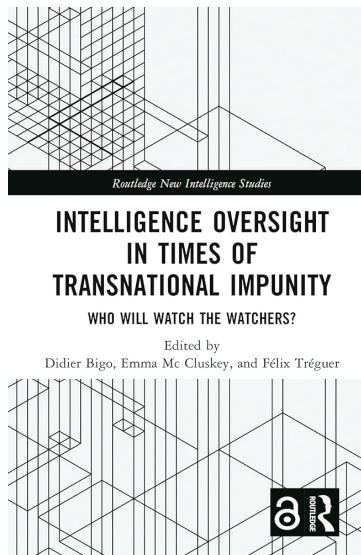


BOOK REVIEW: INTELLIGENCE OVERSIGHT: THE WATCHERS AND THE WATCHDOG

Didier Bigo, Emma Mc Cluskey, Felix Tréguer (eds), (2024), *Intelligence Oversight in Times of Transnational Impunity. Who will Watch the Watchers?*
Oxon: Routledge.



This book focuses on two important issues in intelligence oversight: the long-standing acceptance of *raison d'état*, and the increasing relations between intelligence agencies transnationally and how much those should come under scrutiny and legal restraint. It is not a book that is designed to be read comfortably by intelligence practitioners, and indeed there are priors that suggest practitioners would much prefer it if there was no oversight of their activities at all. Whether framing the enquiry in this way provokes some degree of urgency or simply divides opinion, the questions of *raison d'état* and transnational oversight are important.

Intelligence scandals tend to focus public and political attention on the integrity of oversight controls, but this usually produces the opposite effect, and allows intelligence agencies to reinvent themselves and assume new powers and greater protection from the law, argues Felix Tréguer. In fact, intelligence agencies often succeed in portraying themselves as “potent stabilisers” during the very crises they are caught up in: we can think of 9/11 as being not only a review but also a revival of intelligence power. Tréguer outlines this argument with a history from the Church Committee in 1975 to the Intelligence Identities Act and clamp down on (F)OIAs in the early 1980s. Along the way, he describes the persecution of the left-wing, reinforcing the view that the very people who are most likely to challenge oversight controls are those the intelligence agencies may seek to close down and even jail.

Underpinning these behaviours is an implicit belief in *raison d'état*, the idea that “powerful motives of self-preservation and the growth of the State drive the statesman on to actions ... [which at times] directly infringe the valid universal moral decrees and the positive law.”¹ Tréguer sees this as shoulder-shrugging at its least sinister, a tacit acceptance of emergency measures or that occasionally the wrong people get victimised for the (mostly) right reasons. But this is bound to be compounded by what Ronja Kniep describes as “silence as a social code”: the environmental conditions of secrecy, organisational loyalties, belief in the mission, and personal ambitions. These can fundamentally lead to things going very wrong. Kniep illustrates this with the German BND's reaction to a Constitutional Court surveillance hearing in 2020, where the claimants were called “litigation fools” who were making “a mockery of fellow agents” in other countries.

This theme of oversight and organisational interest is explored further in chapters on the UK, US, France and Europe generally. The British intelligence agencies, according to Emma McCluskey and Claudia Aradau, have traditionally seen themselves as a model for the world to emulate, and exposed after the Snowden disclosures, set about rebuilding trust, which the authors say, meant managing debate by including the “trustworthy” (ie. those who supported the intelligence community), and excluding those who were not. Similarly, Bernardino Leon-Reyes argues that while Snowden's findings galvanised activists and journalists to challenge NSA's mass surveillance programs, this was countered by prestigious think-tanks like the Brookings Institution and RAND, who sided with the IC and branded the whistleblower a traitor. For Arnaud Kurze, although FBI boss Robert Muller sought to distance himself from CIA blacksite interrogations after 9/11, in reality his organisation did not. For Kurze, this illustrates the close company intelligence networks keep, both domestically and internationally, and how little oversight there is for transnational relationships (like the Five Eyes).

¹ Friedrich Mienecke. (1924) “*Machiavellism. The Doctrine of Raison D'Etat and its Place in Modern History.*” 1957 Edition. London: Routledge and Kegan Paul. p.2

New Zealand intelligence scholar Damien Rogers has a long-standing interest in oversight, and is skeptical of the controls we have in place. Rogers sees New Zealand's primary intel agencies, NZSIS and GCSB, as part of a "transnational guild", where not only the intelligence sharing arrangement of Five Eyes, but also the career opportunities offered by the network, foster a commonality which may outweigh their interest in the public good. Rogers goes further, however, by pointing out that oversight measures allow for, and legitimise, secret violence undertaken by governments, which New Zealand intelligence agencies therefore support, albeit indirectly. He is particularly interested in how this creates complicity for ministers of state. For example, Rogers reminds us of allegations that the then-Prime Minister John Key appointed a family friend to run the GCSB. As a result, reforms were instituted that removed the portfolio of GCSB and NZSIS from the Prime Minister, and devolved responsibility for surveillance warrants to an intelligence minister, or other ministers of the Crown. This was, according to Rogers, part of a consensus that wished to protect the Prime Minister from further scandals relating to the portfolio of intelligence, thus confirming Tréguer's view that those at the top use reform to shield themselves from further scrutiny.

Rogers' argument is, to some extent, supported by other observers. Geoffrey Palmer, in his review of the Protective Security Requirements (PSR) of the Intelligence and Security Act 2017, said "it is not good enough to say the PSR is what a cabinet decision says it is. That is an affront to Parliament, perpetuated by the executive government."² Terence Arnold and Matanuku Mahuika, who reviewed the Act in 2023, were wary (as Rogers is) of the cosy relationship between the Executive and the watchdog Parliamentary Intelligence and Security Committee. "This is inconsistent with a fundamental principle of responsible government" they wrote, "- that Ministers, as members of the Executive, should be answerable to Parliament for activities within their portfolios."³

At the centre of this exposition is a belief that the state's monopoly on violence is not beyond question, and that the intelligence discipline is founded on violence. The history of the persecution of the radical left is something that might have been better saved for another book. As both Palmer and Arnold demonstrate, these arguments resonate without the polemics. Michael Cullen and Patsy Reddy put it eloquently in the 2017 Act: "Freedom and liberty cannot be preserved either in a vacuum of apathy or in an atmosphere of tolerance of the abuse of power."⁴ Whether you ascribe tolerance to the active or passive sense, the need for active oversight is irrefutable.

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² Geoffrey Palmer. (2023) "The Criminal Law, the Intelligence and Security Act 2017 and the Protective Security Requirements." *Victoria University of Wellington Law Review* (Vol. 54, Issue 1) pp.283-284

³ Ministry of Justice. (2022) "*Taumarū: Protecting Aotearoa New Zealand as a Free, Open and Democratic Society, Review of the Intelligence and Security Act 2017, 31 January 2023.*" Wellington : Ministry of Justice. p.230

⁴ Michael Cullen and Patsy Reddy (2017) "*Intelligence and Security in a Free Society. Report of the First Independent Review of Intelligence and Security in New Zealand.*" p.3 (Foreword)

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