Book Review

Review of Johnson, Loch K. 2018. *Spy Watching: Intelligence Accountability in the United States*. New York: Oxford University Press.
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Like “democracy,” “accountability” is a contemporary buzzword of which everybody approves. Like democracy, there is little agreement about what accountability actually means. That elected or appointed public officials should be “held to account” for their performance, and especially for possible incompetence or malfeasance, seems an obvious principle for any functioning democracy. But accountability regimes in practice are a crazy-quilt of mechanisms across jurisdictions and within jurisdictions: generalizations are fraught with exceptions.

Finding the right legal, institutional, and cultural mix to achieve genuine accountability is a test of good governance, not easy for the general run of government business but a complex task indeed for the specialised area of state security, intelligence, and policing. States, claiming a monopoly of coercion in a given territory, also claim specially privileged status for information having anything to do with “national security.”

Secrecy is the enemy of accountability, and all democratic governments claim the privilege of securing at least some classifications of information from curious eyes, even from the eyes of accountability inspectors. The case of security, intelligence, and policing agencies raises the stakes: for these agencies, secrecy is not an *adjunct* to their regular activity, but the *essence* of their activity. Transparency and accountability may appear as contradictory to their core mission.

That there is a structural national security accountability problem is hardly news to liberal democracies. Yet everywhere in the Western world, governments and legislatures have tried to erect accountability structures around their national security and policing agencies. Massive intelligence failures such as 9/11 and recurrent scandals resulting from the overreach of the secret state keep putting accountability back on the national agendas of liberal democracies. Motives for accountability reform vary, from a cynical desire for public fig leaves to cover ongoing secret operations to a genuine, if sometimes naïve, desire to maximize transparency in the shadow world. Reforms have taken different shapes in different jurisdictions and political cultures, but it is fair to say that none have been wholly successful; all have fallen short of bringing national security agencies to full account for all of their activities. Some have, however, done better than others at the partial spotlighting of failures and wrongdoing.

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Nowhere has the need for reform been made evident earlier or more urgently than in the United States, the hegemonic Western power in the Cold War era when intelligence operations served as surrogates for direct military confrontation between the American and Soviet superpowers rendered too risky in the nuclear age. The CIA and KGB directed offensive operations against each other on a global scale, clandestinely interfering in other countries' politics, assassinating opponents, manipulating regime changes, etc. While the Soviet state remained implacably indecipherable, American public opinion grew restive about international troubles brought on by America's secret wars and out-of-control spy agencies. In the 1970s, the twin disasters of bloody defeat in Vietnam and the President-toppling scandal of Watergate raised popular distrust of state authority to new heights. Revelations of illegal CIA spying inside the US and its subversion of a democratically elected government in Chile moved Congress to seriously investigate the intelligence activities of the executive branch after a period of benign neglect by legislators that ran all the way back to the eighteenth century. The year 1975 became known as the "Year of Intelligence" as a Committee of the Senate under Senator Frank Church commenced an extensive and searching inquiry into the activities of the CIA and other US intelligence agencies.

Loch Johnson was a young staff member of the Church Committee who later published a book on this investigative era, *A Season of Inquiry* (1985). Johnson subsequently went on to a distinguished academic career and a number of further stints attached to later congressional investigations. He is the pre-eminent scholar of intelligence accountability in the United States, and *Spy Watching* is his magnum opus. Every question one might want to raise about American intelligence accountability is addressed within its six-hundred pages. That not all questions are given satisfying, complete answers is a reflection of the still opaque nature of the subject rather than any failings or reticence on the part of the author.

Although the doctrine of "American exceptionalism" in international relations has come under increasing and deserved criticism in recent years, national security accountability is one area where American exceptionalism seems analytically justified. No other Western states have exhibited anything like the global reach and impact American intelligence agencies have exerted abroad. In the post-9/11 world, the military-industrial complex President Eisenhower famously warned against in his 1953 farewell address is matched by a vast American security-industrial complex in which the lines between public and private sectors, between direct state operations and outsourced activity, are deeply blurred, dispersing lines of accountability even further than in the past. This formidable and technologically sophisticated complex built for global reach has profound domestic implications, as fierce controversies over spying on Americans from the George W. Bush administration to today attest.

A crucial source of American exceptionalism in intelligence accountability is the US system of government with its division of powers between the executive, legislative, and judicial branches. The CIA is the leading executive arm of global intelligence-gathering and covert action abroad, created not by executive fiat but by the congressional passage of the *National Security Act* in 1947. In Canada's Westminster system of parliamentary government, CSIS is similarly mandated by an act of Parliament (the *CSIS Act* of 1984), but parliamentary oversight or review of CSIS activities has been intermittent, sometimes absent altogether and at other times feeble to barely adequate. The British principle of parliamentary supremacy means, in practice, the fusion of the executive and legislative branches in the "Crown-in-Parliament": executive domination of the legislature, especially under conditions of majority government. In the US system, Congress retains *constitutional* authority to oversee executive conduct of agencies mandated by Congress. While Congress has not always invoked this authority in regard to national security, congressional "trust" and "benign neglect" of its responsibilities to oversee executive conduct often overriding the urge to scrutinize, from time to time the American system of accountability has worked more impressively than similar efforts in other democracies.

In late 1974, Congress passed the *Hughes-Ryan Act*, which stipulated that covert actions undertaken abroad must be formally approved by the president and reported to Congress, establishing a clear trail of accountability that would lead finally to the Oval Office (where, as President Truman insisted, the buck stops). The *Intelligence Oversight Act* of 1980 went further yet, specifying that the intelligence agencies

must keep the House and Senate intelligence committees “fully and currently informed” of their activities, including any “significant anticipated activities.” The agencies are thus mandated to inform Congress of all significant activities in advance of implementation. “This wording,” writes Johnson, “the Holy Grail of *ante facto* reporting, would provide lawmakers with an opportunity to shut off the funding for an intelligence activity that they had found ill-advised *before it was implemented*” (140; emphasis in the original). This pre-emptive power—needless to say, the CIA lobbied ferociously against its passage—is unique to the Americans. Everywhere else where national security accountability mechanisms have been established either within or outside legislatures, it has been taken for granted that oversight/review must be *ex post facto*, that permitting politicians or appointed officials to intervene in ongoing intelligence operations would be an unacceptable burden on the professionals doing their jobs.

However stark the contrast in theory, Johnson is clear that the opportunity to pre-empt dangerous American intelligence activities before they are undertaken is just that, an opportunity that requires concerted and likely bipartisan support to be seized. These conditions have occurred with decreasing frequency as American politics have been riven with fierce and seemingly unbridgeable partisan divisions.

During the Reagan presidency, the Iran-Contra affair and covert CIA actions against Nicaragua revealed deliberate executive evasion of reporting responsibilities, which led to an unusual *crise de conscience* on the part of Republican senator Barry Goldwater. CIA Director William Casey deliberately misled the Senate intelligence committee by denying that the US was mining Nicaraguan harbours. “I am pissed off!” declared Goldwater when the truth came out. Casey, Johnson writes, “managed to do the seemingly impossible: he singlehandedly turned the intelligence community’s most reliable ostrich on Capitol Hill—Barry Goldwater—into one of its most vocal skeptics” (289–299). It was, however, a one-off reaction, and Goldwater soon faded back into the role of “cheerleader” for agencies, following the bidding of Republican administrations.

By the George W. Bush years and the “Global War on Terror” after 9/11, there was virtually no Republican curiosity over matters such as CIA torture of terrorist suspects in off-shore secret prisons or evidence of extensive spying on Americans by the now much-enhanced armoury of sophisticated surveillance technology. In the charged atmosphere after the fall of the twin towers, Democrats too were often cowed into ostrich-like postures towards executive stonewalling and deceitful denials for fear of running afoul of illiberal public opinion that agreed with Bush’s bald assertion that “you’re either with us or with the terrorists.”

Even if the American experience of imposing effective legislative accountability on the secret state has been spasmodic, dependent upon such variables as intelligence scandals rousing media and public interest and occasional indignation or major intelligence failures calling forth intensified scrutiny of the efficacy of the national security establishment, Johnson has an interesting and instructive story to tell, which he tells very well. One of his particular assets derives from his long, hands-on experience of working on behalf of the congressional intelligence committees: he knows the politicians, their strengths and their foibles, all of which he discusses with entertaining candour. Indeed, he is able to offer a taxonomy of the politicians watching the spies, whom he groups into “ostriches, cheerleaders, lemon-suckers and guardians” (275–310). He is also very familiar with successive directors of the CIA and other intelligence agencies, as well as many of their top officials over the years. His own stance is one of careful respect for the mission of the agencies tempered by hard-nosed scepticism about their sometimes self-serving justifications for secrecy and evasion. Johnson is far from having membership in the “sack the spooks” school of criticism, but his partial insider position does yield informed knowledge of what works and what does not work in the arcane secret world. For instance, he devotes some twenty-five pages to unmasking fourteen “Myths of covert action,” each of which he demolishes with forensic precision (327–353). These pages should be required reading for American foreign policy-makers.

One critical observation I would venture about *Spy Watching* is that Johnson, as partial insider, may sometimes fail to appreciate the structural limitations on transparency imposed by ongoing institutionalized

accountability mechanisms. There is a paradox inherent in the very idea of accountability for the secret state, whether in the American or any other form of democratic government. Those charged with oversight of the intelligence agencies seek to maximize their investigative reach into their inner workings. But the more access they gain into the hidden secrets, the less they are able to publicly disclose about what they have learned. Serious investigators have to themselves be security cleared (by the agencies they are watching) and have to sign off on binding legal commitments not to expose classified information. If they wished to keep their hands clean, as it were, they would never come close to accessing the information required to bring the agencies to account. But in getting their hands dirty, they often find themselves in the position of having acquired knowledge they can never use.

This paradox was revealed by the celebrated (or notorious, depending upon your position) case of the NSA whistleblower Edward Snowden, now in exile in Russia avoiding prosecution by the American state. Snowden revealed, among other things, evidence of intrusive surveillance of Americans, and allies, that was beyond the legitimate remit of the NSA. Worse, this was known to congressional investigators, who had their hands tied by the secrecy commitments they had entered into—even when the Director of National Intelligence denied before the Senate intelligence committee any knowledge of mass domestic surveillance. After the Snowden leaks blew his denial out of the water, the same official admitted he should have been more transparent and should have explained why domestic surveillance was necessary rather than denying it. The Obama administration, while pursuing Snowden with serious criminal charges, nonetheless admitted that much of what Snowden had pointed to was indeed questionable and promised reforms. Johnson is defensive about the DNI's statement, suggesting he had misunderstood the question, but the fact remains that the mass NSA domestic surveillance had been kept secret and had been known to legislative investigators who were unable to bring the executive to account because they were bound by the same rules of secrecy as the agencies they were watching. I would consequently identify Snowden's actions as a form of *guerilla accountability*, outside the bounds of legality but serving the public interest in a way that the institutionalized accountability mechanisms were prevented from doing. Johnson is less impressed with Snowden and his significance, but perhaps there is room for further reflection on the inherent limitations of formal accountability.

Johnson's book, published in 2018, effectively comes to a close before any detailed examination could be made of intelligence accountability during the Donald Trump presidency. If the Bush years had hastened the politicization of intelligence, partisan politicization became total under Trump. Efforts by Democrats on the congressional committees to probe Russian interference in the American democratic process were treated by Republican politicians as virtual declarations of war, to be fought on all fronts with no prisoners taken. It is hard to see much future for effective congressional oversight when Congress itself has become a battlefield for permanent partisan warfare.

To make matters more bizarre, the Trump Republicans deliberately made enemies of the intelligence agencies: the former directors of the CIA, the FBI, the NSA and the former Director of National Intelligence all came out as implacable and outspoken critics of Trump. Meanwhile, Trump advisers were warning about an allegedly nefarious "Deep State" (principally the intelligence community and the top military brass) that was stealing America away from "real" Americans (i.e., Trump supporters). The political/ideological landscape in which the intelligence community had found itself for decades—the Left as critics of what they saw as a secret state backing the Right—had been turned on its head. Moving from the bizarre to the surreal, the attempted armed insurrection against Congress itself by the bloodthirsty Trump mob on January 6, 2021, has resulted in almost uniform Republican refusal even to investigate. In short, Johnson's careful and judicious analysis of the course of national security accountability pre-2017 has been upended by Trump and his white nationalist populist revolt. But pretty much all wisdom, conventional or otherwise, about how America operates has been upended by Trump.

Johnson's book is the best account we have of a world that persisted for decades but seems, for now, to have stepped through the Looking Glass.