

When Should State Secrets Stay Secret?

Accountability, Democratic Governance, and Intelligence

Genevieve Lester (Cambridge University Press, 2015), 213 pp., notes, bibliography, index.

Reviewed by Jason U. Manosevitz

Oversight is a key topic in the study of national intelligence. The question of how a permanent intelligence system fits within the United States's democratic system of checks and balances is a recurring theme. Possible executive abuse of power; transparency; interplay among the executive, legislative, and judiciary branches on intelligence activities; and what makes effective oversight are among the central issues. Genevieve Lester's book, *When Should State Secrets Stay Secret? Accountability, Democratic Governance, and Intelligence*, is an example of the genre, animated most recently by CIA's past use of enhanced interrogation techniques and drone attacks against terrorists and the NSA's communications surveillance.

Lester's work offers a glimpse into how some in the next generation of national intelligence academics view oversight issues. She aims to apply a rigorous analytic framework to the key problem of intelligence accountability. Lester criticizes current oversight mechanisms as making it easier to keep state secrets secret (6), highlights the non-public nature of judicial decisions in intelligence matters as worrisome (202), and concludes that Congress has failed to keep pace with the growth of intelligence agencies following 9/11.

Lester roots her work in academic debates about the meaning of accountability. She makes a welcome case for a structured approach to analyzing intelligence oversight and points out, correctly, that many works dealing with intelligence accountability brush past this core concept. For Lester, accountability links one organization to another and is a mechanism that reviews, monitors, and corrects activities through external means. In her view, accountability is a "check on explicit and specific power" in a government context and means that the "supervisor has authority and the right of sanction over the supervised." (10–12)

This definition allows Lester to split accountability processes into those inside and outside intelligence agencies, though she focuses almost exclusively on CIA. Internal processes include development, review, and

correction of programs by individuals within the executive branch, such as intelligence officers, national security staff members, and the White House. External accountability refers to review processes of intelligence activities by institutions outside the executive branch, namely Congress and the judiciary. The media lies outside of Lester's conceptual scope, which is unfortunate since the press plays such an important role in holding government officials accountable in a democratic society. Nonetheless, this nuanced approach enables Lester to assess differences between internal and external oversight of CIA activities.

When Should State Secrets Stay Secret? offers separate but overlapping criteria for examining internal and external accountability. Lester assesses external accountability based on knowledge conditions, autonomy, organizational complexity, temporality, and transparency. (14) Internal accountability, for her, depends on hierarchical authority, organizational complexity, bureaucratic processes, legality, recourse, and internal autonomy. (21) Lester argues that internal accountability, at least for CIA, is stronger than external accountability because the executive branch has "continual control and perfect information" as intelligence activities are developed and that external oversight "is reliant on executive information sharing." (70)

The theme of executive information control and the asymmetrical relationships this creates with Congress and the judiciary is woven throughout the book. Like others, Lester sees this as problematic because it gives the executive branch and its intelligence services a tremendous advantage over the other two branches of government. (30–31, 75, 160) Interestingly, she argues the statutory inspectors general (IG) in intelligence organizations are positioned to play a special role in overall accountability because they can bridge internal and external accountability mechanisms. (25–26, 56–57)

When Should State Secrets Stay Secret? covers differences in congressional and judiciary oversight. For example, the Foreign Intelligence Surveillance Court is

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able to deny or demand revisions to intelligence services' application requests for electronic surveillance, physical searches, and access to targets' business documents. (14–16, 174–176) Congressional committees do not play such a role in the details of operations; rather they conduct mostly actions after the fact, such as holding hearings and conducting investigations. Moreover, the executive is legally required to inform Congress—but not the judiciary—about covert action. Lester laments the lack of congressional influence on intelligence programs because only a few members of Congress are informed about intelligence activities, and it is unlikely Congress would cut CIA's funding even if it disapproved of CIA actions. (104)

Lester argues oversight is not static. The efficacy of oversight, she finds, “ebbs and flows” because of shifting domestic politics and the threat environment. (158) This means that intelligence activities pursued under one set of political and national security imperatives may later be found unacceptable as the threat declines or political views change. Lester further judges that we are once again in a period in which the American public is seeking to determine “where the limits of intelligence activities both at home and abroad should be placed.” (206) All of this should serve as a warning to intelligence and national security officials. The dynamic Lester describes can put intelligence officers and programs in precarious positions in the face of shifting winds unless they continually assess whether the programs and actions they have undertaken on behalf of US security continue to be deemed appropriate.

This is Lester's first book, coming from the PhD dissertation she wrote while at the University of California, Berkeley. She demonstrates a good command of existing academic intelligence literature but makes little use of memoirs by intelligence professionals, deriding them as self-aggrandizing (38). True or not, the use of such work could have added to the insider views she seemed to have been seeking. Lester's interviews with intelligence and national security professionals—such as former CIA Director Michael Hayden, former CIA Deputy Director Steve Kappes, and former Special Assistant to the Director of CIA Charlie Allen and former CIA inspector general L. Britt Snider—lend authority to some of her key points. She also refers to anonymous senior CIA officials, ex-station chiefs, analysts, and congressional and NSC staffers, making it difficult to determine how many professionals she interviewed or to gauge the value of their insights on these topics.

Lester's substantive chapter on congressional oversight of CIA is concise, tracing the roots of CIA scrutiny to the mid-1970s and the Rockefeller, Church, and Pike

Committees. Her review of the CIA inspector general offers readers a short tour of a woefully understudied topic, highlighting the promise and pitfalls the position has within the CIA. Her chapter on the development, role, and function of judicial oversight provides a succinct review on the disparate collection of work on the intersection of intelligence and the courts. There is no examination of other intelligence agencies, such as the Defense Intelligence Agency or the National Geospatial-Intelligence Agency, and the book gives only a slight nod to the Federal Bureau of Investigation. This is unfortunate because her analysis of the CIA cannot be fruitfully generalized to oversight of the IC in general.

Frustratingly, Lester never answers the title question of when state secrets should stay secret. Readers encounter several normative questions that are also left unanswered, and at times Lester's analysis seems to confuse oversight and authorization of intelligence activities. This implies the underlying key question driving her work centers on executive authority for conducting intelligence activities. Additionally, Lester pays scant attention to previous work that found CIA operates almost exclusively on orders of the president and has not been “the rogue elephant of excited journalists and politicians.”^a

Lester's focus on high profile, controversial intelligence activities also leaves readers with a skewed sense of CIA's operations. Like other authors in the genre, she gives scant attention to CIA efforts to regularly engage external institutions or police itself to ensure operations and activities are reviewed, revised, and corrected to make sure they are consistent with US law. Additionally, the thin slice of intelligence agencies and activities she analyzes do not naturally lead to Lester's conclusion that Congress should conduct more oversight because of the growth of the IC in the post-9/11 era. (208–213). At a minimum, the book would have benefited from a thorough review of how the CIA's Office of Congressional Affairs informs Congress and responds to congressional requests.^b Some reflection on the efforts of Office of the Director of National Intelligence to create more transparency around intelligence work would have also advanced the study of oversight.



a. See John Ranelagh, *The Agency: The Rise and Decline of the CIA* (Simon & Schuster, 1987), 11.

b. Lester cites L. Britt Snider's *The Agency and the Hill: CIA's Relationship with Congress, 1946–2004* (CIA, Center for the Study of Intelligence, 2008) as a reference but does not herself offer her own baseline analysis of the CIA-congressional relationship.