institutions are mainly taking preventive measures to limit the possibility of excessive secrecy, their creation was determined by reactive measures taken by U.S. Congress. Such situation occurred in 1970s with the Federal Election Commission established to control the campaign financing in federal elections (Mutch 2014), the implementation of special prosecutor responsible for checking the legality of actions undertaken by executive officials (Salokar 2000;

Harriger 1992), or as a result of the Church and Pike Committees' findings leading to creation of the FISA Court. One should add to this several disclosure regulations promoting the idea of an open government, as well as numerous oversight committees which role was to verify legality of governmental actions and support greater transparency. The post-Snowden era, affected by the truth about secret governmental surveillance programs was also marked by public exhortation for openness and transparency, but the legislative and institutional effects were not significant. Implementation of the Freedom Act in 2015, requiring the government to request records from phone companies for foreign intelligence purposes under court order, was the only central regulation, which – at least theoretically – strengthened the control over secret actions of surveillance agencies. It was supported by Democratic President, Barack Obama, but also by several Republicans who backed the bill in House of Representatives and Senate. On the other hand, there have been no disclosure measures and institutions established after 2013, which would be equipped with oversight powers, except for Privacy and Civil Liberties Oversight Board which received broader competences, but existed since 2004 (Edgar 2017: 29). Of course, the said paradox between secrecy and transparency is not only rooted in the character of the U.S. separation of powers and checks-and-balances system, but also, as Levitsky and Ziblitz (2018) argue, can be derived from the style of current governance which undermines other branches of government or political opposition.

Conclusion

Whether we are analyzing times before Snowden when the growth of national security paradigm in U.S. foreign and domestic policies was significant, or the post-Snowden era when mass surveillance conducted by the government received political and social attention, the research findings concerning the engagement of Democratic and Republican politicians in the process of sustaining the Secret Surveillance State are equal. As members of the executive they are somehow justified, because secrecy is not only an indispensable element of functioning of the executive from the birth of American statehood, but it is also the core idea of how intelligence agencies operate. Congress, as the main legislative body which is responsible for implementing legal framework for surveillance, but also for imposing effective oversight measures, has been struggling to limit too broad secrecy of executive actions. Although it seems more likely to see Democratic Congressmen actively promoting the ideas of transparency rather than their Republican counterparts, history proved that in times of crisis, defined as times of emergency,

both political parties united in order to strengthen the powers of the government. Cold War and the war on terror have served as a legitimization of initiating secret surveillance programs which scope went far beyond constitutional and statutory delegation, and only the disclosure of these programs by the press or whistleblowers made any change possible. Still, the change American citizens were longing for has never come to fulfillment, providing for a system of limited transparency. The Secret Surveillance State, where National Security Agency is able to intercept metadata of anyone using mobile phone or internet, where telecommunication companies have to cooperate with the government sharing data of their clients, where every next Congress increases the budget of executive and intelligence agencies conducting national security surveillance, and where congressional oversight committees and special judicial institutions are provided only limited information about the scope of surveillance programs, is contemporary American reality. The culture of secrecy attracts politicians from both parties, and even if they use the rhetoric of transparency, they are finally charmed by the possibility to expand their powers in the name of security - national security.

Funding:

The article is a result of the Polish-German research project *Beethoven-2 Trust and Transparency in an Age of Surveillance. American, German and Polish perspective* funded by the Polish National Science Center (UMO-2016/23/G/HS5/01864).

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