

Secret and Sanctioned: Covert Operations and the American Presidency¹

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*The Committee has found that certain covert operations have been incompatible with American principles and ideals and, when exposed, have resulted in damaging this nation's ability to exercise moral and ethical leadership throughout the world.*²

I. Introduction

In 1976, the Senate Select Committee on Intelligence Activities³ published a multi-volume report examining America's Cold War secret intelligence operations and offering conclusions about what it termed the "basic issue": whether secret operations under the exclusive control of the Executive Branch can be reconciled with a democratic system of government.⁴ Secrecy, the Committee found, had encouraged the Executive Branch to use covert operations as a means of bypassing the legislative process and forestalling public debate on potentially unpopular initiatives.⁵ The Committee ultimately made several recommendations designed to limit the Executive's use of covert action and increase congressional oversight of future operations, emphasizing that "covert action must in no case be a vehicle for clandestinely undertaking actions incompatible with American principles."⁶

In his 1996 book, *Secret and Sanctioned*, author Stephen Knott identifies the Select Committee investigation as the beginning of a long, concerted congressional effort to interfere with the President's exercise of authority over clandestine operations.⁷ He traces this struggle for control over covert operations through the Iran-Contra scandal and up to the first Bush administration, when President George H.W. Bush yielded to congressional calls for appointment of an independent inspector general within the Central Intelligence Agency (CIA).⁸ The final chapter of his book is

dedicated to Knott's central thesis: that the growth of congressional oversight is not only unwise, but predicated on the faulty assumption that the CIA's Cold War activities are inconsistent with American principles and values.

As Knott explains in his introduction, he embarked on his research to correct the popular misconception that covert operations only began in the modern era and to "restore a sense of historical perspective" to modern debates over the roles of the legislative and executive branches.⁹ He is only partially successful. While his primary sources do establish that the founding generation carried on certain military and diplomatic missions in secret, these early activities are fundamentally dissimilar from the complex operations undertaken by the CIA in modern times. The historical value of Knott's work is undermined by his persistency in overlooking these differences and his insistence that the Founding Fathers would have endorsed a system they could scarcely have imagined. Like a well researched editorial, *Secret and Sanctioned* presents historical facts in support of the author's political opinions; those expecting a balanced approach to this topic will be disappointed.

II. The Executive Branch's Use of "Clandestine Operations" in Foreign Affairs, 1775-1947

The bulk of Knott's work is dedicated to scrutinizing the Executive Branch's early involvement in foreign affairs and wartime intelligence operations for activities that can be equated, however tenuously, to campaigns later undertaken by the CIA. The goal of this early history is not to trace the development of American covert operations, but to vindicate the actions of the Cold War administrations.¹⁰ Consistent with that aim, Knott identifies a litany of secret operations that can be compared to the CIA's endeavors during the Cold War: George Washington's efforts to infiltrate the British headquarters in New York City during the Revolutionary War; the pervasive use of spies posing as diplomats; Thomas Jefferson's support of a coup attempt during the war with Tripoli; James Madison's support for

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¹ STEPHEN F. KNOTT, *SECRET AND SANCTIONED: COVERT OPERATIONS AND THE AMERICAN PRESIDENCY* (1996).

² FINAL REPORT OF THE SELECT COMMITTEE TO STUDY GOVERNMENTAL OPERATIONS WITH RESPECT TO INTELLIGENCE ACTIVITIES: FOREIGN AND MILITARY INTELLIGENCE, S. Rep. 94-755, 94th Cong., 2d sess., 1976, bk. 1, 156 [hereinafter CHURCH COMMITTEE FINAL REPORT].

³ Widely referred to as the "Church Committee" after its chairman, Senator Frank Church.

⁴ *Id.* at 16.

⁵ *Id.* at 156.

⁶ The Committee was particularly concerned with "U.S. involvement in assassination plots against foreign leaders and the attempt to foment a military coup in Chile in 1970 against a democratically elected government," characterizing these operations as "failures in purposes and ideals." *Id.*

⁷ KNOTT, *supra* note 1, at 167.

⁸ *Id.* at 183.

⁹ *Id.* at 4.

¹⁰ See, e.g., *id.* at 187 (predicting that the day will come "when the covert operations of America's presidents from Truman to Bush will be seen as reasonable actions well within the bounds of traditional American practice").

pro-American rebels in West and East Florida; and repeated presidential meddling in Mexico.¹¹

In addition to documenting these initiatives, Knott cites the writings of George Washington, Alexander Hamilton, John Jay, and Thomas Jefferson as evidence that the founding generation viewed covert operations as the exclusive purview of the Executive Branch.¹² A representative quotation from Alexander Hamilton bemoans Congress's inability to act decisively:

Congress have kept the power too much into their own hands and have meddled too much with details of every sort. Congress is properly a deliberative corps and it forgets itself when it attempts to play the executive. It is impossible such a body, numerous as it is, constantly fluctuating, can ever act with sufficient decision, or with system.¹³

Knott's treatment of Alexander Hamilton indicates his overly simplistic approach. He characterizes Hamilton as a vigorous advocate of "the unrestricted use of executive power to direct secret initiatives" based primarily on Hamilton's involvement with intelligence operations during the Revolutionary War and his request for a secret service fund in 1798.¹⁴ In doing so, Knott means to suggest that Hamilton, along with the other Founding Fathers, would have objected to Congress's future attempts to reign in the CIA.¹⁵ This unsupported interpretation of Hamilton's writings is entirely speculative and, as a result, of limited usefulness. In addition to advocating for an energetic executive, Hamilton adhered to the principle of prudence in foreign affairs and repeatedly argued against becoming involved with other nations.¹⁶ In fact, his initial draft of Washington's *Farewell Address* included the admonition that "the great rule of conduct for us in regard to foreign Nations ought to be to have as little political connection with them as possible."¹⁷ As one scholar of Hamilton's work concludes:

¹¹ *Id.* at 72–79 (Jefferson's war with Tripoli); 88–104 (Madison's operations in Florida); and 112–20, 127–35 (Presidents Monroe, Jackson and Polk all sponsored various attempts to influence Mexico, culminating in the Mexican war).

¹² *Id.* at 24–48, 79–84.

¹³ *Id.* at 42 (quoting from Hamilton to James Duane, September 3, 1780, HAMILTON'S PAPERS, 2:404).

¹⁴ *Id.* at 39–42.

¹⁵ *See, e.g., id.* at 187 (arguing that "the truth is, that from Truman to Bush, America's presidents conducted their clandestine foreign policy in a manner than remained faithful to the practices and beliefs of their revered predecessors.").

¹⁶ MICHAEL P. FREDERICI, THE POLITICAL PHILOSOPHY OF ALEXANDER HAMILTON 149 (2012).

¹⁷ *Id.* at 181.

By the mid-twentieth century, the centralization of government had evolved beyond anything Hamilton could have imagined . . . Hamilton wanted the nation to be strong enough to make its debt payments, create a currency and banking system, and build a standing army large enough to deter European powers from encroaching on American interests. These policy objectives are hardly the stuff of modern nationalism.¹⁸

It is impossible to guess what Hamilton would have thought of two hundred years of history, two World Wars, and the bureaucracy that has evolved into the modern CIA.

The effectiveness of Knott's historical survey is further blunted by his determination to present every episode as a vindication of the CIA's Cold War efforts. For example, Knott meticulously documents the development of President Washington's Contingency Fund, an appropriation intended to finance the President's diplomatic and intelligence operations overseas.¹⁹ Washington was granted the latitude of accounting for only those expenditures that he deemed necessary to make public; in this area, he enjoyed almost complete discretion.²⁰ Knott concludes that this practice reflects an early consensus "that the president was the appropriate administrator of the instruments of American policy,"²¹ an observation that, even if true, has little to do with the concerns of the Church Committee.²²

Washington used the Contingency Fund to finance the efforts of two men dispatched to gather information about the intentions of Great Britain, Portugal, and Spain.²³ The differences between these "operations" and the paramilitary coups attempted by the CIA in Central America are legion. If some members of Congress were disturbed by the actions of two spies in 1790, as Knott acknowledges, why should it be surprising that the CIA's participation in domestic spying, assassination attempts, and fascist regimes would come under intense Congressional scrutiny?²⁴ Knott's thesis is predicated on the belief that policies adopted in 1790 should shape the relationship between the executive and legislative branches in 1980. His failure to address significant developments in the intervening period does little to help his cause.

¹⁸ *Id.* at 185–86.

¹⁹ KNOTT, *supra* note 1, at 54.

²⁰ *Id.*

²¹ *Id.* at 160.

²² *See supra* note 3.

²³ KNOTT, *supra* note 1, at 55–56.

²⁴ *Id.* at 55, 59.

III. The Unforeseeable Growth of America's Clandestine Capabilities

Portions of *Secret and Sanctioned* suggest the work it could have been; Knott's description of the American effort to expand into Florida and Texas is interesting enough to warrant its own book, and his analysis of the extent to which European politics played out on the American continent is equally well written and researched. Unfortunately, these high points are almost completely overshadowed by the claims Knott makes in the last chapter of his book.

Clearly incensed over what he views as an unprecedented degree of Congressional meddling in the work of the CIA, Knott makes the outlandish claim that "the major Cold War alteration in regard to clandestine operations occurred in Congress, where a tradition of deference to the executive was discarded."²⁵ Even a casual student of American history could identify several "alterations" that had a more significant impact on clandestine operations: the founding of the CIA;²⁶ the growth of an intelligence bureaucracy and the accompanying escalation of interagency rivalries;²⁷ the Vietnam and Korean Wars, both of which were conducted by the Executive Branch without a declaration of war from Congress;²⁸ and the clandestine support of regimes engaged

²⁵ *Id.* at 186.

²⁶ See MICHAEL WARNER, ED., *CENTRAL INTELLIGENCE: ORIGIN AND EVOLUTION—HISTORICAL PERSPECTIVE*, <https://www.cia.gov/library/PUBLI-publications/creation-of-ic-founding-documents>; see also WILLIAM M. LEARY, ED., *THE CENTRAL INTELLIGENCE AGENCY: HISTORY AND DOCUMENTS*, (1984)(noting that the United States "came late to defining the need for an intelligence institution as an arm of foreign policy. Secretary of State Henry Stimson's alleged statement, 'Gentlemen do not read each other's mail' reflected the United States' rejection of ongoing espionage activities).

²⁷ The tension between the CIA and armed forces, in particular, date back to the formation of the agency. Ironically, "the feuding between the State, War, and Navy departments over controlling intelligence was what strengthened the arguments for a new, independent, civilian agency with presidential backing so that it could centralize information." JON RANELAGH, *THE AGENCY*, 103 (1986). In addition to establishing the CIA, the National Security Act of 1947 reorganized the Department of Defense, "shift[ing] responsibility away from individual service secretaries and [giving] the Office of the Secretary of Defense] authority over the 'national military establishment.'" H.R. MCMASTER, *DERELICTION OF DUTY*, 13 (1997). This dynamic forced all the services to compete for scarce resources by expanding their "roles and missions," some of which were impacted by the new intelligence agency's ability to carry out covert action operations. *Id.* at 14; see also CHURCH COMMITTEE FINAL REPORT, *supra* note 2, at 98 ("[T]he CIA assumed functions very different from its principal mission, becoming a competing producer of current intelligence and a covert operational instrument in the American cold war offensive.").

²⁸ See CLAY BLAIR, *THE FORGOTTEN WAR: AMERICA IN KOREA 1950-1953*, 72-73 (1987)(noting that the armed forces entered Korea under the "'guise of aid' to the U.N." and that "the White House announcements of these decisions were deliberately understated. There was no indication or implication that America was embarked on the road to war. America was merely humanely responding to a United Nations request for limited assistance to South Korea."); see also STANLEY KARNOW, *VIETNAM: A HISTORY*, 320-21 (1983)(observing that President Lyndon Johnson "balked at mobilizing public support for the war in Vietnam. Instead, he

in wide-spread human rights abuses that are absolutely antithetical to American values."²⁹ Knott's willingness to overlook the ramifications of the CIA's involvement in the latter reflects an "ends justify the means" worldview that is as dangerous to the American way of life as the principles he claims to deplore.

Two recent books refute Knott's portrait of the CIA as an organization with no need of legislative oversight. In *Legacy of Ashes: The History of the CIA*, author Tim Weiner describes the establishment of the CIA with an attention to detail that is missing from *Secret and Sanctioned*.³⁰ From the outset, *Legacy of Ashes* documents the extent to which the CIA represented an entirely new development in the history of American intelligence. General William Donovan, the head of the Office of Strategic Services (OSS), reported to President Truman in 1945 that the United States lagged woefully behind other countries in the realm of intelligence systems:

All major powers except the United States have had for a long time past permanent worldwide intelligence services, reporting directly to the highest echelons of their Government. Prior to the present war, the United States had no foreign secret intelligence service. It never has had and does not now have a coordinated intelligence system.³¹

President Truman was so unimpressed with the idea that he fired General Donovan and disbanded the OSS.³² The Pentagon and the State Department vehemently opposed the formation of a new agency; when the CIA was finally stood up, it had no charter and no appropriated funding for the first two years of its existence.³³ Dean Acheson warned the President that "as set up neither he, the National Security Council, nor anyone else would be in a position to know what it was doing or to control it."³⁴

manipulated the news media, evidently presuming that his measures would not be noticed . . . Whatever his motives, he refused to admit that he was going to war, yet he would never disavow his commitment.").

²⁹ The Church Committee Report argues that "[t]he U.S. involvement in assassination plots against foreign leaders and the attempt to foment a military coup in Chile in 1970 against a democratically elected government were two examples of such failures in purposes and ideals." CHURCH COMMITTEE FINAL REPORT, *supra* note 2, at 156. The abandonment of CIA-backed forces at the Bay of Pigs to death and imprisonment at the hands of Fidel Castro surely counts as a third. See JOHN PRADOS, *PRESIDENTS' SECRET WARS: CIA AND PENTAGON COVERT OPERATIONS FROM WORLD WAR II THROUGH THE PERSIAN GULF*, 201-207 (1996).

³⁰ TIM WEINER, *LEGACY OF ASHES: THE HISTORY OF THE CIA* (2007).

³¹ *Id.* at xviii.

³² *Id.* at 8.

³³ *Id.* at 28.

³⁴ *Id.*

Oversight of the CIA's activities became an ongoing and pervasive problem for every administration. In 1960 and 1961, President Eisenhower commissioned two reports on the CIA, both of which concluded that the CIA's preoccupation with planning and conducting covert operations had handicapped its ability to gather useful intelligence.³⁵ President Eisenhower left office believing that "the structure of our intelligence organization is faulty . . . it makes no sense, it has to be reorganized, and we should have done it a long time ago."³⁶ He characterized his efforts as an "eight-year defeat" that would be left for his successor, President Kennedy, to sort out.³⁷

In *Privileged and Confidential: The Secret History of the President's Intelligence Advisory Board*, the authors discuss the findings of each administration's board of intelligence advisors.³⁸ Although this book's tone is not as conversational as that of *Legacy of Ashes*, the former book reaches many of the same conclusions. Foremost among these is the challenge each administration faced in overseeing the CIA. As already discussed, President Eisenhower's board discovered significant problems within the agency and felt that they were "unable to conclude that, on balance, all of the covert action programs undertaken by the CIA . . . have been worth the risk or the great expenditure of manpower, money and other resources involved."³⁹ Eisenhower's successor, President Kennedy, inherited a deeply flawed intelligence network as well as a tentative plan for the invasion of Cuba.⁴⁰

The Bay of Pigs disaster made President Kennedy determined to avoid another "failure of intelligence."⁴¹ He elected to rely not on the CIA, but on a separate group of advisors.⁴² President Kennedy also decided that "the Pentagon, and not the CIA, should have primary responsibility for future paramilitary actions and that the CIA and its unbudgeted funds needed better oversight."⁴³ This distrust survived into the Nixon administration, when an internal study concluded that "the operations of the intelligence community have produced two disturbing phenomena. The first is an impressive rise in their size and cost. The second is an apparent inability to achieve a

commensurate improvement in its scope and overall quality of intelligence products."⁴⁴

To the authors of *Legacy of Ashes* and *Privileged and Confidential*, the Church Committee reforms were the foreseeable outcome of an agency left to its own devices or the particular habits of the administration in power.⁴⁵ In 1975, President Ford first learned in a five-page memo from Secretary of State Henry Kissinger that his agency had been conducting a campaign of domestic spying and assassination attempts.⁴⁶ Some of these activities had begun in the Eisenhower administration and simply continued, unchecked, until a *New York Times* reporter broke the story in December of 1974.⁴⁷ In 1981, when Congress began to oversee the CIA, the agency's director simply resolved to work around the committees.⁴⁸ The determination to circumvent Congress was so pervasive that it divided the CIA's own personnel; the agency's deputy director resigned after being lied to by the director on several occasions.⁴⁹

Knott never reconciles this view of the agency with his call for exclusive executive oversight. He simply assumes, without discussion, that the Cold War presidents were willing and able to oversee a complex bureaucracy in the same way George Washington managed military intelligence efforts during the Revolutionary War. Although *Secret and Sanctioned* was apparently intended to support that analogy, it never does so convincingly.

⁴⁴ *Id.* at 173.

⁴⁵ John Prados reaches a similar conclusion in his book on the CIA's covert operations. In *Presidents' Secret Wars*, he argues that "the record on presidential control of covert actions is that these have never been under complete control, although the White House has total authority to order them. The problem with this authority is that it may not exist . . . This legal conundrum would not exist if there were a detailed charter that specified permissible missions and methods for the intelligence agencies; but initiatives for charter reform were headed off by the Carter administration in 1978 and 1980. Presidents as politically diverse as Eisenhower and Johnson have consistently opposed intelligence reform. The device of issuing executive orders to regulate intelligence is precisely aimed at avoiding charter revision by law." JOHN PRADOS, *PRESIDENTS' SECRET WARS: CIA AND PENTAGON COVERT OPERATIONS FROM WORLD WAR II THROUGH THE PERSIAN GULF*, 473 (1996).

⁴⁶ WEINER, *supra* note 24, at 390.

⁴⁷ *Id.* at 389. See SEYMOUR HERSCH, *Huge CIA Operation Reported in U.S. Against Anti-War Forces; Other Dissidents in Nixon Years*, *NEW YORK TIMES*, Dec. 22, 1974; see also CIA's Chief Historian Gives Perspective on Newly Released Documents, June 29, 2007, available from <https://www.cia.gov/news-information/featured-story-archive/2007-featured-story-archive/>. The "Family Jewels" documents detailing the CIA's Vietnam-era domestic activities are available on the CIA's website under its Open Government Initiative at <https://www.cia.gov/open/index.html>. These documents describe "the use of a member of the Mafia in an attempt to assassinate Fidel Castro," the imprisonment of KGB defector for a period of two years "in a cell behind bars with nothing but a cot in it," and the surveillance and wiretapping of newspaper reporters "who were suspected of disclosing classified information." "Family Jewels," Attachment A, page 5, <https://www.cia.gov/open/index.html>.

⁴⁸ *Id.* at 442.

⁴⁹ *Id.*

³⁵ *Id.* at 193.

³⁶ *Id.* at 194.

³⁷ *Id.*

³⁸ KENNETH MICHAEL ABSHER ET AL., *PRIVILEGED AND CONFIDENTIAL: THE SECRET HISTORY OF THE PRESIDENT'S INTELLIGENCE ADVISORY BOARD* (2012).

³⁹ *Id.* at 45.

⁴⁰ *Id.* at 53.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

The United States did not have a standing intelligence organization until after World War II. The founding of the CIA was by no means certain and represented a fundamental change in America's intelligence gathering and covert action capabilities. Knott has not produced a shred of evidence to suggest that the founding generation could have conceived of such an organization, much less formed an opinion as to the propriety of legislative oversight.

and domestic spying with democracy, and the degree to which foreign policy ends justify unsavory means. Unfortunately, Knott is as determined to answer those questions as he is to raise them. His willingness to cast his opinions as scholarship is both distracting and disappointing to those seeking a history of early American clandestine operations.

IV. Conclusion

Those looking for an opinion piece on the appropriate balance of power between the legislative and executive branches will find a good deal to consider in *Secret and Sanctioned*. Knott raises several interesting questions concerning the role of American values and principles in clandestine operations, the compatibility of secret initiatives