

First Principles

NATIONAL SECURITY AND CIVIL LIBERTIES
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National Security and Civil Liberties:
The Situation, the State of the Current
Law, and Legislative Action
CHRISTINE M. MARWICK

The Principal Unlearned Lesson
Watergate: The Need for a Responsible
Presidency
PHILIP B. KURLAND

NOV.: Freedom of
Information Act

ALONG WITH THE CONCENTRATION of political power in the executive branch of government has come the claim that "national security" somehow dictates that we must give up some of our civil liberties in order to protect our freedoms. This claim has not been seriously challenged until the last several years; the veil of secrecy placed over the activities of the executive branch also served to protect these actions from effective public and congressional scrutiny.

With the unfolding of recent events, however, the myth of official benevolence, unanimity, and even expertise began to crumble. It began to emerge that for all practical purposes successive administrations had come to think of the Congress and the American public like a foreign power to be deceived and investigated in the interests of the nation's security. From the initial deceptions a ripple effect began as a system of secret actions were taken to reinforce breaches in secrecy — such as the wiretaps that followed news reports of bombing in Cambodia. Using the claims of "national security" as an incantation to overwhelm all logic, legitimate political controversy was cast into the mold of dissidence and disloyalty. As the trickle of information about illegal government activities grew into a river in Watergate, the credulity of the public changed into a healthy skepticism. But, as Professor Philip Kurland notes in his article in this issue, the executive branch still makes a plea to institutionalize the Cold War era's blind trust in the Presidency. For example, the Rockefeller Com-

mission Report, in spite of all its detailing of CIA abuses, calls for an expanded CIA charter which would solve the problem somehow by making many of its currently illegal actions legal. Likewise, the administration bill S. 1 (the reform of the federal criminal code) would define as unequivocal espionage the Ellsberg "offense" of releasing information to the public. The list of such efforts is a lengthy one — the article on page 3 treats more of them.

The focus of *First Principles: National Security and Civil Liberties* will be on following these issues and the many turns and twists taken in the conflict between expansive claims of national security and civil liberties. We hope to contribute to a return to *First Principles* — the necessary and vital right of full and informed public participation in government — by increasing public awareness of continuing threats and of opportunities to improve the situation.

Each monthly issue of *First Principles* will include an up-date on what has happened in the Congress, the Courts, and elsewhere that affects the conflicting claims of national security and civil liberties. There will also be a literature review keeping you abreast of relevant books, articles, and government publications. Each issue will also focus on a particular topic with guest articles, citations of leading cases, and analysis. In this inaugural issue we survey the field as a whole. Next month we will turn to national security wiretaps.

Why
First
Principles

It is at all times necessary, and more particularly so during the progress of a revolution and until right ideas confirm themselves by habit, that we frequently refresh our patriotism by reference to first principles.

THOMAS PAINE