intelligence as democratic statecraft

Accountability and Governance of Civil-Intelligence Relations Across the Five Eyes Security Community—the United States, United Kingdom, Canada, Australia, and New Zealand

CHRISTIAN LEUPRECHT & HAYLEY McNORTON
Intelligence as Democratic Statecraft
Intelligence as Democratic Statecraft

Accountability and Governance of Civil-Intelligence Relations across the Five Eyes Security Community—the United States, United Kingdom, Canada, Australia, and New Zealand

CHRISTIAN LEUPRECHT AND HAYLEY MCNORTON

OXFORD UNIVERSITY PRESS
To the public servants, judges, politicians and civilians who are committed to ensuring that the intelligence professionals and institutions protecting our democracy adhere to its spirit and respect its laws.
## Contents

*List of Tables* ................................. ix
*Acknowledgements* ......................... xi
*Foreword* ................................... xvii

1. Introduction: The Democratic-Intelligence Paradox ............................................. 1
3. United States of America ...................... 44
4. United Kingdom ............................... 89
5. Canada ........................................ 109
6. Australia ....................................... 135
7. New Zealand .................................... 157
9. Conclusion: Foundations of Intelligence Accountability in Democratic Regimes .................. 191

*References* ..................................... 207
*Index* .......................................... 233
List of Tables

3.1 Core members of the United States Intelligence Community (USIC) 47
3.2 House of Representative Permanent Select Committee on Intelligence (HPSCI) 68
3.3 Senate Select Committee on Intelligence (SSCI) 70
3.4 Foreign Intelligence Surveillance Court 73
3.5 Inspectors General (IG) 76
3.6 Government Accountability Office 79
3.7 Privacy and Civil Liberties Oversight Board (PCLOB) 82
3.8 President's Intelligence Advisory Board (PIAB) 86
4.1 Members’ organizations of the UK Intelligence Community 91
4.2 The Investigatory Powers Commissioner’s Office (IPCO) 101
4.3 The Investigatory Powers Tribunal (IPT) 103
4.4 Parliament's Intelligence and Security Committee (ISC) 105
4.5 The Independent Reviewer of Terrorism Legislation (IRTL) 107
5.1 Member organizations of Canada’s Intelligence and Security Community 110
5.2 The Civilian Review and Complaints Commission for the RCMP (CRCC) 120
5.3 The National Security and Intelligence Committee of Parliamentarians (NSICOP) 125
5.4 The National Security and Intelligence Review Agency (NSIRA) 128
5.5 The Intelligence Commissioner 132
6.1 Organizational members of the Australian Intelligence and Security Community (NIC) 137
6.2 Inspector General of Intelligence and Security (IGIS) 149
6.3 Parliamentary Joint Committee on Intelligence and Security (PJCIS) 152
6.4 Independent National Security Law Monitor (INSLM) 155
7.1 Organizational Members of New Zealand’s Intelligence and Security Community 158
7.2 Inspector General of Intelligence and Security (IGIS) 165
7.3 IGIS Advisory Panel 167
7.4 Parliament’s Intelligence and Security Committee (ISC) 168
7.5 Commissioners of Intelligence Warrants (CIWs) 170
Acknowledgements

Why This Book?

The genesis of this book arose in the context of media reporting and public debate following the unauthorized disclosures of classified signals intelligence information by former US National Security Agency contractor Edward Snowden, beginning in June 2013. The subsequent years witnessed controversy, criticism and debate about the powers and legality of activities of intelligence organisations. Included in this was criticism of government bodies mandated to help keep intelligence agencies accountable to elected governments and to act as proxies for the public that could not of necessity peer into the secret organisations. There was, however, information in this public debate that was incomplete, out of context, or simply incorrect. A need was evident for reliable, open source and unclassified information for legislators, journalists, academics and others with an interest in this field to be able to consult.

The motivation behind this book, then, is to help correct the record. There is a common misperception on the part of some people that intelligence agencies are rogue actors that no one keeps an eye on and that gratuitously violate people’s civil liberties. That perception is correct—for authoritarian regimes. But it is patently false for democracies. To be sure, like any government bureaucracy, intelligence agencies have their problems, and their covert nature means that some of these problems can be and have been consequential for democracy and its citizens; ostensibly far more consequential because of far-reaching powers of security and intelligence agencies.

Security and intelligence agencies are poorly understood, in part because most citizens have little interaction with them, if any. Their information about such institutions tends to come from the media: either when an agency turns out to have done something poorly, or from movies and television shows. The cloak-and-dagger exploits of characters such as James Bond and Jason Bourne have shaped popular cultural ideas of spy work. By and large, however, such films are complete and utter fiction that does not reflect how security and intelligence agencies actually operate. You might take the following test: count the number of constitutional, legal, regulatory and policy violations next time
you watch a show. If you know what to look for, within a matter of minutes you will run out of fingers on your hands.

Not only is much of the public discourse on security and intelligence not particularly informed, but neither is much of the scholarly discourse. In their critiques, many so-called experts target a straw man: not the institutions as they are, but leveraging a snapshot as representative of an institution, and filling in the vast unknown about the institution with conjecture. Even an accountability body that should supposedly know better can fall into this trap: Based on a single incident—Canadian Omar Khadr’s was treated in Guantanamo—Canada’s Security Intelligence Review Committee arrived at the sweeping conclusion that the Canadian Security Intelligence Service had to change its ways from top to bottom.

By definition, security and intelligence institutions tend to be fairly closed and tightknit (tightly coupled, as sociologists like to say). For those who have not previously served in “the community”, the sunk costs of studying it are extremely high. When scholars do write on intelligence, it is often historical, critical or tactical. One aim of this book is to entice more civilian outsiders to study security and intelligence, not just with the aim of making the field of intelligence studies more accessible, but also to broaden the disciplinary approaches, because if there ever was a field of study that stands to benefit from greater methodological pluralism, this is it!

The reason is quite straightforward. We are staunch believers in democracy: “Democracy is the worst form of government, except for all the others,” Winston Churchill famously opined. For good reason democracies are the most prosperous and desirable states to live in that the world has ever known. But democracy is fragile. Ergo, democracy needs to be defended, rather than naively just taking it for granted. In the twenty-first century when threats are global, transnational and operate below the threshold of war, international law and the law of armed conflict, democracy is doomed if it is only defended at home. While “The Enemy Within” is as prevalent as ever, democracies also have to “defend forward”: identifying and understanding threat vectors abroad so as to mitigate their deleterious impact at home. Security and especially intelligence agencies are at the forefront of deterrence, resilience and cooperation to defend against a proliferation of myriad insidious threats.

Two movies encapsulate how the world of intelligence has changed in recent decades: Spies Like Us (1985) and Zero Dark Thirty (2012), which offers a controversially dramatised account of the hunt for Osama bin Laden. The United States’ use of torture is shown in film through images of waterboarding and other forceful techniques. Although illegal in allied countries
Acknowledgements

...since disendorsed by the United States, recourse to dubious approaches to gather intelligence has sullied the image of American intelligence work and, through guilt by association, the allied intelligence business as a whole. Similarly, trust in intelligence has atrophied since actions by Edward Snowden, depicted in Oliver Stone’s biopic (2016), have bolstered popular conceptions of signals intelligence as malign and intrusive. The Snowden revelations have hurt the Five Eyes intelligence partners—far more than their targets. Former British intelligence advisor Sir David Omand speculated that Snowden’s revelations to the Russians and Chinese about the extent of US spy activities may well eclipse those of the Cambridge Five (a group of UK spies recruited by the Soviet Union during World War Two) in terms of damage. Nefarious actors have already grown noticeably more wary and surveillance-savvy as a result. Yet, Snowden’s actions, both in reality and as depicted on screen, stand in stark contrast to intelligence legislation and practices among America’s core allies. Shows such as Homeland and House of Cards depict intelligence operations that are intended to coerce opponents and sully the political process. These portrayals are often accurate, to a point, albeit dramatised. They demonstrate technical surveillance capabilities and the limitations of analysis that crosses cultural and linguistic boundaries. Eye in the Sky (2016) offers a comparatively accurate depiction of the current status quo in intelligence. Many of the capabilities on display in the film are real, particularly the way in which technology such as aerial sensors, signals intelligence, satellite imagery, and human agents on the ground has enabled ever more detailed, time-sensitive and actionable intelligence, and the moral questions it raises.1

The starting proposition of this book is that democracy’s very survival depends on security and intelligence agencies, their ability to adapt to a rapidly changing threat environment and powers appropriate to confronting the full spectrum of threat vectors. If the premise is the utility of such agencies—there is a reason every country in the world maintains such agencies—and the need to equip them with powers sufficiently robust to meet their adversarial matches, then the real controversy in a democracy should be about how to ensure that these agencies play by the rules. This is essential, not just to reassure citizens that they are carrying out the will of the people rather than acting in the particular interests of an elite; but also because the credibility...
and legitimacy of democracies in this space depends on playing by the same rules they avow to protect.

To this effect, democracies have developed extensive systems to ensure security and intelligence agencies are accountable to their citizens through the political executive of the day, through elected representatives and through the judicial processes. The aim of this book is to demystify this system, to make it more accessible and understandable, to get more people engaged in debates about accountability, and, hopefully, to raise the level of informed debate.

Inherently, the public will be sceptical about changing or expanding security and intelligence powers unless the accountability system can be calibrated accordingly. But this book is about much more than compliance. Agencies that are confronting existential threats must be at their best and most innovative while using measures that are appropriate and proportional to the threat vectors and environment. This book is meant to foster a constructive conversation about conveying those insights. A benefit of focusing on the accountability system instead of the security and intelligence community per se is that there is more open access material on which to draw.

The challenge is that this material can be obscure, obtuse and, although online, difficult to find: public reporting on intelligence activities, such as Australia’s Richardson review report in 2020, run upwards of 1,300 pages! So, aside from a very short introduction to the security and intelligence community and strategic environment in each Five Eyes country, this book also intends to provide as comprehensive a list of references for each of the five countries as possible so as to make it easier for others to pick up the baton and expand on this field of scholarship. Indeed, for that very reason, this book took years to compile and write. It takes a village to raise a child, and given the nature of the challenges associated with working on such a topic, it would not have been possible to realize without myriad enablers, who we acknowledge below. Invariably there is always more to say. In the country chapters especially, we made every effort to keep them to a readable length. That meant trading off on the depth with which we lay out the country’s security and intelligence community, the strategic environment in which it operates and how the community has evolved, with an in-depth discussion of the country’s accountability system. Clearly, there is more to be said, and this book is meant to be the beginning of a conversation.

It is also difficult to conceive just how difficult it is to compare the accountability systems of five security and intelligence communities, especially since there is little scholarship to begin with. Much of the scholarship that does exist comes from legal scholars. That makes good sense: in a democracy
security and intelligence involves highly complex legal decisions because, by definition, these are communities that are authorized to violate people’s rights; so, under the rule of law, it all comes down to whether these violations are legitimate, appropriate, proportional, and what the ultimate purpose is: whether to mitigate the risk emanating from a particular person’s behaviour, for instance, or whether the evidence is to be used to prosecute with a reasonable chance of obtaining a conviction. However, the aim of the chapters and the book may not entirely satisfy some legal scholars who may believe more legal detail was required. Our aim though was not to duplicate excellent and intricate legal scholarship on each country. We are not legal scholars, and do not pretend to be. Rather, our aim was to provide an informed comprehensive understanding and appreciation of accountability in each country writ large.

Acknowledgements

We would like to thank the Office of the Communications Security Establishment Commissioner (OCSEC) in Canada for having raised the need for factual information in public debate about these issues, and encouraging us to fill this gap, from our independent and objective academic perspective. Thus was planted the seed that evolved into a broader discussion, and into this book about the democratic-intelligence paradox and intelligence accountability in the Five Eyes countries. We also thank OCSEC for their good offices in obtaining the active co-operation for this project from review or oversight organisations in the other four countries.

Specifically, we would like to thank: from Australia, the Office of the Inspector-General of Intelligence and Security; from New Zealand, the Office of the Inspector-General of Intelligence and Security; from the United Kingdom, the Investigatory Powers Commissioner’s Office; and from the United States, the Office of the Inspector General of the Intelligence Community, as well as the Office of Civil Liberties, Privacy, and Transparency, Office of the Director of National Intelligence.

We also thank the many scholars who made time to review (repeated) iterations of individual chapters or the manuscript as a whole, including John Blaxland, Dominique Dalla-Pozza, Mary DeRosa, Jan-Hendrik Dietrich, Loch K. Johnson, Ian Leigh, Larry Pfeiffer, Mark Pythian, David Skillicorn, Joel Sokolsky and Patrick Walsh. This book would not have been possible without so many dedicated and kind supporters and the co-operation of these organisations.
xvi ACKNOWLEDGEMENTS

Books come together because of dedicated staff behind the scene, first and foremost editors who believe in the project and its merits. At Oxford University Press, we would like to thank Dominic, Matthew, Olivia, Dolarine and Martin for shepherding this publication. Finally, our gratitude to our partners and families for the patience and support they showed in helping us see this project through!

This subject is dynamic and we made every effort to be reasonably current through 2020, but, as authors, we take responsibility for any omissions or errors.

Christian Leuprecht & Hayley McNorton

Kingston, March 2021
Foreword

It is a pleasure and a privilege to write a foreword for this fine work by Christian Leuprecht and Hayley McNorton. Two features of this volume drew my attention immediately: first, it focuses on my favorite research subject, intelligence accountability; and second, it provides a marvellous comparative perspective, so often missing in Intelligence Studies, by examining the secret services of the Five Eye members—an alliance forged by a common interest in intelligence cooperation that includes Australia, Canada, New Zealand, the United Kingdom, and the United States.

Having served as the senior editor for the journal Intelligence and National Security from 2002 to 2019, one of the most common remarks I heard from authors and readers was that the journal—like other intelligence-oriented publications during this period (and before)—was too focused on the United Kingdom and the United States, largely ignoring the rest of the world. This was an accurate observation, although not because I and my fellow editors were biased in any way against the subject of intelligence in other lands. On the contrary, we agreed with this observation and tried our best to do something about it. At the time, we simply were not receiving many manuscripts sent our way from researchers in other countries.

Working first with Professor Peter Jackson and then his successor Professor Mark Phythian (my co-editors during the period when I was with the journal), we did our best to encourage research on a wide range of intelligence organizations around the world. Happily we soon were able to publish many research articles that went beyond the CIA and MI6. The three of us at the journal were proud of this broader orientation; and Professor Phythian, now the senior editor, is continuing to look for worldwide perspectives on intelligence and enjoyed good success. It is still uncommon, though, to find a comprehensive, comparative handling of intelligence topics and, thus, my appreciation for this book’s efforts to examine the important question of intelligence accountability across the Five Eyes. We find in these pages an admirable and ambitious research endeavour that has produced impressive results, thanks to the solid knowledge, experience, and research skills of the authors as they address the challenge of understanding and explaining the
role of intelligence in modern democratic societies, with these five nations as their laboratories.

The chief reason intelligence scholars have published more on the UK–US experience than on the rest of the world’s intelligence history and practice is that these two members of the Five Eyes were pioneers in their public self-introspection on this subject. Throughout history, nations have treated the hidden side of government as an exceptional domain that must be kept ultra-secret and free of the prying eyes of journalists, academic scribblers, and, by and large, even duly elected lawmakers and parliamentarians with responsibilities for holding bureaucratic agencies accountable (at least in the democracies). Scandals during the 1970s and 1980s, though, forced the United Kingdom and the United States to assuage public concern by conducting significant inquiries into their respective clandestine agencies and reporting back to their constituents—spell that V-O-T-E-R-S.

The result of these government investigations was a mountain of research findings, declassified and released to the public, on the activities of the intelligence services within the United Kingdom and the United States. These findings, in turn, stimulated further research by academic and think-tank scholars in the public domain. As my mentor Professor Harry Howe Ransom of Vanderbilt University liked to point out, in the 1950s and 1960s the search for intelligence research material ‘with a pick-and-shovel’ before, in the 1970s and 1980s, the UK and US governments moved in ‘with bulldozers’. Intelligence Studies scholars at the universities and elsewhere suddenly had something to study and a new academic discipline was born. The journal *Intelligence and National Security* went to press for the first time in 1986.

A focus on the Five Eyes is a worthy contribution to intelligence scholarship and to the practice of intelligence. Each of these nations has taken major strides toward maintaining a sensible balance between necessary secrecy and security, on the one hand, and public accountability within the dark side of government, on the other hand. Much can be learned by examining the approaches to national security intelligence by each member of this unique and important intelligence club. Each member has embraced intelligence objectives, capabilities, and methods of accountability that are, in some significant respects, distinct from one another. Each example deserves close study for those interested in improving intelligence in defence of the democracy, and for ways to advance democratic principles inside the more remote corridors of power.

All of the Five Eyes members deserve praise for the devotion they have displayed towards these twin goals of maintaining a strong intelligence
service, while introducing democratic principles even into the shadowy side of government. This ongoing and laudable experiment should inspire and encourage similar developments in every other open society. Indeed, one can already see in France, Germany, the Netherlands, and some other valued democratic nations steps being taken toward establishing an ethical balance between security and liberty, by way of an improved watchfulness over the activities of their secret agencies.

Within all of the democracies, intelligence reform remains a work in progress. The authors of this volume capture the ‘overhauling and streamlining’ that is currently underway among Five Eyes members, as each seeks to improve both efficiencies and democratic safeguards within their intelligence communities. With respect to the United States, the authors argue that too much accountability may have evolved, with Inspectors General, scores of executive oversight boards, multiple White House reviews, a Foreign Intelligence Surveillance Court, and Congress weighing in several oversight panels, as well as its Government Accountability Office (GAO)—all examining various aspects of America’s intelligence activities.

They have a point. Clearly on Capitol Hill, for example, the number of committees and subcommittees involved in the review of intelligence activities could be reduced, and efforts are underway to make the Senate Select Committee on Intelligence (SSCI), the House Permanent Select Committee on Intelligence (HPSCI), and two small Appropriations Subcommittees the sole repositories of the intelligence oversight mission. One has to be careful, though, that the democracies avoid a return to the days when their secret agencies had few, if any, overseers. In that direction lies the increased odds of scandal and analytic error—secret power run amok.

The intelligence services within democratic regimes can compete well with their counterparts in authoritarian and totalitarian regimes—in fact, at a superior level because of the great advantage that debate, parliamentary experience, judicial review, and a culture of honest, apolitical analysis can bring to intelligence initiatives. In the United States, for example, the Hughes-Ryan Amendment (1974) and its sequel, the Intelligence Oversight Act (1980), have allowed CIA discussions with lawmakers—not just the president—about proposed covert actions before they are launched (Meese, Nielsen and Sondheimer 2018: 55). This review, which takes place periodically inside the guarded sanctuaries of SSCI and HPSCI, has yielded important corrective measures in operational details—and, occasionally, has led even to the curbing of ill-conceived activities that might well have otherwise gone forward without this extra moment of reflection and tempering. In contrast, the
Bay of Pigs disaster in 1961 never enjoyed the benefit of congressional review, which might have stopped this poorly planned operation in its tracks.

Debate is the very anchor of democracy and the Five Eyes have shown that the combination of ‘intelligence’ and ‘debate’ in the same breath is not an oxymoron. The careful cross-country analysis provided in this book carries our knowledge of ‘democratic intelligence’ — the challenge of supervising secret agencies in open societies—a large leap forward. Long live the Five Eyes, and long live the democratic principles and first-rate intelligence work for which members of the alliance are famous.

Loch K. Johnson

Regents Professor Emeritus
University of Georgia
United States
1

Introduction

The Democratic-Intelligence Paradox

‘The essence of government is power; and power, lodged as it must be in human hands, will ever be liable to abuse.’

—James Madison, 4th President of the United States,
Speech in the Virginia Convention (2 December 1828)

1.1 Governing Forward: Intelligence Accountability in the Age of Coercive Disruption

Security is a necessary condition to the democratic exercise and realization of individual and collective freedoms. We fear perfidious actions of ‘others’; so, we create or expand security and intelligence institutions to protect us, but then we fear the very institution we created for protection. This gives rise to the democratic-intelligence paradox: a tension between different institutional and operational logics. Democratic citizens want to exert control to ensure that intelligence agencies and communities play by the rules. Accountability and governance reconcile the logics that inform legislative frameworks and security systems, ultimately by ensuring that the intelligence trade strictly adheres to a lawful institutional culture that democracies superimpose on the intelligence and security community. How best to structure and legitimize the relationship between civilians and their democratic institutions on the one hand, and the intelligence community on the other hand, to achieve this result is a matter of active debate and growing controversy—amidst significant legislative and institutional changes that have already occurred in many countries.

Authoritarian or dictatorial states commonly use intelligence to protect their ruling caste (Chestnut Greitens 2016). By contrast, states with free and fair elections in general, and the Five Eyes in particular, collect intelligence to protect democratic life, interests, and values against harm from dictators,
terrorists, and insurgents, promoters of violent extremism, cyber attackers, proliferators of weapons of mass destruction, people traffickers and smugglers, child abusers, money launderers and organized criminals alike. Intelligence reduces uncertainty and unknowns, such as the predispositions of hostile actors, or how those may be changing (Schweizer Eidgenossenschaft 2020). By informing government policy it furthers national security interests in confronting threats from actual or potential adversaries (Meese, Nielsen and Sondheimer 2018: 4). By design, the intelligence space is characterized by an exceptional degree of information asymmetry: the intelligence community knows more than the political community. Traditionally, the political executive has not been fully accountable for that privilege.

Intelligence failures and scandals have made citizens sceptical about the functional imperative of intelligence in a democracy: collecting, collating, evaluating, analysing, integrating, and interpreting information, some of it secret, to protect the state and its citizenry. The realization that the intelligence and security community needs to be fully aligned with democratic values and public expectations gave rise to expanded intelligence accountability. Whilst intelligence used to be governed largely through command by a state or government, intelligence governance mechanisms have expanded beyond the intelligence and security community and their direct reports. Whereas intelligence accountability had previously been an almost exclusive prerogative of the executive and administrative branches of government, henceforth it would encompass the judicial and legislative branches. Across the Five Eyes country case studies in this book, this change hastened a dialogue on intelligence accountability between the courts and legislatures, which further bolstered democratic principles.

Those developments transpired in the context of a changing threat environment, which occasioned a shift in posture: from conventional conceptions of defence and deterrence to the need to ‘defend forward’ against adversarial activity; that is, to be assertive and credible at generating insights, improving defences and imposing intangible and tangible costs on geostrategic rivals and adversaries determined to leverage military, economic, information, and diplomatic coercion, constrain the strategic action space of competitors, and undermining democratic influence, interests, institutions, values, and prosperity. Digitization has transformed the form, scope and methods of hostile activity. By consequence, democracies have become a target-rich environment whose target surfaces have multiplied while the resources and expertise required to operationalize attacks have decreased substantially. Democracy has grown more vulnerable as a result, but not necessarily more fragile, provided the intelligence posture adapts accordingly. Developments over recent years and
decades are a stark reminder that democracy is not to be taken for granted, but instead needs to be defended. Intelligence is the first line of defence. In a democracy, forward defence has to be responsible and accountable. If the past is not prologue, then intelligence has to be governed forward.

The threat environment during the Cold War was relatively straightforward: security intelligence was preoccupied with counterespionage, countersubversion, and counterintelligence against threats that were directed from external sources (Molinaro 2021). By the 1970s, security problems had become domesticated in the form of counterterrorism. Terrorism and non-state threat actors have since become increasingly transnational, information is systematically being weaponized by adversarial regimes to subvert democratic institutions and processes, and to polarize public opinion, and biological Weapons of Mass Destruction have been deployed on foreign soil by Russia and North Korea. The latter is involved in the illicit transfer of nuclear-weapons technology. Adversarial states are looking to assert revisionist ambitions, seeking to adjust the distribution of power in the international system, regional security orders, the role and scope of international institutions, the free flow of uncensored information across borders, and the liberal nature of the international rules-based order. As threat vectors multiply and give rise to an increasingly anarchic security environment, the intelligence community is the principal mechanism democracies have at their disposal to defend themselves against asymmetric adversarial state and non-state threat actors that avail themselves of the full spectrum of kinetic information and cyber implements to pierce democratic societies, cultures, and politics.

Intelligence activities parse into overt and covert. Embassies, for instance, perform a core intelligence function of collecting overt intelligence on foreign actors. By contrast, criminal, human, and signals intelligence agencies can use kinetic or non-kinetic covert or clandestine activities as a means of last resort, but in the process may end up violating individual and collective freedoms, equality and justice, as well as autonomy necessary for human flourishing and self-actualization. Covert activity thus raises important questions about ideals, ethics, and morals.

How to govern and hold to account the intelligence community in a liberal democracy is the focus of this book. Openness and transparency are hallmarks of democratic governance. Operational secrecy—in relation to other states, to democratic society, and to other parts of government—is the essence of intelligence tradecraft: ‘To reveal their secrets and protect our own’ is the motto of the Australian Signals Directorate. The more adversaries know about one’s capabilities and intentions, the more difficult and costly it is to gather intelligence and the less effective those efforts will be. This book aims to reconcile intelligence
and security functions with democratic principles by developing a democratic theory of civil–intelligence relations. The intelligence community cannot be fully transparent as it needs to avoid revealing tradecraft as well as intelligence products. Accountability rebalances that asymmetry within a framework of democratic ideals to enhance public trust by proxy: through review and oversight. Compliance is the *sine qua non* of intelligence accountability. This book, however, aims to shift the debate over intelligence accountability from quantity to quality. The evidence in this book points towards a proliferation of agents independent of the executive of government with a growing array of powers to constrain the executive. Instead of abrogating responsibility, the conclusion in this book is that democratic government needs to own up to its responsibility for the intelligence function. That conclusion is premised on a paradigmatic change in the democratic understanding of compliance: from compliance as an end to compliance as a means to raise the government’s awareness of and appreciation for the intelligence function and whether it is being carried out in the most effective, efficient, and innovative way possible to achieve its end.

The book takes as its starting point previous case studies of intelligence oversight, theories of intelligence accountability, and implications for enhanced transparency. In the American context, the literature on intelligence oversight occupies an uneasy nexus between government oversight and intelligence studies: while intelligence scholars tend to generate historical narratives of intelligence oversight that focus on sundry variables such as a particular individual, oversight theories in political science have limited applicability to intelligence (Zegart 2011). Previous research—much of it by legal scholars—has laid out intelligence accountability in different countries, the core tenets of intelligence accountability, how to establish it in developing countries, and future trajectories (cf. Dietrich and Sule 2019; Johnson 2018; Leigh and Wegge 2018; Goldman and Rascoff 2016; Richardson and Gilmour 2016; Caparini 2007; Leigh 2005).

By contrast, this is the first book to offer a methodical and rigorous comparison of the authorities, institutions and processes by which intelligence communities are held to account through executive, legislative, administrative, and judicial review and oversight. Country case study chapters on the United States, the United Kingdom, Canada, Australia, and New Zealand survey each country’s intelligence community and corresponding accountability system, situate both historically in strategic context, and assess the accountability system relative to changing intelligence powers and functions. Collectively called the ‘Five Eyes’, these five states form the world’s most powerful and long-standing intelligence community, which sits at the apex of the international security pyramid. More than an intelligence alliance, the
Five Eyes is a foreign policy coordination mechanism among a security community of like-minded states that is commonly known as the Anglosphere (Vucetic 2011; Wellings and Mycock 2019). Characterized by shared norms, values, and practices (Deutsch 1957), the Anglo-American tradition in foreign affairs has traditionally perpetuated and staked its reputation on a common core set of national interests (Wolfers and Martin 1956): sovereignty, security, prosperity, national, regional, international, and transnational security and stability, including the liberal international rules-based order as well as a democratic conception of the rule of law, and fundamental human rights. The commitment to playing by the same rules to which the community has committed itself in their defence sets democracies apart in general, and the Five Eyes community in particular.

1.2 Framing the Problem

Each country case study in this book shows that domestic public, media, and the legislative branch’s interest in accountability has waxed and waned over time depending on the prevailing sentiment towards threats to the national interest. During the Cold War, for example, there was a broad consensus in favour of the policy of containment and deterrence; so, problems and transgressions of the intelligence community were often overlooked or ignored. As that consensus unraveled in the 1970s, however, investigations grew in number and new accountability measures were enacted. Accountability, then, has developed in response to international and domestic obligations. Exogenously, democracies are motivated to take the moral high ground by acting on their principles when confronted by adversaries that refuse to do so. To this end, accountability manifests the distinction between state practices that are consistent with liberal-democratic ideals and those that democracies have an ethical obligation to condemn when they are used by autocratic regimes. Endogenously, accountability responds to demands by a domestic audience to demonstrate that the way intelligence and security agencies realize their objectives, capacities, and purpose—that is, their functional imperative—is consistent with democratic ideals. This problem is at the heart of this book, because making this connection is precisely where intelligence agencies run the risk of going astray, as the section on the strategic environment in the country case studies that inform this book confirms. To this end, accountability scrutinizes intelligence practices and systems to ensure their compliance with regulations, mandates, laws, and the Constitution. Concretely, it does so by gauging intent, proportionality, authority, necessity, *jus in bellum*, and
discerning between legitimate and illegitimate targets (Omand and Pythian 2018).

Sound intelligence decisions are informed by ontology and consequentialism in the form of principles of proportionality and discrimination: weighing benefits against a spectrum of individual and social harms and goods, and minimizing the risk/potential of damage while optimizing gains. The inherent trade-offs between threats and harms may differ by objective: direct existential threats as opposed to economic well-being while accounting for the epistemic difference between states and people, as the latter have intrinsic dignity and worth. In theory, the political community delegates its representatives to weigh social, political, and cultural harms. In practice, legislatures, rather than the political community, frame mandates and delegate the responsibility to oversee trade-offs to government appointees. Via political intermediaries, political communities thus effectively entrust civil service professionals and the judicial system with ensuring that the intensity and intrusion of intelligence activity in a democracy are incremental and that authorizations to legitimate intelligence activity are justified and impartial. Political elites, the judiciary, and gatekeepers with expert knowledge need to ensure that intelligence institutions are sufficiently attached to the society they serve so as not to distort objectives, abilities, and purposes relative to the wider political agenda while withstanding ‘capture’ by that same agenda. The controversial instrumentalization of intelligence for political ends to justify the second Iraq war in the United States and the United Kingdom are an example of capture.

Two trends have proven particularly vexing for covert intelligence activities in democratic societies since the end of the Cold War: bulk data collection and seeing government security organizations that used to be passive collectors of data henceforth empowered as security actors. These capabilities are being pressed into service against asymmetric, transnational, and global threat vectors that are non-linear, changing rapidly, and difficult or impossible to detect and deter at conventional sovereign state borders. The rise of the Internet, wireless communications, and transnational terrorism precipitated an expansion of intelligence capabilities and activities without historical precedent whilst accelerating global intelligence cooperation. However, the national security agenda that is indispensable to safeguarding democratic values may run afoul of fundamental democratic values. Ergo, these trends have been calling into question the bond of trust between the concerned publics and the democratic state. In this principal–agent relationship, the civilian principal seeks reassurance that their state’s security and intelligence agents