

SWIFT AND THE ASYMMETRIC CONTROL OF DATA

I've been thinking a lot about SWIFT lately. Partly that's because of the renewed discussion on how some big banks relied on cash from drug cartels to survive as the housing bubble began to pop. Partly that's because of advance publicity for Nicholas Shaxson's *Treasure Islands* and coverage of corporate tax dodging. And partly it's because of this piece, declaring privacy dead without realizing that privacy is only dead for the little people.

You see, I'm increasingly convinced SWIFT will one day be the ultimate battleground over whether the US government can just suck up and analyze all the data it wants.

As a reminder, SWIFT (or Society for Worldwide Interbank Financial Telecommunication) is the online messaging system the world's finance industry uses to transfer funds internationally. It records the flows of trillions of dollars each day.

It first got big news coverage when Eric Lichtblau and James Risen reported on how our government uses it to track terrorist financing. But of course, the database tracks all sorts of financial flows, not just terrorist financing. Thus, it could be used to track drug finance, tax cheats (both corporate and individual), and the looting of various nations' riches by their elites.

Swift, a former government official said, was "the mother lode, the Rosetta stone" for financial data.

Indeed, according to Lichtblau's *Bush's Law*, the database appears to track even more information than tax havens would ever collect.

[T]he routing instructions that the company used to move money around the globe often included much more detailed data than any other system: passport information, phone numbers and local addresses, critical identifying information about the senders and the recipients, the purpose of the transaction, and more. (243)

In a world where—as described in Shaxson’s book—our financial system largely runs on the strategic shifting of money behind the cloak of corporate anonymity or secret back accounts, SWIFT appears to be the one place where there is full transparency.

The US and UK in particular, according to Shaxson, have used the secrecy that corporate laws and associated tax havens can offer to sustain their hegemonic position in the world. As we saw, giving a bunch of drug cartels means to launder their money allowed Wachovia to survive for years after the time when it should have collapsed; the US and UK are just larger versions of the same gimmick.

Which is why, I’ve become convinced, the response to NYT’s reporting on SWIFT was (and remains) so much more intense than even their exposure of the illegal wiretap program. The shell game of international finance only works so long as we sustain the myth that money moves in secret; but of course there *has* to be one place, like SWIFT, where those secrets are revealed. And so, in revealing that the US was using SWIFT to track terror financing, the NYT was also making it clear that there *is* such a window of transparency on a purportedly secret system.

And the CIA has, alone among the world’s intelligence services, access to it.

There are hints in Lichtblau’s book that back my suspicion that revealing SWIFT was so problematic because it reveals monetary

transfers aren't as secret as the bankers would like you to think they are. One reason people grew uncomfortable with the program was because "some foreign officials feared that the United States could turn the giant database against them." (234) Others worried that the US might be "delving into corporate trade secrets of overseas companies." (248) And when Alan Greenspan helped persuade SWIFT to continue offering US access to the database, he admitted how dangerous it was.

If the world's financiers were to find out how their sensitive internal data was being used, he acknowledged, it could hurt the stability of the global banking systems. (246)

Now, Lichtblau doesn't describe explicitly what these risks entail, but this all seems to be about letting the CIA see, unfettered, the most valuable secrets in the world, financial secrets. The world's globalized elite has to trust in the secrecy of their banking system, but in fact the CIA (of all entities!) has violated that trust.

Mind you, the CIA says that (after getting the entire contents of the SWIFT database at first) there were safeguards put in place to make sure the CIA wasn't using the database to find corrupt politicians who could be blackmailed to spy for the US or to see what scams other countries' banks were using to make money. When Lichtblau and Risen broke this story in 2006, the safeguards then consisted of Booz Allen Hamilton (which is hard to claim is independent from our spy agencies) auditing the searches and SWIFT employees overseeing the CIA's use of the data. But reports of a recent European audit on our use of SWIFT suggests that these safeguards have been oversold. Significantly, the US augments very generalized data requests with **verbal** requests, meaning the individual searches can't be audited. (Indeed, I've been told—though haven't confirmed—that the European audit was supposed to have replaced the function of the

BAH audit; given how much of a joke the European audit is, that would suggest the US used its squabble with Europe over SWIFT access to lower the protections that had been in place.)

And all that pertains just to our acknowledged use of SWIFT to track terrorist financing.

But underlying that use of it, there appears to be one of DOJ's wacky set of legal authorizations that would suggest the database should be accessible for a whole range of other uses. As Lichthblau and Risen's original story described, DOJ basically claimed that there is no legal bank privacy for SWIFT.

Treasury officials said Swift was exempt from American laws restricting government access to private financial records because the cooperative was considered a messaging service, not a bank or financial institution.

But at the outset of the operation, Treasury and Justice Department lawyers debated whether the program had to comply with such laws before concluding that it did not, people with knowledge of the debate said.

[snip]

In 1976, the Supreme Court ruled that Americans had no constitutional right to privacy for their records held by banks or other financial institutions. In response, Congress passed the Right to Financial Privacy Act two years later, restricting government access to Americans' banking records. In considering the Swift program, some government lawyers were particularly concerned about whether the law prohibited officials from gaining access to records without a warrant or subpoena based on some level of suspicion about each target.

[snip]

After an initial debate, Treasury Department lawyers, consulting with the Justice Department, concluded that the privacy laws applied to banks, not to a banking cooperative like Swift. They also said the law protected individual customers and small companies, not the major institutions that route money through Swift on behalf of their customers.

[snip]

Treasury officials said they considered the government's authority to subpoena the Swift records to be clear. "People do not have a privacy interest in their international wire transactions," Mr. Levey, the Treasury under secretary, said.

In other words, while our government claims it only uses SWIFT to track terrorist financing, there is a legal argument probably hidden in an unknown John Yoo memo that says no one—not corrupt politicians, not GE, not Goldman Sachs—have any right to privacy as SWIFT records them transferring money internationally.

Now, as Greenspan suggested, that theory could radically destabilize the financial shell game the world's elites depend on.

Thus far, though, it hasn't. Which I take to mean the US has largely stood by its promise not to use SWIFT to uncover all the crimes it could reveal—like what Bank of America and GE did with the money they should pay in taxes, or who really crashed the global economy. Presumably, DOJ is sitting on a bunch of legal opinions saying they could use SWIFT to pursue those crimes, but it has chosen not to.

I get it. Our country likes to pretend terrorism is a bigger existential threat to us than the looting and financial shenanigans that have dismantled our middle class and have led to increased instability and deaths here and in

other countries. That's laughable on its face, mind you, but it's a nice story elites like to tell.

But they have to tell that story. Because otherwise, knowing that DOJ has authorized itself to access SWIFT with no privacy restrictions, if we all acknowledged that this looting has already done more damage than terrorists will ever do, then DOJ would actually have to use the tools it has at hand to pursue this looting.