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reining in the state
Introduction

On Saturday, June 11, 1977, John Shattuck, a young attorney with the American Civil Liberties Union (ACLU), parked his car at Marygrove College in Detroit, Michigan. He entered the auditorium, winding his way through the crowd to the folding table on the side. Shattuck pulled dozens of pamphlets and brochures from his worn leather briefcase including one published by the House Government Operations Committee titled, “Litigation under the Freedom of Information Act” and placed them in neat piles on the table. He glanced at his watch and as if on cue, an organizer for the Michigan Coalition to End Government Spying appeared behind the podium to introduce the attorney from Washington, D.C. People quickly took their seats as Shattuck, speaking in his booming baritone, began a talk that he had given dozens of times before. The ACLU’s campaign to educate victims of government surveillance, he explained, was a nationwide effort to help citizens understand their basic constitutional rights. Using new laws like the Privacy Act and the Freedom of Information Act (FOIA), those who suspected they had been targets of secret government spy operations could obtain copies of their “dossiers” from government agencies. If they secured evidence that their rights had been violated, Shattuck assured them that the ACLU would provide free legal advice to those wishing to pursue lawsuits against government agencies. A few in the audience scribbled on notepads. After concluding his remarks, he moved off stage, making way for the next speaker, U.S. Congressman John Conyers.¹

In 1977, the House Committee on Government Operations published the first of its kind citizen’s guide on how to request records from federal agencies. Nearly 50,000 copies of this guide were distributed by men like Shattuck to American citizens from 1977 to 1986. Members of Congress, the House Committee on Government Operations, and other federal agencies distributed thousands more. Shattuck attended dozens of conferences like this one in the late 1970s. As an attorney for the ACLU he was part of an army of activists battling to rein in the state. They suc-
ceeded in transforming the American state from one that operated with few checks and balances regarding government intrusion into privacy, to one that was inherently more transparent. Their movement had a lasting impact on the nation’s most powerful institutions and shaped American political culture well into the twenty-first century.

This book is a history of the movement to rein in the state during the 1970s. It chronicles the efforts of a group of unheralded heroes who battled to reinvigorate judicial, legislative, and civic oversight of the executive branch to prevent abuses by government agencies in the future. The cast of characters includes Russ Wiggins, editor of the Washington Post, who organized a journalist campaign for government transparency; John
Moss, a representative from California, who called the public’s attention to government censorship during the Cold War; U.S. Army Captain Christopher Pyle, who blew the whistle on the army’s secret domestic surveillance programs; Aryeh Neier, the director of the ACLU, who created a legal strategy to increase judicial oversight of executive branch security measures; Senator Sam Ervin, a civil libertarian, who demanded greater congressional oversight of the executive branch; and Morton Halperin, a former National Security Council (NSC) staff member, who called attention to the gross constitutional violations of the nation’s top security agencies. During the 1970s, these reformers stood apart from the radical left and the anti-government right. Rather than overthrow or demolish American political institutions, they sought to bring the American state in line with democratic practice. Like their early twentieth-century forebears, they believed in the power of good government. Informed by 1960s culture, they sought to invigorate participatory democracy.

These reformers responded to an era of unprecedented growth of the federal government since 1932. Nothing better exemplified that growth than the vast expansion of the national security state. In the immediate aftermath of World War II, federal officials centralized foreign policymaking within the executive branch to ensure that intelligence gathering and sharing were more systematically integrated into the American state. The National Security Act of 1947 established the Central Intelligence Agency (CIA) and the NSC and unified the armed services under one administrative office within the new Department of Defense. These capacities greatly enhanced the power of the president to conduct foreign policy. In particular, Cold War–era presidential administrations, sometimes but not always working closely with Congress, further expanded the national security state with new agencies and departments. Before the mid-1970s, democratic oversight of this burgeoning bureaucracy, whether by congressional hearings, mass media investigations, or public interest groups, was inconsistent, at best.

During the 1960s and early 1970s American presidents Lyndon B. Johnson and Richard M. Nixon responded to an era of social change movements, radical politics, and urban disorders by expanding the federal government’s domestic surveillance capacities. Using new computer and data bank technologies, federal agencies watched, wiretapped, and spied on broad segments of the American population. By the mid-1970s the Departments of the Army and Justice alone maintained some 400 data banks containing nearly 200 million files on individuals and organizations in the United States, capacities that rivaled the Federal Bureau
of Investigation (FBI) (in 1970 the U.S. population totaled some 203 million). Rarely did elected and appointed officials and career civil servants worry how the implementation of these programs might undermine civil liberties. Few possessed a profound appreciation for constitutional law. They were, for the most part, technocrats with a powerful trust in the use of technology and institutional capacity to solve social problems. A few cautioned against such broad domestic surveillance operations, fearing the breakdown of constitutional authority in the process. But even they assumed the programs would be temporary, though necessary, evils—measures that officials would discontinue after tempers cooled and social order returned. While scholars have developed a rich literature that explores the growth of the FBI’s domestic response to urban unrest and civil disorder in the 1960s, few have explained the central role the Department of Justice and the Department of Defense played in domestic security operations, especially in the 1960s era.

The state’s domestic spy operations and the tumultuous politics of the 1960s created fertile ground for reformers to challenge the power and reach of the national security state. The turbulent events of the late 1960s—the increasingly unpopular war in Vietnam, the limitations of the War on Poverty, the assassinations of Robert Kennedy and Martin Luther King, Jr., the urban riots and campus protests throughout the decade—seriously undermined the U.S. public’s belief in the competency of national political figures and government institutions to solve the nation’s problems. The citizenry’s alienation also fostered a wave of individual and organizational efforts to rein in state power. When whistle-blowers pulled back the curtain on secret domestic surveillance programs in the early 1970s, neo-progressives led the campaign to halt these programs.

Activists such as Christopher Pyle, Aryeh Neier, and Morton Halperin partnered with editors and journalists Russ Wiggins, Charlie Peters, and Seymour Hersh, who demanded greater transparency of government agencies. Beginning with Franklin Roosevelt’s censorship policies during World War II, presidential administrations regularly restricted or censored the news during the Cold War era. Frustrated journalists and editors demanded better access to information at the local, state, and federal levels. Editors and journalists organized a right to know movement through their professional organizations, such as Sigma Delta Chi and the American Society of Newspaper Editors (ASNE). Spurred on by the censorship policies of both Democratic and Republican presidential administrations, and in particular, the Johnson administration’s “credibility gap” over its Vietnam War policy, journalists revived a kind of inves-
tigative journalism that had lain dormant for decades. The mainstream media created new forms, both in print and television, through which journalists could publicize their exposés. NBC’s First Tuesday, CBS’s 60 Minutes, and the Washington Monthly offered forums for journalists to publish in-depth stories about the nation’s most powerful people and institutions.

Investigative reports of civil liberties abuses by national security agencies spurred neo-progressives and members of Congress to rein in executive power. While scholars have detailed efforts by the legislative branch to rein in the state following the Watergate scandal, their work has overlooked congressional efforts to challenge executive privilege, wiretapping, and surveillance and to protect First Amendment rights and individual privacy—efforts made long before Watergate became headline news. Beginning in the 1950s and working closely with organizations such as the ASNE, the ACLU, Common Cause, and the Center for National Security Studies, members of Congress devoted their committee and staff resources to better understanding the burgeoning power of the executive branch, particularly on national security issues.

In the twenty years before Watergate, activists relied on a loose coalition of elected officials, Republicans and Democrats, conservatives and liberals, senators and members of the House of Representatives, to strengthen their calls for national security reform: Donald Rumsfeld (R-IL), Barry Goldwater, Jr. (R-CA), and William Moorhead (D-PA), and Senators Ervin, Edward Kennedy (D-MA), Walter Mondale (D-MN), Chuck Percy (R-IL), Frank Church (D-ID), Mike Mansfield (D-MT), and William Fulbright (D-AR). But few federal lawmakers had done more to investigate and reform the state’s control over public information than California Democrat John Moss, chairman of a House Government Operations subcommittee and the father of the FOIA. After conducting dozens of hearings, consulting closely with media organizations and right to know advocates, and publishing thousands of pages of reports, Moss earned bipartisan support in the House and Senate for his legislative efforts. In 1966 President Lyndon Johnson signed the FOIA, legally defining the public’s right to know and providing Americans with new tools to request government information. In the Senate, conservative Democrat Sam Ervin of North Carolina investigated issues related to the presidential aggrandizement of power, including executive privilege, wiretaps and black bag jobs, surveillance, and the right to privacy.

Activists’ demands for greater transparency and accountability in the executive branch appealed broadly to members of both parties. Con-
servatives denounced the burgeoning power of the executive branch as a violation of the separation of powers and as evidence of a tyrannical executive. They pointed to Soviet-style totalitarianism as an example of state power run amok. Senator Ervin called the right to dissent one of the founding principles of the United States and a keystone of American democracy. The state must impose law and order, conservatives insisted, while also protecting the fundamental tenets of American democracy—especially the right to privacy.

Like conservatives, liberals opposed state domestic spy programs on constitutional grounds. But their objections were not rooted in a fundamental aversion to state power. Though they charged national security managers with blatant disregard for American constitutional rights—dissent, freedom of association, personal privacy—they worried more about how unchecked state power undermined American democracy. The state’s natural tendency toward secrecy, they argued, deprived citizens of their fundamental right to know what their government was doing. Liberals wanted to protect legitimate national security institutions such as the FBI and CIA by making these agencies more transparent and accountable to the public. Though conservatives and liberals differed in their philosophical approach to solving the nation’s problems and in their understanding of the role of government in everyday life, they all agreed that the army had no business spying on civilians.

By uniting this loose coalition of allies, reformers won major legislative victories and landmark judicial decisions throughout the 1970s. Beginning with the 1966 signing of the FOIA, the movement reached its apex in 1978 with the passage of the Foreign Intelligence Surveillance Act (FISA). Contrary to recent works that have identified the 1970s as the first decade of “diminishing democracy” when Americans withdrew from national associations that had organized sociopolitical life for nearly two centuries, civic activism flourished throughout the decade.

Public advocacy groups proliferated in the 1960s and 1970s, largely because of the institutional failures of the state. Activists worked with public advocacy groups to create new organizations dedicated to educating the public and lobbying elected officials to enact legislative reform. Believing that policy change would come only through the imposition of new legal and institutional structures, they sought to ignite public debate and shape public discourse. Through conferences, letters-to-the-editor campaigns, and congressional hearings and investigations, they coordinated a strategy to educate the public to the abuses of the national security state. Through the process of discourse and debate, reformers gained public and congres-
external support for sweeping policy changes, including the FOIA (1966),
its revisions in 1974, the Privacy Act of 1974, the Government in the Sun-
shine Act of 1976, resolutions creating permanent intelligence oversight
committees in the House and Senate, and the FISA (1978).

Reformers, investigative journalists, and “good government” activ-
ists reshaped powerful institutions in the 1970s, though until now they
have received little attention by historians. To explain the politics of the
era we must explore how civil society developed new capacities to force
change even as street protests and radical politics diminished. Though
recent works have done much to broaden our understanding of the role
individuals, organizations, and associations have played in leveraging po-
litical power at the local, state, and national levels, the role of civil society
in American political development remains under-explored.

This is a story not only of efforts to stop repressive government power.
It is also a story of how these reformers’ efforts, ironically, had the long-
term effect of legitimating the national security state. Activists instituted
policy reforms to strengthen oversight of the federal government among
its three branches. They developed new state capacities to manage consti-
tutional checks and balances: bureaucracies within bureaucracies to pro-
cess FOIA requests, new congressional committees to oversee domestic
and foreign intelligence programs, and a new national security court to
oversee requests for wiretaps. To restrain the federal government’s do-
mestic security programs, reformers strengthened and enlarged the state,
simultaneously legitimating and normalizing domestic security pro-
grams. Reformers built up the state in order to restrain state power.

This book traces the growth of this movement from a small but vo-
cal coterie of the nation’s most powerful news editors and journalists
in the 1950s, to its apex with the passage of the FISA in 1978. While the
movement is best defined by activists’ trust in “good government,” re-
formers’ motivations changed over time. In the 1950s and early 1960s,
they demanded greater transparency from government. The state’s re-
sponse to civil unrest and disorder in the mid-1960s prompted activists
to reiterate the people’s right to protest. These constitutional violations
led neo-progressives to demand broader protections by reinvigorating
checks and balances throughout the 1970s. Chapter 1 examines the roots
of the right to know movement when journalists, editors, and publishers
responded to government censorship policies. Their campaign prompted
some Americans, and a key ally in Congress, Representative John Moss

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of California, to demand greater transparency in government and culminated with the passage of the first federal law requiring the disclosure of information. Chapters 2 and 3 trace the state’s response to urban revolts, mass protests, and rising crime, focusing on the secret programs developed within the Department of Justice and the Department of Defense to gather information about rioters and dissidents across the nation.

When a counterintelligence officer blew the whistle on the U.S. Army’s domestic surveillance program, reformers had evidence of domestic spying that they had long suspected—but could not confirm. Chapter 4 explores how one officer’s story united liberals and conservatives to demand an end to the executive branch’s unchecked domestic surveillance programs. In the late 1960s and early 1970s, advocacy groups like the ACLU sought to rein in national security policy from the bench. In the words of Aryeh Neier, the ACLU’s executive director and an architect of its civil litigation program, the organization hoped “to stop political surveillance of dissenters,” and to compel the government, through the courts, “to reveal information that it tries to keep secret.”

Chapter 5 explores the judicial and legislative strategies pursued by reformers. When the Watergate story broke, reformers argued that the scandal was further evidence of the need to rein in the state. Indeed, Watergate proved a watershed event, which prompted broad debate in the public sphere about the problems of executive power and the need for greater transparency in domestic security policy and more careful oversight of the activities of various agencies—especially the FBI and CIA—within the national security state. Chapter 6 explores how, in the wake of Watergate, Congress enhanced citizens’ ability to access government information, revising the FOIA to grant the public and the media more powerful tools of discovery. The Privacy Act created a new mechanism for citizens to petition the government for access to their individual records and to dispute the material held therein. Reformers hailed these laws as major victories for the American people.

The Senate Watergate investigation revealed that the executive branch had misused intelligence agencies and capacities, sometimes for political gain, and chapter 7 explores the congressional response to these revelations, placing the creation of permanent congressional intelligence oversight committees in the context of a longer reform effort. Reformers also successfully passed a law to restrict wiretapping and surveillance of American citizens on home soil, the FISA.

The battle to rein in state power did not begin or end in the 1970s, but this successful movement offers a lens through which we can better
understand the parameters of the same struggle today. The concentration of power within the executive branch, one of the defining features of the federal government in the twentieth century, has ignited fierce public debate on the left and right. Though the executive branch continues to have extraordinary powers, particularly in the conduct of foreign relations and national security, this study suggests that state power is, after all, historically contingent. In the 1970s reformers envisioned how a nation of empowered citizen activists could prevent government abuse in the future. They promoted a set of principles that define political debate today: that the people have a “right to know,” that transparency strengthens democracy, and that the state cannot be allowed to accumulate unchecked powers without impinging upon the rights of its citizens.