
FOREIGN POLICY & DEFENSE

***The Public's
Need to Know***

"Intelligence Secrecy and Security in a Free Society" by William Colby, in *International Security* (Fall 1976), 9 Divinity Ave., Cambridge, Mass. 02138.

Must the United States forswear secret intelligence in order to prevent abuse of its domestic freedoms? Or should it accept limits on these freedoms to preserve American society in a dangerous world?

"Both exposure and secrecy are essential," writes Colby, who retired as director of the Central Intelligence Agency last year after cooperating with congressional investigations of prior Agency wrongdoing. But, Colby adds, the United States must develop a new, "appropriate" concept of secrecy—better than that embodied in the 1974 Freedom of Information Act amendments (which opened up historical documents to public scrutiny) or in President Nixon's ineffective 1972 executive order reducing "secrecy" classification of documents.

Colby urges a reversal of the old CIA rule barring secret information to all but those officials who "need to know." Without revealing sources, confidences, or sensitive technical data, he contends, the essentials of most policy problems (e.g., whether or not to intervene in Angola) and the structure of negotiations (as in the Arab-Israeli dispute) can be disclosed on the basis of the public's need to know. When, for diplomatic reasons, the executive branch must remain officially silent, basic information can then be released by congressional committees without attribution.

Endorsing proposals by President Ford, Colby urges that unauthorized disclosure by responsible officials of real secrets—such as intelligence sources and methods—should bring legal prosecution and thus provide judicial review of executive "secrecy" decisions and protection against cover-ups.

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***The Court
and Business***

"What the Supreme Court Is Really Telling Business" by Walter Guzzardi, Jr., in *Fortune* (Jan. 1977), 541 North Fairbanks Court, Chicago, Ill. 60611.

The Burger Court is widely viewed as reflecting a national antipathy towards too much concentration of power in Washington. But Guzzardi, a *Fortune* editor, says the Court's apparent "attack" on central government is limited in scope and not necessarily a boon to business.

Favoring business were 1975-76 Supreme Court rulings that curbed the powers of various federal regulatory agencies, notably the Securities and Exchange Commission. The Court's majority also endorsed

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several contested bank mergers to end an almost unbroken 40-year string of Justice Department court victories in the antitrust area.

In one SEC case, the Court's majority found that the agency had been overzealous in trying to show fraud without making the case that the Wall Street defendants had acted with knowledge that what they were doing was indeed fraudulent (the principle of *scienter*). In this case, writes Guzzardi, the Court was making the point that the sheer complexity of regulation can sometimes lead to honest error.

But there was also a unanimous ruling in 1976 supporting the U.S. Environmental Protection Agency against a power company; the Court has shown "surprising deference" to state legislatures in upholding their powers to tax and regulate corporations. In general, Guzzardi finds, "it is the cause of the states, not the cause of business, that the Court is promoting."

But beyond states' rights, the Court, in a series of decisions, particularly one involving odd-lot investments, has made clear its feeling that class-action suits as vehicles to redress all grievances are "simply not permissible," and that the citizen's proper route for righting perceived wrongs inflicted by corporations or governments is through the legislature, not the courtroom.

*Karl Marx
and Adam Smith*

"Smith v. Marx on Business Morality and the Social Interest" by William J. Baumol, in *The American Economist* (Fall 1976). Long Island University, Brooklyn Center, Brooklyn, N.Y. 11201.

Karl Marx professed a more benign view of the capitalistic businessman than Adam Smith, whose *Wealth of Nations* (1776) is considered the charter document of free enterprise.

Princeton economist Baumol argues that capitalism, as depicted by Smith, "is a mechanism designed, apparently by divine providence, to curb man's inherent selfishness and, indeed, to put it to work for the general good." To Marx, the capitalist is simply the product of a historical process, neither inherently good nor evil, destined to be no more than a transitory exploiter of the working class.

To Smith, man in general (the businessman in particular) is morally weak and untrustworthy. Yet to Marx, the capitalist, "with all his crimes, is not the product of a warped morality, but of a set of circumstances that give him no choice."

Smith's economic analysis shows a progression from a simple to a complex market system, in which free enterprise can exercise perfect restraint if supply and demand are left unhampered by monopolistic restrictions or governmental interference. Marx argues that the capitalist entrepreneur should be admired for his creativity and that his energies can be redirected to serve the general welfare in another stage of history—the communist society.