

# THE EVOLUTION AND ORGANIZATION OF THE FEDERAL INTELLIGENCE FUNCTION: A BRIEF OVERVIEW (1776-1975)\*

## INTRODUCTION

Four centuries before the birth of Christ, Sun Tzu, a Chinese military theorist, counseled that:

The reason the enlightened prince of the wise general conquer the enemy whenever they move and their achievements surpass those of ordinary men is foreknowledge. . . . What is called "foreknowledge" cannot be elicited from spirits, nor from the gods, nor by analogy with past events, nor from calculations. It must be obtained from men who know the enemy situation.<sup>1</sup>

In this observation is the essence of what modern civilization refers to as "intelligence." As defined by the prestigious and highly respected Commission on the Organization of the Executive Branch, chaired by former President Herbert C. Hoover: "Intelligence deals with all the things which should be known in advance of initiating a course action."<sup>2</sup> But the concept is not synonymous with "information." Admiral William F. Raborn, Director of the Central Intelligence Agency from 1964 to 1966, explained:

"Intelligence," as we use the term, refers to information which has been carefully evaluated as to its accuracy and significance. The difference between "information" and "intelligence" is the important process of evaluating the accuracy and assessing the significance in terms of national security.<sup>3</sup>

Expanding upon the idea of information evaluation preparatory to policy development, intelligence may be understood as "the product resulting from the collection, evaluation, analysis, integration, and interpretation of all available information which concerns one or more aspects of foreign nations or of areas of operations and which is immediately or potentially significant to planning."<sup>4</sup>

Intelligence activities need not rely upon spies and informers to secure "foreknowledge." Information obtained in the open market place of ideas and international communications media can, with

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<sup>1</sup> Samuel B. Griffith, tr. *Sun Tzu: The Art of War*. New York and Oxford, Oxford University Press, 1963, pp. 144-145; generally, see chapter 13 "Employment of Secret Agents."

<sup>2</sup> U.S. Commission on Organization of the Executive Branch of the Government. *Intelligence Activities*. Washington, U.S. Govt. Print. Off., 1955, p. 26.

<sup>3</sup> Anon. What's CIA? *U.S. News and World Report*, v. 69, July 18, 1968 : 74.

<sup>4</sup> U.S. Department of the Army, U.S. Department of the Navy, U.S. Department of the Air Force. *Dictionary of United States Military Terms for Joint Usage*. Washington, Departments of the Army, Navy, and Air Force, 1955, p. 53.

proper analysis, significantly contribute to an intelligence product. Further, the possible utilization of spies and informers raises both the Machiavellian question of ends versus means and a practical question regarding impersonal spying. For some, the righteousness of the cause sanctions clandestine information gathering. Others condone such activity when it is confined to technological devices such as robot spy planes, space satellites, deep sea sensors and listening devices, or code breaking machines.

Intelligence activities were a developed art among the ancients. Practice, experience, and technology have contributed to the sophistication of this pursuit. Today, it may be assumed that every nation, regardless of their form of government or guiding political philosophy, engages in some type of intelligence activity. Minimally, the intelligence function contributes to the preservation and security of the state. Beyond this denominator, the intelligence function variably extends to the cultivation of the most grandiose schemes of international relations and world power.

### *I. Research Limitations*

Because intelligence activities are generally cloaked in official and operational secrecy, research on the evolution, organization, and activities of the Federal intelligence community may be hampered by a scarcity of useful resource material and a plague of inaccuracies effected by a lack of corroborating evidence or reliance upon a common erroneous source.<sup>5</sup>

Other research problems derive from the attitude of Federal officials and leaders of the armed services toward the intelligence function prior to World War I: within the departments and agencies, intelligence activities were viewed as neither necessary nor serious concerns. The naive view prevailed that the major foreign powers of the day made little use of and had little use for intelligence. If this was the case, then the United States need not engage in such efforts. When World War I introduced America to modern warfare, it also provided an opportunity to examine the intelligence activities of the allies. The net effect was one of embarrassment. Much was learned from the war experience with regard to building a useful and effective intelligence structure. Nevertheless, the historical record must necessarily reflect scant consideration being given to intelligence activities at the Federal level prior to the World War. Perhaps as an attempt to compensate for the actual circumstances of the pre-war situation, some accounts of Federal intelligence activity appear to overstate or overemphasize the importance of certain agents or operatives and the significance of certain accomplishments. Thus, a careful effort must be made to maintain a sense of historical proportion with regard to the exploits of individuals and the causation of events in the sphere of intelligence operations.

It should also be kept in mind that very early intelligence activities in the United States were highly sporadic and individualistic.

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<sup>5</sup> Official secrecy refers to some type of legal authority establishing the compulsory withholding of certain types of information from disclosure; operational secrecy refers to nonacknowledgement of actions either by announcement or upon open questioning.

These conditions contribute to research difficulties with the result that very few records were produced or continue to exist.

And one final note must be added regarding the limitations of historical records in this area of research. Some significant developments in the evolution of Federal intelligence operations have escaped written account and useful and important documents for this research have been destroyed for reasons of political sensitivity, embarrassment, security, and personal privacy.

## *II. Intelligence Authority*

The Constitution of the United States is silent regarding any direct reference to intelligence activities. Within Article I, section 8, Congress is granted certain powers which have an implication for the enactment of statutes operationalizing the intelligence function. These include the authority to "support armies," "maintain a navy," and "make rules for the government and regulation of the land and naval forces." Relying upon these provisions, Congress might have directly established armed forces intelligence operations and provided for the restriction of intelligence information by enacting appropriate rules for Federal civilian employees and regulations for military and naval personnel. That the House and Senate did not directly legislate on these matters does not effect the implied constitutional authority. What the Legislature did was provide a more ambitious and sophisticated organizational and administrative structure derivative of these powers—the Department of War, created in 1789 (1 Stat. 49), and the Department of the Navy, established in 1798 (1 Stat. 553). It may be argued that it was within the discretion of the Executive authority of these entities to organize intelligence operations in conformity with the constitutional power exercised by Congress in creating the departments.<sup>6</sup> Modern intelligence operations authority continues to rest upon these basic constitutional provisions, interpreted by Congress to grant power to legislate for the defense and security of the nation.<sup>7</sup>

The President would appear to derive authority for intelligence activities from two constitutional provisions: Article II, section 2, names the President the Commander in Chief of the army and navy and section 3 directs that the Chief Executive "... take care that the laws be faithfully executed. . ." As these are very vague and general provisions, reliance upon them alone as authority for intelligence activity would depend upon a President's view of his office. A Chief Executive adopting Theodore Roosevelt's classic "stewardship theory" would, undoubtedly, have little reservation in utilizing such implied

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<sup>6</sup> A permanent intelligence unit was established in the Navy Department in 1882 and in the War Department in 1885. Both actions were by internal directive. Ad hoc and temporary spy systems of varying sophistication had been utilized by the armed forces since the time of the Revolution.

<sup>7</sup> The principal contemporary intelligence activities' statutes are the National Security Act of 1947 (61 Stat. 495) and the Central Intelligence Act of 1949 (63 Stat. 208) which establish the National Security Council and the Central Intelligence Agency (see 50 U.S.C. 401–404 [1970]). Much of the existing intelligence structure was created at the direction of the President or other Executive Branch officials and therefore has no direct statutory base.

powers to justify intelligence operations. In his autobiography, Roosevelt exemplified his view of the presidency, explaining:

The most important factor in getting the right spirit in my Administration, next to the insistence upon courage, honesty, and a genuine democracy of desire to serve the plain people, was my insistence upon the theory that the executive power was limited only by specific restrictions and prohibitions appearing in the Constitution or imposed by the Congress under its constitutional powers. My view was that every executive officer, and above all every executive officer in high position, was a steward of the people, and not to content himself with the negative merit of keeping his talents undamaged in a napkin. I declined to adopt the view that what was imperatively necessary for the Nation could not be done by the President unless he could find some specific authorization to do it. My belief was that it was not only his right but his duty to do anything that the needs of the Nation demanded unless such action was forbidden by the Constitution or by the laws. Under this interpretation of executive power I did and caused to be done many things not previously done by the President and the heads of the Departments. I did not usurp power, but I did greatly broaden the use of executive power. In other words, I acted for the public welfare, I acted for the common well-being of all our people, whenever and in whatever manner was necessary, unless prevented by direct constitutional or legislative prohibition. I did not care a rap for the mere form and show of power; I cared immensely for the use that could be made of the substance.<sup>8</sup>

Just a few months before leaving office in June, 1908, Roosevelt told Sir George Otto Trevelyan:

While President I have been President, emphatically; I have used every ounce of power there was in the office and I have not cared a rap for the criticisms of those who spoke of my "usurpation of power;" for I know that the talk has been all nonsense and that there had been no usurpation. I believe that the efficiency of this Government depends upon it possessing a strong central executive, and whenever I could establish a precedent for strength in the executive, as I did for instance as regards external affairs in the case of sending the fleet around the world, taking Panama, settling affairs of Santo Domingo, and Cuba; or as I did in internal affairs in settling the anthracite coal strike, in keeping order in Nevada . . . or as I have done in bringing the big corporations to book . . . in all these cases I have felt not merely that my action was right in itself, but that in showing the strength of, or in giving strength to, the executive, I was establishing a precedent of value. I believe that responsibility should go

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<sup>8</sup>Theodore Roosevelt. *An Autobiography*. New York, Scribners, 1920, pp. 388-389.

with power, and that it is not well that the strong executive should be a perpetual executive.<sup>9</sup>

Opposed to this view of the presidency was Roosevelt's former Secretary of War (1905–1908), personal choice for and actual successor as Chief Executive, William Howard Taft. According to America's twenty-seventh President:

The true view of the Executive functions is, as I conceive it, that the President can exercise no power which cannot be fairly and reasonably traced to some specific grant of power or justly implied and included within such express grant as proper and necessary to its exercise. Such specific grant must be either in the Federal Constitution or in an act of Congress passed in pursuance thereof. There is no undefined residuum of power which he can exercise because it seems to him to be in the public interest, and there is nothing in the *Neagle* case [*In re Neagle*, 135 U.S. 1 (1890)] and its definition of a law of the United States, or in other precedents, warranting such an inference. The grants of Executive power are necessary in general terms in order not to embarrass the Executive within the field of action plainly marked for him, but his jurisdiction must be justified and vindicated by affirmative constitutional or statutory provision, or it does not exist. There have not been wanting, however, eminent men in high public office holding a different view and who have insisted upon the necessity for an undefined residuum of Executive power in the public interest. They have not been confined to the present generation.<sup>10</sup>

Between these two views of the presidency lie various gradations of opinion, as many conceptions of the office as there have been holders. The argument may be advanced, however, that those holding Roosevelt's stewardship theory would be more comfortable with undertaking constitutionally ill defined intelligence activities. Also, a President's view of his office will change with time and circumstances. Though he had argued against the stewardship theory in his Blumenthal Lectures at Columbia University in 1915–16, former President Taft, writing the majority opinion of the Supreme Court as Chief Justice in the *Myers* case, appealed to the opening clause of Article II of the Constitution as a grant of power. He held that the Chief Executive had the right to remove executive and administrative officers of the United States nominated or appointed by him, without the least restraint or limitation by Congress. The Constitution, Taft contended, intended such officers to serve only at the President's pleasure.<sup>11</sup> Following this example, if momentary circumstances suggested such action and neither the Constitution or Congress offered any restraints

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<sup>9</sup> Joseph Bucklin Bishop. *Theodore Roosevelt and His Time* (Vol. II). New York, Scribners, 1920, p. 94.

<sup>10</sup> William Howard Taft. *Our Chief Magistrate and his Powers*. New York, Columbia University Press, 1916, pp. 139–140; for a direct response to Theodore Roosevelt's expression of presidential power, see ——. *The Presidency*. New York, Scribners, 1916, pp. 125–130.

<sup>11</sup> See *Myers v. United States*, 272 U.S. 52, 106–177 (1926).

upon same, then a President might enter into intelligence operations under the color of the Commander in Chief clause or the faithful execution of the laws provision.

The Founders of the Republic did not have intelligence activities in their immediate purview when drafting the Constitution and assigning powers and functions to the branches of government established by this instrument. Nevertheless, implied authority for such pursuits appears to have been granted to both the Executive and the Legislature. This situation has permitted each branch to act independently with regard to intelligence organization and policy and has contributed, as well, to conflicts between them on these matters. What follows here is an overview of the evolution and organization of the Federal intelligence function with a view to its origins and development within the context of a constitutional, democratic republic.