

On American Power and Politics (Part II)

On our last visit to the crisis in American politics triggered by the FBI raid on Trump's Mar-a-Lago mansion last August, we tried to formulate, in politico-philosophical terms, the question "Who has the legitimate power to raid a citizen's domicile to recover documents deemed secret and/or confidential by the federal government?"

A more precise reformulation, taking into consideration the three branches of American government, would be: Does the U.S. Department of Justice –which is the legal arm of the **Executive** branch of the Federal government– have the right to order a federal law-enforcement agency (i.e., the FBI) to raid the domicile of a former elected official, in order to seize any document considered confidential or top secret by said branch of the government? Or, in other words, does the **Executive** have the right to raid the domicile of an **individual citizen** in order to recover any document, deemed worthy of prosecution of offenders of Federal laws, before the courts [i.e., the **Judiciary**]?

Unfortunately, the issues become even more muddled as we inquire into the meaning of terms such as "Confidential" and "Top Secret" –used to label the misplaced documents to justify the warrant to search Trump's estate. As a rule, these labels pertain to federal government powers which were never enunciated or even appear in the original Constitution.

The First Amendment to the United States Constitution, adopted on December 15, 1791, is one of the ten amendments that constitute the Bill of Rights. It prevents the government from making laws that abridge the freedom of speech, the freedom of the press or the freedom of assembly of any and all individual citizens. However, despite the clear and unmistakable language of the First Amendment, wars, threats of wars, and perceived risks to **national security** have prompted the federal government to, at times, restrict freedom of speech and other First Amendment freedoms throughout U.S. history.

The Sedition Act is an example of a restriction of freedom for the sake of national security. In 1798, Congress, fearful of an impending, full-blown war with France, adopted the Sedition Act, which attempted to stifle any speech that criticized the President. The Federalist Party justified the Sedition Act as a measure needed to prevent threats to national security from within the country.

Again, certain provisions of the USA Patriot Act, which Congress passed forty-five days after the 9/11 attacks in 2001, gave police unprecedented authority to search people's homes and business records secretly and eavesdrop on telephone and computer conversations.

But, how are documents classified as either **Confidential**, **Secret** or **Top Secret** in the U.S.?

The current U.S. government classification system was established under Executive Order 13526, issued by President Barack Obama in 2009. This is the latest in a long series of executive orders on the topic, beginning in 1951. It lays out the system of classification, declassification, and handling of **national security** information

generated by the U.S. government and its employees and contractors, as well as information received from other governments.

The desired degree of secrecy about such information is known as its “**sensitivity.**” Sensitivity is based upon a calculation of the damage to “national security” that the release of the information would cause. The U.S. has three levels of “classification”: **Confidential, Secret, and Top Secret.** Each level of classification indicates an increasing degree of sensitivity. Thus, if one holds a Top Secret security clearance, one is allowed to handle information up to the level of Top Secret, including Secret and Confidential information. However, if one only holds a Secret clearance, one may not handle Top Secret information, but may handle Secret and Confidential classified information.

The United States does not have a British-style Official Secrets Act. Instead, several laws protect classified information, including the Espionage Act of 1917, the Atomic Energy Act of 1954 and the Intelligence Identities Protection Act of 1982. The relevant laws have been mostly used to prosecute foreign agents, or those passing classified information to them.

The most important reasons for “classification” as Confidential, Secret or Top Secret are:

- Military plans, weapons systems, or operations;
- Foreign government information;
- Intelligence activities, sources, methods, or cryptology;
- Foreign relations or foreign activities of the United States, including confidential sources;
- Scientific, technological or economic matters relating to national security; which includes defense against transnational terrorism;
- Government programs for safeguarding nuclear materials or facilities;
- Vulnerabilities or capabilities of systems, installations, infrastructures, projects or plans, or protection services relating to the national security, which includes defense against transnational terrorism; and/or
- The development, production, or use of weapons of mass destruction.

Most espionage law criminalizes only national defense information, but only a jury can decide if a given document meets that criterion; and judges have repeatedly said that being "classified" does not necessarily make information become related to the "national defense". Furthermore, by law, information may be classified only to protect national security objectives.

CONCLUSIONS: Far from defending the actions of Mr. Trump or the positions of his attorneys in the present confrontation with the DOJ and the FBI, we are, as objective thinkers, compelled to arrive at these conclusions:

- (1) That the initial imbalance between the powers of the three branches of the U.S. government has been responsible for the growing pathological mistrust of all governments, as well as their law-enforcement agencies, at the municipal, state and primarily at the Federal level;

- (2) That the exponential growth of the Military and Intelligence establishments have tended to undermine the democratic rights of all individual citizens under the pretext of national security; and
- (3) That the perceived powerlessness of the Federal Executive to deal with the criminal actions of former elected officials, has “weaponized” party politics, and are fomenting anarchy and domestic terrorism, which threaten both the State and the Constitution as conceived by the Founding Fathers.

Sources: https://en.wikipedia.org/wiki/Classified_information_in_the_United_States#cite_note-1
<https://mtsu.edu/first-amendment/article/1134/national-security>

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