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Eyewitness to History in Devolution of Democracy and Constitutional Rights Following 9/11

Thomas Drake
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Walden University
2017

Abstract

Eyewitness to History in Devolution of Democracy and Constitutional Rights Following

9/11

by

Thomas A. Drake

Dissertation Submitted in Partial Fulfillment

of the Requirements for the Degree of

Doctor of Philosophy

School of Public Policy and Administration

Walden University

May 2017

Abstract

Many researchers and political experts have commented on the disenfranchisement of the citizenry caused by irresponsible use of power by the government that potentially violates the 4th Amendment rights of millions of people through secret mass surveillance programs. Disclosures of this abuse of power are presumably protected by the 1st Amendment, though when constitutional protections are not followed by the government, the result can be prosecution and imprisonment of whistleblowers. Using a critical autoethnographic approach, the purpose of this study was to examine the devolution of democratic governance and constitutional rights in the United States since 9/11. Using the phenomena of my signature indictment (the first whistleblower since Daniel Ellsberg was charged under the Espionage Act) and prosecution by the U.S. government, data were collected through interviews with experts associated with this unique circumstance. These data, including my own recollections of the event, were inductively coded and subjected to a thematic analysis procedure. The findings revealed that the use of national security as the primary grounds to suppress democracy and the voices of whistleblowers speaking truth to, and about, power increased authoritarian tendencies in government. These tendencies gave rise to extra-legal autocratic behavior and sovereign state control over the institutions of democratic governance. Positive social change can only take place in a society that has robust governance and social structures that strengthen democracy, human rights, and the rule of law, and do not inhibit or suppress them.

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Dedication

I dedicate this study to Jesselyn Radack, Director of the Whistleblower and Source Protection Program (WHISPeR) with ExposeFacts. I consider her the pioneering post 9/11 whistleblower when there was no one there to defend her, after she spoke out as a government ethics attorney against injustice and ethical violations committed by the U.S. Department of Justice, and was personally and professionally punished, persecuted and sanctioned for her actions in the defense of human rights and due process.

She became my indefatigable and fierce whistleblower attorney, resolute public advocate and matchless defender during the worst of my ordeal facing down the government's vindictive and malicious Espionage Act prosecution against me with very long odds. She was also my clarion voice and conscience in the court of public opinion and with the press, fearlessly and so courageously – speaking truth to and about power. In the end, and due in no small part to her extraordinary defense of me privately and publicly, I kept my precious freedoms and liberties that she so well protected on behalf of me.

She continues to dedicate her professional life supporting and defending whistleblowers everywhere – and bringing sunshine to light on the dark deeds of those who would abuse and misuse power as the best form of disinfectant, while providing critical legal services for whistleblowers and media sources in the national security and human rights arena. It is an honor to stand with her in tandem as eyewitness to injustice along that long arc of history – bending it together just a little bit closer toward justice.

Acknowledgments

I wish to acknowledge my mother who continually encouraged me, my father for always promoting education, and my best friend for his regular and sustaining support. Although my mother passed away just before I began the formal research, I promised her I would see it through.

I also want to express my appreciation to Marta Denchfield, a fellow Walden PhD student during our early years attending residencies and colloquia, for her steadfast support and encouragement.

In addition, I want to thank my first methodologist, Dr. John Nirenberg for suggesting the auto-ethnographic approach for this study, even though it was nontraditional and required particular care and attention for the research.

Finally, it is with great sadness that I also want to acknowledge my previous Chair for this study, Dr. Ian Birdsall. He tragically passed away four days after I successfully defended my Proposal before my Committee. His words of wisdom and perspective gave me the persistence to see this long journey through and realize an academic dream turn into reality.

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Chapter 1: Introduction to the Study

Introduction

This study examined what happens when a whistleblower (such as myself), who took an oath to support and defend the Constitution when assigned to the National Security Agency in the Defense Intelligence Senior Executive Service of the U.S. government, disclosed widespread government wrongdoing, 9/11 intelligence failures, billions in fraud as well as the apparent and widespread violations of the rights of citizens under the 4th Amendment of the Constitution, and then ends up persecuted and prosecuted over a five year period by the Department of Justice under the Espionage Act of 1917 (Project on Government Secrecy, n.d.). It raises the questions of what the consequences are of a democratic government decoupling itself from the Constitution in secret and forsaking the rights of the people for the sake of national security in a post 9/11 security world. These consequences strike at the very heart of a special form of democratic governance in a constitutional republic.

Social Implications

My signature indictment (the first whistleblower since Daniel Ellsberg charged under the Espionage Act) and prosecution by the U.S. government was a stark example and reminder of the erosion of civil rights and individual liberties in the post 9/11 world. My criminal case raised the fundamental question of whether the United States can respond effectively to the threat of terrorism and public safety without jeopardizing the precious and inalienable rights of people that characterize and undergird a free, open, transparent, and democratic society. In this regard, there was a distinct and compelling

need for an increased understanding of this vital issue that lies at the heart of the American experience and democratic governance in a constitutional republic.

In addition, this study investigated the long term strategic consequences when democracies, such as the United States, develop surveillance regimes out of fear and the need to protect democratic power through national security without apparent regard to the rights of citizens and people in the process. The question then arises as to whether the very powers of national security developed by authorities in a democracy can threaten democratic governance itself. These are fundamental issues at the heart of the tension between security and liberty, especially in the aftermath of the horrific events of 9/11.

Background

The checks and balances between a strong executive branch of the U.S. government and the legislative and judicial branches can create real democratic tensions regarding the lengths to which obedience to the authority of that government is compelled when the government itself acts in an undemocratic manner. This is particularly the case when government actions are weighed against the Constitutional protections afforded individual rights and liberties (e.g., the Bill of Rights), including the fundamental right to privacy as a citizen granted to the people under the 4th Amendment. This tension is especially relevant in a post 9/11 security-focused world increasingly characterized and dominated by national security, secrecy, executive action, and operations conducted in ways that are not accountable to the public. It is a tension evidenced by the extraordinary and still ongoing Snowden disclosures since June of 2013. This troubling democratic tension between ostensibly democratic governance

authorities favoring security and surveillance at the expense of liberty and privacy was widely noted in the literature (Calo, 2015; Diamond, 2008; Meier & O'Toole, 2006; Tilly, 2007), among others.

While a senior official at the National Security Agency (NSA), I found out about the use of a secret mass electronic eavesdropping and vast digital dragnet data mining program. Furthermore, I discovered that this program was approved by the highest levels of the U.S. government in secret, turning this country into the equivalent of a foreign nation for the purpose of mass electronic domestic surveillance under a program called STELLARWIND, in blatant disregard of the 4th Amendment and a 23-year legal regime called the Foreign Intelligence Surveillance Act (FISA), the exclusive means for the conduct of such electronic collection and surveillance, and carried criminal sanctions when violated (Piette & Radack, 2006).

I also discovered that the NSA had withheld critical and crucial intelligence prior to 9/11 and after 9/11 as well as data and information that was available but was undiscovered, which, if shared, could have made a decisive difference in preventing the 9/11 attacks from ever happening. I also learned about a massively expensive and failing multibillion dollar intelligence program under development called TRAILBLAZER that largely served as nothing more than a funding vehicle to enrich government contractors and keep government program managers in charge when a cheap, highly effective, and operational alternative called THINTHREAD was available in-house that fully protected Americans' and peoples' privacy rights under the law while also providing superior

intelligence to the nation and the common defense, and was compliant with the 4th Amendment and FISA.

These secret “deep state” mass domestic surveillance programs, which appeared to completely bypass the Constitution and existing laws, were born (or expanded) during the first few critical weeks and months following 9/11 as the result of willful decisions made by the highest levels of our government, up to and including the White House. However, such shortcuts and end-runs were not necessary, as lawful and Constitutionally-compliant alternatives existed that would have vastly improved U.S. intelligence capability with the very best of American ingenuity and innovation, while also providing critical support for the common defense of the people from genuine threats to public safety and national security.

The criminal investigation, indictment and prosecution of me by the U.S. government was a stark example of the devolution of democracy and a sobering reminder of the erosion of civil rights and individual liberties in the post 9/11 security world. Many years later, this case continued to remain relevant given the latest news reporting on referrals made by the U.S. Office of Special Counsel to the Department of Justice Inspector General for formal investigation regarding the Department of Defense Office of Inspector General’s likely and probably deliberate destruction (and/or cover up) of crucial material evidence and documents that I provided to them as part of official long-running government investigations of NSA that were central and critical to my whistleblower activities (Taylor, 2016). In addition, the tragedy of 9/11 also accelerated a secret and highly questionable centralization of power within the executive branch often

characterized by activities that were contrary to law, while ostensibly conducted under the cover and the color of law including the secret order by President Bush to permit unfettered mass domestic electronic surveillance by NSA (Fein, 2008).

It was my understanding of FISA, unfortunately proven true with the subsequent revelations about what became known as the Terrorist Surveillance Program (Lichtblau, 2008), that neither the NSA nor even the President's own Constitutional authority permitted the overriding or bypassing of statutory law in regard to conducting warrantless electronic surveillance within the United States and against U.S. citizens and persons. This meant that the targeting of a U.S. person under FISA could not take place without first going through the process of obtaining a judicially sanctioned and approved particularized 4th Amendment standard warrant to do so, even when it limited executive branch authority. It also meant that without a warrant (other than the enumerated emergency conditions under which electronic surveillance could occur without a warrant for a period of time, even in a time of war), such conduct was considered a violation of the law and the 4th Amendment, and punishable with significant felony criminal sanctions and penalties as a deterrent to violating this statute.

It is ironic and troubling that although the Bush Administration did seek and was able to gain the passage of the PATRIOT Act in October, 2001 (PATRIOT Act, 2001), testimony I provided as a material witness whistleblower to two 9/11 Congressional investigations, including the Joint Inquiry that led to the 9/11 Commission, showed that the Administration was continuing to violate the very updated legislation that was passed by Congress and then signed into law by President Bush (Gellman, 2008). If the

administration felt that even the updated FISA (in light of the PATRIOT Act) was insufficient (even though it included a wartime and hot pursuit wiretap provision), key questions arose regarding why they did not just seek to change that part of the law lawfully. One of the most critical aspects of a constitutional republic is that it is always open to the President—or anyone else—to seek to change existing law through lawful due process. I had confronted the lead attorney at the NSA in the Office of General Counsel the first week in October 2001, regarding the apparent wholesale violation of the 4th Amendment and FISA by NSA (Frontline, 2014). However, I was told explicitly that the White House had approved “The Program,” that NSA was the executive agent for “The Program,” and that it was all legal. I was also instructed not to ask any more questions on the subject.

Certain parts of government wield tremendous power, and the use of that power must be lawful, subject to oversight and review, as well as continuing vigilance and accountability (Mayer, 2008). I chose to faithfully follow the Constitution, execute the law and discharge the proper duties of a public servant, as it directly related to how the government conducted itself constitutionally, the way it expended public funds, and how it was carrying out its national security duties and obligations regarding the public trust.

Bypassing the Constitution in this way raised serious questions regarding why some officials wanted to conduct the surveillance in secret away from Congressional scrutiny or the public interest and without the consent of the governed. Unfortunately, when these probably unlawful and unnecessary programs were revealed through whistleblowers, the government criminally investigated those who stood in the way or

raised troubling questions regarding their decisions and their conduct (Fein, 2008). This directly contradicted what it meant to uphold a solemn oath to defend and protect and preserve the Constitution, while also faithfully executing the law of the land without any mental reservation or purpose of evasion (Bacevich, 2008).

Suppressing those who defended the Constitution and the necessary robust and public debate (within and without our system of government) suggested other intentions. Given what has occurred, it could be argued that the office of Presidency and the government itself were seriously damaged and the rule of law and democratic governance significantly compromised as a result.

Nevertheless, the Obama Administration decided to turn my whistleblowing into a signature criminal case by indicting me under the Espionage Act in April, 2010, on 10 felony counts, which could have resulted in many decades in prison (Project on Government Secrecy, n.d.). Fortunately, I prevailed against the government in June, 2011, when on the eve of the public trial, the Justice Department dropped all the felony indictment charges against me in a plea deal, I made on my terms, to a minor misdemeanor for exceeding authorized use of a government computer and a sentence from the Judge of one year probation and 240 hours of community service (I ended up interviewing three and half dozen veterans from WWII to the present day) with no jail time or fine.

My whistleblower experience raised the fundamental question (and gap in the knowledge) of whether the U.S. governance structure can respond effectively to the threat of terrorism and maintain security without jeopardizing the very rights that are

foundational to a free, open, transparent, and democratic society. This problem centered on the historical tension between protecting national security secrets and ensuring the public's "right to know" about abuses of authority that eroded democratic governance.

In the immediate aftermath of the heinous September 11, 2001 attacks on the United States, the U.S. government violated the 4th Amendment in the deepest of secrecy through executive orders and decrees that gave authority to the national security establishment to engage in blanket, dragnet, domestic mass electronic surveillance within the United States as a unitary executive branch action ignoring the required judicial oversight of the Foreign Intelligence Surveillance Court (FISC) established in 1978 under the Carter Administration by FISA. As Piette & Radack (2006) stated, "FISA was specifically tailored to provide a check and balance between Fourth Amendment principles and the government's authority to use electronic surveillance for foreign intelligence and national security purposes" (p. 439). For 23 years, this was the exclusive means to "protect the American people from an overreaching, over-intrusive, and unchecked government while still allowing the government to conduct vital surveillance for foreign intelligence purposes with judicial oversight" (p. 486), while also protecting the privacy rights of citizens and U.S. persons. But the dangers to privacy and liberty were quite real when mass surveillance was employed in secret to monitor people's online activities on an extraordinarily wide scale (Stoycheff, 2016).

However, in the post 9/11 world, increasingly driven by deference to national security interests conducted largely in secret, the reality of these electronic surveillance programs became a clear and contemporary federal democratic governance issue. This

challenge to democratic governance was further heightened by the real tension posed by democracy and a constitutional republic upholding the ideals and practices of freedom and liberty, once the initial contours of these super-secret national security state-sponsored programs were made public with the startling revelations in a *New York Times* article (Risen & Lichtblau, 2005), my own 1st Amendment-protected disclosures to the press in 2006 and 2007, and then later with the Snowden disclosures, first published in the *Guardian* (Greenwald, MacAskill, & Poitras, 2013), since June 2013. These state secret activities were conducted in the absence of traditional public interest debate and discussion, and therefore significantly eroded the rights and liberties of millions of citizens and people under the U.S. Constitution (Frank, 2007; Levinson, 2006).

This study was needed because in the post 9/11 world, given the failure of the U.S. government to keep citizens and people out of harm's way, security took clear priority and even dominance over civil rights and liberty in the name of protecting the nation, an orientation and focus decidedly anathema and even threatening to democratic governance, especially when these secret government programs were not challenged until discovered or exposed at great risk through the disclosures of whistleblowers. Despite legal challenges to the government's interpretations of law regarding surveillance secrecy since the public revelations began in late 2005 with the Risen & Lichtblau (2005) article, several courts have held up legal challenges based on lack of standing or no harm. An example is cited in Richards (2013) regarding the more recent Supreme Court decision in *Clapper v Amnesty International USA* (n.d.), (pp. 1934-1935), while other court cases are still active, such as *Jewel v NSA* (McKeown, 2016).

Problem Statement

The problem that needed further study was the disenfranchisement of the citizenry regarding the unbridled and irresponsible use of power by the government violating the 4th Amendment rights of millions of people through secret mass surveillance programs (Risen & Lichtblau, 2005), and disclosures of this abuse of power protected by the 1st Amendment.

The quintessential nature of the uniquely American form of democracy was historically preserved by adherence to a unique governance structure called a constitutional republic. This “grand experiment” had always been subject to interpretation by the courts, precedent, and tradition as well as swings in the public perspective and societal influences (e.g., Johnson era to Reagan era and Warren Burger Supreme Court to the Roberts Supreme Court). However, the fundamental question that lies at the heart of democratic governance (and the U.S. Constitution) was raised by the questions faced by James Madison during 1786-1787 (Magnet, 2011): How do we best govern ourselves? And what are the means of governance that can satisfy or even fulfill that question?

Newbold (2011) focused on the historically disturbing reality of that tension in democratic governance where confidence by the citizenry in their government (and the governance structures) demands accountability and transparency. However, this openness ran directly opposite to power and control incentives by an increasingly centralized government when the exercise of its governance mandate was obscured from the people. When a democratic form of governance is deliberately sacrificed for the sake of security

out of fear and control, the question became how much secret intrusion into people's lives was then necessary for the federal government to conduct in order to ostensibly protect them. As Benjamin Franklin apparently once said, "Those who would give up essential liberty to purchase a little temporary safety, deserve neither" (The Electric Ben Franklin, n.d.).

In this context of conflicting tensions faced by democratic governance, Smith (2012) examined the claims made by so-called American exceptionalism as a form of evolutionary democratic governance that created a substantial challenge to the foundational underpinnings in the civic structures of the United States, namely the rule of law and democratic governance. These tensions created a distinct democratic governance problem when the demands and primacy of national security eclipsed the inalienable rights of the people (including the right to privacy) and are posited as the sacrifice necessary to keep the body politic safe.

It is against this historical and contemporary background that a distinct and compelling need arose for a deeper examination of what has happened to democratic governance in the United States in the post 9/11 security world and the apparent erosion of key liberties and rights as the price (i.e., sacrifice) to keep that security. Executive branch decisions were made to subsume privacy in the name of national security based on a unitary theory of inherent executive authority asserted in secret (that is, away from public awareness and understanding) under the military Commander in Chief Article II powers of the Constitution. However, this did not become public until several years later (Fisher, 2011).

This challenge to democratic governance was certainly not new in U.S. history, given the ebb and uneven flow of democratic rights and personal liberties. However, the historical tension that checked the governing elite exhibiting a mistrust of those rights (and apparent willingness to trade them for security) and protected the people against abuse by the government under the Constitution, took a decidedly darker historical turn after 9/11, as evidenced by my insider experience. This critical historical nexus following 9/11 posed a fundamental challenge to democratic governance and the U.S. constitutional republic.

Research Gap

An obvious question emerged: Why was the U.S. government (and in particular the executive branch) apparently permitted to violate the law behind the veil of national security and the need for secrecy? U.S. history would suggest that the role of the Supreme Court under Chief Justice John Marshall created judicial review as the mechanism to determine the constitutionality and appropriateness of what may appear as temporary constitutional violations by the government (Tuomala, 2010). However, the precedent of giving the Supreme Court the power to decide what is constitutional may be supported or loathed in equal measure, and unless Congress or the people act, what was secret law engaged in by the executive branch can become de facto public law, simply by precedent of use or interpretation of extra-constitutional and extra-democratic law.

As noted by Richards (2013), U.S. law “governing surveillance is piecemeal, spanning constitutional protections such as the Fourth Amendment, statutes like the Electronic Communications Privacy Act of 1986 (ECPA), or the Communications

Assistance for Law Enforcement Act of 1994 (CALEA) and private law rules as the intrusion-into-seclusion tort. But the general principle under which American law operates is that surveillance is legal unless forbidden” (p. 1942). In other words, surveillance law offered limited protections to the people and especially when conducted in secret or behind the veil of national security and exigent or crisis conditions, giving the executive branch a much wider and expansive authority to act in a largely unilateral manner with few constraints.

However, what the government posited as legal in the name of security through “enabling act” legislation, ex post facto law, unitary executive theory, state secrets doctrine, secret interpretations of law, and secret courts ran counter to the primacy of democratic governance defined by the Constitution as the supreme law of the land (Morgan, Kirwan, K.A., Rohr, J.A., Rosenbloom, D.H., & Schaefer, 2010). Although Morgan et al did identify a gap between these government actions and the Constitution, there was a directly related but very distinct gap in the literature concerning the substantial government punitive reactions to whistleblowers for exposing government wrongdoing (even when following whistleblower legislation), who dared to expose these gaps to the people in the public interest and out of public service, especially given the oath the whistleblowers took (including myself) to defend and support the Constitution. This study provided empirical evidence that filled a gap in the literature concerning why current whistleblower protections were not effective or sufficient in a national security driven environment and proposed policy changes that could be initiated to make protections more effective when disclosing a crime of state became a state crime.

Purpose of the Study

The substitution of trust with fear, where the government essentially licensed to itself special national security-based authority to exercise extraordinary and exigent powers in secret (instead of through informed and voluntary consent by the governed under the Constitution through their representatives in Congress), directly contradicted a democratic form of government, and the two could not co-exist. Although there were a few in Congress who attempted to introduce articles of impeachment against President Bush and Vice President Cheney or hold hearings, Congress continued to pass enabling act legislation to further legalize and expand the secret mass surveillance and extra-judicial practices conducted by the executive branch since shortly after 9/11 under an extra-constitutional legal regime setting dangerous precedents. All these powers were further codified and expanded under the Obama Administration as a legal framework and then passed on to the Trump Administration on a presidential platter of expanded power.

Therefore, the democratic governance problem posed by a post 9/11 security world centered on exploring and describing the democratic disenfranchisement of the citizenry and the people regarding the unaccountable use and abuse of power by the government in secret, and especially when it violated or eroded the protected rights and liberties of the people. In addition, I experienced what happens to those who dared speak truth to power regarding the use of secrecy and national security as a license for wrongdoing and committing violations of the Constitution under the mantel of national security, resulting in a loss of civil rights and liberties for the people.

These phenomena centered directly on the devolution of democracy in a post 9/11 world and were an outgrowth of two things. First, the self-assigned powers by the executive branch granting itself license for broad authority to deal with the “threat” of terrorism; and second, the general public acceptance (promulgated in the aftermath of the 9/11 tragedy) of a need for “security” against these “threats.” In other words, the gap centered on the consequences of the government restricting civil liberties and constitutional protections in an effort to achieve security within the structures of democratic governance, despite disclosures of government wrongdoing by whistleblowers in the public interest.

Research Question

Given the aforementioned, the research question is:

RQ: What happens when governments respond to events such as 9/11 by asserting the power and primacy of national security over public interest disclosures by whistleblowers of government violations of democratic governance?

Theoretical Framework for the Study

The theoretical framework for this research study was democratic theory in the context of democratic governance within the United States in the form of a constitutional republic. Analyzing the contextual framework constructs of democratic governance underlying democratic theory (as they relate to privacy, civil rights, and liberty), provided an understanding of the key foundational precepts for their historical development of democratic governance set against the rule of law, the U.S. Constitution, as well as the 1st and the 4th Amendments.

In addition, it was vital to examine the basis for the foundations of democratic governance and the enabling legislation, as well as the key assumptions that inform the practice of democracy in public institutions of government, particularly as they manifested in a post 9/11 security world. Contrasting, comparing and synthesizing the works of Dahl (1998); Keman (2002); Gerring & Thacker (2008) as well as others helped provide understanding and context for the dynamics of democratic governance and its impact on privacy and liberty and its historical devolution when faced with the crisis of 9/11 and the less than democratic governance response that followed – especially when conducted in the deepest of state-level secrecy on an extraordinary scale and scope in terms of the breadth and depth in the erosion of individual rights and liberties, including privacy.

The key attributes and characteristics of public democratic governance processes, undergirded by democratic theory, were how a civil society established the basis for public policy formulation and implementation. Furthermore, determining the value of the theory helped explain the ends of democratic governance through the rise of institutional structures and organizations that implemented public policy within society. This theory of democratic governance included a contrasting synthesis of its various forms including decentralism (in the tradition of Madison, Locke, Rousseau, and Montesquieu), pluralism, republicanism (federalism/power separation), public choice, economic factors, and centralism as noted by Dahl (1998), as well as the more novel centripetal approach that was multi-party centric in nature (Gerring & Thacker, 2005).

These concepts formed the theoretical foundation of this study for the purpose of focusing on specific practices in democratic governance, using the prism of contemporary post 9/11 national security history and executive conduct not always consistent (and often at odds) with the U.S. Constitution and democratic governance. With this context, what was the construct within the theory of democratic governance that gave rise to a framework that expanded power and the abuse of power violating the rights of the people?

The intellectual foundations of a modern democracy that led to the creation of a Constitutional Republic in the United States were formed during the European Enlightenment. Two of its most influential thinkers were John Locke and Montesquieu who greatly inspired Thomas Jefferson as the principle author of the Declaration of Independence and James Madison when faced with the question of how best to govern ourselves during the formation of the U.S. Constitution.

In the late 17th century, Locke published his seminal book called the *Two Treatises of Government*. His core assertion was grounded on the proposition that any legitimate government fundamentally rested upon the consent of the governed (Locke, 2008). Locke argued that natural law guaranteed to all people basic rights, including the right to life, liberty, and their own labors. However, to secure these rights, people in a civil society needed to enter into a social contract with their government. In this contract, the citizens were bound to obey the law and the government had the right to make laws and defend the commons for the public good. However, Locke also posited that when any

government became lawless or autocratic, the citizenry had the responsibility to hold them to account.

Locke's theory inspired Jefferson and Franklin as well as others, but it was Montesquieu that took up the notion of a republican form of a democratic governance structure based on the consent of the governed. In his 1748 *The Spirit of Laws*, Montesquieu advocated a governance system comprising separate checks and balances on power between the executive, legislative, and judicial branches of government as a means of guaranteeing the freedom of the individual against the abuses of those in power (Montesquieu, 2011).

Why? It was the tendency of the executive in democratic governance structures that gave rise to the abuse of power that hampered political democracy and a political democracy expressed in terms of civil rights while also checking the executive. This democratic form of governance where the polity of the citizens participate, prevented the degeneration and devolution of democracy into executive-dominated rule and abuse. This theoretical construct of democratic governance (with its attendant checks and balances) helped to form the philosophical and principled basis for the U.S. Constitution, with its division of power distributed among the executive presidency, the legislative Congress, and the judiciary. Given this theoretical context for democratic governance, the center of life for democratic governance focused on the will of the people who are governed by their consent or the governors assuming a mandate of consent from the governed when elected to office.

The conceptual precepts of Locke and Montesquieu intersected with normative democratic theory centered on the moral, ethical, and principled foundations of democracy and democratic governance institutions in a constitutional republic. More critically, Locke in chapter XI of his book, provided the internal limits of democracy based on the idea that there were some things done by democratic authorities to which a citizen cannot consent. This included nonconsent to arbitrary rule and violations of a person's fundamental human rights to life and liberty (Christiano, 2015).

This theoretical construct of normative democratic governance forms the heart of this research as well as the core experience I faced as a whistleblower with the clear and compelling abuse of power against the protected rights of the people by the governing elite in secret right after 9/11. Why? Secrecy by the governing elite created a tension in a democracy and raised the most basic of questions about democracy in the United States and the rise of the national security state in a post 9/11 world.

Secrecy and surveillance were fundamentally at odds with democratic governance and yet both were something that the government does. How to square the proverbial circle between the rights of the governed and those doing the governing in power who violated the very protections against abusive power also raised the most fundamental of questions for democratic governance. This was especially true when the rubric of national security was used as the justification for doing things in secret behind closed doors that were not democratically consented to by the people. And what happens when shedding light on the violations (as I did as a whistleblower) was regarded as a criminal act

allegedly violating (and even gravely damaging) national security by the same governance structure engaged in the violations in the first place?

Democratic governance can be unilaterally undermined in secret, by majority rule or through government hegemony by the minority over the people, by using top down means rather than an approach that encouraged a decidedly bottoms up approach through dialogue, compromise, diversity, and inclusion of wide ranging opinion. Real democratic governance survives or withers within the very self-governing practices that created the conditions for a more limited government, keeping in check the tension posed by less democratic and minority power elite with the attendant manipulation of institutional governance structures.

This particular challenge and tension faced by democratic governance was highlighted in Bevir (2006) and was perhaps the biggest obstacle to democratic governance in the 21st century (pp. 426-427). In other words, the juxtaposition of the public trust against private interests having a propensity for power and access, created a tension between the governed and the government often at cross-purposes with each other and especially with respect to the rights of the governed. In the United States these rights were protected in the Bill of Rights and subsequent amendments to the Constitution.

Within this tension, the more simplistic view that representative government was the bedrock of democracy tended to obscure who and what represents the people – fellow human beings quite susceptible to the same fallacies and predilections as ourselves. As outlined by Wolin (2008), democracy has devolved and become a form of business, a democracy incorporated, where economic and state powers were joined together, often

against the better interests of the populace. Therefore, the theory of democratic representation made a great ideal, but the governance reality was far different and served as a very uncomfortable contradiction in terms of democracy. Why?

Government by its very nature acted as a distinct instrument of the power elite, a form of “inverted totalitarianism” (Wolin, 2008) and institutional equities, where the state created a hybrid form of governance composed of public and private interests combined with corporate power. In this context, it did not always matter who was elected, when the elected are so beholden to those who put them in office. Even though all forms of democracy have representation, or are representative, it was overly simplistic to state that voting someone into office was proof of democratic governance.

In addition, although classic democracy was not always compatible with corporate power, true democratic governance often only occurred with a few (Parenti, 2011). Unconstrained corporatism sold out democracy for economic gain at the expense of social democratic gain (Parenti, 2015). Lindblom (1977) looked at the role of free markets in fostering democracy and liberty but also highlighted the debilitating impact of big business on democratic institutions and stated “The large private corporation fits oddly into democratic theory and vision. Indeed, it does not fit” (p. 356).

Furthermore, Bevir (2006) concluded that notions of a traditionally oriented static democratic governance had come up way short, and there was a need to incorporate elements of radical democracy to sustain the body politic, while also remaining relevant in the public interest and for public discourse, as opposed to using it as the means to an

end to remain in and sustain power – the increasingly prominent theme in a 21st century post 9/11 national security dominate (and dominated) United States.

Borowiak (2007) considered what was coined as an accountability quotient for democratic governance and its deficiencies through an examination of the antifederalists and federalist debates. These wide ranging constitutional debates that took place over a couple of years were of significant importance in shaping democratic governance during the formation of the United States. They also took on one of the critical issues of centralized power structures versus decentralized power in the budding United States. However, this tension between central and decentralized power also created ideal opportunities for the representatives of the people (and those they influence) to abuse governance power through increased centralization and thereby transgressed the rights and civil liberties of the citizens they were bound to serve in the public interest.

In addition, the very well-being of the governed by the governors was critically dependent on preventing a central government from exercising the very powers that make them unaccountable to the citizenry. This also created an opening for a different form of governance to emerge that was distinctly undemocratic, including tyranny. Under the long view of history, Federalists argued that the Constitution provided a sufficient safeguard against the mischief of those representing the citizenry for their own purposes. However, the Federalists also assumed that these same representatives would have their constituents' best interests in mind.

In the context of radicalized democracy, let us return for a moment to 1787 and the Constitutional Convention. This was the same year that Shays' Tax Rebellion

occurred in Massachusetts and alarmed many people, especially the elite of the Massachusetts commonwealth, focused on regulation of the populace. In addition, the elite of that day viewed the revolt of Captain Daniel Shays and his farmers as a threat to their control of government. However, from a Jeffersonian perspective, the Shay “rebels” were practicing good democracy considering the recent War of Independence that was really about resistance to a heavy-handed and authoritarian government (Goldscheider, 2015), as were those involved in the so-called Whiskey Rebellion (Hogeland, 2010).

In other words, any democratic government was susceptible to corruption and with the passage of time devolved from its original principles. The particularly salient point made by Newbold (2012) was public administrators must return to first principles and protect the rights of all citizens under the Constitution. This required a distinct constitutional perspective because the reference point for governance in a constitutional republic was maintaining the separation of powers between the three branches of government while also preserving individual rights and freedoms as protected by the Constitution. In other words, the unique nature of the U.S. form of democracy in terms of a constitutional republic was preserved and protected by adherence to constitutional law, statutes, principles, precedent, and practices.

In this light, Newbold (2012) emphasized the critical role of responsibility and accountability exercised by public administration education in ensuring that government service was fundamentally based on protecting and defending the constitutional form of democracy – by focusing on fidelity to the Constitution instead of a particular political policy issue, party, position, or program. The centrality of public administration was

exercised under the authority of constitutional government and this exercise provided the integrity and legitimacy of democratic governance. However, if the organs of governance function outside the boundaries of the U.S. Constitution, then rule of law was jeopardized and democratic governance was placed at significant risk. In addition, it was crucial that the public servant in government recognized the constitutional underpinnings of public administration accountability by exercising freedom of speech, protection of individual rights, and the separation of powers in government (Rohr, 2002).

In a Jeffersonian form of democratic governance, the people should never fear the government, but the government should always fear the people they govern. With this perspective, the greatest enemy to society and individual liberty was the government itself. Why? The tendency of power to abuse its own instruments was everywhere and tended historically toward concentration – a distinct inclination to go after the treasure of the country and the wealth of the citizenry and use the government to take and appropriate it. In the uniquely distinct U.S. form of democratic governance most people go about doing their own thing, unless they are provoked intolerably by the abuses of their own government and resist those usurpations of power.

History has very much demonstrated that given time, chance, and opportunity there are those who will use the means of machinery and instruments of government for their own self-interest driven ends. The constitutional governance structure was a “grand experiment” to diffuse the power enough to make that tendency towards abuse more problematic. Against the dangers of centralized power and those who would seek and keep power, Jeffersonian democracy focused on individual liberty and sovereignty taking

primacy, where a free person would defend themselves and their communities from the vicissitudes of an overbearing and overreaching central government. However, limited power and increased economic and social freedom under democratic governance has given way to enormous centralized power and a largely institutionalized corporatized economy.

One could argue that none of the conditions Tocqueville (Kramnick, 2003) wrote in the early years of the U.S. constitutional republic were recognizable today, especially with the monopolization of political power, opinion, influence lobbying, and mainstream culture. So, what happens when democratic governance became highly centralized? The U.S. democratic system has devolved from decades of political and administrative centralization, bureaucracy, secrecy, the resurrection of the imperial presidency, the erosion of civil rights and liberties, the growth of a police state, the corruption and influence of interest groups and lobbies, the massive power of money in electoral politics, and the statist and partisan two party system (Wolin, 2008). This was like what happened in the controversial Citizens United decision by the Supreme Court (McConnell, 2013). And what happened when the press criticized the government in the public interest and their sources are whistleblowers and truth tellers? Who protected them?

Furthermore, by exporting abroad a unique brand of the Monroe Doctrine called exceptionalism, the United States embarked on a lot of misguided foreign policy follies such as the tragedy in Iraq, drone warfare, and the longest conflict in U.S. history that took place in Afghanistan. The result made adversaries of many countries and probably

something Tocqueville would not have accepted as the defining quality of a thriving and vibrant democracy and constitutional republic.

American exceptionalism turned into a special form of manifest destiny expressed as projected power. Its effects created a real challenge to the foundational precepts of democratic governance within the United States as well as posing significant challenges to the continuance and sustainability of the constitutional rule of law -- especially in a post 9/11 national security world where a lot of executive action and justification of policy was due to the cover provided by the so called global war on terrorism. This exceptionalism also raised fundamental questions regarding whether that original “grand experiment” taken up in 1787 could endure in the face of a federal government turning Tocqueville on his head - handing over the constitutional republic experiment in democratic governance (with all of its flaws and foibles) to the world of politics, position, and power instead of innovation, freedom, and democracy.

Lest we forget history, the American Revolution was largely sparked by outrage over the Alien and Sedition Acts and the restrictions by the British Crown on press and assembly, as well as arbitrary writs of assistance that granted access to people’s homes and property by fiat and not through due process (Farrell, 2006). Do we really want the government suppressing free speech that was protected under the 1st Amendment of the Constitution while also violating our 4th Amendment rights that protect our homes, papers, and other personal effects and information from unlawful and unreasonable government searches and seizures – even electronically – out of pretextual cause?

Whistleblowing as Autoethnography

Is this the country we wanted to keep? Is this how our democracy dies behind closed doors and national security? I found myself in exceptionally grave danger from the U.S. federal government after blowing the whistle on many billions of dollars in contract fraud and government officials selling out national security to the highest bidder for profit and gain as institutional and corporate self-interest. I also blew the whistle on the secret collusion between the NSA and the White House at the highest levels of the government to bypass the Constitution and turn the United States into a surveillance state right after 9/11. In addition, I was a material witness for two 9/11 Congressional investigations as well as a Department of Defense Office of Inspector General audit and also disclosed 9/11 intelligence failures and cover up.

I did go to the press several years later with unclassified information regarding all of this government wrongdoing, 9/11 intelligence failures, malfeasance, and violations of the law, including the mass violation of the 4th Amendment. For this whistleblowing, I was severely retaliated against and ultimately found myself served with a 10-count felony indictment by the U.S. Department of Justice facing 35 years in prison in April, 2010, but was fortunately able to hold off the government and kept my individual freedoms and liberties 14 months later (Project on Government Secrecy, n.d.).

This disturbingly dark democratic devolution toward the autocratic side of the political spectrum in America reminded me of Senator Smith in the iconic *Mr. Smith Goes to Washington* movie (Capra, 1939). In this movie, Senator Smith turned into a whistleblower against the established collusion of corporate and government interests

(Morgan et al, 2010). In the movie, the senior Senator from Mr. Smith's state wanted to ram a 'deficiency bill' through Congress. The backroom political and corporate corruption manifest in the legislation included a real sweetheart provision that enabled a special land swindle project involving payoffs and a dam that would flood Willet Creek – the very place where Mr. Smith wanted to create a national boys' camp.

Nature of the Study

This study centered on an autoethnographic approach as articulated by Chang (2008) and involved narrative based reflection on my experience as a whistleblower from interviews with expert analysts, attorneys, and legal professors and scholars who practiced in the fields of national security, constitutional law, and civil liberties policy for assessing key attributes associated with secrecy regimes and deliberations absent public discourse and debate via an open and transparent democratic process. This research included an analysis of my personal experiences in parallel with an analysis of the systemic phenomena involved in the secret strategic decisions within the executive to bypass the rule of law through proclaiming the primacy of national security state power and criminalized those (like me) who performed their solemn duty of supporting and defending the Constitution by disclosing government wrongdoing, failures to protect people from harm, fraud and reporting government violations of law and statute.

In terms of key phenomenon for the study, the center of federal government power as expressed through the institutional bureaucracy and prerogative of the instruments of national power (including public administration) was supposed to act within the bounds of a constitutional government protecting the legitimacy and integrity

of democracy as well as the rights of the people. However, if the administrative state functioned outside the boundaries as established by the U.S. Constitution then the rule of law was jeopardized and the integrity of democracy and democratic governance was placed at real risk. Yet what happens to citizen rights protected by the Constitution when a whistleblower (like me) spoke out in the public interest about government wrongdoing and malfeasance and then was persecuted and prosecuted for it as a threat to state power?

In terms of methodology, this study conducted narrative based, semistructured interviews composed of 11 national security, civil liberty and human rights attorneys, policy analysts, professors, and legal scholars/historians. These participants, as part of their professional practices, had expertise in the fields of constitutional law, whistleblower protections, national security, 1st Amendment, and 4th Amendment privacy rights, and also had knowledge of my criminal case. This study used one-on-one interviews as the field setting for the raw data collection.

The use of participant observation was a key data collection tool for ethnographic methods. Kawulich (2005) highlighted how this form of observation has emerged as a hallmark in the study of sociological phenomenon. I took a post structural approach (Denzin, 2014) in articulating a lived experience that was captured through reflection, archival records and memory. In this regard, interviews with the research participants provided the necessary data to reflect, analyze and synthesize an interpreted experience of mine through “textually constructed presence” (p. 37) and then were subsequently coded and linked for contextual patterns using an advanced automated qualitative tool.

Historical and Contemporary Definitions

Let us now take ourselves to the very beginning of U.S. history and explore this tension between state secrecy and individual privacy through the eyes of whistleblowers. Indeed, the nation's founders faced this very issue. During the Revolutionary War, a few whistleblowers took a huge risk and petitioned the Continental Congress with direct evidence that the commander of the Continental Navy, a Commodore Hopkins, had participated in the torture of captured British sailors. Hopkins was quite powerful and very well connected as his brother was a signer of the Declaration of Independence.

Hopkins retaliated with extreme prejudice and filed a criminal libel suit against the whistleblowers – all military - and they were arrested and put in jail for what they later said was doing what they then believed and still believed was nothing but their duty. The Continental Congress voted to remove Hopkins from his post and in the summer of 1778 passed into law this country's first whistleblower protection. This law also provided the whistleblowers with legal counsel to fight criminal charges and even authorized payment for all the legal fees they incurred dealing with Hopkins.

Remember - the country was at war. And yet remarkably, Congress did not hide behind claims of government secrecy or invoke any form of executive "state secrets" privilege. In fact, Congress also authorized the release of all records dealing with the removal of Hopkins. Furthermore, the whistleblowers did not have to use a Freedom of Information Act to release all of the exculpatory documents that vindicated their whistleblowing, or even keep away from the public the fact that Hopkins had tortured and abused and severely mistreated British prisoners of war. And in the end, the

whistleblowers won their case in a court of law (Kohn, 2011). And what more proof than this telling episode that took place at the very embryonic stages of the founding of the United States – fully demonstrating that the dominant purpose for what later became the First Amendment was to prohibit the widespread practice of government suppression of embarrassing information?

In 1989, the Whistleblower Protection Act (WPA) and later the Intelligence Community Whistleblower Protection Act of 1998 (ICWPA) were passed. These laws were supposed to protect federal employees (and contractors) who exposed fraud and misconduct from retaliation (D’Isidoro, 2014). But over the years, these protections have been completely undermined, essentially providing rights but not a remedy when violated. And a right without the remedy of recourse and due process was not a right.

For example, one loophole gave the government the absolute right to strip employees of their security clearances and fire them, without judicial review. Another barred employees of the National Security Agency and the Central Intelligence Agency from any coverage under the law or cause of action with respect to legal recourse. And Congress had barred national security whistleblowers who are reprisal against for exposing wrongdoing from obtaining protection in federal court.

The Whistleblower Protection Act of 1989 (WPA) protected the public disclosure of a violation of any law, rule, or regulation if 1) such disclosure was NOT specifically prohibited by law, and 2) such information was not specifically required by Executive order to be kept secret in the interest of national defense or in the conduct of foreign affairs. The WPA and the Intelligence Community Whistleblower Protection Act of

1998 (ICWPA) both authorized whistleblowers to report to cleared government personnel (including certain Members of Congress) in national security cases (and sometimes to the media). Yet there was no specific reference in any of the whistleblower laws to the Espionage Act, and nowhere does the Espionage Act refer to “whistleblowing” because that concept postdates the Act by over 70 years.

This Act was “directed primarily toward such matters as espionage and protection of military secrets” and yet was used to prosecute several thousand dissenters in WWI and suppress disloyal activities opposing the government (Stone, 2003). The enactment of the Espionage Act did not mean the suppression of speech or the press. But that option was invoked by the Wilson Administration and the judicial system at the democratic governance system, setting a precedent that Congress never intended in the legislation.

As to the intent element, the “plain language” (a legal term) of the Espionage Act failed to require a “specific intent” (another legal term of art) either to harm U.S. national security or to benefit, for example, al Qaeda. Instead, it required only that one know or have “reason to believe” that the “national defense information” at issue was used to injure the U.S. or benefit a foreign nation. Because of this relaxed *mens rea* (guilty mind) requirement, the Espionage Act can be applied, as happened in my case, to prosecute government employees or private citizens in cases bearing no resemblance to classic espionage, e.g., cases in which a government employee seeks to reveal the details of an unlawful or abuse of power program with no desire (ore intent) to harm national security. That knowledge, however, does not bear any relationship to one’s actual motive. And yet

this Espionage Act (an act designed to go after real spies and not whistleblowers) was used against me.

In this context, it was critical to examine the devolution of democratic governance in the United States since the tragedy of 9/11 and how it reflected directly on the value of our democracy's foundations – the Constitution, as how we govern ourselves. Promoting the worth, well-being, development and value of who we are and our civic communities in a free, transparent and open society are the cornerstones of democracy. When security and safety (real or imagined) became the imprimatur for taking away and eroding citizen rights and freedoms and thereby altered the very fabric of democratic governance, then something had to give. And what gave was the very progress of the “grand experiment” called the Constitution. This tension surrounding “We the People” was present during the early years of the United States between the popular sovereignty of majority rule and the need to secure the rights of all people against the abuses of majority rule (Barnett, 2016). Important to also note that Walden University's mission of positive social change can only take place in a society that has robust governance social structures that strengthen democracy and the rule of law – and do not inhibit or suppress them.

When the Obama Administration took office, many thought he would re-democratize the great American experiment and return to a constitutionally bound governance structure. Reality proved quite different. Obama's promise of hope and change was not matched by his actions. His Administration's reaction to national security and intelligence whistleblowers was harsher than all previous Administrations combined as evidenced by going after whistleblowers and truth tellers under the Espionage Act,

including Thomas Tamm, John Kiriakou, Chelsea Manning, Jeff Sterling, and several others in the form of threatening prosecution or handing down indictments. (Gardner, 2016; Project on Government Secrecy, n.d.). This precedent was passed onto Trump.

The Bush Administration was harsh in its harassment and criminal investigations of whistleblowers; however, actual persecution and prosecution of whistleblowers under the Espionage Act of 1917 (and updated in 1950) did not start to take place until the Obama Administration. For a president, whose mantra was to “look forward and not backward” (Greenwald, 2010) when it came to investigating torture, warrantless wiretapping and mass surveillance, it was blatantly inconsistent for that same president to persecute and prosecute the people whose very disclosures served the public interest and did no actual harm to national security.

Using the Espionage Act to silence public servants who reveal government malfeasance was chilling at best and tyrannical at worst. The Obama Administration’s attack on national security and intelligence whistleblowers expanded the Bush Administration’s secrecy regime and impeded the expression of a free press exercising the 1st Amendment by going after and silencing its most important sources. These attacks on whistleblowers and truth tellers (and continued under the Trump Administration) were (and are) a recipe for the slow poisoning and devolution of democratic governance.

Valladao (2006) showed that this reality has created a real and lasting paradox for the United States, because the very instruments of power were now more heavily concentrated within the executive branch of the federal government instead of the courts or Congress – a new shadow governance structure that created a dilemma for the United

States in promoting the very undemocratic phenomena that eroded their own economic and political power. Newbold (2011) highlighted the disturbing reality of undemocratic governance when highly centralized government exercised its power away from the people. When democratic governance was sacrificed for the sake of security, just how much intrusion was necessary and acceptable in people's lives by the federal government under the guise of national security?

There was a general issue of honest citizens getting censored and persecuted for speaking out against the government, while also lacking legal protections when witness to waste, fraud and abuse in government national security programs, and were forced to turn to unauthorized methods to take action, including going to the press. These actions exposed malfeasance, negligence or incompetence on the part of the government. Instead of intimidating and ignoring whistleblowers, the executive branch and Congress chose to not follow the example of the Continental Congress which supported and shielded them. In a world filled with inequity, institutional loyalty, partisan politics, and abuse the act of resisting organizational power was often an act of career suicide by a whistleblower when exercising their moral agency. And in a world inhabited by powerful institutions, whistleblowers were not simply disadvantaged and pursued unmercifully by those in charge – they were now too often retaliated against as criminals, leading to devastating consequences, both personally and professionally, including loss of career, bankruptcy, shattered social relationships, and getting ostracized or worse with many who faced or served jail time.

Whistleblowers typically act alone resisting against the will and might of the institution – large or small. Whistleblower protection was very much dependent on those who exercised institutional power over them – an automatic social inequality. A whistleblower perceived that a wrong has been committed and responded by attempting to address that wrong. Yet in practice, when the wrong was the result of those with direct power over the whistleblower, a real inequity was created.

Exposing the wrongdoing as a subordinate often resulted in retaliation against the whistleblower, while the underlying cause remained in place. We must also appreciate that organizations were absolutely ruthless administratively when it came to whistleblowing and especially when the organization was well entrenched, and had lots of resources at their disposal to go after the whistleblower. More often than not they turned the whistleblower into an outsider, banishing them from any influence, while also ensuring that they could do no further damage, making a mockery of democracy and turning whistleblowers into threats or even enemies of the state, as the government did with me.

There were also laws that undermined one's rightful actions as a citizen and one who, as a professional, had the duty to judge circumstances surrounding their job that might lead to serious mistakes. For example, there were two grounds for my actions as a whistleblower – one as a citizen who fundamentally took an oath to support and defend the Constitution and found myself defending the Constitution against a government that had turned me into a criminal defendant. The other was as a professional who realized the mistakes and errors and violation of the law required correction by blowing the whistle

on the wrongdoing and going through all the proper channels to shed light on those improper actions. Again, a right without a remedy was really not a right at all.

Assumptions

The relevance of this research in terms of assumptions rested on the fundamental precept that adherence to the Rule of Law was the great equalizer and that in times of national crisis (real or imagined) it became all too easy to redefine or violate the Rule of Law established by the primacy and precedent of the Constitution (including the rights of citizens under the 1st and 4th Amendments). This was now an all too commonplace occurrence in the post 9/11 world. The rise of the national security state led to authoritarian governance and less and less accountability to the public and the law. The centrality of democratic public governance acted in accordance with the authority of constitutional government protecting the legitimacy and integrity of the rule of law and the consent of the governed.

However, it was also assumed that when the federal government functioned outside the boundaries as established by the U.S. Constitution, then the Rule of Law was jeopardized and the integrity of democracy as expressed through individual privacy and personal liberty was fundamentally put at risk under the application of the theory of unitary executive legalism and secret law rule. So even with the “Rule of Law” it was assumed that it was possible to violate what one considers the founding inalienable rights and principles of a democracy under a constitutional republic: separation of powers, responsible oversight, and checks and balances, as well as the consent of the governed.

For example, during the Bush Administration, the Attorney General's frequent rubber-stamping of torture, the invasion of privacy, and other patently abusive behaviors of the Administration were conducted under the guise of legality enabled by the Attorney General and White House counsels – all political appointees pre-disposed to justify such usurpations of process and presidential prerogatives. Another assumption was that under the Obama Administration an institutionalized legal framework of enabling act legislation and secret executive action had emerged and further extended the extra-judicial and extra-constitutional power of the executive branch established by the Bush Administration – creating a more permanent imperial presidency operating under national security powers. In other words, it was a core assumption in this study that the rule of law needed constant vigilance so it did not devolve into a sham of democratic governance.

Another assumption centered on the first principles of the U.S. Constitution. Newbold (2012) pointed out that public administrators must return to first principles and protect the Constitutional rights of all Americans, while also in possession of a constitutional perspective, because the reference point for governance was maintaining the separation of powers while also preserving individual rights and freedoms. Why? It was assumed that the essential nature of American democracy was preserved by adherence to constitutional practices and respecting long held traditions. Newbold (2012) further noted that it was the responsibility and accountability of public administration education to ensure that civic life and the civil service were fundamentally based on protecting and defending the constitutional form of democracy – and focused on fidelity to the Constitution and not to a particular political party, policy issue, or program – and

also not allow or permit (let alone license) the security state to replace the democratic state from within.

The research questions in this study assumed a specific situation regarding the phenomena associated with the primacy of the state as governor versus the citizen and the people as the governed, in terms of power and privacy, and researching further information about that phenomena in a post 9/11 world. The implicit assumption was that the primacy of state power and secrecy outweighed the rights of the people in a post 9/11 world for the sake of security. Therefore, this study also examined the tension of governance by the state over a citizen of that state and what happens in terms of civil rights and personal liberty when that assumption held true.

Another key assumption was that the intended scope of research participants in this study were highly qualified in their respective fields. It was also assumed that the research participants answered accurately and truthfully with respect to the interview questions based on their professional experience, knowledge of my case, and in the context of a post 9/11 national security world.

Scope and Delimitations

Scope and delimitations in this study limited and defined its boundaries (Simon, 2011). Scope of this study involved the tension posed by the nexus of national security, secrecy, and state power with the devolution of democracy where public interest disclosures made by whistleblowers exposed government wrongdoing, fraud, waste, abuse violations of law, and threats to public safety and health and were then regarded as a threat to the state. In this climate of the public's "right to know" abuses of government

authority and power eroded democratic governance. This problem centered on the historical tension (exacerbated by the events of 9/11) between protecting national security secrets and ensuring the public's "right to know" about the abuses of government authority and power (as well as secrecy) exercised under the mantle and blanket of national security that fundamentally eroded democratic governance.

I chose to delimit the scope of this study to the phenomenon posed by the devolution of democracy as viewed through the prism of state power and secrecy juxtaposed with my own whistleblowing experience, background, and subsequent criminal case for disclosing government violations of law, wrongdoing, and fraud protected by national security. By creating a set of questions that specifically focused on eliciting the key linking factors from the planned research participants related to this phenomenon in the context of democratic governance, it was anticipated that the gap in the literature regarding why public interest disclosures made by whistleblowers were regarded as such threats to the state and worthy of persecution and prosecution, were thereby indicative of the devolution of democracy in a national security driven world. I determined that delimiting the study to a minimum of seven to ten selected research participants in the fields of national security, whistleblowing, policy analysis, and Constitutional law was sufficient to answer the key research question based on their professions and expertise in these areas (Creswell, 2007).

One of the key delimitations of this study was my criminal prosecution by the U.S. government who determined that violations of national security had allegedly occurred with no public interest defense possible under the extant Espionage Act statute

in the United States criminal code and a statute considered by the government as a strict liability case. Given that their case against me became very public by virtue of the serious felony charges in the indictment levied against me by the government (and the signature Espionage Act case under the Obama Administration), it took a defense in the court of public opinion (while also mounting a robust criminal defense in the federal courtroom) to inform the public regarding the true public interest nature of my whistleblowing within and without the government (including the press under the protections provided and afforded by the 1st Amendment of the U.S. Constitution).

In terms of potential transferability, whistleblowing was recognized as one way to bring to light government wrongdoing through designated disclosure channels as well as via the 1st Amendment in the public interest. Given my background in the federal government and in particular the national security area, as well as my experience on the receiving end of a criminal prosecution for the act of whistleblowing, I chose to delimit the study to just the federal national security sector and my criminal case.

Limitations

Key limitations of this study were the autoethnographic approach and possible research bias. However, I also took on the role of observer in interviewing the research participants as the most ethical approach to compensate for any perceived bias, given that this study was fundamentally centered on autoethnography. With this approach, the study was designed to include my personal experience and observations about the group or individuals being researched.

These observations and insights were not always possible with the more conventional empirical research methods. As noted by Sheridan (2013), autoethnographers wrote narratives about what they experienced as phenomena, and were themselves a primary subject of the research. Thus, statements by me that appeared to lean toward conclusions were in reality statements concerning my personal experience and observations.

One further limitation of the study was bound by the period of 9/11 to the present day. Yet 9/11 was widely considered a watershed event in the evolution of the national security state and the devolution of democracy defined by the sacrifice of privacy and the rights of the citizens for the sake of national security interests (Smith, 2012).

Significance and Implication for Social Change

Social change here took place at the deeply personal level as a result of my facing external forces that bore down upon me. Hiles (2002) offered some explanation that needed verbatim citation because it draws attention to the transformation I experienced: “The heuristic approach is an adaptation of phenomenological inquiry, but explicitly acknowledges the involvement of *the researcher* [italics original], to the extent that the lived experience of the researcher becomes the main focus of the research. Indeed, what is explicitly the focus of the approach is the transformative effect of the inquiry on the researcher’s own experience” (pp. 4–5). A quasi autoethnographic approach provided the means to more fully explore this transformative experience.

In this rigid social institutional climate, individual integrity and rights did not matter, law did not matter, and maintaining the status quo of the organization or the

boss's position took priority – including sacrificing those individuals who would dare question the authority of the organization or expose the organization's dirty linen. What happens when the government itself engaged in devolving democratic practices (Tilly, 2007), and also engaged in corrupt conduct that involved American taxpayer monies for the purpose of illegal conduct that was not necessary, except to get away with them in the name of national security through secret abuse and unaccountable executive power? Could the U.S. democracy as manifested by a constitutional republic, survive when the government attempted to justify extralegal conduct through a theory of expansive unitary presidential power, enabled by a state-secrets doctrine that was then used to evade judicial review with a largely compliant and co-opted Congress?

In terms of positive social change, I prevailed against the government's selective and vindictive prosecution in the courtroom as well as in the critical court of public opinion via the media (both mass media and alternative media). Why? Because the government's case fundamentally collapsed under the eventual weight of the truth, public scrutiny, investigative press reporting, and main stream media attention in the end. This outcome demonstrated the contribution made to transparent and open democratic governance when facing the primacy and power of national security priorities.

In this context, my approach for the research focused on examining events through the perspective of experts familiar with my criminal case facing where I faced 35 years in prison and the larger historical backdrop when the government charged me as an American under the WWI-era Espionage Act statute for documented public interest disclosures of government wrongdoing and violations of law involving multi-billion

dollar program waste and fraud, intelligence failures and secret mass domestic surveillance by the National Security Agency.

There existed significant issues and violations of law, regulation, statute, directives, and legislation within certain agency-level elements of the government's sprawling intelligence complex following the tragedy of 9/11. I provided key material witness evidence as a person and subject with significant knowledge, or in testimony as requested directly by certain formal investigations and inquiries including two 9/11 Congressional investigations and a Department of Defense Office of Inspector General audit and investigation. I also reported violations of law and statute in accordance with existing whistleblower procedures and legislation to oversight personnel and staff or to duly designated officials and representatives within the government from 2001 through 2005.

There were also violations and/or circumvention of standing reporting and notification requirements to Congress (and others in the executive branch) for loss of intelligence capabilities and related instruments of national power. There were also significant issues related to the failure and/or obstruction of reporting and notification of vital indications and warning related to keeping our national interests secure and people out of harm's way, even prior to 9/11. In addition, there were significant issues related to failures or breakdowns in providing key information and actionable intelligence to certain operational entities required to receive it or to certain national command authorities and decision makers that could have taken the requisite action.

Furthermore, there were violations and failures to implement certain specific statutes, regulations and/or signed legislation related to national security and national security funds and programs. There also existed substantial acts of fraud regarding unauthorized expenditure of funds for other than what it was intended for legislatively, or redirected without lawful approval to other activities not authorized. And finally, there was the obstruction of certain formal investigations and inquiries and the hiding or suppressing of very relevant information with the deliberate intent on the part of senior officials to keep it away from certain investigations and inquiries. I discovered a concerted effort to keep at least some of the critical truth buried, including what appeared as a real cover up of the truth and ongoing denials as well as the obstruction of justice with respect to certain investigations and inquiries (including not fully informing legitimate oversight committees within Congress).

Given my own circumstances, I was reminded of something uttered by President Obama during his National Archives speech on 21 May 2009, "We must not protect information merely because it reveals the violation of a law or embarrasses the government" (Johnson, 2009) and also on 28 May 2009 in a memo he released that ordered two studies to review government secrets and stated "A democratic government accountable to the people must be as transparent as possible and must not withhold information for self-serving reasons or simply to avoid embarrassment." (Shear, 2009).

The balance between a strong central government and the administration of government created democratic tensions regarding obedience to government set against the merits of protecting citizens' rights and liberties. This was especially relevant in a post

9/11 security world characterized by secrecy and government operations increasingly conducted in ways that were far less transparent and accountable to the public. All of this lack of accountability was enabled by the increasing propensity of the federal government to assume a larger and larger role in the life of the polity and exert an even more dominant role in the discourse and direction of American democracy.

Did the lack of awareness and understanding or even the dismissal of the constitutional traditions that underpin democratic governance in the United States and its devolution and erosion in the face of a national security and secrecy regime create the very conditions for the emergence of a shadow governance structure bypassing democratic checks while operating under the veil of administrative and state secrecy? These challenges posed by democratic governance and the new American “grand experiment” in executive exceptionalism as the norm squarely centered on security instead of liberty, led directly to the need to answer the core research question (RQ) centered on the use of political power and effects-based decision-making in a post 9/11 security world exercising extraordinary, extraconstitutional activities and other related programs that were created under raw executive authority in the wake of 9/11, as the response to protect the U.S. against terrorism.

Summary

We were now left with the following issues to ponder and consider as context for the literature review given the future of democracy as expressed through citizen privacy and clearly challenged in a post 9/11 national security world. Secrecy tended to make the body politic less exclusive in terms of engagement and participation in order to define

and address public problems and issues as part of democratic governance, including whistleblowers. Democracy was not easy. A vibrant and open democracy required responsible and responsive power as well as an informed citizenry. An examination of the key peer-reviewed journal articles and seminal texts in Chapter 2 explored these questions and related challenges and tensions that face democracy and democratic governance when confronted by state power and secrecy.

Chapter 2: Literature Review

Introduction

My objective in the literature review was to contrast, compare, and synthesize the current leading peer-reviewed journal articles in the fields of democratic governance; the Constitution and rule of law; national security and secrecy; privacy and liberty; and rights and civil liberties, as well as those considering whistleblowing and law in the context of a post 9/11 world. In order to provide a synthesized presentation for this research, I organized the literature review around the above categories. I also included a section on the theoretical construct behind democratic governance highlighting the tension created between the demands of authority and power in a democratic governance structure and the consent of the governed, with particular attention of this phenomena in a post 9/11 national security driven world.

This approach permitted examining the effects of decisions made by those in power within democratic governance structures and institutions and how they do so, revealing the tension between state secrecy and individual privacy that created the conditions for the devolution of democracy through the erosion of the right to privacy as essential to the expression of individual liberty for the sake of national security interests. This included looking at the elements of democratic governance regarding what was expected of the governed. The governed included citizens serving their country as government employees (including whistleblowers) and the responsibilities of government

institutions to their employees who protect the Constitution, even when their bosses and organizations do not.

Literature Search Strategy

The search strategy consisted of accessing the Walden Library and the internet in order to seek peer-reviewed journal articles using Boolean queries related to the problem and the central RQ as defined in Chapter 1. Terms used included *democratic governance*, *national security*, *secrecy*, *Constitutional law*, *intelligence*, *liberty*, *democracy*, *4th Amendment*, *1st Amendment*, *privacy*, *espionage*, and *whistleblower*. A secondary search strategy included articles citing the U.S. government's indictment against me, the subsequent publicity, and the substantial body of literature that cites this case, including court records and deliberations that were made public. Most of the criminal case proceedings were sealed, however, and the records were not available to the public or for release.

In addition, this search strategy included noting any conference proceedings, magazine and periodical articles (including specialized publications), media appearances, panels, and conferences attended by the population of national security lawyers, rights and whistleblower attorneys, policy analysts and legal scholars. Given the larger body of material available in just the past 5-7 years on the topic, I concentrated on the peer reviewed journal articles that focused on democratic governance, Constitutional law, national security and secrecy, and individual privacy and liberty. However, several peer reviewed articles were included from more than 7 years ago due to their relevance to the

topic and analysis of the rise in the power and influence of the national security and secrecy state since 9/11 and its corresponding impact on democratic governance.

Theoretical Foundation

The United States was a constitutional republic and structurally set up to manifest democratic values, but this special and unique form of democratic governance required an informed and enlightened citizenry and not just representatives in high places ostensibly making decisions on the citizens' behalf. In fact, the very fabric of a democracy was based on the core precept and practice of a free electoral system serving all of the people, with individual freedoms and liberties not subject to at will or arbitrary violations by the government. Democratic governance was the key, as it was the basis for decision making and implementation on behalf of the governed with their consent and not power for its own sake hiding from the public interest. If government was serving its citizens "of, for and by the people," then it was probably closer to the ideal of democratic governance.

The seminal book by Dahl (2000) *On Democracy* made it clear that no individual nation met the lofty theoretical ideals of democracy and that the practice and principles of democracy have "meant different things to different people" over the years (p. 3). Dahl outlined the particular criteria necessary for having a democratic governance process by articulating five main criteria. The first one was "effective participation" in which citizens have adequate and equal opportunities to form their own informed preferences, the ability to place questions about the public agenda, and the freedom to express their own opinions on policy.

The second was “voting equality,” where citizens were assured that their votes were the measure of open opportunity to cast their individual ballots as equals. The third was “enlightened understanding” where citizens enjoyed equal opportunities for learning about different choices and the consequences attendant with those same choices. The fourth was “control of the agenda,” in which people had the opportunity to decide for themselves, both individually and as a community, what mattered politically and then have the freedom to deliberate about it. Dahl’s fifth criterion was “inclusion of adults” in the process without regard to status, gender, race, or creed, because all citizens of age had a clear and compelling legitimate stake in the political process (pp. 37-39). Dahl characterized advanced democracies as those in which officials were chosen in fair and free elections, respectful of minority groups and women’s right to vote and the right to run for office, and characterized by freedom of expression with alternative information and autonomy that gave rise to choice that was unimpeded by the controls and powers of a centralized and overarching political power dominated by elites.

In contrast, Diamond (2008) primarily focused on the means necessary to spread democratic governance abroad in the least coercive yet most cost effective manner using an anti-U.S. intervention in Iraq strategy model. Diamond attributed democracy’s overall decline in the world to weak rule of law, endemic corruption, poor economic performance, and increasing social upheaval and chaos. Diamond did note that economic development, even under more authoritarian regimes, still tended to raise education, personal income, access to information, and awareness of the world in ways that enabled democratization and democratic governance. Diamond detailed the struggles to build free

societies through the world and noted that since 1974 more than 90 countries had made transitions to democracy (pp. 54-55). However, Diamond also acknowledged that celebrations of democracy's triumph were probably premature because of the democratic “third wave” (p. 51).

Diamond characterized this “third wave” by showing how democratic governance is impeded by a powerful authoritarian undertow, how the world had slipped into a democratic recession, and that democracy had even been overthrown or stifled and suppressed in several key nation states, including Russia, Nigeria, Thailand, and Venezuela. The article provided a comprehensive overview of the main elements and key drivers that enabled democracy and made it possible, and tracked its progress in the world historically. The article offered a perspective of cautious optimism regarding the chances of democracy deepening and spreading across the world, despite the contemporary setbacks in Iraq and Afghanistan and renewed resistance to any real form of democratic governance from authoritarian regimes in recent years.

Diamond’s core argument focused on the success of democracy because of its broad universal appeal and links in extensive public opinion data compiled by independent data sources such as the World Values Survey. Diamond also looked at the scope of the empirical evidence presented in documenting the rise of democratic states during the last thirty years. However, Diamond’s take on democracy was cautionary and stated that “malfeasance thrives in secrecy and security” (p. 304) and that laws granting immunity to executives from criminal prosecution could only invite further abuse in the

body politic, with a high societal price paid in sacrificing liberty and freedom for the sake of security.

Diamond also discussed the deteriorating quality of U.S. democracy and that no agenda for reform and change could succeed from the top down. This was particularly true since 9/11 with the U.S. government's penchant for increasingly operating behind the veil of national security and surveillance (Richards, 2013), resisting oversight and punishing disclosures even when made in the public interest. Diamond further argued that the United States could become a better democracy, but that would require innovation in American political institutions and revival of the founding spirit of American democracy "based on active citizenship and a healthy but not cynical skepticism of power" (p. 369). Diamond charted the prospects for freedom around the world in the aftermath of Iraq and deepening authoritarianism but cautioned that arrogance and inconsistency had undermined America's aspirations to promote democracy. In a vision for renewed democratic revival, Diamond posited support for good governance as the means to secure the spirit of democracy including the rule of law, security, protection of individual rights, shared economic prosperity, and unfettered civic organizations within society.

Gerring & Thacker (2008) outlined the importance of political institutions in achieving good democratic governance within a more democratically aligned polity. They focused on the novel notion of centripetal institutions that were designed to promote and maximize political representation and authority in bringing actors and political toward the center of a democratic polity, where multi-party competition increases the democratic tendency within society. They based their innovative theory on

national-level political institutions by asserting there were three types of political institutions that secure a centripetal style of democratic governance: unitary (rather than federal) sovereignty, a parliamentary (rather than presidential) executive, and a closed list parliamentary representative electoral system (rather than a single member district or preferential vote system). Their theory stood in contrast to the dominant paradigm of decentralism and even the U.S. form of democracy that had drifted toward increased centralism.

Gerring and Thacker comprehensively examined the relative effectiveness of the two major systems of democratic government — presidential and parliamentary and found that one system consistently performed better across a wide range of political, economic, and social outcomes, and was not the democratic/constitutional republic system found in the United States. They argued that parliamentary systems do better, because the institutional rules forced different actors in the system to work with each other more comprehensively and cooperatively, thereby promoting better and more inclusive compromises that better the democratic governance process. In their conclusion, they argued that “institutions combining centralized authority and popular inclusion are likely to lead to better governance overall” (p. 155). This was in distinct contrast to the United States since 9/11 where centralized authority and power had grown at the expense of popular or public knowledge, let alone consent. And yet I became a whistleblower disclosing information in the public interest at great risk, because the governed were not informed about the critical conduct of their own government.

Guttman and Thompson (1998) examined the principle of reciprocity as the basis of deliberative democracy. The authors emphasized that reciprocity was based on mutual respect and that arguments within the body politics were better resolved when based on reasoning that was understood and accepted by other citizens interesting in reaching agreement together. Where there was hard disagreement, they promoted the principles of accommodation.

Based on mutual respect, citizens could find solutions based on mutual agreement and that deliberative democracy placed “moral reasoning and moral disagreement back at the center of everyday politics” (p. 361). Deliberative democracy from the perspective of the authors asked that both citizens and officials must justify public policy by giving reasons that were acceptable to those bound by the policy. Authors asserted that the foundation of reciprocity was the capacity to seek fair terms of social cooperation for their own intrinsic sake, using mutually acceptable justification as their reasoning. Citizens were then more motivated by the desire to justify their reasoning to others.

In Keman (2002) comparative empirical and theoretical analyses of the interactions between political and societal actors were examined within the institutional arrangements characterized by representative democracy. A framework was provided for measuring and evaluating contemporary democracy and democratic performance around the world. Particular chapters discussed voters and ideologies in European democracies, electoral behavior in Western Europe during the latter half of the 20th century, democracy and corporatism, constitutionally based structures, the welfare state, policy performance, and institutional effects on democracy. The study of democracy was viewed

through the lens of the political process where the representative democracy was not static but a “political regime in motion” (p. 14), in order to more properly understand the relationship between politics and society.

Meier and O’Toole (2006) examined bureaucracy in a democratic state. They considered the relative power of democratically elected political representatives and the bureaucracies through which they must act, by focusing upon two streams of scholarship, political science and public administration. However, the authors noted that much of the scholarly literature had been rendered moot by the prevailing “governance” environment. Why? Authors argued that policy mandates were not carried out by easily defined bureaus or agencies staffed by government employees, but often by ad hoc networks of government employees, or outsourced privatization through contract employees as well as public-private partnerships.

They stated “these differences—in patterns of bureaucratic recruitment and socialization, decision making, links to interest groups and arrays of formal and informal advisory committees, degrees of decentralization and rule-boundedness, and so forth—definitely matter in any assessment of the fit between bureaucracy and democracy. Some versions of bureaucracy and some contexts are much likelier to facilitate popular influence than others” (p. 13). Authors used data gathered from Texas school corporations to probe various methods of political control via policy-setting, political appointments, etc. that were intended to make bureaucratic performance more acceptable to status quo preferences.

Based upon their review of the literatures and their analysis of their data, the authors concluded that top-down political control of the bureaucracy had only a modest impact on the actual performance of bureaucracies in the United States. While that conclusion would not come as a surprise to anyone familiar with the literature, they further concluded that bureaucrats and political actors did share a commitment to democratic values and norms, and that these shared democratic values operated to create a bureaucracy that was responsive to the will of the constituents. However, the U.S. constitutional form of democracy did not privilege the prevailing status quo and a bureaucrat or a politician may find it ethically or legally necessary to resist compliance if it violated a right protected by the Bill of Rights and as this study took up in the research chapter.

Shapiro (2003) examined the state of democratic theory. Shapiro argued that Joseph Schumpeter's classic defense of competitive democracy was a useful starting point, but was now in need of dire change in terms of the rise in centralized national corporate political institutions and in other forms of democratic associations. Article examined the core conditions that made democracy sustainable in terms of the challenges posed by the distribution of income and wealth and other inequalities and in fact argued that "there is no guarantee that democracy will reduce domination" (p. 147).

In contrast, Tilly (2007) argued that democracy was very much a continuing struggle between totalitarianism and anarchy and examined democratization, democracy and devolution of democracy and how they related to each other. Tilly theorized that for democratization to develop in any regime, change occurred in three fundamental areas:

trust networks (p. 74), and autonomous power centers (p. 76), and what was characterized as categorical inequality (p. 111). Tilly made use of the Freedom House checklist for Political Rights and Civil Liberties in determining the degree of a country's democratic tendencies.

Tilly also included additional factors that impact on the degree of democratic governance within a given country, including the breadth of the rights (and protection of those rights) enjoyed by the population overall, the level of equal rights and obligations based on ethnicity, and the degree of protection against arbitrary action by due process that took away or constrained those same rights and obligations. Tilly further asserted that due to the fluidity of democracy, it could devolve into what Tilly called de-democratization, based on the degree to which citizens enjoyed property, personal, civil, and voting rights.

Tilly made a cogent argument that democracy was never a sure thing and could easily erode away in the face of de-democracy tendencies from centralizing power and more authoritarian tendencies. Tilly concluded this approach by arguing that in order for democracy to flourish it was vital to spend "a great deal of effort promoting the integration of trust networks into public politics, helping to shield public politics from categorical inequality, and working against the autonomy of coercive power centers" (p. 205).

The fundamental questions at the heart of democratic governance were how do a people best govern themselves? And by what means does society use to satisfy those ends of democratic governance? The uneven history of democracy would suggest that the

tension of freedom and liberty with power and control was ongoing and not a guarantee in our progress as human beings unevenly moving toward a more enlightened, open and more democratic society along that long of arc of history that tended to bend toward justice over time.

However, despite the Jeffersonian ideal, it was largely an historical illusion to view democracy as self-governing. Although democracy can take many forms, the practice of democracy was constrained when a society's wealth and the levers of industry and political influence were concentrated in the hands of a few. In addition, it was a contradiction of democracy when critical decisions made by government leaders were done in secret behind closed doors and away from the openness and transparency of accountability and responsibility to the public.

In today's complex world, easy analysis was not always forthcoming. Governance was a very fungible term in the context of democracy and the evolution of the state as viewed through the prism of politics and power. Tilly (2007) pointed out that the absence of trust networks in democratic governance increased the coercive powers of state over the citizenry or the process of de-democratization. And yet democracy takes up many forms and did not lend itself to precise definition (p. xi).

Tilly (2007) summed up the categories of democracy through four main types of definition that include constitutional, substantive, procedural, and process-oriented. The constitutional approach examined democracy through the lens of laws and legal arrangements with wide variation historically between the principles and practices. Substantive approaches concentrated their analysis on the social well-being of the society

as influenced by the governance regime. Procedural approaches restricted the analysis of democracy to elections (even though elections are not a guarantee or even proof a working democracy). The analysis was quite relevant to me as a whistleblower, given my own ordeal and experience, and the fundamental questions raised during my prosecution, as well as the frightening encounter with the government coming after me for doing the right thing in terms of adhering to the rule of law and exposing government wrongdoing and its violation of Constitutional rights.

As Dahl (1998) highlighted, process approaches examined participation, understanding, voting equality and inclusion of adults in the democratic governance. This was often done without any regard to the other approaches except procedural checklists. And as pointed out by Tilly (2007), the autonomy afforded the elite in a society (along with lobbyists, unelected public administrators and anti-democratic legislation), undermined the core practices of process-oriented measures of democracy.

Meier & O'Toole (2006) pointed out that bureaucracies in the administration of governance tended to overtly serve their masters. This tendency reflected the power structure of the dominant status quo governance system, whether it was democratic or authoritarian and that the "inevitability" of bureaucracy (p. 2) posed a real and ongoing threat to democracy and those who would defend democracy, where the bureaucracy engaged in highly cooptive strategies for preserving institutional prerogatives at the expense of democracy, defined by agency heads that were largely beholden to those who appointed them. In other words, bureaucracy and the administrative state posed a

particular challenge to democratic governance and were inherently problematic to the furtherance or even sustainment of democratic governance.

This challenge was experienced directly by me when I defended democracy and the U.S. Constitution against a government that had decided in secret to engage in inverting and subverting the very democratic governance structure protected by that same Constitution. This inversion of democracy into “democracy incorporated” as detailed by (Wolin, 2008) was also a key reference point of departure for me in examining the gap related to the loss of transparency in democratic governance when examining the critical role of expanding secret law behind closed doors in the post 9/11 world and away from the purview of the public and the consent or knowledge of the citizenry, This tension created a decided conflict within the normative democratic governance when abusing its power and authority to undermine the rights, liberties, and privacy of the citizenry in the name of national security.

Literature Review

Democratic Governance

Consent of the governed is a bedrock practice in any democracy including a constitutional republic as a special form of democracy constituted in the United States as the formalized governance structure. Transparency in the governance structure was crucial for understanding what government authorities were doing in the name of democracy, and especially when done by opaque executive rules and secret law with little or no accountability and oversight.

The rise of secret law under the cover of national security in the post 9/11 world was amply described in an extended article and that this allegation was very well-founded (Rudesill, 2015). Article went into great depth across many dozens of carefully researched pages, and made the compelling case that the “vital constitutional values of the rule and self-government . . . are in uncomfortable tension with all three branches” of government (Rudesill, 2015). It was inside of this very uncomfortable tension created by the gap and the problem of democratic governance in a national security driven world, where I once lived and witnessed the proverbial opening of Pandora’s Box. The friction created by this tension brought liberty and security up against each other and the drift in a post 9/11 world appeared to sacrifice liberty for the sake of security. The article concluded by stating that the future of secret law and its increasing use raised several key questions when democracy’s authorities were writing laws in the shadows of secrecy. This raised the key question of how long can a constitutional republic long endure unless it maintained a “favorable friction and sustainable equilibrium” (Rudesill, 2015) between liberty and security.

Anechiarico (2009) emphasized the role of citizen involvement combined with service effectiveness and integrity as the means to achieve public good in the face of corruption. The article examined the operational value of citizen involvement in a climate incentivized to bypass integrity and accountability for the spoils of political privilege and position. Article suggested the construction of a metric based on network connections between officials responsible for delivering services and those officials responsible for ethics (p. 44). In terms of methodology, the article highlighted the use of

performance measurement techniques with the caveat that the theory of public good requires ethical government for their “provision and maintenance” (p. 44).

This article provided a rich and telling example whereby corruption was justified as acceptable, if the appearance of honesty was kept rather than getting anything done. This meant that the value emphasized was administrative self-interest rather than making sure the city potholes were filled on time in the public interest. In other words, the efficacy of democracy as expressed through public administration was sacrificed for corruption and created a stalemate in the delivery of public services, and presented a conundrum for public officials looking to get things done.

The value of this article was two-fold. If public officials tolerate corruption, then corruption became a political value that served the institution and not the public. In other words, the rewards of corruption outweighed the benefits in delivering services for the public good. Here a vigilant and vigorous oversight function was necessary for ensuring the delivery of public goods that served the public and not institutional prerogatives and incentives. This was critical for democracy given that even a little corruption will drive out the ethics that kept the corruption in check (p. 43). An illustrative example cited by the article was the fall of the former governor of Illinois, Rod Blagojevich. In addition, I blew the whistle on corruption and fraud in the government as well as secret mass domestic surveillance and was severely punished and prosecuted by the government.

In terms of public administration, this article emphasized the critical need for ethics in public service and central to democratic governance. Findings embedded within the article made it clear that without ethics, ‘pay to play’ schemes and political machines

became the corrupting norm and the public suffered in the services that were compromised for institutional ends rather than the public good (p. 43). Ethics became the means to create transparency, while ensuring that the public good was delivered as a service and not for simply self-serving institutional ends.

Azpuru's, et al (2008) primary research method focused on a comprehensive quantitative analysis of a dataset that showed all U.S. foreign assistance through the Agency for International Development (AID) over the period of 1990-2005. Article identified patterns in the data in terms of trend analysis. The database was made up of 44,958 records (p. 51) that captured the U.S. AID budgets for the expenditure of monies across all sectors for the indicated period. The findings demonstrated a marked increase in funding for ostensible democracy and governance assistance.

The article conducted a multi-year analysis and discovered that although AID funding for democracy assistance was quite small in the 1990s, it went from \$128 million expended to \$902 million expended – a nearly 10-fold increase during this timeframe (p. 152). According to the article, this rise in funding for democracy assistance also went from consuming 7.7 percent of the total U.S. AID budget in 1990 to 12.3 percent by 2005 (p. 152), with even greater expansion after the events of 9/11. In addition, the U.S. wars in Afghanistan and Iraq created the largest change in so-called democracy assistance spending since 1990, pulling resources away from other parts of the world, notably Africa and South America. However, massive amounts of money were expended in the name of democracy building but instead resulted in vast corruption.

In assessing this article, it was important to consider the larger backdrop against which these types of monies were expended. In addition, it was necessary to compare with the far larger budgets expended by the defense department in these areas. Furthermore, it was rather overly simplistic to assume that the funding was successful if the previous authoritarian government became a government where people were represented or voted – with the idea of free and fair elections as the benchmark of democracy. This article did provide a backdrop for understanding my whistleblowing as part of my fiduciary responsibility for ensuring taxpayers' money were spent wisely and not fraudulently under the veil of national security and secret law.

From the analysis of the data it was clear, that although the distribution of funding had primarily focused on the Civil Society sector, since 2003 the Governance sector had expanded significantly, including the Rule of Law and Elections (Azpuru et al, pp. 156-157). As pointed out by the article, the rise in funding for governance reflected the concerns about corruption and local government issues. What was most interesting was the Elections sector received the smallest percentage of the total – only some 14 percent (p. 157) and yet it was the presence of elections that was usually touted as the visible transformation of a society from a country ruled by executive and power fiat to a country ruled by law.

The value of this article for this research centered on the leadership and policy implications and consequences regarding whether U.S. foreign assistance was an effective mechanism for promoting self sustaining democracy abroad, or whether it was more about stability and civil order as result of U.S. foreign policy interventions and

activities overseas. Given that the vast amount of monies expended for military and stability operations (and the billions I saw spent on national security at NSA), overwhelmed the ability of rather modest amounts of monies expended for democracy assistance to shape democratic governance change, because it was supplanted by authority through other means and to sustain a war economy. At a minimum, democracy assistance had certainly created a debate about the ethics and value of democracy promotion activities by the United States around the world as well as the nature of democracy as proof that it worked.

In Bevir (2011), the article reflected on the genealogy of democratic governance against the backdrop of Bevir's own book entitled *Democratic Governance*. The article presented a case study analysis centered on the argument that democratic governance arose from the combination of modernist theories and public sector reforms. The article examined the rise of modernism as a break from developmental historicism that placed institutions and events in a larger narrative (p. 4). In addition, the article examined the decided turn toward classification schemes, models and correlations, with the advent of social science, comprised of rational choice of economics (utility maximization) and sociological norms characterized by functionalism in the form of network theory and communities of interest (p. 5).

The strength of this article, in terms of the findings, centered on distinctions of modernism, as drawn out by the article, altering the concept and nature of the state beyond traditional representative democracy. Another strength of the article centered on the rise of public policy through experts, and not just through notions of the common

good and national character leading to the modern administrative state with its attendant and often burgeoning and stifling bureaucracy. However, the notion of economic utility created a shift toward networks and public service delivery as the complexity of problem solving in society became more challenging, including problems associated with transparency and accountability in the public sector for democratic governance (p. 9-10) that was now more of a blend between rational choice theory and institutionalism.

The value of this article centered on the notion that the newer democratic governance model substituted one form of modernism (the bureaucratic narrative, experts, and procedural accountability) with rational choice theory. This choice theory was then characterized by network institutionalism and performance accountability (p. 16), ostensibly leading to more participatory forms of democratic governance. However, this theory assumed rationality, but with the rise of wicked problems and more authoritarianism structures and strictures, participatory forms of democracy were increasingly beholden to lobbyists and experts rather than more “direct involvement and control by citizens” (p. 17) and posed another real challenge to democratic governance within the polity. In this kind of environment, a whistleblower like me was regarded as a threat, given the danger of exposure and lack of oversight and insight, into the machinations of the secret side of government conducted largely away from the purview of the public (or even the press).

In Borowiak (2007), the article provided a comprehensive comparative analysis of governance accountability in a republican form of democracy through the historical and competing contemporary lens of the federalists versus the antifederalists against the

backdrop of globalization and an eye toward theory. In furthering this approach, the article cited various literature sources and drew out a definition of accountability linked to legitimacy, while also stating that democracy was only one source of accountability in a governance model (p. 998). The core historical precedent cited by the article centered on the constitutional debates between the federalists and the antifederalists, where the article made it clear that the details of the governance structure (via the prevailing institutions) were critical for understanding how accountability takes place and the critical issues that center on democratically representative government and institutional design. A whistleblower was the canary in the coalmine of democracy, but too often paid a very high price for doing so, given the threat that openness and transparency (traditional hallmarks of democratic governance) posed to secret government.

Borowiak focused on accountability as the central articulating focus for all debates centered on democracy and global governance. Author's method of analysis in terms of accountability took the form of an essay in which the author contrasted the federalist vision of a distinct republican form of democracy and its focus on concentrated and centralized government power with the antifederalist vision of a republican democracy that focused upon the active participation of citizens serving as a check on centralized government encroaching on the rights and liberties of the populace. Article contrasted the strikingly different visions of the federalists focused on concentrating the power of government and keeping the citizens it ostensibly served a length with the antifederalists' vision that highlighted the dangers of overly centralized government and the vital role of the citizenry through their active participation in their own governance.

The strength of this article was not restricting the analysis through the bias and prism of just contemporary affairs, but also going back in history to demonstrate that this fundamental tension between a more centralized government and a less centralized government has been with us since the founding of the United States and its constitutional republic form of governance. It was my experience that those who would dare to defend democracy inside the national security establishment were now called out and targeted as insider threats.

Critically, the article made it a point to define and operationalize the terms of democracy, constitutional republic and accountability in terms of their fuller historical context. This context was crucial for properly understanding the underlying dynamics and debates centered on government, governance, as well as the governed. The article clearly highlighted the significant anxiety expressed by the early Americans regarding what the article called “democratic deficits” (p. 999) and how to ensure both a responsible and responsive democratic government that served the citizenry in the interests of we the people. This tension had come back in large measure post 9/11. The value of the article for me centered precisely on the question of how a governance organization remained accountable to the very people it served. This became even more challenging in the context of globalization when geography no longer served as a boundary for the activities of its citizens’ behavior or forces acting on citizens within the country. My case involved the abuse of government powers to prosecute me as the means of censorship and control to prevent threats from permeating the boundary.

There was no question that the historical constitutional debates in the United States during the ratification period were of seminal importance focused on the critical issue of centralized power versus decentralized power. The article discussed the types of gaps that were created when the governed are at a distance from their own governors and that these gaps created negative opportunities for the representatives to abuse their very power and transgress the laws and rights of the citizens they were bound to serve (p. 1000). In essence, the well-being of the governed in the formation of the U.S. Constitution was critically dependent on preventing the central government from abusing the very powers that would make them unaccountable to the citizenry and created an opening for a different form of governance to emerge, including tyranny. This was the very reality experienced by me as a whistleblower.

In Fung (2007), the article sought to synthesize conceptions of democratic theory and the study of institutions through the idea of a standard called pragmatic equilibrium. It also examined the idea for a method of reasoning about institutional choices in how democracy was viewed closer to pragmatic equilibrium (p. 443). These two ideas were then applied to two governance problems focused on political structure rules and minority tyranny that faced democracy and four ways to view democracy from minimal to participatory (p. 443). Article examined the historical bifurcation between normative political theory and empirical political science and proposed a systematic approach for synthesizing the two ways of studying democratic institutions.

In assessing this article, the article raised the issue of unintended consequences created when the real facts of normative reality clashed with the empirical desire for facts

and causal explanations whereby deductions were thereby invalidated. Importance of this analysis was the blind spot created by the common intellectual tendency to resist new facts and evidence that would alter existing theories of reality. Positing pragmatic equilibrium expanded the scope of the data and provided an accounting for democratic theories using empirical research (p. 447). Article highlighted the consequences created by our political institutions and called for a real synthesis between the theory and the science for understanding political reality. Article stated that the pragmatic equilibrium provided the insights and values into the phenomena (p. 456) of the everyday dynamic of political reality in a democracy, absent static or sterile normative theory.

The relevance of the article to me was significant given that real democracies adhered to the value of what the article called “nontyranny” (p. 444). “Nontyranny” was defined by the article where no minority can decide the collective issues of others without their consent. In this manner, the tyranny of a minority (and especially a minority in power), did not bode well for the longer term health of a robust democracy, let alone democratic governance.

In Gerring, Thacker, S.C., & Moreno, C. (2005), the article asked the fundamental question regarding why certain democratic governments were more successful than others and what impact political institutions made on the quality of governance. Article posited a new theory for democratic governance centered on the notion of “centripetalism” (p. 567), a theory that attempted to show that democratic institutions worked best when centralized authority was reconciled with inclusion across eight indicators of governance. Article examined why some democracies were plagued with

corruption and nepotism, while others were effective and efficient. Focus of their research was on the role of political institutions in good governance through the prism of centralized and decentralized perspectives.

Article's core argument countered the value and construct of decentralized government by recasting centralized government through their concept of centripetalism defined as the "flow of power from diverse sources toward the center" (p. 569) and was both inclusive and authoritative. Article listed 21 different paradigms of centripetalism using a very complex formula that combined the effects of unitarism, parliamentarism and list PR (party list proportional representation). They expanded this paradigm by operationalizing good governance through eight specific measures that included bureaucratic quality, tax revenue, investment rating, trade openness, gross domestic product, infant mortality, life expectancy, and illiteracy (p. 573-574).

In assessing this article, it seemed that the article neglected the reality that the federal government had continued to abrogate greater and greater powers unto itself under the guise of centralized authority that excluded participation, the very opposite of their thesis, while attempting to hold the paradox of flowing power to the center while also maintaining diversity of inclusion in the body politic. In addition, their research design was limited to countries with a democratic framework and so the article limited all of their regression analyses to minimally democratic country years (p. 574) and a trend variable to compensate for spurious correlations, and a control variable that measured the average value of the dependent variable across all the analyzed countries "weighted by the inverse of the geographic distance" of each country (p. 574). However, the article

acknowledged that there was no standard benchmark for the regressions they made (p. 575). In addition, they also recognized that the operationalization of their theory was not randomized (p. 577).

Value for the research with this article centered on not skewing results to validate theory and carefully examining any claims that combining centralized forms of authority with inclusion of diverse political interests could occur without disincentivizing the voices of diversity that were perceived as threats to the central order and were essentially vetoed out.

In Goodsell (2006), the article took the form of an extended scholarly essay and critiqued three common perspectives on public administration that contradicted a view of a democracy. In addition, the article advanced a new perspective that posited that public administration must have public trust building as its goal and the keystone for democracy. Article conducted a comparative analysis of the three main views on public administration as articulated through the major institutions of society: the state (centralized executive control), the market (private sector values and business culture), and civil society (direct influence over public administrators), using three conceptual categories called Visual Direction Chosen, Favored Features Sought, and Desired Outcome Visualized (p. 624).

Article proposed a new vision centered on an integrated public governance model that was characterized by a more decentralized dynamic network of public, private, and voluntary organizations with common interests, shared purposes, and interacted rather than part of a managed top down structure with minimal regulation.

In assessing this article, it was clear that the article took issue with the narrow field of view that often characterized the literature in focusing on the minutiae of public administration and conflicting analysis from mostly outside perspectives looking at the structural dynamics and interplay between government, public administration, the market, and society. This focus, according to the article, left the field “ripe for manipulation” (p. 623). The article also made the case for a new intellectual vision for public administration linked to its crucial role in a democracy and not just as a mechanism of governance bureaucracy. The challenge was the view that public administration was not just an instrument but was also a social asset (p. 633) that lies at the heart of democratic governance, rejecting the notion that public administration was the hand maiden of the executive or merely a commodity that was bought and sold in the marketplace, and must see itself as a major contributor to the lifeblood of democracy.

Relevance for this research was the issue of increasing growth in the centralized executive of government over a vast and burgeoning bureaucracy, and the increasing close relationship between the government, special interests, corporate influence, the revolving door in government, and outsourcing of government services to the market with the occasional cries for reform and change as the antidote. In addition, as pointed out by the article, bureaucracy in government had become “an establishment institution operating within a capitalist culture” (p. 627) and raised the profound question of whether citizen participation was now a quaint notion that was hopelessly antiquated in democratizing public administration for the sake of the common good.

In Haskollar (2010), the article looked at democracy as an international norm for governance in preventing conflicts. The particular methodological approach examined the relationship between democratic governance and peace based on the framework postulated by Finnemore and Sikkink's norm internationalization and impacts on global governance structures. Article also analyzed in chart form a democracy index average based on regions across the world as categorized by full democracies, flawed democracies, hybrid regimes, and the effect of regime change (or no change) on the probability of war, and that wars among democratic and non-democratic states were related to size and proportion, with the paradox of conflict increasingly common between them. Article highlighted that efforts to impose regime change on nondemocratic states had resulted in significant conflict beyond just ideological divides and into religious/cultural divides.

Strength of the article centered on establishing that a climate for fostering democracy was not easy and had led to a Western/nonWestern divide within the international community as part of the "pathologies of democracy" (p. 2). In addition, the article carefully walked through the analytic framework for the evolution of democratic governance through the stages of emergence, acceptance (including Western expansionist behavior), and internationalization (pp. 5-10). However, the imposition of Western models of democracy on nonWestern governance structures had met with significant resistance, and posed real challenges for any sense of a global democratic norm.

The value of the article was taking a strategic view of democracy as defined by Aristotle in terms of the rule of the many rather than the ruling few. In addition, the

article clearly provided the historical context for the meaning of democracy, democratic peace, and democratic internationalism while pointing out the errors in the theories of democracy. One error was the illusory belief that “war proclivity” was constrained by democracy when in fact democracies were more prone to go to war (p. 4).

In Kurki (2010), the article examined the different concepts of democracy in the post Cold War era through the notion of “conceptual contestability” of democracy promotion (p. 362) and the dangers of not considering the multiple meanings of democracy in context. Article emphasized a new way to study democratization based on the roles and motivations that inform the promotion of democracy rather than just causal variables. Article also examined why such promotion succeeded in one context and not in another. In addition, the article questioned the utility of the traditional liberal democratic model for democracy promotion and especially when done in settings that are different from the classical model (p. 364).

The strength of the article centered on challenging the widely accepted notions of the traditionally viewed framework of Western models of democracy from a procedural perspective without critical examination of the alternatives as highlighted by Robert Dahl and his work on polyarchy (p. 367), characterized by a politically defined view of democracy rather than a more realistic normative view of democracy. Article highlighted work in moving beyond narrowly focused procedural notions of democracy and considering the role of civic society and pluralism, political culture, variety and group and individual rights in the success of democracy promotion (p. 368-369), as part of a deeper social phenomena.

The value of the article was the examination of the concept of democracy as a way to describe and categorize the world and the reality that conceptual definitions were bound up by the filters of political, social, and ethical considerations as theory and not just through the convenience of a single lens for viewing the world. In using the notion of “essential contestability” the article directly questioned the use of liberal democracy to the exclusion of any other models that include participatory, radical deliberative and cosmopolitan models of democracy (pp. 372-373), besides yet other models that included feminist and even Islamist models. Article powerfully argued that it was crucial in this debate of what was democracy that different models had divergent views on how a society was structured, how a society functioned on a normative basis with respect to power and control and relationships, while recognizing that divergent views were at odds with the progressive narrative of democracy promotion and the struggles experienced across the world over social and political power (p. 383).

In Morse (2006), the article examined the practice of public administration in a democracy, by considering how Follett viewed public participation in public policy. Article provided a summary of Follett’s life and the influence Follett had on theorists in the fields of business management and public administration. In particular, Follett emphasized what the article called Follett’s “deep democracy that mainstream public and business administration cannot relate to” calling Follett the “quintessential pracademic” (p. 3), due to Follett’s mixture of idealism combined with pragmatism grounded in the experiences as a community organizer and the roles of power and expertise.

In assessing this article, the key point brought out centered on the failure of theorists in the field to adequately make the connection between citizens and public administrators and in that divide, was the challenge and the tension of participatory democracy. Article mined the richness of Follett's writings and highlighted the organizing premise of "circular response and experience" (p. 5) based on people's activity within the public sphere and the importance of the social integration and interaction of the individual within society, rather than looking at them separately as subject and object.

Relevance to my research was Follett's creative use of integration and interaction within the social setting of society where true democracy was created and sustained as the essence of self-government rather than government ruling over society, far beyond merely casting a vote to put people in power at the ballot box, and instead one of building a sustainable society and community.

In Valladão, (2006), the article focused on examining the emerging conflict between global democratic hegemony and United States hegemony. The article argued that this new globalism opened up the emergence of transnational actors at the expense of more traditional notions of U.S. power hegemony. This global reality had created a paradox for the United States, where the instruments of national power were more heavily concentrated within the executive branch of government instead of the courts or the Congress. Article posited that this new emergent reality also created a democratic dilemma for the United States in promoting the very phenomena that eroded their own

economic and political power in terms of increased militarism and de-democratization activities around the world and at home.

In order to understand this reality, the article summarized the meaning of democratic hegemony and argued that transnational entities were setting new limits on a state centric approach (and even regional centric) in understanding the world geopolitical system, because of the discipline's "state-centric tradition" (p. 245). Article highlighted the global communications revolution and the reality that more than "half of the world trade is in the hands of big multinational corporations" and the intellectual brain drain that now moves much more easily around the world. In addition, the article emphasized the impact of new global social media (including Al-Jazeera) and the challenge that even authoritarian regimes were experiencing in keeping a lid on global awareness, democratic trends and the transparency challenge for traditional power elites.

In assessing this article, its salience centered on what the article called the "democracy paradox" where any attempt to promote liberalization and political shifts in the direction of democracy created the very conditions for regime change in the existing power elites. And yet the article asserted that only legitimate warrantor of global security was the United States because no other state or even group of states had the capability to act in providing the necessary security and the burden of world's policeman. In addition, globalization of this scale made the world system much more vulnerable to economic and social shocks. Article also argued that the issue of democratic hegemony was overshadowed by the overextension of U.S. empire projection and the erosion of the very democratic principles the U.S. ostensibly promoted.

For research relevance, the emergence of supranational global institutions and transnational actors did create clear challenges to the nation-state model and raised legitimate questions regarding the geopolitical isolation of the United States on the world stage combined with the increasingly imperial control tendencies for dealing with threats to democratic hegemony. In other words, the article asserted that a worst case scenario could happen through a largely unwieldy and impractical American empire (p. 257), and that it was the exceptionalism of this American Empire that accelerated the devolving of democratic governance after 9/11. As I discovered, any attempt to bring accountability and oversight regarding U.S. national security policy and practices where the invocation of national security was used to justify all manner of actions (including disclosures of wrongdoing and violations of the law centered on secret mass domestic surveillance), were met by government censorship, suppression and retaliation as well as persecution and prosecution of the whistleblowers.

Constitution and Rule of Law

In Behnke (2007) the article used a principal agent relationship based case study centered on the measure of ethics in Germany and the United States as it pertained to the public service sector in both countries. Using the framework of an ethics infrastructure as promoted by the Organization for Economic Cooperation and Development (OECD), the article conducted a comparative analysis of how ethics were measured and how ethics initiatives were implemented in each of the respective countries. Authors supported their research analysis in three steps – from theory to case study and back to theory using a set of general hypotheses regarding the conditions for the emergence of ethics measures.

Using agency theory and path dependency, the article made the case that principal agent (P-A) relationships were key for understanding how ethics measures were normalized (p. 13). The article used political commitment, workable codes of conduct, professional socialization mechanisms, ethics coordinating body, supportive public service conditions, effective legal framework, efficient accountability mechanisms, and active civil society as the measures of ethics sensitivity in both countries (pp. 21-26). In terms of differences, the article found that both Germany and the United States displayed a political commitment to ethics in public service. Their analysis also showed that only the United States had a code of conduct, but Germany had a much more cohesive socialization process that took place that was contrasted with the revolving door in the United States.

A critical analysis of the article suggested that greater emphasis was necessary on the causal factors for unethical behavior and the punishment for transgressions by public officials. In addition, what happened when the leaders conducted their deliberations in secret away from the prying eyes of the public? Article emphasized the importance of the instrumental function of ethics standards of conduct and behavior and what constituted a violation of those proscribed ethics. However, even these instruments may simply be given lip service, while the real business of public service was conducted in private. In contrast, the signaling function was of greater political import in the United States than Germany, while Germany was more focused on the rule of law and hence the use of the instrument of ethics to protect the public interest. And yet what happened when the rule

of law was set aside and the business of public service was turned into private interests for the sake of profit and power, regardless of democratic governance?

In terms of relevance, the issue of public trust loomed large from this article. Confidence in the public trust was easily broken when those in public service did not serve the public and used public office for personal gain or private profit. When scandals did occur in the body politic, ethics standards were typically employed with disincentives for violating that trust in the future. In addition, the juxtaposition of the public trust and private interests given by power and access created a political environment where they were often at cross purposes with each other.

In terms of democracy and government, this article highlighted the distinction of Roman style law found in Germany versus case and common law found in the United States. It raised questions about the type and style of leadership necessary for a public service to truly serve in the public interest. This article shed light on implementing stricter or at least sufficient ethics behavior or enforcement – and significant in terms of my own experience attempting to serve the public good and not private security interests.

Bevir (2006) used a normative issue approach for analyzing the key distinctions between radical democracy and systems governance after defining both terms. The article took the concept of governance (much ballyhooed as the new practice for public administration) and then associated it with the perceived shift from hierarchically oriented bureaucracies within a political system to markets and networks as vital enablers of democratic governance expanding from the local level to the international level. In this

context, governance was defined as a government that was responsible and representative, characterized by the rule of law with no corruption (p. 426).

The article contrasted the emergent normative definition of system governance as participation, openness, effectiveness, accountability and coherence (p. 427) for the purpose of expanding democratic participation as part of a shift from a more traditional power and control orientation to one characterized by a more organic and participatory approach. However, the article suggested that the political leaders of the day were not embracing radical democracy as much as they were simply seeking policy solutions for major problems in society while also dealing with the public distrust of the very governing institutions they controlled. In this way, they coopted the very systems governance principle that networks were more effective and efficient than hierarchies and that dialogue and consensus were crucial for long term political legitimacy (p. 427).

On the other hand, the article stated that radical democracy was viewed as good in itself and that its virtue was as much a way of life and experience apart from any existent institutional structures – and an attempt by people to govern and rule themselves rather than accede that governance to others to rule over them. A critical analysis of this article certainly led to the conclusion that traditional notions of static democratic governance as articulated through institutions had come up considerably short and needed to incorporate elements of radical democracy to sustain itself and remain relevant to the public interest, rather than use the darker aspects of radical democracy as a means to an end that justifies remaining in power.

The relevance of this article struck at the heart of democracy and the will of the people to be governed by consent instead of by decree or absent their consent – more or less, and related back to government practices that I called out as a whistleblower, disclosed to the press, and then got prosecuted for it. Therefore, democratic governance was the continuing hegemony by the prevailing system of government by distinctly centralized and top down means rather than an approach that favored a decidedly bottoms up and more organic approach that encouraged diversity, opinion, and full dialogue. Perhaps real democracy thrived or withered or died in the context of everyday lives and the responsibility for self-governing practices created the conditions for more limited government as it related to the formal government structure and the needs of the existing elites and institutions. This tension was perhaps the central question and the real challenge of democratic governance in the post 9/11 21st century.

In Boyte (2005), the article shifted the discourse from just the purpose and structure of democratic government as defined by those in authority and instead reframed democracy in terms of governance. Boyte's fundamental argument centered on a perspective that shifted away from the mere exercise of authority as governance and instead placed much greater emphasis on the capacity of governments to follow the rule of law and engage constructively and openly through interactions with society, both publicly and privately (p. 536). The article contrasted the more traditional theory and practice of public affairs and administration from a structural perspective and upon a more civic society centered and focused on the commons through the actual practice of governance.

The article's strength centered on a carefully written argument that proposed viewing democracy from the agency of a civic culture and not just from those in office who hold power and provide services to the governed – arguing that governance was much more organic in a democracy. A powerful example provided by the article was from Hubert Humphrey's own life growing up and highlighted an earlier period where his father's drug store in Doland, South Dakota was the place where civic society and the everyday governing of life came together (p. 537) – that real democracy was local and not just the province, purview and prerogative of elite theory and political decision makers at the “center of the political universe” (p. 539).

The article then quoted Lippmann and Lipset regarding the elite alliances for government with politics located in the structure of the state (p. 539-540). Article made a compelling case that the state centered theoretical framework for governance was still quite dominant and prevalent and a status quo model for problem solving that had come up way short, given its detachment from the very citizenry it ostensibly represented in the contest of democratic governance. In addition, the article captured the more technocratic and bureaucratic liberalism language that used value free jargon but obscured the source of power, interests and authority relationships of government (p. 540), instead of emphasizing the critical skills of democratic discourse and democratic engagement at the level where most people lived and worked every day and organically ‘own’ their democracy (p. 540-541).

The value of this article to me was centered on the proposition that real democracy took place and articulated itself within our everyday life. Furthermore, the

well-being of a society was firmly rooted in a democracy exercised by a distinctly decentralized governance model that was more germane to sustaining the civic nature and engagement of the citizens – leaving the constitutional level of state power as enumerated in a more limited way. In essence, this article highlighted the civic ethos of responsible democratic governance with an informed citizenry working together for common purposes creating public good and civic well-being instead of authority and power that “takes public wealth for granted even as it privatizes such wealth” (p. 544) through management, ownership, and regulation of the commons.

In Dunn, et al (2001), this article examined the role of responsibility and accountability of managers within the local government sector of the United States. Study was survey-oriented and included 488 local government manager respondents (p. 73). Article argued that the concepts and associated methods for responsibility and accountability were fundamental to democratic theory and their responsiveness to public preferences (p. 74). The core question they examined centered on how responsibilities were defined and accountability discharged in government’s response to public needs and preferences looking to government as a service. Article referenced the famous Friedrich-Finer debate from the early 1940s with Friedrich focusing on the imprimatur of political control, yet argued that reliance on elected officials to ensure accountability in government was simply inadequate and fell far short. Article noted that Finer emphasized the need for rules and sanctions and authority for achieving accountability using external control by elected officials over the nonelected or appointed public administration officials. The article emphasized Finer’s focus on subordination of nonelected officials to

elected officials and Friedrich's focus on technical competency of nonelected officials and sensitivity to public preferences (p. 79).

Article used data from a survey of local government managers in the United States drawn from a sample of 858 persons that were selected randomly from *Who's Who in Local Government Management* (p. 81). Survey asked the local officials to establish the sources for accountability and responsibility in government using a six point Likert type scale. Their findings noted that managers rated the preferences of elected official the highest, followed by citizens, knowledge of profession and then the media. In addition, these nonelected officials were asked where they placed their importance when developing new policy options and when responding to routine matters, with elected official for the former and reaction of groups most affected by the latter followed by preferences of citizens (p. 82-83).

The article found that local nonelected official responses to sources of accountability and responsibility was a complex dynamic that did not lend itself to narrower definitions as postulated by Friedrich-Finer. Why? Local officials did not always enjoy the benefit of elected officials clearly defining their roles and responsibilities, while elected officials did not always hold nonelected officials accountable. They concluded by emphasizing the blend of elected officials, public preferences and professional technical knowledge that defined responsibility and accountability that must work together while considering both internal and external controls to do their job – a both/and and not an either/or proposition (p. 85).

In terms of my research, the value of this article centered on the finding that media was less a factor in the perception of local administrators for influencing accountability and responsibility. This would seem contradictory, even paradoxical, given the role of the media in the United States under the 1st Amendment of the Constitution and even ran counter to other studies that the article cited for involving the citizens in a more democratic governance process and sensitivity to the public interest. Perhaps the role of lobbyists and other powerful local interests were of real importance in how the wheels of democracy turn locally within communities, with the impact of neglecting the better interests of the general public. In other words, having a government responsive to its own citizens was the heart of democratic governance, but having an informed and enlightened citizenry kept the government responsible and accountable to the polity.

In Gardner (2005), the article focused on two design premises of the U.S. Constitution, namely accountability through elections and the checks for accountability that limit bad governance when serious harm was done to the public good. Article emphasized the challenge posed by undemocratic behavior when political actors were not in compliance with constitutional constraints and argued that self sustaining checks were the key to ensuring the viability and integrity of a democracy. This was particularly true when the public good was used for private gain.

In particular, the article asserted that the “backup systems” (p. 2) that preserved the authority and primacy of the Constitution were often subverted by institutional environments rather than the checks and balances of the three branches of government. The article’s thesis centered on the premise that the Constitution’s backup systems had

never worked as designed and that politics had largely altered their value and original purpose in checking unconstitutional behavior, as in the “bromide” (p. 3) spun with the separation of powers as somehow self perpetuating. However, the article pointed out that the separation of powers was not self perpetuating and was simply a precondition for nontyranny (p. 3) and cited the Madison dictum on power having an inherently encroaching nature.

In assessing the strength of this article, the article really homed in on the reality of the doctrine of separation of powers and the very levers of democracy aggrandizing that power institutionally. Article pointed out quite succinctly that sovereignty in a constitutional republic was held by the collective nature of the people (p. 8), but party organizations subverted this premise, often behind the scenes away from accountability, and thereby defeated the very checks that would keep the powers essentially and necessarily separate.

This article was of significant import for me for an applied research approach because it raised the issue of what happens when the very mechanisms that protect and preserve democracy are eroded by distinctly authoritarian tendencies that begin to take over, turning the very instruments and structures of democratic governance for their own bidding. This was particularly relevant in a post 9/11 security world where many decisions were made by the executive branch in secret or through special powers, shadow authorities, and orders.

In Newbold (2012), the author of this article made the case for establishing the rule of law and constitutional competence as both the practical and theoretical

foundations for graduate public administration programs instead of just a more unidimensional policy analysis, management, and leadership orientation. Article argued that the rule of law under the Constitution was not optional because there was a real and critical need for responsible democratic governance. Article asserted that the profession of public administration more often subordinated the legal aspects to the managerial and the political and that the relationship between the rule of law and the delivery of public goods and services to the citizens were vital and essential to the exercise of the democratic governance discipline as public servants (p. 466).

Article went through an historical overview of the seminal writings in public administration theory and practice (including Woodrow Wilson) that emphasized the managerial and economic aspects of public administration to the exclusion of all other approaches to the exercise of administrative management. Article pointed out the scholarly unwillingness to ground the theory of the field on American constitutional principles.

Why? Article stated that if the “legitimacy of the American administrative state” (p. 467) was only found within the constitutional underpinnings of the United States, then the core of a graduate education must include the legal and constitutional foundation as part of the requirements for the degree – connecting public sector administration and management with constitutional values. The article pointed out the case of *Hamdi v. Rumsfeld* as illustrative of the dangers of what happens when an administrative agency (the CIA) used discretionary judgment without consulting or considering Congress or the

Judiciary and simply exercised raw executive power – making the point that civil servants serving in government must answer to all three branches of government (p. 475).

The strength of this article focused on a clear and compelling argument that absent the grounding of public administration on constitutional law, practice, and tradition there was no real administrative state exercising democratic governance. Furthermore, the article made it clear that American public administration must preserve and maintain the very democratic values that lie at the core of the American governance state (p. 468). In fact, the article further asserted that public administrators must protect the Constitutional rights of all Americans and that the lack of such governance knowledge was not an excuse to erode away those very rights in the interests of governance – because it was not possible to erode the rule of law under the Constitution without sacrificing the heart of liberty and rights as protected by that same Constitution. In other words, American public administration must have a constitutional perspective because the reference point for democratic governance was maintaining the separation of powers while also preserving individual rights and freedoms. Anything else was a drift toward democratic dystopia.

The value of this article centered on the essential nature of American democracy. Article made the case that it was the responsibility and accountability of public administration education to ensure that civil and civic service were fundamentally based on protecting, defending and preserving the constitutional republic form of democratic governance – a form of administrative “conservatorship” (p. 471) that focused on maintaining fidelity to the Constitution and not to a particular political party, program,

institution or policy issue. In addition, the article argued that the U.S. Constitution must remain as the centerpiece for public administration theory and practice – a democratic governance frame of reference that linked constitutional principles, the rule of law, as well as competent and accountable public service.

Finally, this article asserted the centrality of public administration acting only in accordance with constitutional government and that it was the administrative state that protected the legitimacy and integrity of this special form of democracy (p. 476-477). However, if this same administrative state functioned outside the boundaries as established by the U.S. Constitution, then the rule of law was jeopardized and the integrity of democratic governance was placed at risk.

National Security and Secrecy

In Frank (2007), the article argued that democracy had assumed many historical forms over the years – from the participatory form of democracy in ancient Athens to the representative form of democracy in a constitutional republic like the United States. In actual practice the article emphasized that all democratic governments rely on the identity of those who govern and those who are governed and that occurred through the dynamic of governance. However, the article looked at trust between members of a democratic community as the essential key for mediating the two essential components of governance – the common good and the common authority.

Article argued that the common good was a final cause of action for the life of a community and then organized institutions and laws that order that common good (p. 817), like the two providing principles in the Preamble to the Constitution of the United

States – the general welfare and the common defense. In terms of authority, article emphasized that motivation and direction were the necessary operative means for authority to actualize (p. 819) and that authority was particularly animate when there was a lack of unanimity among members of a society regarding their own common good. Article pointed out two kinds of authority – essential and paternalistic. Article said that the latter was fundamentally based on perceived deficiencies among members that required a strong hand to guide and direct while the former focused upon freedom and autonomy.

In assessing this article, the article raised the hard question regarding authority and how it got in the way of the Jeffersonian principle that people were governed best when governed least. Article was a superb treatise on the dynamic of democracy and that a true polity did not simply obey law and order through the maintenance of power taking priority over the practice of common everyday life – where democracy lives. Article emphasized the critical role of trust and that the absence of trust in democracy breaks down into conflict between the interests of the few and the interests of the many (p. 832).

In terms of my research, the article was of particular interest in a post 9/11 national security world for examining the claims of authority to keep us safe, while eroding the very tenets of democracy in terms of civil rights and liberties – a more zero sum game of trading off one for the other – a false dichotomy. This was especially true with the substitution of trust by fear, where government granted itself extraordinary powers and executive control largely conducted in secret instead of through voluntary and informed consent by the governed. In other words, disenfranchising the citizenry

through unbridled and irresponsible power corrupted the democratic governance and gave rise to a form of governance that betrayed the very essence of democracy.

In Lanning (2008), the article examined the features of democracy in terms of engagement, equality and autonomy and their respective challenges to democratic societies in the context of voting and the soundness of election reforms. Article used a “signal detection framework” (p. 432) conceptualized as fraud and disenfranchisement. Article proposed the replacement of the Electoral College by a national popular vote as a way of improving participatory democracy by the polity. The backdrop for this assessment was the constitutional crisis created by the Bush Gore election of 2000.

Article argued that democracy is more than just a system of government and that democratically elected governments can and do act in decidedly undemocratic ways. Article chose to examine voting rights as a way to measure the level of participatory democracy and used this measure to show the uneven progress made based on the rather low overall turnout rates of voters.

In assessing this article, the scope was overly broad because it used theoretical frameworks from intergroup relations to game theory and authoritarianism in attempting to determine the meaning of democracy and political participation in this the United States. Article did examine the relationship between socioeconomic status and political participation, what a vote meant, whether elections were fair, and vote cynicism and apathy. However, what the article argued (and conveniently leaves out) was the reality that going to a popular vote would require a change to the Constitution through an amendment and ratification by three quarters of the states to pass as the means to create

an environment where each vote was counted the same, and not just in battleground states (p. 441).

In terms of research relevance, the perception of legitimacy was critical for trust in government, while cynicism and apathy toward government would indicate real dangers to democratic governance in a post 9/11 security world, where even national security had become bipartisan and the overriding imprimatur of government at the expense of the general welfare for the people. In this regard, keeping a distinct constitutional republic as the form of democratic governance in the end may have much more to do with an informed citizenry as the heart of participatory democracy and engagement.

In Levinson (2006), the article examined what happens to constitutional constraints on power that were exercised during times of indefinite crisis and whether the executive branch was bound by law during times of emergency. Article examined the reality that these phenomena occurred during such crises over the course of the history of the United States. Provocatively, the article asked if the rule of law in times of crisis limited the options that face decision makers due to the constitutional bounds of limited government with assigned and enumerated powers. And yet the article also pointed out the reality that in times of crisis the government was often asked to do whatever it took and was necessary when responding to the “exigencies of the moment” (p. 60). This raised the uncomfortable question regarding whether this meant that under emergency conditions the government could bypass the law of the land and expand its power for the good of the nation.

In assessing this article, the article made a novel, if not out of context, interpretation of John Locke's famous *Second Treatise on Government* and implied that the prerogative of government permitted expanded powers if necessary for the benefit of the greater good, absent the prescription of law (p. 60). The article did highlight the reality that there was also a constitutionally defined means for changing the law, but not doing so via ex post facto laws, except when the limits of the Constitution itself stand in the way of public safety. The real question centered on the relevance of the Constitution and whether compelling government interest was sufficient enough grounds to justify transgressing the normative constraints of the Constitution.

Article stated that in the post 9/11 world the decisions made by the government did "threaten the American constitutional order" (p. 67). Article argued that examination of emergency powers that the government granted to itself were worthy justification for dealing with a permanent emergency or just an excuse. And yet key executive decisions were made in the aftermath of 9/11 where the government willfully violated the law in secret and whether under these circumstances there were any limits to emergency power (p. 70).

The relevance to my research in this article rested on the fundamental precept that adherence to the rule of law was the great equalizer in democratic governance and that in times of permanent or extended crisis (like the post 9/11 period), it became all too easy to redefine and violate the norms of law, and sacrifice liberties and rights for the sake of power and control. In other words, the rise of the national security state led U.S. governance down a path that was much more authoritarian in nature and less and less

accountable to the public and the law – a devolution and devaluing of democracy because it got in the way.

In Newbold (2011), the article examined Federalist Paper No. 27 in the context of a competent administration serving the citizenry and its contribution and relevance to democratic governance. Article provided an historical analysis of the key findings that demonstrated democratic governance was dependent on advancing the constitutional legitimacy of the administrative side of state maintaining and preserving the democratic values of the republic's principles (p. S47). Article highlighted Publius's observation that the confidence held by the citizenry in their own government was directly related to the quality of the administration of that same government. Transparency and accountability became the means to do so, but ran up against the very tension of a highly centralized government exercising its power away from the people.

The strength of the article centered on highlighting how much that foundation was now eroded for the sake of management efficiencies centered on “economy, efficiency, and effectiveness” in a rational choice framework that undermined the very core of democratic constitutional norms characterized by “responsibility, responsiveness, and representativeness” (p. S48). This was particularly relevant given that the article adroitly pointed out the number of Americans questioning the legitimacy, level, and degree of intrusion by the federal government and its necessity in their day-to-day lives, while also expressing real concerns about the overreach of authority by the government without their consent or knowledge, but done in their name. However, this balance between a strong central government and the administration of government created a clear

democratic tension regarding obedience to government and the goodness served by the government in protecting their rights and liberties (p. S48).

The value of this article was particularly relevant in a post 9/11 security world characterized by increased secrecy and government operations conducted in ways that are far less democratic, accountable, and transparent to the public. However, these phenomena were also enabled by the increasing propensity of the federal government to assume a larger and larger role in the life of the polity and assert a far more dominant role in the discourse and direction of governance within the United States. This raised a troubling question. Was the lack of understanding and awareness (or even dismissal) of the constitutional traditions that underpin the unique form of democracy in the United States contributing to its own erosion in the face of a national security regime that preferred to operate in the shadows and behind the veil of secrecy at the expense of democracy?

In Smith (2012), this article looked at the concept of “American exceptionalism” (p. 101) and examined its impact and import from a decidedly historical perspective, rather than through the narrow lens of politics and partisan agendas. Article examined these claims of exceptionalism as a form of evolutionary governance that had created a real challenge to the foundational precepts of the United States, rule of law, and democratic governance, and especially in the post 9/11 age. Article used a scholarly exegesis and argument approach and explored the “exceptionalist” (p. 103) claims of this approach as part of the governance experiment and answered the question of how do we best govern ourselves when often the experiments were failures and that the

exceptionalism of today was a significant departure from the foundations of the country and even cooptation of the common good.

The decided strength of this article was its breadth of historical perspective and synthesis. Article took the reader through the eyes of Tocqueville and the shared ideas from the grand experiment of the U.S. Constitution launched in 1787, the tragedy and hope of the Civil War, the rise of the industrial state, the impact of Darwin and Dewey, the reconstruction of modern society, and the challenges of the 21st century. Article creatively framed the American constitutional democracy through the contrasting perspectives of Lincoln and Obama.

The value of this article highlighted the pressures and tensions placed on democratic institutions and democratic governance in a complex world that often defied easy or simple answers. Furthermore, this tension created the very conditions for deep political and philosophical divisions often far removed from the foundational precepts of a constitutionally based form of democratic governance. In addition, this tension raised the fundamental question of whether the original grand experiment taken up in 1787 in the formation of a constitutional republic could long endure with a highly centralized federal government increasingly turning de Tocqueville on his head - namely handing over the constitutional republic grand experiment to the world of politics and power instead of innovation and democracy.

Privacy and Liberty

In Morgan, et al (2010), the article examined the foundations of public administration based on the contributions made to the field by Herbert Storing. Article

examined what they called an identity crisis and whether public administration was dependent on the political foundations of a government or the outcome of social scientific management. Article noted that Storing focused on the role of public administration in democratic governance and that the crisis was a creature of the unique constitutional form of government in the United States as manifested through bureaucracies.

The strength of the article highlighted the heart of Storing's analysis rejecting the notion that public administration was some kind of science and that to understand the crisis one must return to the founding constitutional governance system established for the purpose of securing liberty from administrative and political pressures against the backdrop of the federalist/antifederalist debates that held in common the crucial need to protect individual rights. Storing argued that the real debates centered on how best were those same rights actually secured (p. 622).

The value of the article centered on the Storing contributions made to the field. First was the danger of majority tyranny that threatened individual liberty. Second was the engaged citizen problem highlighted by the antifederalist's crucial role in shaping the U.S. Constitution and the need to ground democratic governance in republican virtue. This virtue encapsulated a set of political habits and practices that continually promote liberty and not tyranny at the face to face level instead of the "procedural republic" emphasizing the important of structures, processes and formalized rights (p. 623).

In fact, the emphasis here was placed on the small polity as the check on suspicious rulers and unaccountable power informed by local knowledge and permitting more viscerally direct engagement with democracy by the citizenry as opposed to a

centralized government endangering the very liberties the people wanted kept. Third was the abuse of executive power that centralized control and endangered the very purpose of American Constitutional government – the protection and preservation of individual liberty. Fourth was the need for effective government that did not sacrifice liberty for the sake of national and commercial glory and gain as exemplified by the Jacksonian view of obedience to the executive as opposed to the Whig view of obedience to the law (p. 624). Finally, the article highlighted Storing's signature contribution in reinterpreting the role of public administration as statesmanship and that all interesting administrative questions were fundamentally political questions and that public administrative both reflected and shaped the very political regime it served (p. 625), with public service ultimately providing a continual renewal of the foundational principles of constitutionally enabled democratic governance – the very heart of *e pluribus unum*.

The seminal article by Warren & Brandeis (1890), coined the right to be left alone free from unreasonable intrusion as the bedrock of privacy in protecting an individual as enumerated in the 4th Amendment of the Constitution. The article argued that common law was what secured the liberty of each individual making the choice of what to communicate with others as well as the limits of what was shared for others to see. However, the advances in technology and the use of technology in surveillance had made it much easier for others to gain access to what was private. They also argued that this right to privacy did not ban the publication of matters in the public interest. It was precisely the mass violations of privacy by the U.S. government that led me to blow the

whistle on the government's secret mass domestic surveillance programs implemented in short order after 9/11.

As pointed out by Strossen (2015) this dragnet surveillance by the government after 9/11 raised a whole host of constitutional, privacy and statutory challenges and imperiled democratic governance. Article argued that mass surveillance magnified the harm to individual rights and the rule of law under the Constitution and impeded on the 1st Amendment, while providing little if any benefit to national security. This troubling development impacted democratic governance given the due process guaranteed by the Constitution and restraints in depriving a person's interest in their own liberty. Critical to me was that the article highlighted the chilling effect imposed by mass surveillance and has "deterred whistleblowers and other confidential sources from providing valuable information, thus infringing on journalists' new gathering rights and undermining the public's right to information about what their government is doing in the name" (p. 1158). It was the whistleblower disclosures of government violations of the Constitution that led the government to pursue the criminal investigation and prosecution of the sources, including me.

Whistleblowers and Law

In a seminal article by Moberly (2012), the critical role of whistleblowers was detailed and in particular the Obama Administration's treatment of national security whistleblowers prosecuted under the Espionage Act for allegedly mishandling and making unauthorized disclosures of allegedly classified national defense information. Moberly also highlighted the objections raised by the Obama Administration to the

privilege of reporters not revealing their sources – a vital protection when exercising the 1st Amendment. In addition, the article examined the significant national security exemptions in legislation updated or created for whistleblowers providing little or no protection from retaliation or reprisal, because the Obama Administration did not want to provide them the same rights afforded other whistleblowers, and thus exposing them to punitive and punishing persecution and prosecution when exposing government wrongdoing and violations of law and statute.

This article was quite relevant to my research, given that I was criminally indicted under the Espionage Act for alleged retention of classified information for the purpose of disclosure to those not authorized to receive it as one of several national security whistleblowers prosecuted under this World War I-era statute designed to go after spies. In fact, reference was made to Mayer (2011) where the Obama Administration made a “sharp distinction between whistleblowers who exclusively reveal wrongdoing and those who jeopardize national security” (pp. 47-48).

In an article by Benkler (2014), a public interest accountability defense was crucial for national security whistleblowers because such disclosures were critical to democratic governance threatened by the national security establishment and the erosion of fundamental rights and assembly – including privacy. Benkler argued that the Obama Administration’s punitive pursuit of whistleblowers “reflects a broader shift in the use of criminal law to suppress national security leaks in the post 9/11 state of emergency” (p. 282). Article further reflected on the post Watergate period with all the reforms put in place due to the abuse of power by the government. However, the article made it clear

that these reforms “buckled” in the immediacy of the post 9/11 period, setting the stage for emergency decisions to engage in pervasively mass surveillance, torture, and other extra-legal excesses (p. 325). Relevance of this article to the research centered on the tension of disclosing national security wrongdoing and illegality and getting punished for it with a criminal prosecution. When faced with systemic failure and violations of law by the government, it was clearly unsafe to make unauthorized disclosures in the public interest. When these same disclosures were regarded as national security violations the tension created in the body politic between democratic governance and secrecy strike at the very “heart of how society defines security” (p. 323).

Kasner (2015) took up an examination of the complicated history of government leaks and whistleblowing in light of the Snowden disclosures that began in June 2013. However, the article viewed this tension in the context of the Constitution’s Article VI oath clause regarding the obligation of officers to resist unconstitutional government behavior and the implications of that duty. Article acknowledged the necessity for “affirmative disclosures” (p. 241), in the context of the 1st Amendment protection granted an employee to speak out and publish, but argued that the constitutional requirement was shared between the disclosing officers on the executive branch and the judicial branch. Relevance to me centered on the reasonable belief to blow the whistle through channels and disclose information in the public interest when the very constitutionality of government conduct and action (like the NSA mass surveillance programs disclosed by me) were in question. Blowing the whistle on government wrongdoing was critical to democratic governance and checking abuse, but as pointed out

by the article “almost uncontroverted that they are constitutionally helpless, if not viewed with disdain. Yet their role is no less indispensable in catalyzing the constitutional conversation” (p. 244). In this context, whistleblowers were in a special position of fidelity to the public trust shedding light on wrongdoing by the government and ensuring public accountability for that wrongdoing – and thereby sustaining the integrity of democratic governance. I actively resisted the violations of the Constitution I witnessed or was privy to and chose to adhere faithfully to my oath as an executive officer in the U.S. government supporting and defending the Constitution by blowing the whistle on government malfeasance and wrongdoing, including violations of the Constitution ordered by the President of the United States and executing unconstitutional laws (pp. 255-256).

In a Pen America (2015) study, the use of the Espionage Act under the Obama Administration to prosecute whistleblowers demonstrated the lack of protections in bringing light to information as the public’s right to know. This development was central to my study in order to more fully examine the tension created between national security and privacy when used to prevent and discourage the disclosures of information related to national security that was decidedly in the public interest and revealed government wrongdoing, abuse, and violations of law and statute. This same study made it clear that the use of the Espionage Act against whistleblowers was a very heavy hand used by the government, meant to censor and send a chilling message to both sources and those reporting the information. Why? Because there was no public interest defense to what was a strict liability charge and especially for those who had disclosed information that

points to the abuse and misuse of secrecy to hide government wrongdoing from exposure (p. 19).

Summary and Conclusions

The articles examined in this chapter provided a critical synthesis of participation and disenfranchisement in a democracy including the concepts of hegemony, Constitutional republicanism, authority, national security, whistleblowing, civic engagement, public trust, the common good, and democratic governance. These were the salient issues I set out to illuminate that became all too apparent at the most personal and professional level due to the prosecution and pretrial criminal proceedings against me at the hands of the government. My ordeal involved abuse of power, overreach, political exigency, and opportunism, as well as the criminal intimidation and indictment of whistleblowers by the government attempting to control forms of free speech guaranteed under the Constitution by claiming state secrets and national security to obscure and cover up and keep this conduct away from the press and the public.

These articles revealed the contemporary realities and challenges faced in a democratic society and the actual practice of democratic governance in action, resting on the context in which government leaders and managers in the public arena used various democratic processes to lead and manage their institutions, influence public policy, and conduct decision making in the 21st century. In other words, the rose colored glasses of representative government as the bellwether of democracy was increasingly under strain from a more authoritarian form of administrative governance, as directly experienced by me as a whistleblower inside the government.

Chapter 3 proposed an examination of my experiences as an eyewitness whistleblower after 9/11 while a member of the Defense Intelligence Senior Executive Service assigned to the National Security Agency and discovering and uncovering many billions in programmatic fraud, 9/11 intelligence failures and a secret state-sponsored mass domestic surveillance program. I was deeply affected by these activities as I saw the wheels come off democratic governance and oversight structures inside the secret side of government with an executive that played the terror and fear card to great effect with enormous strategic consequences and costs.

I intended to analyze the consequences of these actions by interviewing key experts in the field for the purpose of further revealing the nature and reality of the secret side of government in action with respect to what became a contentious set of national security and federal government governance issues after 9/11. In other words, Chapter 3 examined serious and substantial questions about the tension between democratic governance and the rule of law with the secret implementation of executive authority post 9/11 and the use of these off the books programs in terms of executive branch authority and overriding the Constitution. These actions and this conduct directly impacted and eroded individual freedoms and liberties as seen through the eyes of a whistleblower who faced many decades in prison at the hands of the government for simply defending the Constitution against his own government.

Chapter 3: Research Method

Introduction

In this chapter I presented research on the government granting itself special national security based authority after 9/11 to exercise extraordinary and exigent powers in secret and then criminalizing under the Espionage Act those who dared to disclose alleged government wrongdoing, abuse of power, and violations of the Constitution. This security and secrecy took primacy over liberty and privacy as a zero-sum game directly contradicted a democratic form of government. Although there were a few in Congress who attempted to introduce articles of impeachment against President Bush and Vice President Cheney or hold hearings, Congress passed ex post facto legislation enabling the further legalization and expansion of the secret surveillance practices conducted by the executive branch since shortly after 9/11.

The problem that required further study centered on the democratic disenfranchisement of the citizenry regarding the unaccountable use of power by the government. Research centered on the tension between privacy rights and promises of security was particularly critical when that same government willfully chose to violate the 4th Amendment of the U.S. Constitution and then used criminal prosecution to silence and sanction those who resisted the use of secrecy and national security as license to engage in wrongdoing and violate of the Constitution under the blanket justification of national security. This condition was an outgrowth of two things. First, the self-assigned powers by the executive granting itself license for broad authority to deal with the

“threat” of terrorism; and second, the general public acceptance (promulgated in the aftermath of the 9/11 tragedy) of a need for “security” against these same existential “threats.” This fundamental problem required further research centered on the historical tensions between protecting national security secrets while still ensuring the public’s “right to know” via whistleblowers and disclosures in the press regarding abuses of government authority, as power conducted behind the veil of secrecy eroded the very foundations of democratic governance.

Research Design and Rationale

For this research, I used an autoethnographic approach (Chang, 2008) that involved intense narrative based reflection on my experience from interviews with expert policy analysts, attorneys, and legal scholars who practiced in the fields of national security, Constitutional law, and civil liberties policy for assessing key attributes associated with secrecy regimes and deliberations absent public discourse and debate via an open and transparent democratic process. This research design included an analysis of my personal experience in parallel with an analysis of the systemic phenomena involved in the secret strategic decisions to deliberately bypass the 4th Amendment by secretly proclaiming the primacy of the national security state and to criminalize those (such as myself), who performed their duty defending the Constitution in revealing government wrongdoing by disclosing violations of the Constitution and related statutes.

Research Question

RQ: What happens when governments respond to events such as 9/11 by asserting the power and primacy of national security over public interest disclosures by whistleblowers of government violations of democratic governance?

Central Concepts and Phenomenon Under Study

The research design was qualitative and centered on an autoethnographic study of my criminal case that consisted of a 10-count felony indictment handed down by the U.S. Department of Justice in April, 2010 (Project on Government Secrecy, n.d.). I faced upwards of 35 years in prison after I disclosed a secret mass surveillance program as well as a massive abuse of power at the NSA that had been approved by the White House shortly after 9/11, along with multi billion dollar programmatic fraud and the cover up of 9/11 intelligence failures. This was part of a systematic crackdown on such disclosures. The Obama Administration charged more Americans under the Espionage Act for nonspy activities than all other administrations combined. I was the first whistleblower charged with espionage since Daniel Ellsberg of Pentagon Papers fame. At that time in the early 1970s, Ellsberg was labeled the most dangerous man in America, while I was labeled an enemy of the state by the U.S. government.

The study framework used an analytic approach articulated by Newbold (2012), wherein it was the responsibility of public administration education to ensure that civic life and civil service were fundamentally based on protecting and defending the constitutional form of democracy, focusing on fidelity to the Constitution and common law and not to a particular political party that moves government from administering the

laws or subordinating them to ideology, policy issues, or other politically motivated purposes.

Research Tradition

The center of federal government power as expressed through the institutional bureaucracy and prerogative of the instruments of national power (including public administration) were supposed to act within the bounds of a constitutional government protecting the legitimacy and integrity of democracy as well as the rights of the people. However, if the administrative state functioned outside the boundaries as established by the U.S. Constitution, then rule of law was jeopardized and the integrity of democracy was put at risk. Enforcing this move had led to the increasing militarization of the national security environment and the police forces and to the presumption of guilt on the part of all who were caught up in the ambit of this enforcement apparatus. The question then arose regarding happened to citizen rights protected by the Constitution when a whistleblower spoke out about government wrongdoing and malfeasance only to be persecuted and prosecuted.

Role of the Researcher

Background and Context

National security and intelligence did matter in democratic governance. However, it was a basic precept that a government official did not sell out intelligence or national security to the highest bidder, kept decision makers uninformed or turned information into a political tool driven by self interest. Furthermore, when whistleblowers were prosecuted for exposing fraud and illegalities perpetrated by the central government, it

sent a chilling message about what the government can and will do against those who speak out. Such prosecution was a direct form of political repression and censorship. If sharing issues of significant and grave public concern that did not in any way compromise national security and were critical to the national discourse on who we were as country, and yet revealing the conduct of our own government was considered a criminal act, the country had strayed far from its constitutional foundations.

Once exposed, these unconstitutional and undemocratic detours were predictably justified by vague and undefined claims of national security, aided by efforts on the part of the government to create public fear of external threats while covering up their own actions and keeping them secret from the public. When the U.S. government ignored the Constitution, and cheated the American taxpayer, a civil servant must choose to speak out or let it persist and thereby keeping the country poorly informed of government activities while wasting multiple billions of dollars and enriching contractors engaged in profiteering, often at the expense of national security.

My initial awakening regarding the ideals and principles of the U.S. government and the fact that under our Constitution we are a nation of laws and that no one is above the law (not even the President), took place when I was in high school during the Watergate era. I distinctly remember reading Bob Woodward and Carl Bernstein's articles, viewing the Watergate hearings with rapt attention, and watching what happened to a President who broke the law and then covered up violations of the law, including the use of the NSA for domestic spying. It was during this time that my first real appreciation

of how the Constitution as the law of the land (and particularly the Bill of Rights), protected the people from governmental overreach and abuse.

With respect to the 1st Amendment and the formation of the United States out of a violent revolution against the British crown, my understanding of history was that the primary purpose of the 1st Amendment was prohibiting the practice of governmental suppression of embarrassing information and was, in fact, adopted in order to directly prohibit the widespread use of the common law of seditious libel to punish the dissemination of material that was found to be embarrassing or even disagreeable to persons in power.

It was also during the mid to late 1970s that as a very young adult, I read about the significant abuses of power (over multiple decades) by our government (including substantial and systemic violations of the 4th Amendment on the part of NSA, FBI and the CIA), as well as the significant and willful misuse of our law enforcement and intelligence functions that were deliberately used against Americans domestically and culminated in the Church-Pike congressional hearings and the creation of two permanent standing committees in Congress on intelligence, as well as the passage of the Foreign Intelligence Surveillance Act (FISA) in 1978 under the Carter Administration.

When I served as a member of the Senior Executive Service (SES) in the U.S. government from 2001-2008, I was obligated by the oath I took to support and defend the Constitution against all enemies foreign and domestic as well as to faithfully uphold the laws of the land without any mental reservation or purpose of evasion. However, it also became apparent that the executive branch in key instances after 9/11 was circumventing

Article I, Section 8, Clause 18 of the Constitution (the Necessary and Proper clause). It became my continuing contention that the Bush Administration simply went too far unilaterally on numerous fronts in terms of aggrandizing executive power with few checks and balances in the name of national security when it was entirely and categorically unnecessary to do so, especially in matters that violated the law leading to the erosion, sacrifice, and loss of key aspects of democratic governance.

One prime example of the Administration's intent to do as they would without regard to legal restraint (including invading the privacy of innocent Americans without probable cause), was the Brandon Mayfield case from Portland, Oregon. Mayfield was erroneously and mistakenly linked to the 2004 Madrid, Spain, train bombings (Epps, 2007). His life was thoroughly disrupted as the U.S. Department of Justice treated him as a national security threat who deserved maximum persecution and prosecution. Mayfield's experience was like what happened to me as a whistleblower.

Autoethnographic Bias

Reducing bias involved viewing the phenomena experienced by me through the eyes of others outside of the purview of me and place these experiences in the context of law, secrecy, public policy, national security, and democratic governance. In this same vein, what may appear as anecdotes by me with no empirical evidence were actually the heart of this autoethnographic study. According to Bochner and Ellis (2006), an autoethnographer was both a *communicator and a storyteller* (my emphasis). It showed people (including themselves) in the process of personal discovery, making choices, and interacting with other humans while providing insight into the meaning of their struggles.

Autoethnography was less empirical since it inherently relied on a more subjective approach to a referenced topic through both observation and research participant feedback. To address these limitations, this study followed generally accepted and academically understood and validated autoethnography research methods. NOTE: Trustworthiness, reliability and validity were discussed in an upcoming section.

In this context, all of the research participants were knowledgeable of me and the historical significance of my criminal case as it related to national security, public interest, whistleblowing, secrecy, privacy, and law. I used a purposive convenience sampling of participants in the fields of constitutional and national security law, privacy and public policy analysis. All of these planned research participants were already very familiar with my case, the government's penchant for criminally investigating and prosecuting whistleblowers, and had written or spoken about the case and related national security issues, and the impact on democratic governance in public over several years.

One possible weakness was the use of participants who were familiar with my case, but were not favorably disposed regarding my case. To deal with this weakness, the government press releases, press statements and public pronouncements were all available for public record and the selected research participants for the study were uniquely situated to provide the fuller context regarding the government position with respect to me as well as the positions and pronouncements made by the government in my case over the years.

In addition, no interviews took place with those individuals who were involved in the government's prosecution against me due to issues of access and lack of permission

and cooperation by their respective departments. To address the lack of generalizability, it was anticipated that the results of the study could apply to other public interest disclosures made by whistleblowers as part of an open and transparent democratic process when disclosing critical information about government wrongdoing was brought to light in the public interest.

Professional Relationships

I interviewed 11 well known participants including national security lawyers and human rights attorneys who represent whistleblowers and government clients, law professors, public policy specialists, civil rights analysts, and contemporary legal scholars. Two of the lawyers who participated in this study had represented or currently represent me and also knew the other participants. All anticipated participants had direct insight into the reasons why the government came after me starting in 2006, after the publication of the *New York Times* article (Risen & Lichtblau, 2005). They also understood the government's rationale for targeting, investigating and subsequently prosecuting me as a criminal and enemy of the state.

Methodology

Qualitative

I conducted narrative based, semistructured interviews composed of 11 national security, civil liberty and human rights attorneys, policy analysts, professors and scholar/historians who (as part of their professional practice) had expertise in the fields of Constitutional law/democratic governance, whistleblower protections, national security, 1st Amendment, and 4th Amendment privacy rights, and who also had knowledge of my

criminal case. This study used one-on-one interviews as the field setting for the raw data collection. I took a post structural approach (Denzin, 2014) in articulating a lived experience that was captured through reflection, archival records, and memory.

Interviews of those who could reflect, analyze and synthesize an interpreted experience of me through “textually constructed presence” (p. 37) were included. I also used archival materials and public documents to support my claims and provide context regarding the issues discussed and the autoethnographic approach through the eyes of my own case.

Participant Selection Logic

These in depth interviews with practitioners (both legal and policy) helped triangulate some aspects of this autoethnographic case study research. The participants were key players who were uniquely situated to discuss the motives of the government (the rationale for the approach as well as its consequences), had the requisite public presence, and also spoke and wrote widely in the field of constitutional law, national security, civil liberties and human rights.

Using an autoethnographic approach also provided the analytic means to analyze how I got caught up in the grips of the national security state and secrecy regime and demonstrated how even when a citizen and a public servant exercised their 1st Amendment rights, the power of the state was used to intervene and criminalize the whistleblowing on government wrongdoing (Radack, 2012). This unique autoethnographic study also served as a cautionary tale for fellow public administrators, activists, whistleblowers, and citizens who want to exercise their constitutional rights,

protect the public interest and keep the grand experiment of democracy through a constitutional republic alive.

Instrumentation and Data Collection

Data was captured in the form of transcribed interviews and analyzed using NVivo 11, a qualitative analysis tool. I then coded, categorized, and analyzed the interview data collected using the computer based qualitative analysis program for all the participants selected in the fields of national security, civil liberty law and policy. I included representatives of the entire spectrum of interested parties including defense attorneys, public interest groups, experts on the 1st and 4th amendments, whistleblowers, legal scholars, and policy analysts for completeness of perspectives that captured the essence of the imposition of the federal state in an unconstitutional fashion to silence and even prosecute opposition, dissent, and disclosures of government wrongdoing that violated democratic governance, the Constitution, and the public trust.

Participants answered a series of core questions centered on democratic governance, national security and secrecy, privacy and liberty, whistleblowing, and Constitutional law centered on the study's RQ.

1. In a post 9/11 world, what happens when state secrecy appears to take priority over the rights of citizens for the sake of national security?
2. What is the risk to a democracy when secret national security authority supersedes public law and criminalizes whistleblowing in the public interest?
3. Are there conditions where the primacy of national security might be necessary and how should that eventuality be controlled so it does not

outweigh the fundamental rights and liberties of the people?

4. What is the impact of government surveillance on its citizens through executive privilege and authority, absent court orders or the legal authorization from Congress?

Data Analysis Plan

I used advanced qualitative analysis technology from QSR International and their product called NVivo 11 as the primary tool using concepts of coding and interpretation. I created a matrix by associating categories of coding with the essence of the phenomena of individual rights and liberty as a citizen versus the primacy of national security enforced by a government secrecy regime in the context of the 4th Amendment made as public interest disclosures under the 1st Amendment.

The analysis highlighted the attributes of liberty based on the Constitution, common law, and precedent that protect an individual's right of privacy and sovereignty under the 4th Amendment by consent versus the erosion of liberty by secret coercion and secret law absent consent due to the rise of the post 9/11 national security state. Intent was to capture the opaqueness of behind closed doors national security driven by authorities in government and the loss of transparency in democratic governance through the phenomena experience of my own whistleblowing as the prism (NOTE: A summary overview of the coding process from source material (including interviews and transcripts) using the NVivo 11 qualitative coding and analysis technology is available at the following website: http://help-nv11mac.qsrinternational.com/desktop/concepts/about_coding.htm).

Data was captured in the form of orally transcribed and/or written interviews from the research subjects and analyzed using the NVivo 11 (www.qsrinternational.com) qualitative analysis package. The use of NVivo 11 was for the purpose of gaining a high level of fidelity with associated concepts and attributes that were common between all interviews and then coded them correspondingly for more automated association and linkages. The intent was to create a template for the coding of this phenomenological study by associating five primary categories of coding to the essence of state power versus individual privacy phenomenon in a post 9/11 security world and the necessary attributes that capture the tension between elite state power and democratic governance. These coding categories consisted of epoche or personal bracketing, significant statements, meaning units (or themes), textural descriptions and structural descriptions (Creswell, 2007, p. 170). Also, new codes emerged as the evidence dictated during the research. In addition, a more visual display of the associated linkages was possible using the NVivo 11 software.

Study made use of an essential invariant structure derived from Moustakas (1994) based on clustered themes and linkages that are discovered between attributes in the context of the original problem statement for this research study (Creswell, 2007, pp. 187-189). In other words, this basis analytic approach took the narrative interview data, and provided a fuller description of the setting and experiences of me and the research participants. Intent was to import and then analyze the data within the NVivo 11 software, develop a list of significant statements (or a horizontalization of the data), group these statements into meaning units or themes and write a textual description of

what happened with me and the research participants. In addition, the analysis provided a 'how' or structural description based on the interview reflections with the participants of this research experience in terms of setting and context, and then construct summary passages (or composite descriptions) of the phenomena experienced by me focused on the integration of the 'how' and the 'what' of the experience (Creswell, 2007, p. 159).

Intent of the data analysis was to first conduct broad brush coding using word frequency queries and then running a text search query. The NVivo 11 tool permitted queries for automatically coding the data sources of the interviews based on the words and phrases in them. For example, from each interview with an expert in their field, a word frequency query was used to see the words that occur most often (assuming national security is likely) and then ran a text search query to locate and code all occurrences of 'national security.' After the codes were created, the intent was to understand the codes through matrix coding queries in order to ask a wide range of questions about patterns that occur and access the content of the interviews and data to show the patterns. For example, I used the categories for the search queries in the literature review and compared what the research participants said about the experience of me.

Issues of Trustworthiness

Threats to Credibility (Validity) and Dependability (Reliability)

This study intended on addressing whether the results from the interviews were valid and by what standard. Although validity in research was traditionally associated with quantitative research methodology, its use in qualitative research was centered in terms of the reflection and capture of participant observation. Using the approach

advocated by Lincoln & Guba (1985), as cited in Creswell (2007), this study determined the trustworthiness (reliability) of the results based on the dependability of the interviewed research participants using triangulation of this research method with the data the participants shared in the narrative based interviews from structured questions and inquiry, and formed the basis for the results analysis (Creswell, 2007, pp. 203-204). One of the most widely used criteria in research methodology for evaluating qualitative content analysis was developed by Lincoln and Guba (1985). These two authors used the term *trustworthiness* as a primary means for conducting the evaluation of the content. As noted by Elo, Kääriäinen, K., Kanste, O., Pölkki, T., Utriainen, K., & Kyngäs, H. (2014) the goal of “trustworthiness in a qualitative inquiry is to support the argument that the inquiry’s findings are “worth paying attention to” in reference to Lincoln & Guba (1985).

Given that the methodological approach for this research was qualitative, I used purposive convenience sampling based on the empirical experiences of the research participants and knowledge of my experience with the government given their requisite public profiles as experts in national security, whistleblowing, constitutional law, and related public policy. For interview purposes, a minimum of seven is an adequate number for detecting the necessary relationships among the different phenomena examined with respect to the research question, based on the responses to the questions from the participants.

I used inductive content analysis from the research participant interviews. The results of this analysis went back to those same participants “who then evaluate whether

the results match reality” (Elo, et al, 2014). This also helped mitigate bias through face validity with the research participants as an outside check for trustworthiness.

Ethical Procedures

The narrative based interviews were voluntary, by choice, and were recorded or written down with the consent of the participants in the research. The process for securing the interviews involved an invitation letter and phone call. Each interview took place one-on-one. The key factor from the IRB review (01-09-17-0062201) was informed consent. I anticipated that consent would take place with the participants via a form letter after a request for an interview was accepted with the further understanding that the interview was either written or recorded (Endicott, 2010). Interviews of the participants were identified by categories. Given their public profiles, anonymity was possible and maintained by not naming them individually when requested.

Summary

When the government effectively ignored the Constitution and licensed unto itself its own secret law governed by national security, what does one do when confronted by the same? Before the war on terrorism, our country recognized the importance of free speech and privacy. If we sacrificed these basic liberties, according to the false dichotomy that such was required for security, then we transform ourselves from an oasis of freedom into a police state that crucified its own citizens when they stepped out of line or spoke up against government wrongdoing. These were the hallmarks of despotism, not democracy.

What does it say when our government holds people in contempt for upholding the Constitution? What does it say when our government goes after people because of their conviction that our Constitution is the law of the land? What does it say when our government claimed that people had obstructed justice, yet these same people were bringing to light the obstruction of justice on the part of government on other parts of government regarding certain formal investigations and inquiries? What does say it when the government claimed that attempts to simply have the government obey the law of the land, not violate the public trust, not abuse public funds, while also insisting that our government protect our Constitutional rights as Americans was viewed as a criminal act and a violation of national security?

Core objectives of the research approach centered on evaluating the nature and reality of government in action when it devolved democratic governance. This approach included synthesizing the consequences of a contentious national security and federal governance issue and the serious questions raised by these programs in terms of executive branch authority and Constitutional law with respect to individual freedoms and liberties. In the context of the anticipated research, it was critical to examine the devolution of democratic governance in the United States since the tragedy of 9/11 and how it reflected directly on the value of our democracy's foundations – the Constitution as how we governed ourselves.

Promoting the worth, well-being, development and value of who we are and our civic communities in a free, transparent and open society were the cornerstones of democracy. When security and safety (real or imagined) became the imprimatur for

taking away and eroding citizen rights and freedoms and thereby altered the very fabric of democratic governance, then something had to give. And what gave was the very progress of the grand experiment called the Constitution. Walden University's mission of positive social change can only take place in a society that has robust governance social structures that strengthen democracy and the rule of law – and do not inhibit or suppress them.

With that context, this study also examined the assertions made regarding the significant erosion of enumerated rights and liberties granted to Americans under the U.S. Constitution that were allegedly violated in the name of security through the bypassing of the traditional safeguards for privacy and personal freedoms enjoyed by Americans. Finally, this research evaluated the argument regarding whether calls for security must compromise liberty in the protection of the Nation or whether both are possible, without compromising either, and doing so under the rule of law and not through secret means that bypass or violate the law of the land in an unaccountable and unlawful manner that fundamentally compromised democratic governance, transparency, and government of, for, and by the people.

Chapter 4: Results

Introduction

This research explored and contrasted the tension between national security and secrecy against openness and transparency. The context for the research was set within the structures of democratic governance against the backdrop of disclosures of government wrongdoing made by whistleblowers (such as myself) in the public interest.

Research participants were invited to take part in a study focused on key questions related to exploring the post 9/11 devolution of democracy as viewed through the prism of security versus privacy and what happens when a whistleblower publicly reveals government wrongdoing and violations of law. The core RQ examined by this study was: What happens when governments respond to events such as 9/11 by asserting the power and primacy of national security over public interest disclosures by whistleblowers of government violations of democratic governance?

In addition to the primary questions answered by all participants, I also posed secondary questions designed to provide additional clarification and insight into the primary question answers in order to further explore the RQ.

The four primary questions were:

1. In a post 9/11 world, what happens when state secrecy appears to take priority over the rights of citizens for the sake of national security?
2. What is the risk to a democracy when secret national security authority supersedes public law and criminalizes whistleblowing in the public interest?

3. Are there conditions where the primacy of national security might be necessary and how should that eventuality be controlled so it does not outweigh the fundamental rights and liberties of the people?
4. What is the impact of government surveillance on its citizens through executive privilege and authority, absent court orders or legal authorization from Congress?

In addition, 13 secondary questions were included to further explore the 4 primary questions and elicit additional responses from the research participants. They were:

1. What happens to democratic governance when the government engages in secret dragnet domestic surveillance that violates the Constitution and existing statutes?
2. What is the price paid by liberty in a democratic government when the government uses executive and state privilege to hide its own conduct from the public in the name of national security?
3. Why does a democracy die behind closed doors?
4. What happens to freedoms protected by the Constitution when the government sets aside the protections for those same freedoms in the name of security?
5. If a democratic government forsakes liberty for the sake of security, what is the impact in terms of individual rights and privacy?
6. Why are whistleblowers so vital to the life and vibrancy of a democracy?

7. What does it say in a democracy when whistleblowers find themselves prosecuted by the government for exposing government wrongdoing and violations of law?
8. What does it say when the federal government goes after people for supporting and defending the Constitution because of their conviction that the U.S. Constitution is the law of the land?
9. What does it say in a democracy when the federal government criminalizes the disclosures of probable government wrongdoing and violations of the Constitution?
10. What does it say in a democracy when the government suppressing, censoring and destroying evidence regarding government wrongdoing is considered legal in the name of national security?
11. What does it say in a democracy when the federal government accuses a citizen of engaging in a conspiracy with others against the United States of America, but the conspiracy is simply speaking out about and sharing Constitutionally protected activities and speech, even if it causes embarrassment to the government or exposes government wrongdoing?
12. What does it say in a democracy when the federal government's version of the truth is what the government will say is the truth under the cover of national security, even when it's not the truth?
13. What does it say in a democracy when citizens in the United States are treated like enemies of the state because they dare to stand up to their own

government in the public interest to expose what their own government is doing in secret, without the consent or knowledge of the people, violating the law, weakening security, and eroding citizens' rights and liberties?

The rest of this chapter established the setting for the research, the demographics of the research, the data collection and analysis process using the NVivo qualitative tool, and the results of the research analysis derived from the narrative based interviews of 11 expert research participants.

Setting

Given that I was known publicly by the anticipated participants, participants could have felt obligated to participate based on their existing knowledge of me and/or the professional connections they had with me, as well as the connections they had with the other participants. Therefore, mediating the risk of possible bias focused on ensuring the voluntary nature of their participation when the research participants were contacted, while also emphasizing the positive and independent views gained from the interviews, given the variety of expertise in their professional fields.

I had a list of potential research participants and anticipated that some would not have the time or the attention to participate given the rather narrow time constraints imposed for the formal responses. Several research participants did respectfully decline due to their schedules, professional commitments, and other obligations.

Eleven research participants consented to the study, one more than necessary based on the consent responses of all potential research participants contacted. All the participants who did consent to the study had the time to answer the primary questions as

noted above, but not all answered the secondary questions or incorporated their respective answers for the secondary answers in their responses to the primary questions.

Demographics

The recruiting process for selection of research participants was based on demonstrated knowledge, recognition, qualifications, and public reputations of candidate participants who were known as expert attorneys, policy analysts, media commentators, law professors, or previous government employees who were in or had extensive knowledge of Constitutional law, public policy, privacy, 1st and 4th Amendments, national security, civil liberties, human rights, and whistleblower cases.

Only one research participant from the policy law profession chose to have their participant's name and other demographic identifiers withheld from the study. All others consented to share their names, qualifications, and other identifiers in the study. However, I kept the actual responses of the research participants as nonattributable.

The following represented brief professional qualification and biographical information for the ten out of eleven research participants who consented to have their names used in this study. The identity of each expert research participant (interviewed individually and not as a group or panel at the same place and time collectively) was respected based on their preferences as indicated in the consent form. I must note that summary research results from interviews conducted with the individual research participants are not attributable to any individual research participant, and their designations as RP1-RP11 did not match the order of research participants as listed below.

Eleanor Saitta worked on understanding how complex systems operate in society and takes a transdisciplinary approach to exploring what shapes human interactions with the world. Her focus included the seamless integration of technology into the lived experience or our human environments. She also served on the advisory board of the Press Freedom Foundation that supported and defended public interest journalism focused on exposing wrongdoing, mismanagement, corruption, and law-breaking inside governments.

Quinn Norton was a noted writer and civil liberties and privacy policy analyst and activist. She wrote and gave talks on people and society, privacy and identity, digital security, and internet politics. She was also journalist and was published in *Wired*, *The Atlantic* and other publications. She covered societal trends, science, technology, copyright law, and hackers among a range of topics.

Gabriella (Biella) Coleman was the Wolfe Chair in Scientific and Technological Literacy at McGill University. She was trained as an anthropologist and her scholarship explored the intersection of hacker culture and politics, with a focus on the sociopolitical implications of technology and protest. She authored the books *Coding Freedom: The Ethics and Aesthetics of Hacking* (Princeton University Press, 2012) and *Hacker, Hoaxer, Whistleblower, Spy: The Many Faces of Anonymous* (Verso, 2014). Both books explored the new forms of resistance employed by hacker publics in response to mounting government and corporate control of the internet. In 2005, she received her PhD in Socio-cultural Anthropology from the University of Chicago.

Heidi Kitrosser was a professor of law with the University of Minnesota Law School faculty. She was an expert on the Constitutional law of federal government secrecy, separation of powers, and free speech. She has written, spoken, and consulted widely on these topics. Her book, *Reclaiming Accountability: Transparency, Executive Power, and the U.S. Constitution*, was published in 2015 by the University of Chicago Press. It was awarded the 2014 IIT Chicago-Kent College of Law/Roy C. Palmer Civil Liberties Prize. She received her J.D. degree from Yale Law School in 1996.

Kathleen McClellan served as National Security and Human Rights Deputy Director for the Whistleblower and Source Protection Program (WHISPeR) at ExposeFacts. She supported national security and intelligence community whistleblowers, journalists, media sources, and hacktivists, with a focus on the issues of mass surveillance, excessive secrecy, torture, and drone warfare. She has represented whistleblowers from the NSA, Central Intelligence Agency, Federal Bureau of Investigation, Department of Defense, and Department of Homeland Security. Working with National Security & Human Rights Director Jesselyn Radack, she has also represented me for my NSA whistleblower activities and CIA whistleblower John Kiriakou. She has appeared on *NPR*, *CNN*, *The Thom Hartmann Show*, *Progressive Radio Network*, and *Al-Jazeera English*, and she has written several academic articles and op-eds focused on whistleblowing and national security. Previously she worked at the Government Accountability Project, a whistleblower protection organization, and the American Civil Liberties Union's legislative office, where she worked on surveillance

reform and torture accountability issues. She was a graduate of the University of Wisconsin Law School.

Bruce Fein was an American lawyer who specialized in constitutional and international law. He has written numerous articles on constitutional issues for *The Washington Times*, *Slate.com*, *The New York Times*, and *Legal Times* as well as civil liberties issues. He was a top Justice Department official in the Ronald Reagan administration. He was the author of *Constitutional Peril: The Life and Death Struggle for Our Constitution and Democracy* published by Palgrave MacMillan in 2008. He has represented me as a whistleblower in a private capacity that involved litigation brought before the government on surveillance.

Patrick Eddington was a policy analyst in homeland security and civil liberties at the Cato Institute. From 2004 to 2014 he served as communications director and later as senior policy advisor to the former Rep. Rush Holt (D-NJ). Eddington's legislative portfolio included a range of national security-related issues, with an emphasis on intelligence policy reform in the areas of surveillance, detainee interrogation, and the use of drones. He was also Adjunct Assistant Professor at Georgetown University's Center for Security Studies. From 1988 to 1996 Eddington was a military imagery analyst at the CIA's National Photographic Interpretation Center. His opinion pieces have appeared in several publications, including the *Washington Post*, *Los Angeles Times*, *Washington Times*, and *Army Times*, and he has appeared on the Fox News Channel, MSNBC, SKYNews, and CNN, among other venues. Eddington received a B.A. in international affairs from Missouri State University in 1985 and his M.A. in national security studies

from Georgetown University in 1992. His CIA memoir, *Long Strange Journey*, was published in 2011.

Michael German was a fellow with the Brennan Center for Justice's Liberty and National Security Program, where he worked to help ensure that the U.S. government respects human rights and fundamental freedoms in conducting the fight against terrorism. His work focused on law enforcement and intelligence oversight and reform. Prior to joining the Brennan Center, he served as the policy counsel for national security and privacy for the American Civil Liberties Union Washington Legislative Office. He was also a sixteen year veteran of federal law enforcement when he served as a special agent with the Federal Bureau of Investigation specializing in domestic terrorism and covert operations. As an undercover agent, German twice infiltrated extremist groups using constitutionally sound law enforcement techniques. These operations successfully prevented terrorist attacks by winning criminal convictions against terrorists. He was the author of scholarly articles including "Squaring the Error," published by the Strategic Studies Institute of the U.S. Army War College and "Trying Enemy Combatants in Civilian Courts," published in the *George Washington Law Review*. His first book, *Thinking Like a Terrorist: Insights of a Former FBI Undercover Agent* was published in 2007.

Coleen Rowley was a retired FBI Special Agent and the former Minneapolis Division legal counsel of the FBI. In May of 2002 Rowley brought some of the pre 9/11 lapses to light and testified to the Senate Judiciary Committee about some of the endemic problems facing the FBI and the intelligence community. Rowley's memo to FBI Director

Robert Mueller about the Joint Intelligence Committee's Inquiry led to a two year long Department of Justice Inspector General investigation. She was one of three whistleblowers chosen as Persons of the Year by TIME magazine in 2002. She was also active in several peace groups and an advocate for Constitution & rule of law adherence, integrity in intelligence and whistleblower protection groups such as the Sam Adams Associates for Integrity in Intelligence and Veteran Intelligence Professionals for Sanity. She has written several op-eds for major newspapers and publications including the *New York Times*, the *Los Angeles Times*, *The Guardian*, and *CNN*. She authored a chapter in a 2004 book published by the Milton Eisenhower Foundation entitled "Patriotism, Democracy and Common Sense: Restoring America's Promise at Home and Abroad," a chapter on civil liberties in the 2012 book "Why Peace" and an essay entitled, "The War on Terror: A False Promise for National Security" (published 2014 in the *International Journal of Intelligence Ethics* 4: 4-12).

Elizabeth Murray served as deputy national intelligence officer for the Near East in the National Intelligence Council before retiring after a 27 year career in the U.S. government, where she specialized in Middle Eastern political and media analysis. She was also a member of Veteran Intelligence Professionals for Sanity (VIPS).

I obtained the names and contact information of the above-named participants (and the one unnamed) via their public profile, their public credibility and qualifications as an expert in their respective professional fields, their writings in newspapers, magazines, online publications and interviews as well as their familiarity and connections with my own significant public profile as a government whistleblower.

Data Collection

This research study used one-on-one interviews as the field setting for the raw data collection. I followed a post structural approach for the basis of the interviews (Denzin, 2014). This was done by capturing in narrative interview format the lived phenomena of reflection from the research participants' memory, analysis and synthesis against the backdrop and context experienced by me through "textually constructed presence" (p. 37) based on the core primary questions and the optional secondary questions asked of the research participants.

Eleven research participants consented to in-depth narrative-based interviews as described in Chapter 3. NOTE: This was one more than the ten indicated as a range maximum for the minimum number of research participants required in Chapter 3. Nine of the research participant interviews were submitted back to me in the form of written responses. Two of the research participants opted for face to face interviews that were recorded with voice memo technology on a mobile device and then transcribed with the assistance of automated transcription software called Dragon (version 6.0.5) from Nuance Communications. Research participants answered a series of primary and optional secondary questions centered on democratic governance, national security and secrecy, privacy and liberty, whistleblowing, and Constitutional law linked to the study's core research question (RQ).

Data Analysis

Answers to the questions via written interviews were provided to me via email by the research participants. One of the recorded oral interviews took place face to face in

the Washington, DC area. The other recorded oral interview took place via a telephone call. All written interview responses and transcribed recorded oral interviews were converted into Microsoft Word documents notated with A1-4 for the four primary questions and B1-13 for the thirteen secondary questions. Each Microsoft Word file was saved on a computer with filenames R1-R11 to reflect the anonymized reference mapping for each research participant. No variations in data collection took place that were different from the plan presented in Chapter 3, nor were there any unusual circumstances encountered during the data collection of the research participant interviews.

Research participant (RP3) asserted in the interview that decisions that are made in secret or behind closed doors absent public debate and input are “diktats.” In this kind of environment, the public becomes the victim of decisions imposed without consent and without recourse to redress unless the public is willing to take more extreme measures to make their voices heard. This is particularly challenging when society is faced with sustained government efforts to “exclude the public from debate and evade accountability for its actions.” In these conditions, the public faces the choice of either accepting the government’s diktats or taking actions that result in government officials losing their power and control. If the government responds with repressive measures then less than peaceful confrontation becomes inevitable, and a peaceful, democratic decision making process is suspended. And this cycle “inevitably begins with government efforts to impose greater security measures that invariably abridge basic rights.”

Research participant (RP7) answered these questions in the interview by stating that democracy is weakened, investigative journalism is chilled, the public is less

informed and as a result the nation is less secure. RP7 also argued that if whistleblowers are permitted to come forward “safely and publicly to expose government misconduct and have their disclosures taken seriously and the misconduct corrected, then national security will be strengthened as well.”

RP7 stated that the reason to protect national security is to preserve individual liberty and that it is a logical fallacy to set one against the other. RP7 acknowledged that while there may be certain individuals who should be deprived of liberty for collective security, such as criminals (and agreed that terrorism is a crime), such deprivation of liberty should only occur if necessary to preserve public safety and only after due process is afforded by the Constitution. RP7 said that there is a question where one could contemplate some sort of *just war*. However, RP7 said it is difficult to see how any *just war* in recent memory would outweigh the fundamental rights and liberties of all people.

RP7 also spoke about the critical role of whistleblowers in a democracy. RP7 said during the interview that the Constitution is the supreme law of the land, and federal employees take an oath to support and defend the Constitution.

RP7 also said that a version of “truth” that is inaccurate is simply a lie. If a democratic government is lying or misleading the public, then democracy is undermined because the public is not informed. However, just as government has an obligation to be transparent and truthful, the citizenry (and press) in any democratic society have an obligation to hold government accountable, stay informed, and refuse to accept propaganda because it is convenient and easy. Why? Because RP7 said that democracies derive their power from the people, if democratic governments treat citizens like

“enemies of the state” for exposing government misconduct, then the democracy is made less secure and a democratic government’s power either erodes over time or devolves into tyranny.

Research participant (RP10) in the interview suggested that the idea of national security is derived from the nation state, where the very term national security brings up a balancing act between the fiction of the nation versus the people living in its individual desires. RP10 also spoke at length about why a governance system relying on less democratic structures of control would take issue with whistleblowers. RP10 made the case that whistleblowers are a means of attempting to correct deficiencies in governance.

Research participant (RP9) answered the questions by stating there is a “fundamental divide between the notion of national security as the well-being of the people living in a place, and national security as the protective function for the abstract and bureaucratic structure of the nation, as divorced from any notion of the people or even of the land.” RP9 further state that the intelligence community appears to understand national security as the only meaningful route to human security, based on claims derived from appeals from authority. However, that authority is rooted in the very secrets that then justify invoking national security in order to keep it. Once one defines national security as the only process by which human security can be guaranteed, one then logically transfers the mandate of protecting human lives to the (sometimes self-serving) actions of the national security side of government as a bureaucratic entity.

With respect to whistleblowing, RP9 said that democracy requires consent and a functional chain of authority, starting with the people. Consent requires information.

Representative democracy allows intermediation, but this still implies that representatives are informed and can accurately inform the people from whom they proxy authority. The “existence of secret law and the elimination or classification of national security oversight mechanisms destroys the chain of consent” and renders not only national security authority but representation morally invalid and structurally contradicted.

RP9 also stated that whistleblowing permits a recourse to the authority of the public; it's a healing mechanism for the system that permits the moral recovery of the entire structure from temporary excursions driven by the forces of the moment. RP9 said this has never been true and that when every actual existing state represents a significant collection of unnecessary violence conducted over centuries to the benefit of those running the state, there is no such mandate or legitimacy. While the state contains its own logic and these things play out in that logic, just as fascism contains a similar logic, even the best-case outcomes are neither moral nor optimal for the population – and at best, they are optimal for the state.

RP9 also said that the fundamental right of the people is informed risk acceptance and that this is the definition of the consent of the governed. RP9 further articulated that the responsibility of national security feels that it is necessary to operate for the security of the people in ways that may temporarily dip into states of exception for the common good, but need to ensure that the people (likely via their representatives, but in a way which does not break the chain of consent mentioned above) are able to give informed consent. But they also must ensure that they are also adequately regulated such that fundamental rights and liberties can be provided for eventually. The idea of the eventual

provision of liberty is one that should feel ethically repugnant even to the liberal mind, because it accepts that temporary crimes against a citizen may be condoned as long as they are eventually redressed. However, it's also the core of the liberal compromise that allows the construction of the democratic state; the liberal statist ideal is to allow that violation, but to continually attempt to reduce its scope. This is the vein in which the intelligence community must act -- counter to their narrow interests -- to constrain themselves.

Research participant (RP8) stated in the interview that state secrecy was elevated in many ways after 9/11 premised on the pretext of national security – “promoting the myth that government secrecy was protective of citizens’ security” when the situation was quite the opposite. This secrecy spawned a number of actions away from the purview of the public including the use of the “State Secrets” doctrine to dismiss numerous lawsuits for the release of government information; the retaliation and prosecution against whistleblowers, some Inspector Generals and their staff, and even ending the careers (as well as post retirement careers) of officials (like General Taguba when he investigated the embarrassing military abuses and torture committed at Abu Ghraib); secretly threatening and cajoling reporters and top news editors, like the NYT’s Bill Keller in order to keep government secrets even about highly unconstitutional actions like instituting electronic mass surveillance of American citizens; and the creation of the “Insider Threat Program” in all government agencies which effectively operates to chill speech and reduce sharing of information and ideas, not only by government with the public but even within government agencies.

Research participant (RP6) shared in the interview that some secrets are necessary to protect national security, but also widely acknowledged that the national security secrecy system extends well beyond what necessity demands, including rampant over-classification. RP6 said that although there was no magic bullet to cure the problem of excessive secrecy, while also accommodating necessary secrecy, RP6 said that one could identify some points of guidance in distinguishing shallow secrets from deep secrets, where deep secrets are secrets that are not known, while shallow secrets are known. RP6 also drew a similar distinction between macro-transparency and micro-secrecy.

Here RP6 argued that the constitutional system anticipates and leaves quite a bit of room for “micro-secrecy,” whereby the executive branch may implement laws in secret, but that laws themselves, however, should be transparent (or “macro-transparent”), and the Constitution assumes that they will be transparent. RP6 said that “secret law is antithetical to democratic accountability” – preventing the public and other branches of government from performing their checking functions. RP6 argues that secret law is a classic example of macro-, rather than micro-secrecy.

RP6 noted during the Bush and Obama Administrations the revelations regarding the existence of secret surveillance programs were facilitated by classified executive branch legal memoranda as well as secret orders of the Foreign Intelligence Surveillance Court. But journalists reporting these revelations – particularly the Snowden revelations about the extent of some formerly secret surveillance programs – have had chilling effects on the journalists’ sources, who are afraid to talk for fear of being discovered by their employers or law enforcement. Such chilling effects are among the most striking

impacts of extensive surveillance that reaches beyond statutory or constitutional boundaries, and that is facilitated by secret laws and the tools (such as secret legal memoranda and secret court orders) that make such secret laws possible.

RP6 also noted that the 1st Amendment is one important tool to protect whistleblowers. Although the Supreme Court weakened 1st Amendment whistleblowing protections considerably in *Garcetti v. Ceballos*, they did not gut those protections entirely, and RP6 believes Congress ought to strengthen statutory whistleblower protections, just as the executive branch should implement meaningful protections where they have discretion to do so.

Research participant (RP5) in the interview referenced the John F. Kennedy quote “The very word secrecy is repugnant to a free and open society” to capture RP5’s answer to the question and that democratic and constitutional controls over government are lost, and abuses of the law, civil liberties, and human rights can be expected, if not assured when this happens. Why? RP5 stated that “unchecked secrecy undermines government legitimacy,” ultimately doing more harm to the national security than could be done by any foreign force.

RP5 said in the interview that it is of no surprise that torture, mass surveillance, extra-judicial killings, misguided wars of choice, as well as increasing security threats and security officials actively disrupting the presidential election and transition with “official leaks,” and were all the product of the U.S. government’s post 9/11 move to the dark side by two Administrations, both Republican and Democratic. RP5 said that all national security and intelligence elements should be focused on hostile foreign threats,

but that in a free society government should be responsive to public concerns, because the goal of public accountability is accomplished by guaranteeing rights to speech, association, and belief in policy and practice.

RP5 stated that limiting police powers at all levels of government to law enforcement and public safety missions, where judicial oversight assures compliance with the law, requires public access to government information. Where secrecy is necessary to protect current operations, it should be very short-term, so that everyone approving and participating in the activity knows their actions will be held to public account. RP5 suggests one year, renewable annually to three years where necessary, and further only under extraordinary circumstances approved on an annual basis by all three branches of government, and with public notice. RP5 said that this will drive the costs of keeping unnecessary secrets much higher, which will incentivize declassification at the soonest time possible. RP5 also said that executive privilege governs communications with the President, but that it is well established that the impact of warrantless surveillance and mass surveillance is to suppress public debate, and that is incompatible with a free and democratic society.

Research participant's (RP4) analysis included a long list of issues in the answers he provided during his interview. RP4 said that sunshine is said to be the best of disinfectants and that state secrecy is an instrument of injustice and folly. RP4 shared that citizens are denied redress for violations of their constitutional rights—even government assassinations--because of the state secrets doctrine and that the absence of redress encourages new constitutional outrages. RP4 added that when this happens

Congress is denied effective oversight of the executive branch and that fosters fraud, waste, abuse, incompetence, and lawlessness. Secrecy also fathers staggering government misjudgments because there is no outside check on false assumptions or facts. RP4 referenced the Bay of Pigs and the imaginary WMD in Iraq as prime history examples and that transparency enables public debate and critical evaluation of the government's asserted facts and beliefs.

RP4 also said that “whistleblowing is necessary to forestall government lawlessness, which is more dangerous than all other kinds” by referencing what Justice Louis Brandeis taught in *Olmstead v. United States* (dissenting): “In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy.”

In addition, RP4 stated that national security deserves primacy only when the survival of the nation is at stake, i.e., only in fighting wars declared by Congress in self-defense in response to actual or imminent aggression against the United States. And RP4 referenced Article I, section 9, clause 2 of the Constitution that contemplates suspending the Great Writ of Habeas Corpus only in cases of rebellion or invasion where the public safety may require it.

RP4 also said that history teaches that many crimes are committed in the name of national security—including the odious and racist detentions of loyal Japanese-

Americans during World War II. Said that executive surveillance of the citizenry on the President's say-so alone induces citizen docility and fear of criticizing the government and that citizens fear the Executive Branch could leak unflattering or embarrassing information about them in retaliation for opposing government measures. The result in terms of privacy and liberty could lead to a lost job, a lost friend, a lost spouse, a lost reputation, a lost loan, or a lost educational opportunity. RP4 said that nothing is more dangerous to a democratic dispensation than an inert people and that in times of war, the law is silent, but individual liberty is crucified on a national security cross.

RP4 went on to say in the interview in the context of whistleblowing that the "foremost duty of a citizen is to expose government wrongdoing." Why? Because policing government is more urgent than policing the private sector because the government commands a monopoly of legalized violence and is capable of vastly more evil than individuals or organizations, as history has proved. RP4 added that "when a government prosecutes whistleblowers, it is prosecuting the lifeblood of democracy and the rule of law." This necessity makes citizen exposure of government lawlessness protected by the 1st Amendment right to petition for redress of grievances and cannot be criminalized. This means that in a democracy, the people censure the government, the government does not censure the people. Furthermore, in a democracy, sovereignty lies with the people, and government officials are the temporary stewards of their liberty, and that the concept of "enemy citizen" based on opposition to the government is alien to democratic theory.

Research participant (RP11) stated in the interview that if the public is deprived of the opportunity to hold leaders and civil society institutions accountable for possible or suspected acts of corruption, fraud, waste and abuse (and other serious crimes), then this absence of accountability creates an environment whereby those in authority see no impediment to acting purely in self-interest, even at the expense of the public good. RP11 added that such unethical behavior “creates pervasive rot within a democracy that will eventually destroy it, leaving a mafia-like system or fascistic/oligarchic government” in its wake.

RP11 spoke about the word *national security* and that it needs to be defined within strict parameters rather than remain the watered-down, catchall pretext/excuse for secrecy that it has become. RP11 said that the control can come from an independent, fully empowered Office of the Inspector General or Ombudsman’s Office that does not come under the purview of any agency, but is completely separate from the institution that it polices. RP11 noted the case of former CIA Inspector General John Helgerson — who himself was investigated by the CIA when he attempted to bring to light the atrocities committed by the CIA post 9/11.

Research participant (RP2) said in the interview that it is understood that for intelligence agencies to operate they need some degree of secrecy. RP2 said that what has happened in a post 9/11 world, is that because the government in the United States has lied to the American public, for example in relation to the Iraq war (and here RP2 referred to the U.S. stance about weapons of mass destruction and Iraq), which was parroted by newspapers and later revealed to be false. RP2 said it creates a situation

where the public understandably can't trust the intelligence organizations who rely on near total secrecy to do their work.

RP2 then said when combined with this huge amount of secrecy, citizens can't trust that their government is doing the right thing. RP2 said that one cannot have a "functioning democracy, if the national security authorities and institutions don't abide by the law, and then of course when they criminalize whistleblowing", and precisely because of the condition where there's some degree of secrecy.

RP2 said that some of the only ways that one can hold these agencies accountable is precisely by whistleblowing from someone on the inside, as part of the secret institution, seeing some wrongdoing and then willing to take that enormous risk, the personal risk of whistleblowing. RP2 said that in some ways, whistleblowing is the safety valve for the limited degree of secrecy these agencies require. RP2 did say that secrecy doesn't mean that they should ever supersede public law. Public law requires that they are following the mandates set by Congress, and if they're not doing that, then they're not following democratic procedure.

RP2 added that without those two things it just makes democracy into a sham. It also doesn't mean that they should override public law and should never take such primacy that it overrides the fundamental rights and liberties of people. RP2 could possibly imagine a very limited sort of state of emergency called during a very, very well defined period of one week under a kind of threat of massive danger. But again, these are hypothetical and in the current world we have lived in RP2 just didn't think there were any conditions that would call for overriding these fundamental rights and liberties.

Research participant (RP1) said that even when the government has argued that elected representatives ensure democratic buy-in, there are structural factors that undermine that claim. For example, when elected representatives are briefed on secret national security related programs, they may be unaware of the precise contours and nature of these programs or unable to judge their wisdom and legality without more open discussion and debate – the very hallmarks of democratic governance. And even when they can assess secret national security programs, they will generally have little way of measuring their constituency's view of those programs, in order to properly implement the will of the people – those they represent.

Data points were created from narrative-based interviews consisting of 11 research participants converted into computer-readable text for automated analysis using an advanced qualitative tool called NVivo 11 from QSR International. These narrative-based interviews were then coded and weighted automatically by the tool. The same tool used reference patterns and weighted frequencies of attribute-based matrices for the purpose of addressing the RQ using the research participant responses from the 4 primary questions addressing the RQ and the optional secondary questions. Within the tool a matrix was generated using themed categories of coded text in the form of nodes tagging the essence of the phenomena of individual rights and liberty as a citizen versus the primacy of national security enforced by a government secrecy regime in the context of the 4th Amendment when public interest disclosures are made by whistleblower under the 1st Amendment.

This matrix provided the template for the coding of the phenomenological autoethnographic study by associating five primary categories of themed coding mapped to the phenomenon of state power versus individual privacy phenomenon in a post 9/11 security world and the necessary attributes that capture the tension between elite state power and democratic governance. These five coding categories consist of epoche or personal bracketing, significant statements, meaning units (or themes), textural descriptions and structural descriptions.

Within the NVivo tool the following key terms were defined: Source research materials for automated tool analysis consisted of text converted Microsoft Word documents labeled as “internals.” Coding was the process in the tool for creating themes from the key search words and phrases used in Chapter 2. Nodes were the containers in the tool that captured the coding representing the themes for examining emerging patterns, associations and narrative-based textural descriptions from the 11 referenced files created from the individual responses to the interview questions. The key search words and phrases used for the search strategy within the tool were: *democratic governance, national security, secrecy, Constitutional law, intelligence, liberty, democracy, 4th Amendment, 1st Amendment, privacy, espionage, and whistleblower*. NOTE: All of these words and phrases match the search strategy used in Chapter 2.

Evidence of Trustworthiness

As noted in Chapter 3, the goal of trustworthiness consisted of a “qualitative inquiry” Elo, et al (2014) that was “worth paying attention to” in reference to Lincoln & Guba (1985). The methodological approach for this research was qualitative and the

experience and knowledge of the research participants as revealed in the interviews was the basis for establishing the necessary relationships among the different phenomena examined with respect to the research question, based on the primary questions answered by the research participants with additional depth and breadth provided by the optional secondary research questions.

I used an inductive content analysis approach from the research participant interviews. This was done in order to mitigate bias through the responses from the research participants providing the experiential validity based on their respective professional expertise as an outside check for trustworthiness. This validation of trustworthiness was fully demonstrated in the results section that follows.

Results

Within the NVivo 11 tool the summary search results consisted of 947 raw references with percentage of coverage, based directly on the search strategy using the search words and phrases across all 11 coded interviews. The following figure showed this raw result.












Summary		Reference		
Source Name	^	In Folder	References	Coverage
 RP1		Internals	24	9.97%
 RP10		Internals	163	4.38%
 RP11		Internals	47	7.81%
 RP2		Internals	148	8.98%
 RP3		Internals	46	6.28%
 RP4		Internals	50	14.39%
 RP5		Internals	115	18.30%
 RP6		Internals	40	9.56%
 RP7		Internals	130	20.19%
 RP8		Internals	96	6.43%
 RP9		Internals	88	4.91%

Figure 1. Summary search term references and coverage from interviews.

The next result show examples of the word trees created in a before and after context matrix from the tool analysis based on the search strategy words that were 5 characters in length or greater.

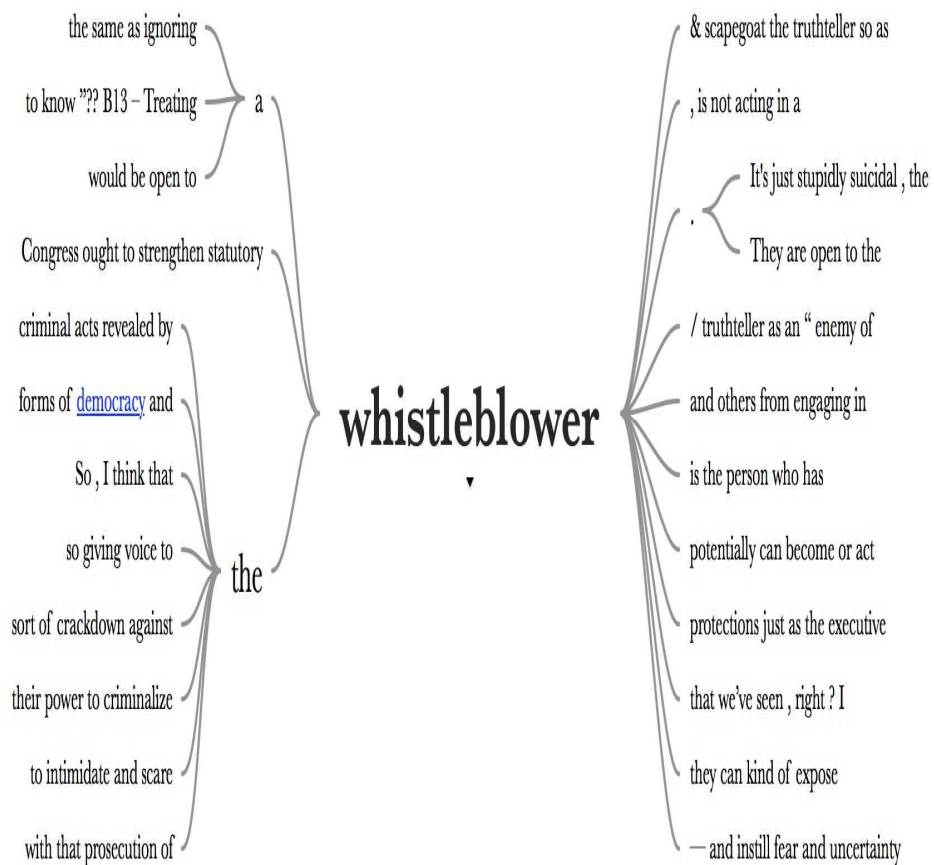


Figure 2. Whistleblower word tree.

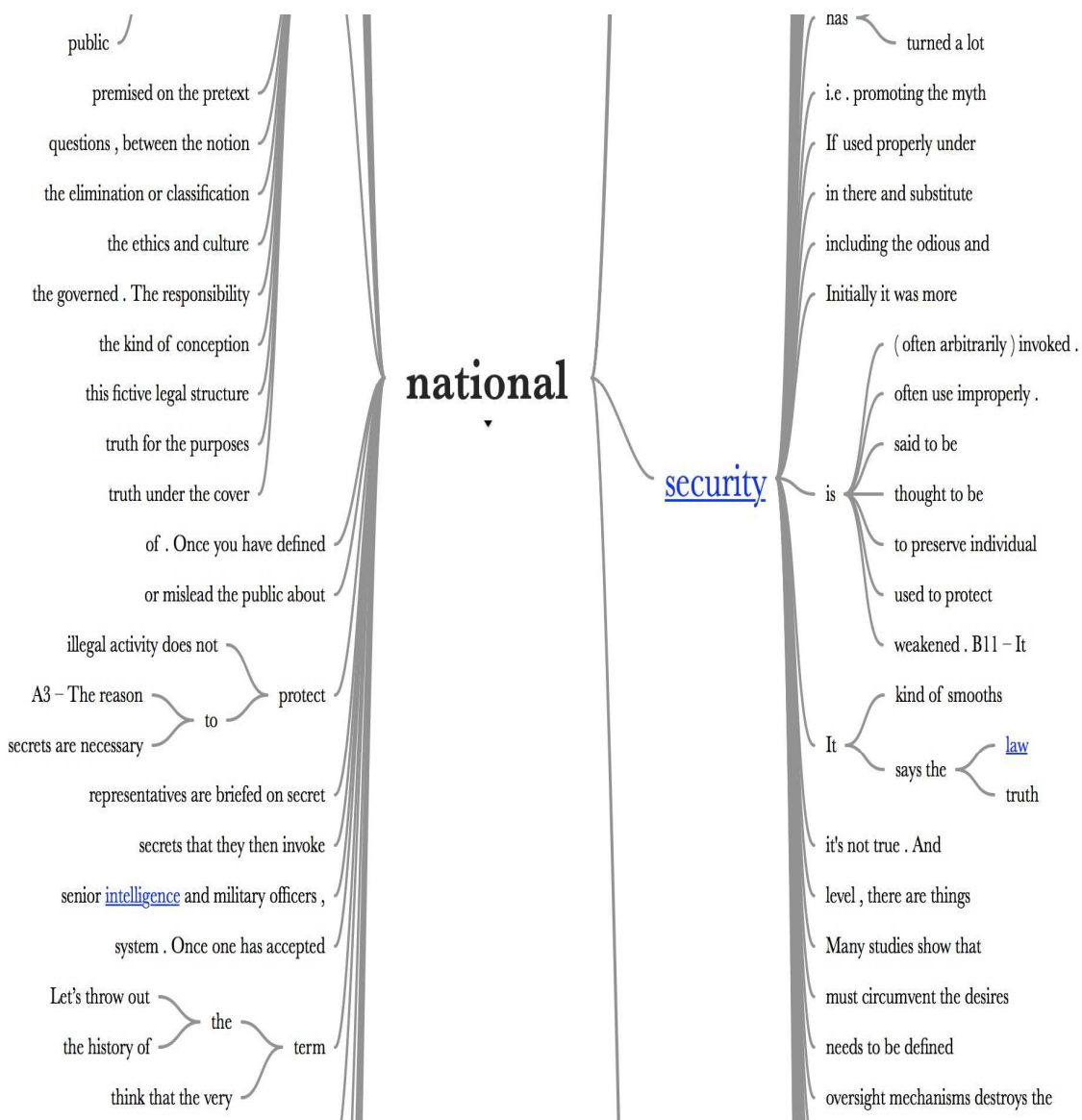


Figure 3. National security word tree.

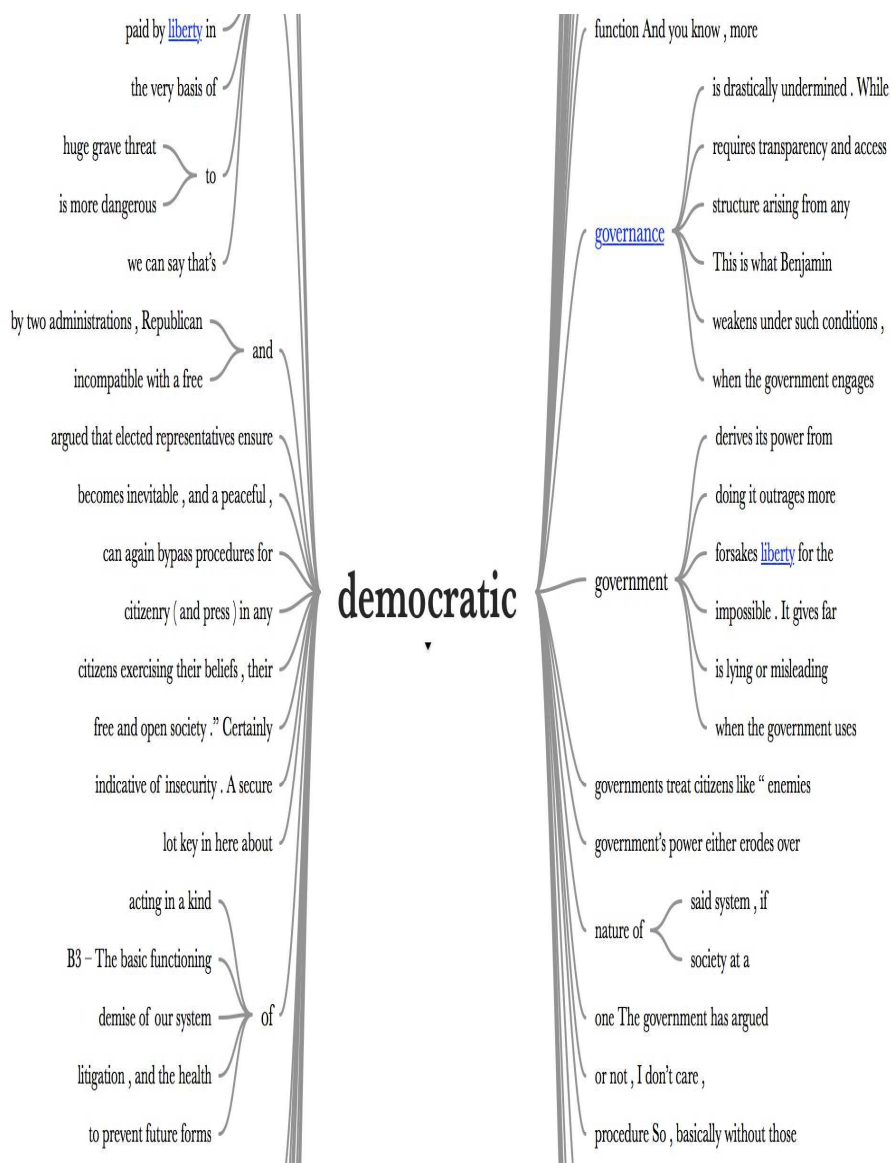


Figure 4. Democratic governance word tree.

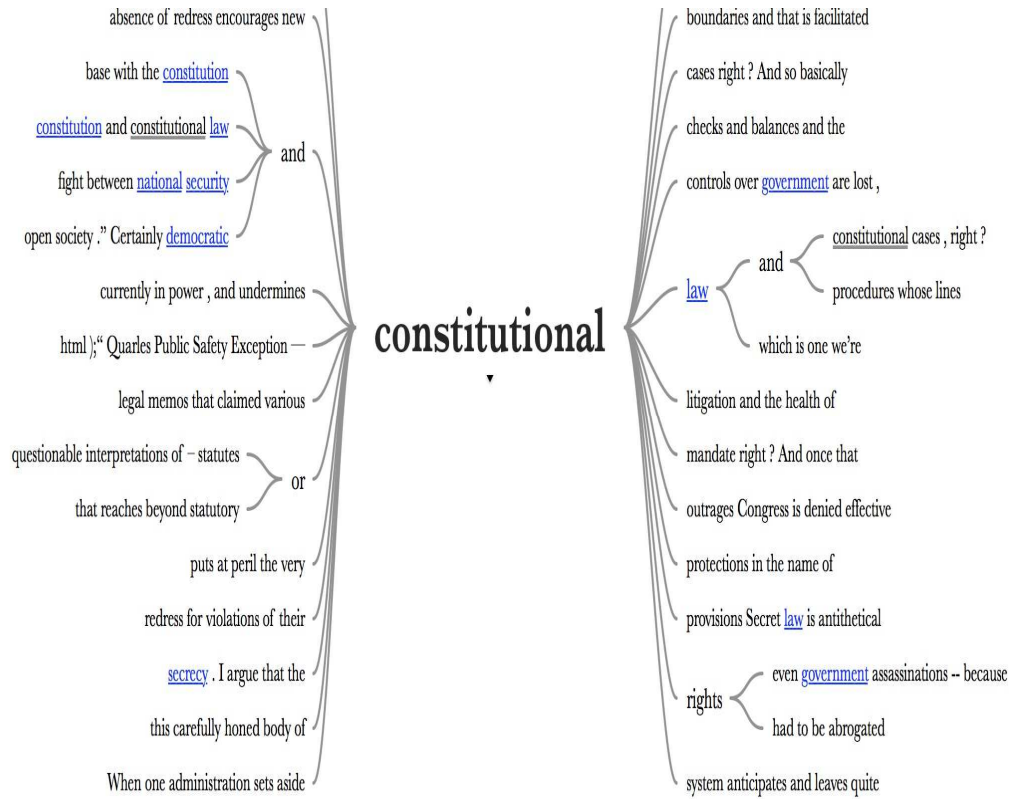


Figure 5. Constitutional law word tree.

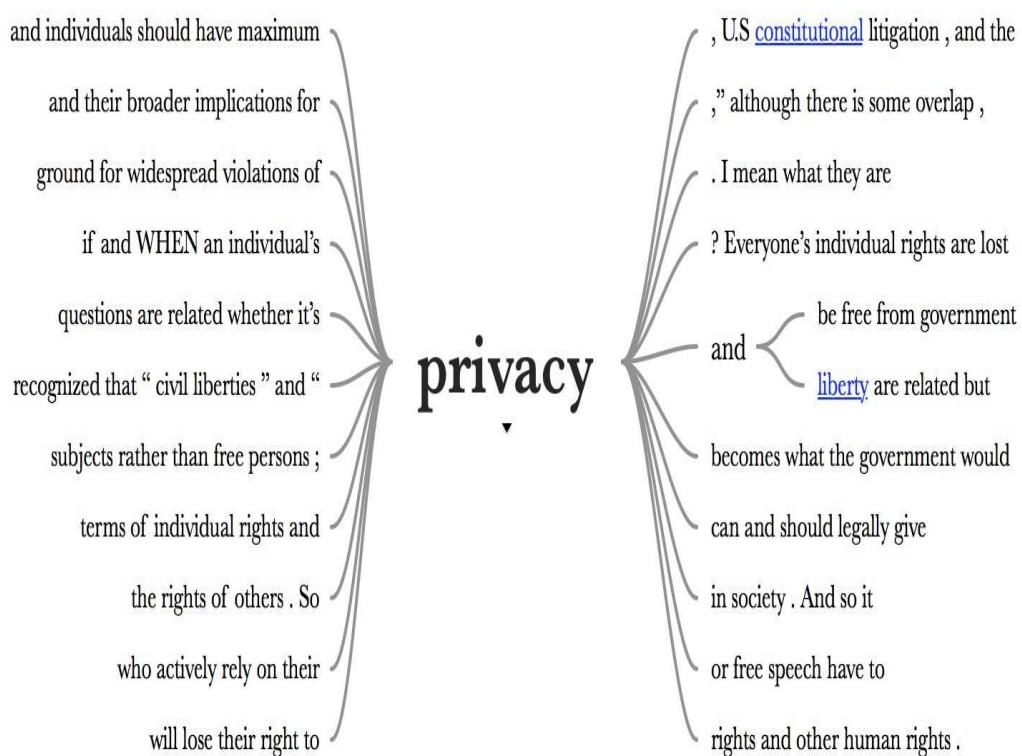


Figure 6. Privacy word tree.

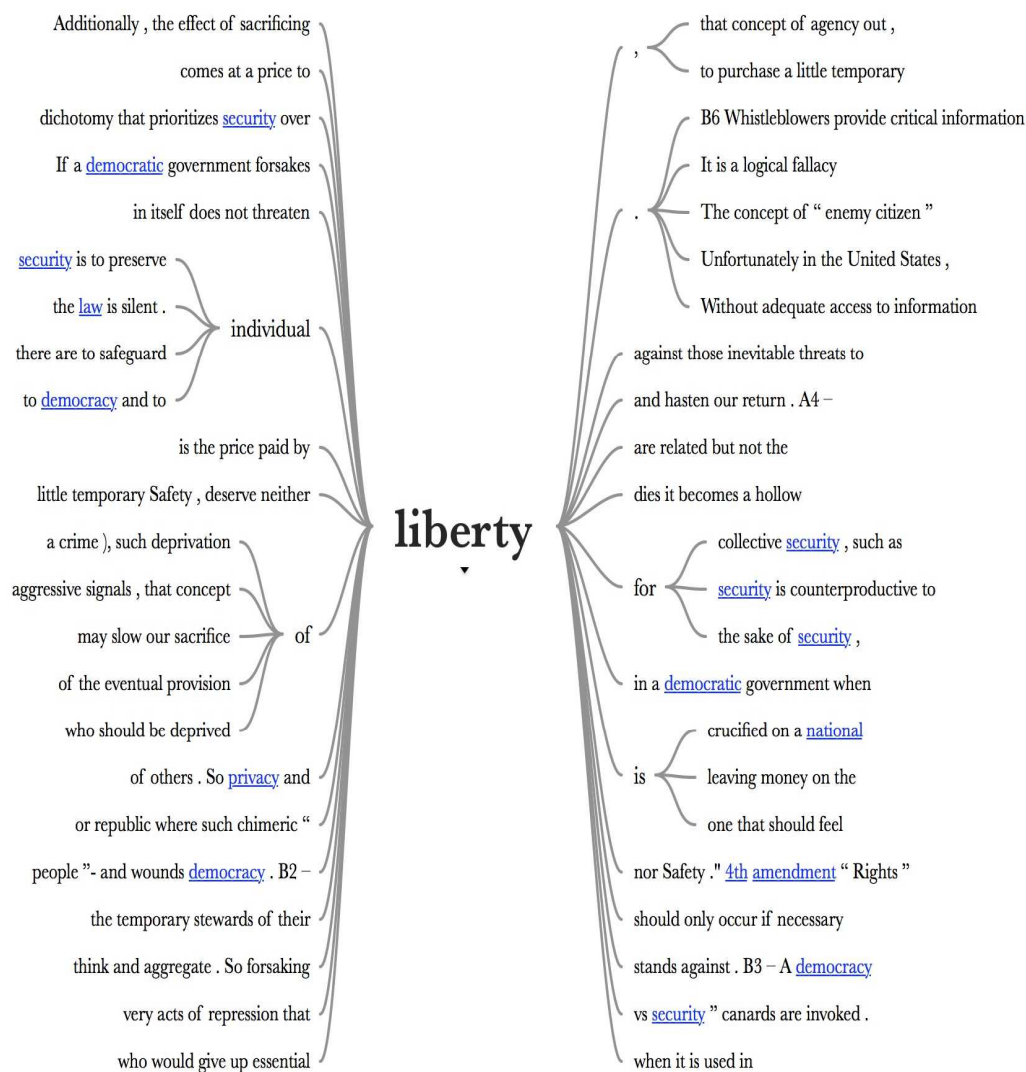


Figure 7. Liberty word tree.

The next result involved generating a count of the most used words from the text of the interview (with weighted percentages) and then created a word cloud to show the patterns and alignments with a minimum word length of 5 characters for all words and NOTE: The word count included stemmed words that were directly related, i.e. govern, governance, governed, governing, government, governs.

Word	Length	Count	Weighted Percentage	Similar Words
governments	11	256	2.35%	govern, governance, governed, governing, g...
people	6	130	1.19%	people
right	5	116	1.06%	right, rights
security	8	110	1.01%	secure, security
national	8	97	0.89%	nation, national, nations
democracy	9	95	0.87%	democracies, democracy
think	5	86	0.79%	think, thinking, thinks
public	6	85	0.78%	public, publication, publicly
state	5	68	0.62%	state, state', stated, states
secret	6	65	0.60%	secret, secretly, secrets
constitution	12	63	0.58%	constitution, constitutional, constitutionally
things	6	63	0.58%	thing, things
society	7	61	0.56%	societies, society
whistleblowing	14	58	0.53%	whistleblower, whistleblowers, whistleblowing
informed	8	57	0.52%	inform, information, informational, informed,...
surveillance	12	53	0.49%	surveillance, surveilled
individual	10	48	0.44%	individual, individually, individuals, individuals'
protect	7	47	0.43%	protect, protected, protecting, protection, pr...
system	6	45	0.41%	system, systemic, systems
democratic	10	43	0.39%	democratic
secrecy	7	42	0.39%	secrecy

Figure 8. Word count weighted percentage.

In Figure 3, national security was associated with ‘pretext,’ ‘ethics and culture’ a ‘fictive legal structure.’ In Figure 4, democratic governance is tightly coupled with ‘transparency and access,’ derives its power from a ‘free and open society’ and that real ‘security’ is tied to ‘liberty.’ In Figure 5, constitutional law is tied to ‘privacy,’ that ‘national security’ is linked to ‘secret law’ and that ‘power’ undermines constitutional law. In Figure 6, privacy is tied to ‘individual rights’ and ‘civil liberties’ as this right is ‘lost’ in ‘society’ with there are ‘violations’ of privacy. In Figure 7, liberty is a ‘security’ to ‘safeguard’ but if ‘security’ takes ‘priority’ over liberty than you are deprived of ‘democratic government.’

Based on the RQ it does appear that the primacy of national security is a key factor in the devolution of democracy that create the very conditions for the violation and erosions of rights, liberties and privacy of individuals in the name of national security and a trigger to clamp down on whistleblowers disclosing those same violations and erosions by the government conducting itself in a less than democratic manner.

I took up the meaning of the research results in the form of findings from the tool analysis in Chapter 5 and contrasted these results and the interview answers to the primary and secondary questions and then compared them against the peer-reviewed literature as described in Chapter 2.

Chapter 5: Discussion, Conclusions, and Recommendations

Introduction

The purpose of this research study was to examine the consequences of the government restricting civil liberties and constitutional protections using public safety and national security concerns as justification in the post 9/11 world. In this study, I explored and contrasted the tension between national security and secrecy versus openness and transparency within the structures of democratic governance, set against the backdrop of disclosures of government wrongdoing by whistleblowers (such as myself) made in the public interest.

Key findings of the research reflect that when a democratic government prioritizes national security and power (real or imagined) over individual rights, an imprimatur is established for the erosion of citizen rights and freedoms. There is a distinct incentive for the government in power to punish whistleblowers for exposing less than democratic conduct that the government justifies in the name of security. These erosions of rights alter the foundation of democratic governance in a society, and democracy itself is threatened.

Interpretation of the Findings

Given the richness of the responses to the four primary questions and the thirteen optional questions answered during the interviews by the research participants, the NVivo tool is best presented live, given the nature of this kind of analysis. For the purposes of this study, I focused on the key functions available in the toolset and presented the key

static examples derived from the tool to demonstrate the contextual patterns and associations from the automated analysis.

As noted in Figure 8, the word count from the transcribed interviews (including all occurrences of stemmed words) is revealing with respect to the key terms associated with the intent of this study and the RQ. For example, the word “governments” appears with almost twice the frequency of “people,” closely followed by “right,” “security” and to a lesser extent, “national” and “democracy.” The words “public,” “state,” “secret,” “constitution,” “society,” “whistleblowing,” “informed,” “surveillance,” and “individual” are each less than a quarter of the frequency of “governments.” This suggests an overwhelming central preponderance of influence to government (made up of people in power) and its impact on people in society. This centrality and focus of government is illustrated by the word cloud in Figure 9.

In further examining the interviews conducted with the research participants, a number of key trends emerge when parsing out the expanded text of the 4 primary questions (A1-4) and supported by the secondary questions (B1-B13).

- (A1): In a post 9/11 world, what happens when state secrecy appears to take priority over the rights of citizens for the sake of national security?
- (A2): What is the risk to a democracy when secret national security authority supersedes public law and criminalizes whistleblowing in the public interest?
- (A3): Are there conditions where the primacy of national security might be necessary and how should that eventuality be controlled so it does not outweigh the fundamental rights and liberties of the people?

- (A4): What is the impact of government surveillance on its citizens through executive privilege and authority, absent court orders or the legal authorization from Congress?

One consistent theme throughout the interviews was that excessive secrecy poses an existential threat to democracy and to individual liberty. Without adequate access to information about the conduct of government, the public has little opportunity to hold the executive accountable for overreaches of authority. This threat is particularly acute for political minorities, who generally cannot rely on majority representation to safeguard their interests. In addition, the exercise of national security authority that exceeds public law is, in a sense, largely an antidemocratic one.

In this context, whistleblowing serves as a societal safety valve for the structural pressure which the government created by excessive focus on national security and secrecy. Whistleblowing, therefore, has served as a crucial check on government from within by exposing wrongdoing in the public interest. It is a false dichotomy that whistleblowing in the public interest must be superseded by national security; the two are not mutually exclusive.

Pervasive government surveillance has a chilling effect on speech, thought, the press, and freedom, and people under surveillance may self-edit and self-censor with regularity, often subconsciously. In this climate, the press under the 1st Amendment cannot accurately report on government conduct when dissent is discouraged and branded as problematic. Free speech, dissent, a robust free press, and a diversity of viewpoints are the hallmarks of a healthy democracy. In this regard, Kitrosser (2015) provided

substantial analysis regarding the crucial role of whistleblowers in maintaining democratic governance and holding government accountable.

Whistleblowers provide critical information about government and private institutions that the public has a right to know but has no way of finding out. Democracy depends upon an informed public, and whistleblowers provide information on behalf of the people. They also provide a critical check on government institutions in that they are uniquely positioned within those institutions to see waste, fraud, abuse, and illegality. When individual government officials or government institutions feel threatened because of their own law-breaking or embarrassing conduct, turning the system against whistleblowers is a natural but nefarious reaction. Prosecuting whistleblowers for revealing information that is in the public interest undermines democracy because it chills speech, hampers investigative journalism, and makes the public less informed and the government less accountable.

Persecuting the people defending the Constitution puts government officials and institutions above the Constitution. Democracy is threatened when protecting powerful government officials and institutions is prioritized over the Constitution. Government in a democracy should serve only the public, not powerful government officials, and should operate only within the confines of the Constitution. Government institutions only derive power from the Constitution—and ultimately the people. Criminalizing disclosure of information about government wrongdoing is indicative of an insecure democracy. A secure democracy should be accepting of all dissent and speech, both internally in

government and externally, especially when the speech does not in actuality compromise national security and informs the public of government wrongdoing.

Protecting government officials from exposure or destroying evidence of illegal activity does not protect national security. When a democracy takes these actions under the guise of protecting national security, the public is less informed, democracy is threatened, and true national security is weakened. It is indicative of insecurity. A secure democratic government derives its power from the people, and therefore cannot be threatened by the people knowing the truth about government or holding government wrongdoers accountable.

Whistleblowers are a form of immune system for a government, but when the government goes after the whistleblowers, the government is effectively killing off its own immune system. And when the government cracks down on whistleblowers (as well as all sorts of different kinds of truth tellers), it is eroding democracy from within. When whistleblowers are being persecuted and prosecuted by the government, it shows that no checks are in place and democratic governance will devolve.

In this context, an existential threat to the system (such as 9/11) invokes an external adversary that exists outside the context of that system. Once a person accepts that national security is necessary, then the justification that it necessary cannot exist within the rule of law and therefore takes place within a state of exception. Thwarting whistleblowing and accountability guarantees that the contradictions of the system will eventually destroy the democratic nature of that system, if not the system itself. The structure of democratic governance relies on the assumption that the state itself is a

legitimate construct with an ethical mandate from the people who compose it. When the state suppresses those who would dare hold up the mirror in order to preserve it, that legitimacy is threatened.

The costs of excessive secrecy are many. Excessive secrecy can cloak abuses of individual rights, and secret government programs can amount to “secret law” when they circumvent or are based on highly questionable interpretations of statutes or constitutional provisions. Among the most important protections against secret law and against excessive secrecy more broadly are whistleblowers who leak information from within the government about fraud, waste, abuse, or illegality.

Not all leaks of information are justified, and not all secrecy is unjustified. It is still important to have protections in place to ensure that persons who claim to disclose information have the opportunity for meaningful review of their cases in independent forums such as courts. It is also important for agencies to have protected channels in place to encourage and even to reward reasonable internal complaints rather than leaving potential whistleblowers with little resort but to go public.

Increased government secrecy makes whistleblowers more essential to the proper functioning of democratic government. Criminalizing conscientious whistleblower activity ensures government waste, fraud, abuse, mismanagement, and illegality will flourish. Secret law is anathema to a free society, and government by the consent of the governed is a hoax if the people are unaware of the government’s claimed authorities and thereby unable to voice opposition or demand repeal.

Limitations of the Study

Key limitations of this study center on an autoethnographic approach that created the possibility for confirmation research bias. This limitation centered on me taking on the role of participant observer when I interviewed this study's research participants. However, the mitigation of this approach involved the very research participants themselves drawing upon their own experiences as the most ethical approach to compensate for any possible or perceived bias.

From the literature, Zhang & Wildemuth (2005) provided a comprehensive summary that overcomes the limitation of this study's research reliance in qualitative data derived directly from observation and analysis captured in the form of narrative-based interviews. By coding and identifying themes as patterns that are "manifest or latent in a particular text . . . allows researchers to understand qualitative content analysis in a subjective but scientific manner (p. 1). Key to this methodology is inductive analysis that permits themes to emerge from the data that validates a theoretical framework which "starts with the counting of words . . . then extends the analysis to include latent meanings and themes" (p. 2).

Recommendations

Research participant (RP3) articulated in the interview that the government going off the rails in terms of rule of law and engaging in less than democratic conduct is not new and that history is not kind. RP3 said the same thing happened in 1798 (Sedition Act), 1861-65 (the suspension of habeas corpus), 1917-18 (Espionage & Sedition Acts), 1919 (Overmann Committee & Palmer Raids), 1934-75 (Dies Committee/HUAC), 1941-

45 (internment of Japanese-Americans), 1950 (the McCarran Act), 2001 (PATRIOT Act & STELLARWIND), 2008 (FISA Amendments Act)—where the Bill of Rights goes out the window, and individuals and groups designated as “enemies” by the government are harassed, imprisoned, or even killed. Any after-the-fact apologies followed by zero enduring reforms have ensured the cycle repeatedly over the last 116 years—almost half the history of the United States. RP3 said that this had the cumulative effect of eroding any real concept of the rule of law and adherence to the Bill of Rights and demands major reform.

However, no major reform in the national security arena has ever happened absent one or more whistleblowers being involved at the outset (like I did as a whistleblower with several fellow NSA colleagues) in exposing waste, fraud, abuse or criminal conduct by federal officials. For example, RP3 pointed out that the only reason the public learned that Verizon was accommodating U.S. government mass surveillance requests via the FISA court was due to Edward Snowden’s revelation of the order to the *Guardian* in 2013. And the very fact that the FISA court agreed to the government’s interpretation of the prevailing statute allowing such a practice happened at least in part because the FISA court, throughout its nearly 40-year existence, has never had the kind of adversarial process that is a key feature of normal, open Title III federal courts. Mechanisms that create and enforce secret law are, by definition, authoritarian or totalitarian and under such conditions, individual rights are obliterated.

One recommendation is to revisit history and the American Revolution. Why? The entire American Revolution was fueled by Great Britain’s government’s use of broad

surveillance powers unchecked by any judicial review or restraint, as well as the forced quartering of British troops in the homes of American citizens, and the imposition of taxes and duties without the consent of those being taxed. These measures were all invoked by the British Crown based on “public safety and security.”

When the Founders made the decision to break from Great Britain, they did so knowing that true security lies above all else in the protection and advancement of individual freedom—especially freedom from being watched, harassed, brutalized, or even killed by one’s own government. Each and every compromise of a freedom in the name of “national security” has resulted in abuse of individual rights and lives throughout the history of this country, and in every other democracy or republic where such chimeric “liberty vs. security” canards are invoked.

Another recommendation is researching all invocations of the “state secrets” privilege that began as state doctrine with the *Reynolds* case. As pointed out by RP3 in the interview the *Los Angeles Times* noted in 2004 (<http://articles.latimes.com/2004/apr/21/opinion/ed-secrecy21>), the entire *Reynolds* case on which the “state secrets” privilege was built is a lie. The Supreme Court simply took executive branch officials’ claims about the incident at face value and never made an attempt to examine the truthfulness of the government’s assertions. Accordingly, until the truth emerged as the result of a Freedom of Information Act action in 2000, the executive branch could maintain that lie and use it as a legal bulwark to stymie all manner of efforts over the intervening 50 years to get the truth out about government activities in the

national security arena carried out under the cloak of the judicially-sanctioned “state secrets” privilege.

In the *Reynolds* case, it involved a multi-decade lie by the government to the family of an Air Force member killed (along with his fellow aircrew) because of maintenance negligence. The pain and suffering of that family and the others affected by the aircraft crash in question lasted their entire lives because the government used the Supreme Court’s endorsement of blanket secrecy over the case to prevent a real investigation into the incident. As a recommendation, researching this particularly odious and pernicious doctrine is one of the most urgent reform tasks facing the United States.

This raises the need of further exploring the nature of what some now coin the ‘deep state’ or the rise of a shadow administrative state government that intersects with the visible, public government and the risks of those blowing the whistle on the deep state (Frontline, 2014) that is composed of the national security apparatus, the military, intelligence agencies as well as monied industrial interests (Lofgren, 2016). In addition (and as noted in Chapter 2), it is critical to understand that the underpinnings for such a deep state are distinct from and anathema to a Constitutional Republic (Fisher, 2011) and especially executive power largely unconstrained by public interest and accountability and taking the license to sidestep legislative or judicial checks and balances (p. 190).

With respect to whistleblowing, research into why whistleblowers do not have the right to a court trial in the national security arena is another area for further inquiry. Whistleblowing serves as a safety valve for the structural pressure created by excessive secrecy. For example, if government officials properly balanced the need for secrecy with

the need for transparency, there would be far less incentive (and need) for whistleblowing. But in the history of the United States going back some 240 years, we have yet to find that balance. And so, whistleblowing has served as a crucial check on government when other avenues of structural governance accountability have failed.

This tension was noted in the seminal article about secret law as noted in Chapter 2 from Rudesill (2015) and that public law takes primacy over secret law and especially secret law that is criminal law hiding behind the convenient veil of secrecy and not in accord with public law, let alone the Constitution (p. 360). Additional study is necessary to further explore state power pursuing and prosecuting whistleblowers disclosing criminal conduct and violations of the Constitution and rule of law and then alleging that the disclosure is a crime against the state for exposing state crimes.

Another area of recommendation that this study could not fully address center on the governance decisions that are made absent public debate and input and devolve into edicts and orders. In such an environment, the public becomes a victim without recourse to redress (including whistleblowers) unless the public is willing to take an ever-increasing number of extreme measures to make their voices heard. In the face of sustained government efforts to exclude the public from debate and evade accountability for its actions, the public faces the choice of either accepting the government's diktats or taking actions that result in government officials losing their power and control. If the government responds with repressive measures, violent confrontation becomes inevitable, and a peaceful, democratic decision making process is thus suspended. But the cycle

inevitably begins with government efforts to impose greater security measures that invariably abridge basic rights.

As noted by RP3 in the interview, since Edward Snowden's revelations in 2013, multiple studies have shown the "chilling effect" that government surveillance has on speech and association: the Pen American report (<https://pen.org/press-release/new-pen-report-demonstrates-global-chilling-effect-of-mass-surveillance/>), the NTIA report (<https://www.ntia.doc.gov/blog/2016/lack-trust-internet-privacy-and-security-may-deter-economic-and-other-online-activities>), the Facebook report (<http://journals.sagepub.com/doi/pdf/10.1177/1077699016630255>), and the Penney report (https://papers.ssrn.com/sol3/papers2.cfm?abstract_id=2769645). RP3 references what the Penney report noted, "These, and other results from the case study, not only offer evidence for chilling effects associated with online surveillance, but also offer important insights about how we should understand such chilling effects and their scope, including how they interact with other dramatic or significant events (like war and conflict) and their broader implications for privacy, U.S. constitutional litigation, and the health of democratic society."

If society, and especially Congress (the elected representatives of the people), largely pay lip service to the notion that whistleblowers are valued, let alone government transparency and responsibility, where does the change come from? Change will not come from federal officials charged with upholding the Constitution placing their bureaucratic and career interests ahead of that obligation when the two are in conflict. As pointed out by many of the research participants during their interviews, change will also

not come when too many in the executive branch are protecting the organization's reputation and that of their superiors as a higher daily priority than doing the job they were hired to do in the first place and with the oath that they took to support and defend the Constitution of the United States against all enemies, foreign and domestic. In the absence of real consequences for those who commit such acts, the kind of lawlessness and disregard for democratic governance with government malfeasance in such behavior will only continue.

RP3 noted during the interview there is an online timeline (<https://www.cato.org/blog/introducing-american-big-brother-century-political-surveillance-repression>) from 2016 that describes exactly these kinds of episodes, which have stretched over the course of more than 100 years. As said directly in RP3's interview, the fact that "these episodes have formed a de facto continuum of surveillance and repression is the best evidence yet that the phenomenon has become all but normalized in American political, social, and cultural life—another indicator of the anemic state of our democracy."

Implications

In terms of positive social change, I did prevail against the government's selective and vindictive prosecution in the courtroom as well as in the court of public opinion, because the government's case collapsed under the eventual weight of the truth and public scrutiny. In this context, the approach for this research focused on examining events through the perspective of experts familiar with the criminal case in which I faced 35 years in prison and the larger historical backdrop when the government charges an

American under the WWI-era Espionage Act statute (designed to go after spies and not whistleblowers) for documented public interest disclosures of government wrongdoing and violations of law involving multi-billion dollar program waste, intelligence fraud and secret surveillance by the National Security Agency.

The government's post 9/11 penchant for operating in secrecy and hiding behind a unitary executive branch state secrets doctrine has arguably done more harm to our national security than not. It has also given rise to a massively persistent military industrial intelligence congressional surveillance complex out of all proportion to providing for the common defense by sacrificing our general welfare and our civil liberties.

As noted in Chapter 2, the theoretical construct of normative democratic governance formed the heart of this research in the context of the core experience of me as whistleblower faced with the clear and compelling abuse of national security power against the protected rights of the people by the governing elite in secret right after 9/11. As discovered by me, interviewing eleven experts in their respective disciplines, security and secrecy by the governing elite creates a critically negative tension in democratic governance and raises the most basic of questions about the current state and future of democracy in the United States with the rise of the national security state in a post 9/11 world.

The power of national security and surveillance are fundamentally at odds with democratic governance and a development that was called "inverted democracy" by Wolin (2008). This is particularly true when the primacy of national security is posited as

justification for doing things in secret behind closed doors that are not democratically consented to by the people. In addition, shedding light on the violations (as I did as a whistleblower) is regarded as a criminal act violating national security by the same less than democratic governance structure engaged in the violations in the first place.

As articulated by the research participants, democratic governance can be unilaterally undermined in secret, by majority rule or government hegemony over the people by using top down means rather than an approach that encourages a decidedly bottoms up approach through dialogue, compromise, diversity and inclusion of diverse opinion – the hallmark and bedrock of democratic governance. However, these same democratic governance practices are then eroded in an environment characterized by less democratic and minority power elite with the attendant manipulation and co-opting of institutional governance structures.

Restoring the Constitutional rule of law and the public trust for those in power will not be easy - as so much damage has already been done - but restore it we must - because our very fortunes, our very lives and the very essence of what it truly means to be an American are very much at stake -- as I never want to see a 'dead or alive' wanted poster for our Constitution - for this generation let alone ANY future generations (Fein, 2008; Woods & Gutzman, 2008).

In terms of benefits to society, it is anticipated that the results of the study will provide further critical insight into the devolution of democratic governance in the United States since the tragedy of 9/11 and how it reflects directly on the value of our

democracy's foundations and the Constitution as how we govern ourselves and the danger to democracy and democratic governance.

As shown in this research, the following rhetorical questions still remain front and center going forward in order to ensure the future of a living and robust democracy in the United States against the troubling reality of the deep and profound tension and conflict in the body politic created by the post 9/11 national security world.

What does it say when the federal government goes after people for supporting and defending the Constitution because of their conviction that the U.S. Constitution is the law of the land? What does it say when the federal government holds people in contempt for upholding the Constitution? What does it say when the federal government claims that people have obstructed justice, and yet these same people were bringing to light in the public interest under the 1st Amendment government obstruction of justice on other parts of government regarding formal investigations and inquiries?

What does it say when the government claims that attempts to ensure that the government is obeying the law of the land, not violating the public trust, not abusing public funds, while also insisting that our government protect the Constitutional rights afforded all citizens and that citizens have the right to exercise those rights without compromising either security or liberty, is then defined as 'fraud' in terms of the services rendered by a public servant?

What does it say when the government suppressing, censoring and destroying evidence regarding government wrongdoing, is considered lawful? What does it say when the federal government accuses a citizen of engaging in a conspiracy with others

against the United States of America, but the conspiracy is simply speaking out about and sharing Constitutionally protected activities - even if it causes embarrassment to the government and exposes their own wrongdoing? What does it say when the federal government's version of the 'truth' is what the government will say is the truth, even when it's not the full truth?

What does it say when citizens in the United States are treated like 'enemies of the state' because they dare to stand up to their own government for what their own government is doing in secret without their consent or knowledge that the government is violating the law, weakening security, and eroding rights and liberties?

Promoting the worth, well-being, development and value of who we are and our civic communities in a free, transparent and open society are the cornerstones of democracy. When security and safety (real or imagined) become the imprimatur for taking away and eroding citizen rights and freedoms and thereby alter the very fabric of democratic governance, then something has to give. And what is giving is the very progress of the grand experiment called the Constitution as a special form of democracy. Positive social change (part of Walden University's mission) can only take place in a society that has robust governance social structures that strengthen democracy and the rule of law – and do not inhibit or suppress them.

Conclusion

Although the United States' founding governance documents profess that all people are created equal, there are other contradictions and lapses in the promise and practice of democracy in the United States – from the acceptance of slavery to the

suspension of habeas corpus during the Civil War under President Lincoln, minority rights, women's rights, the tragic internment of the Japanese during WWII, and the communist witch hunts of the late 1940s and 1950s.

All of these threats to democratic governance showed how easily rights are ignored, denied, or rescinded when the government overreaches and abuses its powers. We must not forget the lessons the framers of the U.S. Constitution drew from Locke and Montesquieu, and common law, And yet as seen by the Bush Administration's state secret policies involving torture and warrantless surveillance (and subsequently expanded into an administrative national security state legal framework by the Obama Administration and handed off to the Trump Administration), the separation of powers under the Constitution is severely eroded, imperils the rule of law and gives rise to the devolution of democracy and 'soft' tyranny (Piffner, 2008). The paradox that Benjamin Franklin warned about is not irreversible, though the increasing frequency of government suppression against those speaking truth to power and the use and invocation of national security and secrecy in the post 9/11 world seems historically worrisome.

This conduct corrupts the very heart of democracy and gives rise to a form of governance that betrays the Constitution of the United States, and especially in light of the worldwide debate and discussion triggered by the Edward Snowden disclosures starting in June of 2013 (as well as earlier disclosures made by others many years earlier, including I). This condition is an outgrowth of two things: First, the self-assigned powers by the executive granting itself license for broad authority to deal with the "threat" of

terrorism; and second, the general acceptance (promulgated in the aftermath of the 9/11 tragedy) for “security” against these “threats.”

What are the consequences of a government decoupling itself from the Constitution and democratic governance in secret, forsaking the rights of the people for the sake of national security? These consequences strike at the very heart of a Constitutional Republic resulting in the sacrifice of rights, estrangement of the population from their government, and the prosecution and indictment of truth-tellers and whistleblowers. In this regard, we need an increased understanding of this vital issue that lies at the very center of the American experience.

I also cannot forget the absolutely tragic loss of innocent life taken by the perpetrators of 9/11 – knowing at the same time the United States government failed to prevent or interdict that heinous and murderous attack on that fateful day. Shortly after 9/11 I heard as eyewitness a very senior official (to whom I reported at that time) at NSA state that 9/11 was a “gift” to NSA, and that NSA would get all the money it wanted and then some. It also became quite tragically clear in the ensuing months and years (often characterized by fear and denial) that key government leaders as well as the nexus of the military industrial intelligence congressional complex would not necessarily prioritize the best of America to protect legitimate American national security interests. Instead, and quite deliberately, they would make a series of fateful and quite secret decisions right after 9/11 to lessen the protection of rights and liberties granted by the Constitution in light of the crisis, under the banner of national security – a largely ends justifies the

means approach to the 9/11 intelligence failure and failure to also keep people out of harm's way.

In effect, 9/11 also accelerated the increasing practice by certain large contractors who viewed the government (and the intelligence community) as a means to an end in terms of profits and access through very large, multi-year contract vehicles. This approach was often substantially over budget and ultimately delivered little or nothing to show for it in terms of real impact on improving U.S. intelligence capabilities and capacities, while also enjoying the protection and 'cover' afforded by their government sponsors to keep the money flowing as well as the revolving door turning as well.

My first reporting day on the job at NSA as a newly minted senior executive reporting to the number three person at NSA (and having taken the oath for the fourth time to support and defend the Constitution) was 9/11 – a day I will certainly never forget as the NSA quickly plunged into full crisis mode. Shortly after the tragedy of 9/11 (a day that was regarded as a failure by a number of people on the part of the U.S. government to protect America as part of its responsibility to provide for the common defense under the preamble of the Constitution, and something that many people at NSA took personally), the call went out from the Director of Central Intelligence, George Tenet, to the entire intelligence community (including NSA) to deploy the best available programs and projects available in order to deal with the aftermath of 9/11 and the threats to national security. This led to an enterprise-wide search across NSA led by me examining any and all programs, laboratory and pilot initiatives, special projects, and even proof-of-concept efforts that could be used and put into the 'fight' in the immediate aftermath of

the 9/11 crisis. It was also done to deal with the longer-term response to the real global threat posed by radicalized Islamic extremists and associated movements – while still dealing with other more symmetric and traditional threats.

However, it was very evident to some that quite a bit of evidence from multiple sources pointed to a rather clear and intensive al Qaeda effort to launch attacks on U.S. soil well before 9/11 and going back to the 1990s – especially after the New York City World Trade Center bombings in 1993. This history was something I was acutely aware of because of his time as an all-source intelligence officer and analyst with the U.S. Navy, specializing in international terrorism and then later the Middle East/North Africa region while assigned to the National Military Joint Intelligence Center at the Pentagon.

As part of my former senior executive role at NSA, I received several communications and visits from people across the NSA regarding alternatives and recommendations for how NSA could fundamentally deal with what was now clearly a real threat in light of what had happened on 9/11. Over a period of a few weeks I visited several organizations, went to see demos and reached out to several these efforts that held out either real promise or had made substantial progress toward solving some of NSA's greatest challenges in dealing with the reality of its mission in a 21st century world and the digital age, and that its legacy systems were increasingly challenged to meet.

With respect to the Foreign Intelligence Surveillance Act (FISA) as the exclusive means by which electronic surveillance would occur under probable cause warrants against U.S. Persons, significant questions of law and statute began to occur for me. The core of the Constitutional issue centered on what appeared to be a concerted effort to

bypass FISA as the exclusive means by which certain kinds of electronic surveillance could be conducted domestically within the United States against U.S. persons.

In FISA, Congress very directly and specifically spoke on the question of domestic warrantless wiretapping and electronic surveillance, including the same during wartime and the exclusive means to do so. The problem is that evidence gathered without a warrant (and the obvious probable cause standard), raises significant 4th Amendment issues that could very well preclude its use in a subsequent criminal trial.

I did not believe before the post 9/11 era, that even the Supreme Court had ever addressed the issue of constitutionality with respect to warrantless searches including warrantless surveillance and warrantless data mining, et al – not withstanding other provisions of the U.S. criminal code. Historically it is important to note that FISA came into law in 1978 under the Carter Administration due to the extraordinary revelations under various investigations conducted in the 1970s (including the Church Committee hearings) revealing widespread U.S. government violations of the 4th Amendment rights of thousands and thousands of innocent Americans targeted in secret by the U.S. government, including political ‘enemies,’ war protestors, activists, journalists and reporters.

However, the President simply cannot violate or bypass duly constituted law behind closed doors and then do so in secret under the color of law because he deems existing or even updated law is already obsolete or impracticable or simply out of date. Unilateral expressions or assertions of Presidential power and prerogative that supersede domestic law are simply not Constitutional, even under the Article Two provisions of the

Constitution and arguably do not supersede the explicit and comprehensive FISA statutory framework provided by Congress, signed into law and amended repeatedly over the years before 9/11 to keep up with the times and the technology. I would assert that the President's choice to have done probably violated the Constitution and clearly eroded individual U.S. Person rights for the speculative gain generated from warrantless actions that required lawful, judicially-issued warrants in the first place.

Furthermore, the Bush Administration never claimed FISA was unconstitutional and misled Congress and the American people into believing that they were complying with the FISA under the 'color' of law, when in reality they were secretly breaking the law and then argued once it was revealed that they had broken and bypassed even the updated law, that they had the right to break the existing law. Again, there is no inherent presidential authority to conduct warrantless electronic surveillance in the U.S. domestically (or against U.S. Persons unilaterally), and this type of activity is clearly limited in FISA. Furthermore, if the existing law was so problematic, there is also a defined process under the Constitution for changing or modifying law via the legislative process in Congress - something that was in fact done with FISA over the years to keep it current and up to date with the advances in technology.

FISA, by itself, was hammered into the employees at NSA every year. This took place through regular and persistent briefings and trainings for those of us who were in the intelligence community (and under what was known as USSID-18 within NSA) as the law regarding the collection and use of intelligence as it pertained to U.S. Persons (whether in the domestic or foreign 'space'). For me, the FISA training went all the way

back to 1981, largely due to the abuses that had been revealed in rather stark detail from the hearings and investigations of the 1970s, just a few years earlier.

Given the incredible power of the government to conduct electronic surveillance after the large-scale abuses in the past that led to FISA (and the creation of two standing intelligence oversight committees in Congress), it was my understanding that FISA has defined 'content' to include 'metadata' – the interception of which would constitute electronic surveillance. To do so requires a warrant and the FISA statutes even further spelled out the procedures required for specific 'pen register' as well as the 'trap and trace' procedures by which the government needs to gain judicial approval (a warrant) to actually gain access to such information, even when this type and kind of electronic surveillance is less than what would might be the standard for a wiretap.

Given what I discovered in the course of my former duties as a senior executive at NSA regarding government activities that raised serious questions about the law, statute, regulation and ultimately the Constitution, I did make a critical choice to speak truth to power and became a whistleblower. I could not look the other way or just turn aside and act like nothing had happened - especially where the Constitution was concerned as well as the lives, fortunes and honor of others in critical matters involving the public trust, protecting the rights of Americans while still providing for the general welfare and the common defense (and not simply sacrificing or eroding our liberties and our rights artificially and especially when it was not necessary under the color or banner of security). I chose to faithfully uphold the Constitution and not break faith with the oath to support and defend it – even if it meant defending it against the government.

As a whistleblower, I raised the gravest of concerns through internal channels and reported massive contract fraud, management malfeasance and illegalities conducted by NSA, including critical intelligence information and analysis that was never reported, withheld, or made available by NSA, and could have prevented 9/11. I followed all the rules for reporting such activity under the 1998 Intelligence Community Whistleblower Protection Act (ICWPA) until it conflicted with the primacy of my oath to support and defend the Constitution. I exercised every proper disclosure channel that existed within NSA and the government, went to both the House and Senate Intelligence Committees with what I knew, served as material witness whistleblower for two 9/11 Congressional investigations providing them prima facie evidence and documentation on the 9/11 intelligence failures and secret mass surveillance programs, was a whistleblower for a multi-year DoD Office of Inspector General audit and investigation of intelligence programs at NSA (including the flywheel transformation program that spent many billions without delivering anything that worked), as well as others. I ended up making a most fateful choice to exercise my fundamental 1st Amendment rights and went to the press in early 2006 with *unclassified* information about which the public had a right to know regarding the multi-billion fraud perpetrated by NSA, the 9/11 intelligence failures as well as the secret domestic mass surveillance programs at NSA launched shortly after 9/11.

However, rather than address its own corruption, ineptitude, and illegality, the government made me a target of a multi-year, multi-million-dollar federal criminal “leak” investigation as part of a vicious campaign against whistleblowers and truth tellers that

started under Bush and came to full fruition under Obama. For all intents and purposes, I became viewed as a traitor and as an enemy of the state in the eyes of the government.

Speaking with the press about unclassified matters was viewed as a criminal act. And telling the truth was considered making false statements. However, I could not stand by and become an accessory to willful government violations of the Constitution and our precious freedoms. I could not remain complicit with the subversion of our own form of government where secrecy became the cover for illegalities and wrongdoing and the government engaged in widespread massive fraud, waste, abuse and mass surveillance at the expense of our liberties for the sake of national security.

In a post 9/11 world, it is pure sophistry for the federal government to argue that the government can or should operate with largely secret impunity and willful immunity - even when unlawful - from those it is Constitutionally bound to serve and protect. This is particularly hypocritical when the Preamble of the Constitution states the two main responsibilities of the central federal government are providing for the common defense and the general welfare of the Nation. It is therefore egregious for the government to then ignore the rule of law and the Constitution by punishing and prosecuting those who reveal their misdeeds and wrongdoing that violate the very same Constitution. Criminalizing disclosure of information about government wrongdoing and regarding the disclosure as a state crime is indicative of an insecure democracy that leads to less democracy and more state power and authority.

References

- Anechiarico, F. (2009). The ethical pothole: Tolerable corruption? *Public Manager, Fall 2009*, 41-44.
- Azpuru, D., Finkel, S. E., Pérez-Liñán, A., & Seligson, M. A. (2008). What has the United States been doing? *Journal of Democracy, 19*(2), 150-159.
- Bacevich, A. (2008). *The limits of power: The end of American exceptionalism*. New York, NY: Metropolitan Books.
- Barnett, R.E. (2016). *Our republican constitution: Securing the liberty and sovereignty of we the people*. New York, NY: Broadside Books.
- Behnke, N. (2007). Public trust, path dependence, and powerful interests. *Public Integrity, 10*(1), 11-36.
- Benkler, Y. (2014). A public accountability defense for national security leakers and whistleblowers. *Harvard Law & Policy Review, 8*(2). 281-326. Retrieved from <http://nrs.harvard.edu/urn-3:HUL.InstRepos:12786017>
- Bevir, M. (2006). Democratic governance: Systems and radical perspectives. *Public Administration Review, 66*(3), 426-436.
- Bevir, M. (2011). Democratic governance: A genealogy. *Local Government Studies, 37*(1), 3-17.
- Bochner, A. P. & Ellis, C. (2006). *Ethnographically speaking: Autoethnography, literature, and aesthetics.*, Walnut Creek, CA: AltaMira Press.
- Borowiak, C.T. (2007). Accountability debates: The federalists, the anti-federalists, and

- democratic deficits. *Journal of Politics*, 69(4), 998-1014.
- Boyte, H. C. (2005). Reframing democracy: Governance, civic agency, and politics. *Public Administration Review*, 65(5), 536-546.
- Calo, R. (2015). Can Americans resist surveillance? *University of Chicago Law Review*, 83(1), 23-43.
- Capra, F. (Director). (1939). *Mr. Smith goes to Washington* [Motion picture]. United States: Columbia Pictures.
- Chang, H. (2008). *Autoethnography as method*. Walnut Creek, CA: Left Coast Press.
- Christiano, T. (2015). "Democracy", *The Stanford Encyclopedia of Philosophy*, Spring 2015 Edition, Edward N. Zalta (ed.). Retrieved from <http://plato.stanford.edu/archives/spr2015/entries/democracy/>.
- Clapper v. Amnesty International USA. (n.d.). *Oyez*. Retrieved April 22, 2017, from <https://www.oyez.org/cases/2012/11-1025>
- Creswell, J.W. (2007). *Qualitative inquiry & research design: Choosing among five approaches* (2nd ed.). Thousand Oaks, CA: Sage Publications.
- Dahl, R.A. (1998). *On democracy*. New Haven, CT: Yale University Press.
- Denzin, N. (2014). *Interpretive autoethnography* (2nd ed.). Thousand Oaks, CA: Sage Publications.
- Diamond, L. (2008). *The spirit of democracy: The struggle to build free societies throughout the world*. New York, NY: Henry Holt and Company.
- D'Isidoro, D. (2014). Protecting whistleblowers and secrets in the intelligence community. *Harvard Law School National Security Journal*, September 29.

Retrieved from <http://harvardnsj.org/2014/09/protecting-whistleblowers-and-secrets-in-the-intelligence-community/>

- Dunn, D. D., & Legge, Jr., J. S. (2001). U.S. local government managers and the complexity of responsibility and accountability in democratic governance. *Journal of Public Administration Research and Theory*, 11(1), 73-88.
- Elo, S., Kääriäinen, K., Kanste, O., Pölkki, T., Utriainen, K., Kyngäs, H. (2014). Qualitative content analysis: A focus on trustworthiness. *SAGE Open*, 4(1), 1-10.
- Endicott, L. (2010). *Institutional Review Board (IRB) frequently asked questions* [Online tutorial]. Retrieved from http://my.campuscruiser.com/cruiser/waldenu/ctl/self-paced_trainings/irb/IRB.htm
- Epps, G. (2007, October 3). Vengeance is Brandon Mayfield's. *Salon*. Retrieved from http://www.salon.com/2007/10/03/brandon_mayfield/
- Farrell, J.M. (2006). The writs of assistance and public memory: John Adams and the legacy of James Otis. *New England Quarterly*, 79(4), 533-556.
- Fein, B. (2008). *Constitutional peril: The life and death struggle for our Constitution and democracy*. New York, NY: Palgrave Macmillan.
- Fisher, L. (2011). The law: John Yoo and the republic. *Presidential Studies Quarterly*, 41(1), 177-190.
- Frank, W. A. (2007). Authority and the common good in democratic governance. *Review of Metaphysics*, 60(4), 813-832.
- Frontline. (2014). *United States of Secrets* [Documentary]. Arlington, Virginia: Public Broadcasting Service (PBS).

- Fung, A. (2007). Democratic theory and political science: A pragmatic method of constructive engagement. *American Political Science Review*, 101(3), 443-458.
- Gardner, J.A. (2005). Democracy without a net? Separation of powers and the idea of self-sustaining constitutional constraints on undemocratic behavior. *St. John's Law Review*, 79(2), 293-317.
- Gardner, L.C. (2016). *The war on leakers: National security and American democracy, from Eugene V. Debs to Edward Snowden*. New York, NY: The New Press.
- Gellman, B. (2008). *Angler: The Cheney vice presidency*. New York, NY: The Penguin Press.
- Gerring, J., & Thacker, S.C. (2008). *A centripetal theory of democratic governance*. New York: Cambridge University Press.
- Gerring, J., Thacker, S. C., & Moreno, C. (2005). Centripetal democratic governance: A theory and global inquiry. *American Political Science Review*, 99(4), 567-581.
- Goodsell, C.T. (2006). A new vision for public administration. *Public Administration Review*, 66(4), 623-635.
- Goldsheider, T. (2015). Shays' rebellion: Reclaiming the revolution. *Historical Journal of Massachusetts*, 43(1), Winter 2015.
- Greenwald, G. (2010, April 15). What happened to "look forward, not backward"? *Salon*. Retrieved from http://www.salon.com/2010/04/15/prosecutions_10/
- Greenwald, G., MacAskill, E., & Poitras, L. (2013, June 11). Edward Snowden: the whistleblower behind the NSA surveillance revelations. *The Guardian*. Retrieved from <http://www.theguardian.com/world/2013/jun/09/edward-snowden-nsa->

whistleblower-surveillance

Gutmann, A., & Thompson, D. (1998). *Democracy and disagreement*. Cambridge, MA: Belknap Press.

Haskollar, E. (2010). The conceptualization of democratic internationalism as a norm of global governance: How significant is democratic governance as a source of global norm for preventing international conflict? *Journal of Global Change and Governance*, 3(2), 1-20.

Hiles, D.R. (2002) *Narrative and Heuristic Approaches to Transpersonal Research and Practice*. Paper presented to CCPE, London, October 2002. Retrieved from <http://www.psy.dmu.ac.uk/drhiles/N&Hpaper.htm>.

Hogeland, W. (2010). *The whiskey rebellion: George Washington, Alexander Hamilton, and the frontier rebels who challenged america's newfound sovereignty*. New York, NY: Simon and Schuster.

Jewel versus NSA (n.d.). *EFF*. Retrieved April 22, 2017, from <https://www.eff.org/cases/jewel>

Johnson, C. 26 May 2009. Showdown looms over use of state secrets' privilege in wiretapping case. *The Washington Post*. Retrieved from <http://www.washingtonpost.com/wp-dyn/content/article/2009/05/25/AR2009052502076.html>

Kasner, A. J. (2015). National security leaks and constitutional duty. *Stanford Law Review*, 67(1), 241-283.

Kawulik, B. (2005). Participant Observation as a data collection method. *Qualitative*

Social Research, 6(2), Art. 43.

- Keman, H. (Ed.). (2002). *Comparative democratic politics: A guide to contemporary theory and research*. Thousand Oaks, CA: Sage Publications.
- Kitrosser, H. (2015). *Reclaiming accountability: Transparency, executive power, and the U.S. Constitution*. Chicago, IL: The University of Chicago Press.
- Kohn, S. M. (2011). *The whistleblower's handbook: A step-by-step guide to doing what's right and protecting yourself*. Lanham, MD: Rowman and Littlefield.
- Kramnick, I. ed. (2003). *Alexis de Tocqueville: Democracy in America and two essays on America*. New York, NY: Penguin Classics.
- Kurki, M. (2010). Democracy and conceptual contestability: Reconsidering conceptions of democracy in democracy promotion. *International Studies Review*, 12, 362-386.
- Lanning, K. (2008). Democracy, voting, and disenfranchisement in the United States: A social psychological perspective. *Journal of Social Issues*, 64(3), 431-446.
- Levinson, S. (2006). Preserving constitutional norms in times of permanent emergencies. *Constellations: An International Journal of Critical & Democratic Theory*, 13(1), 59-73.
- Lichtblau, E. (2008). *Bush's law: The remaking of American justice*. New York, NY: Pantheon.
- Lincoln S.Y., Guba E.G. (1985). *Naturalistic inquiry*. Thousand Oaks, CA: Sage.
- Lindblom, C.E. (1977). *Politics and markets: The world's political-economic systems*. New York, NY: Basic Books.

- Locke, J. (2008). *The works of John Locke*. New York, NY: Cosimo Classics.
- Lofgren, M. (2016). *The deep state: The fall of the constitution and the rise of a shadow government*. New York, NY: Penguin Books.
- Magnet, M. (2011). James Madison and the dilemmas of democracy. *City Journal*, Winter.
- Mayer, J. (2008). *The dark side: The inside story of how the war on terror turned into a war on American ideals*. Garden City, NJ: Doubleday.
- Mayer, J. (2011, May 23). The secret sharer. *The New Yorker*. Retrieved from <http://www.newyorker.com/magazine/2011/05/23>
- McConnell, M.W. (2013). Reconsidering citizens united as a press clause. *The Yale Law Journal*, 123(2). Retrieved from <http://www.yalelawjournal.org/essay/reconsidering-citizens-united-as-a-press-clause-case>
- McKeown, M.M. (2016). Introduction – ninth circuit survey. *Golden Gate University Law Review*, 46(1), 1-5.
- Meier, K. J., & O'Toole, Jr., L. J. (2006). *Bureaucracy in a democratic state: A governance perspective*. Baltimore, MD: The Johns Hopkins University Press.
- Moberly, R. (2012). Whistleblowers and the Obama presidency: The national security dilemma. *Employee Rights and Employment Policy Journal*, 16, 51-141.
- Montesquieu, C.B.D. (2011). *The spirit of laws*. New York: Cosimo Classics.
- Morgan, D.F., Kirwan, K.A., Rohr, J.A., Rosenbloom, D.H., & Schaefer, D.L. (2010). Recovering, restoring, and renewing the foundations of American public

- administration: The contributions of Herbert J. Storing. *Public Administration Review*, July/August 2010, 621-633.
- Morse, R.S. (2006). Prophet of participation: Mary Parker Follett and public participation in public administration. *Administrative Theory & Praxis*, 28(1), 1-32.
- Moustakas, C. (1994). *Phenomenological research methods*. Thousand Oaks, CA: Sage Publications, Inc.
- Newbold, S.P. (2011). Federalist no. 27: Is transparency essential for public confidence in government? *Public Administration Review*, December 2011, S47-S52.
- Newbold, S.P. (2012). No time like the present: Making rule of law and constitutional competence the theoretical and practical foundation for public administration graduate education curriculum. *Journal of Public Affairs Education*, 17(4), 465-481.
- Parenti, M. (2015). *Profit pathology and other indecencies*. Boulder, CO: Paradigm Publishers.
- Parenti, M. (2011). *Democracy for the few*. Boston, MA: Wadsworth.
- PATRIOT Act, H.R. 3162, 107th Cong. (2001-2002).
- PEN America. 10 November 2015. Secret sources: Whistleblowers, national security, and free expression. *Pen American Center*. Retrieved from <http://www.pen.org/sites/default/files/Secret%20Sources%20report.pdf>
- Piette, D.C. & Radack, J. (2006). Piercing the “historical mists”: The people and events behind the passage of the FISA and the creation of the “wall.” *Stanford Law*

Policy & Review, 17:437, 437-486.

Pfiffner, J.P. (2008). *Power play: The Bush presidency and the constitution*. Washington, D.C.: Brookings Institution Press.

Project on Government Secrecy (n.d.). In *USA v. Thomas A. Drake Selected Case Files*. Retrieved from <http://www.fas.org/sgp/jud/drake/index.html>

Radack, J. (2012). *TRAITOR: The whistleblower and the "American Taliban."* Washington, DC: Whistleblower Press.

Richards, N.M. (2013). The dangers of surveillance. *Harvard Law Review*, 7:126. 20 May 2013, 1934-1965.

Risen, J. & Lichtblau, E. (2005, December 16). Bush lets U.S. spy on callers without courts. *The New York Times*. Retrieved from http://www.nytimes.com/2005/12/16/politics/bush-lets-us-spy-on-callers-without-courts.html?_r=0

Rohr, J.A. (2002). *Civil servants and their constitutions*. Lawrence, KS: University Press of Kansas.

Rudesill, D.S. (2015). Coming to terms with secret law. *Harvard National Security Journal*, 7:241.

Shear, M.D. 30 December 2009. Nation Digest: Obama creates national declassification center. *The Washington Post*. Retrieved from <http://www.washingtonpost.com/wp-dyn/content/article/2009/12/29/AR2009122902770.html>

Sheridan, R. (2013). Autoethnography, An Unusual Research Method, With the

- Researcher as a Participant. Retrieved from
<https://wiki.rit.edu/display/MidTenureReviewPanel/Autoethnography%2C+An+Unusual+Research+Method%2C+With+the+Researcher+as+a+Participant.+By+Dr.+Rick+Sheridan%2C+Assistant+Professor%2C+Wilberforce+University>
- Simon, M.K. (2011). *Dissertation and scholarly research: Recipes for success* (2011 ed.). Seattle, WA: Dissertation Success, LLC.
- Smith, R.M. (2012). Our republican example: The significance of the American experiments in government in the twenty-first century. *American Political Thought: A Journal of Ideas, Institutions and Culture*, 1(1), 101-128.
doi:10.1086/664593
- Stone, G.R. (2003). Judge Learned Hand and the espionage act of 1917: A mystery unraveled. *University of Chicago Law School Review*, 70, 335-358.
- Strossen, N. (2015). Beyond the fourth amendment: Additional constitutional guarantees that mass surveillance violates. *Drake Law Review*, 63, 1143-1170.
- Stoycheff, E. (2016). Under surveillance: Examining Facebook's spiral of silence effects in the wake of NSA monitoring. *Journalism & Mass Communication Quarterly*, 16, 1-16.
- Taylor, M. (2016, March 21). Probe launched into Pentagon handling of NSA whistleblower evidence. *McClatchyDC*. Retrieved from
<http://www.mcclatchydc.com/news/nation-world/national/national-security/article67392097.html>
- The Electric Ben Franklin (n.d.). In *The Quotable Benjamin Franklin*. Retrieved from the

USHistory.org Website: <http://www.ushistory.org/franklin/quatable/quote04.htm>

- Tilly, C. (2007). *Democracy*. Cambridge, United Kingdom: Cambridge University Press.
- Tuomala, J. C. (2010). Marbury v. Madison and the foundation of law. *Liberty University Law Review*, 4:2, 298-335.
- Valladão, A.G.A. (2006). Democratic hegemony and American hegemony. *Cambridge Review of International Affairs*, 19(2), 243-260.
- Warren, S.D. & Brandeis, L.D. (1890). The right to privacy. *Harvard Law Review*, 4(5), 193-220.
- Wolin, S.S. (2008). *Democracy incorporated*. Princeton, NJ: Princeton University Press.
- Woods, T.E., & Gutzman, K.R.C. (2008). *Who killed the constitution?: The fate of American liberty from World War I to George W. Bush*. New York: Crown Forum.
- Zhang, Yan & Wildemuth, Barbara M. (2005). Qualitative analysis of content. *Analysis*, 1(2), 1-12.