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Buuren, J. van

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From Oversight to Undersight: the Internationalization of Intelligence

Jelle van Buuren
Researcher and lecturer, Centre for Terrorism and Counterterrorism,
Campus The Hague, Leiden University
g.m.van.buuren@cdh.leidenuniv.nl

Abstract
Due to the globalization and nodalisation of intelligence - resulting in hybrid intelligence assemblages - well-known problems related to overseeing intelligence are deteriorating. Not only does the international cooperation between intelligence services contribute to this problem, but especially the internationalization of intelligence collection meaning that as a consequence of technological and market transformations intelligence collection has become footloose and can be conducted remotely. In that way it leaves any idea of national sovereignty or the national protection of civil rights increasingly obsolete. Instead of oversight by institutions the real counter-power in post-democratic constellations seems to be practised by whistleblowers and investigative journalists. Sousveillance or undersight therefore seems to be the most important current oversight mechanism.

Keywords
intelligence; oversight; undersight; sousveillance; post democracy; globalisation; hybrid intelligence assemblages; privatisation of intelligence

Democratic oversight of intelligence services 'adds up to a dilemma', as Ott stated: 'Can a democracy maintain an effective, capable intelligence service without doing violence to the norms, processes, and institutions of democracy itself?'[1] Traditionally, intelligence services direct their attention to threats from abroad. Besides countering threats to national security - ranging from terrorism, organised crime to nuclear proliferation - the intelligence services also have a function in protecting or supporting economic and political interests. This last function, under renewed public attention thanks to the revelations of Edward Snowden, points to the intimate

[1] M.C. Ott, 'Partisanship and the Decline of Intelligence Oversight', in *International Journal of Intelligence and CounterIntelligence*, 2003, Vol. 16, No. 1, pp. 69- 94.

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connection between the executive power of the state and the fusion of political and economic interests. Democratic oversight of intelligence services ideally would serve as a counter-power towards this executive power - both in guarding ethical and judicial norms as well as in terms of objectives: what exactly are those security, political and economic interests that justify the deployment of secret tactics and techniques?

The problems associated with overseeing national intelligence services are well documented in literature.[2] Both theory as well as the practice of overseeing intelligence services proves that no single golden oversight mechanism exists. Rather a layered model of oversight mechanisms should be advocated, consisting of internal dimensions (internal oversight within intelligence agencies and a strong professional ethical awareness), administrative dimensions (oversight by the executive branch), parliamentary dimensions (parliamentary committees overseeing intelligence services), independent dimensions (judicial oversight, independent inspectors) as well as extra-parliamentary dimensions (media and civil society). However, practice also shows that even layered models of oversight that seem promising in theory can for different reasons be quite dysfunctional in practice.[3]

This problem is even more pressing and complex when looking into the international dimensions of intelligence operations. The international dimension of intelligence operations does not only refer to *international cooperation* between intelligence services, but increasingly to the *internationalisation* of intelligence collection: as a consequence of technological and market transformations intelligence collection has become footloose and can be conducted remotely and in that way leaves the concepts of national sovereignty and national oversight mechanisms increasingly obsolete. The dilemmas of overseeing intelligence services are further complicated as a result of emerging hybrid intelligence assemblages in which both public as well as private agencies play an important role.[4] One the one hand, this refers to the role played by global private players like Control

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[2] M. Caparini, 'Controlling and Overseeing Intelligence Services in Democratic States', in: H. Born and M. Caparini (eds), *Democratic control of intelligence services: containing rogue elephants*, Aldershot: Ashghate, 2007, pp. 3-24.

[3] J. van Buuren, 'Uit de schaduw: toezicht in de EU-lidstaten', in: B.A. de Graaf, E.R. Muller and J.A. van Reijn (eds), *Inlichtingen- en veiligheidsdiensten*, Kluwer, Alphen aan den Rijn, 2011, pp. 161-186.

[4] J. van Buuren, 'Analyzing international Intelligence Cooperation. Institutions or intelligence assemblages?', in: Ben de Jong, Joop van Reijn and Isabelle Duyvesteyn (eds.) *The Future of Intelligence*, Routledge, London, 2014.

Risk, Booz Hamilton or Stratfor, who deliver a range of security and intelligence products and services to both private and public parties and who work together with public intelligence agencies in informal or personal networks.[5] On the other hand, this refers to the role played by multinationals like Facebook, Google, Apple, Twitter and Microsoft which could be conceptualized as first-line collectors of personal data or private intelligence multinationals. Without the voluntary transfer of the most intimate personal data to these data giants, intelligence services would have a far more difficult job in accessing worldwide communication and personal data.

One can therefore speak of both the internationalisation as well as the nodalization of intelligence, characterised by (1) a plurality of decision and operational centres in which (2) no clear hierarchy between centres exist, (3) the core of decision structures consists of networks, (4) the boundaries of decision structures are fluid, and (5) the actors include professional experts, public actors and private actors.[6]

In this article we will first look into the dilemmas of overseeing both the international cooperation between intelligence services as well as the internationalization of intelligence. Subsequently, we will discuss the ramifications for institutionalised oversight and propose some alternative academic perspectives for conceptualizing and researching oversight on international intelligence collection.

International cooperation between intelligence services

International cooperation between intelligence services is hardly a new phenomenon.[7] However, especially since the 9-11 attacks, one can speak of

[5] Scholars estimated for instance that some years ago, 70% of the public intelligence budget in the U.S. was subcontracted to private companies. 35% of the operations of the American Defense Intelligence Agency and 90% of the operations of the National Reconnaissance Office were run by private actors. See: H.S. Arthur, 'The uneasy relationship between intelligence and private industry', in *International Journal of Intelligence and CounterIntelligence*, 1996, Vol. 9, No. 1, pp. 17-31; G.J. Voelz, 'Contractors and Intelligence: The Private Sector in the Intelligence Community', *in International Journal of Intelligence and Counterintelligence*, 2009, Vol. 22, No. 4, pp. 586- 613.

[6] K.H. Goetz, 'Governance as a Path to Government', in *West European Politics*, 2008, no. 1, pp. 258-279.

[7] See for examples of international cooperation for instance P. Gill, 'The Intelligence and Security Committee and the challenge of security networks', *in Review of International Studies*, 2009, pp. 929-941; J.E. Sims, 'Foreign Intelligence Liaison: Devils, Deals, and Details', in *International Journal of Intelligence and Counterintelligence*, 2006, no. 2, pp. 195-217; A.D.M. Svendsen, 'The Globalization of Intelligence Since 9/11: The Optimization of Intelligence

an 'exponential increase in both the scope and scale of intelligence cooperation'.[8] The scale of cooperation has both increased in terms of the information shared as well as the number of joint operations as such. The scope has changed in terms of involved states and a wider variety of intelligence activities.[9] This change in the scope and scale of intelligence cooperation manifests itself in new embryonic structures and joint centres, for instance the EU IntCen[10] or the Paris-based 'Alliance Base'[11] in which France, the US, the UK, Germany, Canada and Australia work together; more or less formalized agreements on international data exchange or access to data (Passenger Name Records, SWIFT); secret agreements on access to data (for instance the access of US intelligence to data from the British Number Plate Recognition System); and a plethora of bilateral, informal cooperation and information exchange mechanisms between intelligence services, be it ad hoc or structural.

At the same time, however, according to Aldrich[12] a qualitative change in the nature of intelligence activities can be noted. Confronted with strong globalisation tendencies without comparable global governance structures, intelligence services are nowadays more into the business of 'fixing' and 'enforcing' than just 'finding', as they were redesigned as the 'toilet cleaners of globalisation'. The four main changes within modern intelligence, as defined by Aldrich, consist of (1) the enlargement of intelligence services[13] (2) a more interventionist and sometimes more violent operational modus (3) the involvement of private entities as most globalised actors and (4) an

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Liaison Arrangements', in *International Journal of Intelligence and Counterintelligence*, 2008, no. 4, pp. 661-678; S. Lefebvre, 'The difficulties and dilemmas of International Intelligence Cooperation', in *International Journal of Intelligence and Counterintelligence*, 2003, no. 4, pp. 527-542.

[8] I. Leigh, 'Accountability and intelligence cooperation. Framing the issue', in: H. Born, I. Leigh and A. Wills (eds) *International Intelligence Cooperation and Accountability*, Routledge, London, 2011, pp. 3-17.

[9] I. Leigh, 'Accountability and intelligence cooperation. Framing the issue', in: H. Born, I. Leigh and A. Wills (eds) *International Intelligence Cooperation and Accountability*, Routledge, London, 2011, pp. 3-17.

[10] J. van Buuren, *Secret Truth. The EU Joint Situation Centre*, Eurowatch, Amsterdam, 2009.

[11] David Servenay, 'Terrorisme : pourquoi Alliance Base a fermé à Paris', *Le Nouvel Observateur*, 24 May 2010.

[12] Richard J. Aldrich, 'International Intelligence Cooperation in Practice', in: H. Born, I. Leigh and A. Wills (eds.) *International Intelligence Cooperation and Accountability*, Routledge, London, 2011, pp. 20-21

[13] See for instance: Dana Priest and William M. Arkin, 'A hidden world, growing beyond control', *Washington Post*, 19 July 2010.

acceleration of cooperation between intelligence agencies of the Western world with 'improbable partners'.[14]

Due to revelations in media outlets some idea of what these cooperation practices entail has become public and has affirmed that intelligence operations have indeed become more interventionist and barely controllable by national oversight mechanisms. Famous examples are of course the practices of secret rendition, black sites and 'enhanced' interrogation techniques. Although the US was mostly blamed for these practices, most of these operations could not have been implemented without the assistance of, amongst others, Member States of the European Union. In spite of profound efforts by national committees in the UK, Germany, Canada and Italy, and the European committees of both the European Parliament and the Council of Europe,[15] the exact nature of assistance for these operations that was given by European governments and their intelligence and security apparatus has not been totally clarified - let alone that those who were responsible have rendered account for their actions. Further, a range of intensive data exchange practices and blacklisting procedures, although seemingly less spectacular, pose 'comparable significant concerns for accountability and human rights', as Leigh.[16]

It seems hardly surprising then, that regarding the oversight of international cooperation between intelligence agencies, scholars conclude that in fact no adequate oversight exists. Leigh[17] stated, for instance, that there is

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[14] Richard J. Aldrich, 'International Intelligence Cooperation in Practice', in: H. Born, I. Leigh and A. Wills (eds.) *International Intelligence Cooperation and Accountability*, Routledge, London, 2011, pp. 20-21.

[15] See for instance: Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, '*Report of the Events Relating to Maher Arar: Analysis and Recommendations*', Public Works and Government Services Ottawa, Canada, 2006; Venice Commission (2006) '*Opinion No. 363/2005 on the international legal obligations of Council of Europe member states in respect of secret detention facilities and inter-State transport of prisoners*', COE; PACE, Committee on Legal Affairs and Human Rights, '*Secret Detentions and Illegal Transfer of Detainees involving Council of Europe Member States: Second Report*', 11 June 2007, COE; European Parliament, Temporary Committee on the alleged use of European countries by the CIA for the transport and illegal detention of prisoners, '*Report on the Alleged Use of European Countries by the CIA for the Transportation and Illegal Detention of Prisoners*', 30 January 2007, doc. A6-0020/2007.

[16] I. Leigh, 'Accountability and intelligence cooperation. Framing the issue', in: H. Born, I. Leigh and A. Wills (eds) *International Intelligence Cooperation and Accountability*, Routledge, London, 2011, pp. 3-17.

[17] I. Leigh, 'Accountability and intelligence cooperation. Framing the issue', in: H. Born, I. Leigh and A. Wills (eds) *International Intelligence Cooperation and Accountability*, Routledge, London, 2011, pp. 3-17.

an 'increasing accountability deficit' due to the fact that national oversight committees are bypassed by the 'levels of secrecy, sensitivity and multi-territoriality inherent in international cooperation activities'. In a comparable way, Aldrich[18] concluded: 'National parliamentary oversight committees were always weak and now stands on the side lines, relatively powerless in the face of what appears to be complex distributed networks that consist of the agencies of many countries working together with private entities (…) and face intelligence services that are larger, more vigorous and have less time for auditors.'

Internationalisation of intelligence collection

There is however another aspect of modern intelligence that also has profound impacts on oversight and accountability, but has frequently been overlooked in literature. As a consequence of technological and market transformations intelligence collection has become more footloose and can be conducted remotely. On the one hand, this increases the opportunities to collect intelligence related to political and economic interests. Although the phenomenon of intelligence services spying on both opponents as well as allies is of course not new, the documents leaked by Edward Snowden show that the US National Security Agency (NSA) and the UK Government Communications Headquarters (GCHQ) are actively deploying the newest technological opportunities in order to intercept, amongst others, the G20,[19] the European Council,[20] the United Nations[21] and diplomatic representations[22] and are an important reminder that internationalized intelligence collection has more functions than countering terrorism or organised crime.

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[18] Richard J. Aldrich, 'International Intelligence Cooperation in Practice', in: H. Born, I. Leigh and A. Wills (eds.) *International Intelligence Cooperation and Accountability*, Routledge, London, 2011, pp. 20-21.

[19] Ewen MacAskill, Nick Davies, Nick Hopkins, Julian Borger and James Ball, 'GCHQ intercepted foreign politicians' communications at G20 summits', *The Guardian*, 17 June 2013.

[20] Laura Poitras, Marcel Rosenbach, Fidelius Schmid and Holger Stark, 'Attacks from America: NSA Spied on European Union Offices', *Der Spiegel*, 29 June 2013.

[21] Laura Poitras, Marcel Rosenbach and Holger Stark, 'Codename 'Apalachee': How America Spies on Europe and the UN', *Der Spiegel*, 26 August 2013.

[22] Ewen MacAskill in Rio de Janeiro and Julian Borger, 'New NSA leaks show how US is bugging its European allies - Edward Snowden papers reveal 38 targets including EU, France and Italy', *The Guardian*, 30 June 2013

More importantly, however, citizens can no longer trust that their personal data[23] and communications are protected by national laws regulating intelligence operations. As soon as a citizen from, for instance, the Netherlands uses a communication service[24] that has some link with the USA or UK, his or her personal communication data and other personal data can end up in some intelligence database abroad. This can happen because their communication is being routed through the territory of these countries, or their communication is stalled on servers on US or UK soil, or in clouds operated by firms from these countries,[25] or stalled in the European databases of firms also having a representation in the US or UK. Or otherwise the confidentiality of their communications and personal data can be compromised because transnational communication cables are being intercepted[26] or telecom providers are being hacked[27] and monitored remotely by foreign intelligence services.[28]

Due to the globalisation of communications and the market dominance of U.S. data multinationals it can be hardly a reassurance for, let us say, a German citizen to know or trust that German intelligence services are operating within the strict limits of their judicial powers and therefore he or she is protected against any infringements of civil rights. Because at the same time foreign intelligence services are remotely hovering[29] his or her private

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[23] Laura Poitras, Marcel Rosenbach and Holger Stark, 'Follow the Money: NSA Monitors Financial World', *Der Spiegel*, 16 September 2013.

[24] Glenn Greenwald and Ewen MacAskill , 'NSA Prism program taps in to user data of Apple, Google and others, *The Guardian*, 7 June 2013; *Washington Post*, 'NSA slides explain the PRISM data-collection program', 6 June 2013.

[25] John Naughton, 'After Edward Snowden's revelations, why trust US cloud providers?', *The Observer*, 15 September 2013.

[26] Ewen MacAskill, Julian Borger, Nick Hopkins, Nick Davies and James Ball, 'GCHQ taps fibre-optic cables for secret access to world's communications', *The Guardian*, 21 June 2013.

[27] *Der Spiegel*, 'Belgacom Attack: Britain's GCHQ Hacked Belgian Telecoms Firm', 20 September 2013.

[28] Laura Poitras, Marcel Rosenbach, Fidelius Schmid, Holger Stark and Jonathan Stock, 'How the NSA Targets Germany and Europe', *Der Spiegel*, 1 July 2013.

[29] Glenn Greenwald and Ewen MacAskill, 'Boundless Informant: the NSA's secret tool to track global surveillance data', *The Guardian*, 11 June 2013; Glenn Greenwald and Spencer Ackerman, 'How the NSA is still harvesting your online data', *The Guardian*, 27 June 2013; Ewen MacAskill, Julian Borger, Nick Hopkins, Nick Davies and James Ball, 'Mastering the internet: how GCHQ set out to spy on the world wide web - Project Tempora - the evolution of a secret programme to capture vast amounts of web and phone data', *The Guardian*, 21 June 2013; Laura Poitras, Marcel Rosenbach and Holger Stark, 'Partner and Target: NSA Snoops on 500 Million German Data Connections,' *Der Spiegel*, 30 June 2013; Glenn Greenwald, 'XKeyscore: NSA tool collects 'nearly everything' a user does on the internet', *The Guardian*, 31 July 2013.

communications, be it with[30] or without[31] the voluntary assistance of the same private intelligence multinationals like Google, Twitter, Apple, Facebook and Microsoft that are in the business of seducing their clients to hand over as much personal data as possible and subject themselves freely to 'liquid surveillance'.[32] And of course there is no guarantee that this remotely intercepted information at the end of the day will not end up in the database of German intelligence services through one of the myriad of informal networks and information exchange channels. Although European authorities have publicly disapproved of NSA surveillance practices, documents prove that there is no guarantee whatsoever that their intelligence and security services will refuse to accept 'forbidden fruits'[33] - as happened earlier, for instance, with intelligence retrieved from prisoners in Guantanamo Bay or black sites by 'enhanced interrogation techniques' formally disapproved of by European leaders.[34]

Post-Democracy

The problems analysed in this article regarding overseeing international cooperation between intelligence services and the internationalization of intelligence collection have not just recently come to the attention of

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[30] James Ball, Luke Harding and Juliette Garside, 'BT and Vodafone among telecoms companies passing details to GCHQ', *The Guardian*, 2 August 2013; Craig Timberg and Barton Gellman, 'NSA paying U.S. companies for access to communications networks', *Washington Post*, 30 August 2013; Glenn Greenwald, Ewen MacAskill, Laura Poitras, Spencer Ackerman and Dominic Rushe, 'Microsoft handed the NSA access to encrypted messages,' *The Guardian*, 12 July 2013; *The Guardian*, 'Sigint - how the NSA collaborates with technology companies. Document shows how 'signals intelligence', or Sigint, 'actively engages US and foreign IT industries to covertly influence and/or overtly leverage their commercial products' designs', September 5, 2013.

[31] James Ball, Julian Borger and Glenn Greenwald, 'How US and UK spy agencies defeat internet privacy and security', *The Guardian*, 6 September 2013; *Daily Mail Reporter*, 'NSA and GCHQ unlock encryption programs that EVERYONE uses to email and make purchases on their phones and tablets,' 5 September 2013; Marcel Rosenbach, Laura Poitras and Holger Stark, 'iSpy: How the NSA Accesses Smartphone Data', *Der Spiegel*, 9 September 2013; Barton Gellman and Ashkan Soltani, 'NSA infiltrates links to Yahoo, Google data centers worldwide, Snowden documents say', *The Washington Post*, 30 October 2013.

[32] Zygmunt Bauman and David Lyon, *Liquid Surveillance: A Conversation*, Polity, Cambridge, 2012.

[33] *Der Spiegel*, 'Prolific Partner: German Intelligence Used NSA Spy Program', 20 July 2013.

[34] Richard Norton-Taylor and Ian Cobain, 'MI5 fed questions to CIA for interrogation', *The Guardian*, 19 February 2009; *Frankfurter Allgemeine Zeitung*, 'Untersuchungsausschuß: Masri, BND, Guantánamo und CIA', 5 March 2006.

scholars and are hardly new.[35] Further, possible solutions to fill up the accountability deficit and to strengthen human rights protection are not absent. Scholars have elaborated quite extensively on international oversight mechanisms and have recommended well-thought and eloquent measures in order to protect civil and human rights.[36] Some scholars have even dumped traditional scientific restraint and diplomatic language and stated in no uncertain terms that we are not running the risk of losing control of international intelligence activities, but in fact have long lost the battle. 'These networks, which essentially regulate themselves, pose an increasingly serious threat to the preservation of liberal democracies', as for instance Sepper wrote.[37]

The pressing question from an academic perspective, however, is whether this traditional focus on rules and institutions is still appropriate for understanding, conceptualizing and researching current questions of overseeing international intelligence cooperation and the internationalisation of intelligence collection. Current difficulties in the institutionalized oversight of intelligence collection are a reflection of the broader issue of what has been labelled post-democratic tendencies. The notion of post-democracy should definitely not be confused with a notion of non-democracy. It refers, in the words of Colin Crouch,[38] to a transformation in which the forms and institutions of national electoral democracy remain fully in place while at the same time their meaning has been hollowed out as the main decisions are taken elsewhere. Post-democratic constellations reflect the shift in power relations in which national democratic institutions have not kept pace with economic and political globalisation.[39] Executive political power and economic power liberated themselves from national democratic constraints and rearranged themselves in diffuse international

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[35] See for instance Richard J. Aldrich, 'Global Intelligence Co-operation versus Accountability: New Facets to an Old Problem', in *Intelligence and National Security*, 2009, no. 1, pp. 26-56; T. Wetzling, *The democratic control of intergovernmental intelligence*, Working paper No. 165, DCAF, Geneva, 2006; H. Born, *International Intelligence Cooperation: The Need for Networking Accountability*. Speaking notes NATO Parliamentary Assembly Session at Reykjavik, 6 October 2007.

[36] See for instance B. van Ginkel, *Towards the intelligent use of intelligence: Quis Custodiet ipsos Custodes?, ICCT Research Paper*, The Hague, 2012; E. Sepper, 'Democracy, Human Rights, and Intelligence Sharing', in *Texas International Law Journal*, 2010, pp. 151-207; J. McGruddy, 'Multilateral Intelligence Collaboration and International Oversight', in *Journal of Strategic Security*, 2013, no. 5, pp. 214-220.

[37] E. Sepper, 'Democracy, Human Rights, and Intelligence Sharing', in *Texas International Law Journal*, 2010, pp. 151-207.

[38] C. Crouch, *Coping with Post Democracy*, Fabian Society, London, 2000.

[39] C. Crouch, *Coping with Post Democracy*, Fabian Society, London, 2000.

political structures and global markets. In a post-democratic constellation the relationship between politics, power and society has been broken.[40]

Discussing and researching democratic oversight on the internationalisation of intelligence while neglecting these fundamental power transformations in national democratic constellations is, as Ian Loader once put it nicely, a little bit like devoting all energy to strengthening the door of a stable which the horses have long since vacated. [41] Scholars emphasizing judicial and institutional remedies for the current gaps in oversight therefore sadly run the risk of becoming part of a mostly self-referential system gathering around what are merely *simulacra* of national democratic institutions: alive and kicking on paper, hollowed out in practice.[42] As a result, academic discussions about the oversight of national and international intelligence practices circulate in some kind of a vacuum, in which frequent references are made to high-principled democratic values being taken for granted. The assumption is that the vast majority of the Western executive power wishes to see nothing better than an adequate oversight, but somehow cannot come up with the right ideas as to how to materialize this objective, in the meantime ignoring fundamental shifts in power relations.

Personal data as commodities

It would be challenging from an academic perspective to look more into fields other than institutionalised oversight to understand future developments and the capabilities of the oversight of internationalised intelligence collection. First, the commodification of personal data could be a pretext, as the almost unlimited availability of personal data and communication patterns in the hands of the 'first-line collectors' is an important part of current intelligence practices. According to experts the collection and use of personal data by private intelligence multinationals like Facebook, Google, Apple, Twitter and Microsoft is still in its infancy. Personal data are increasingly becoming assets: commodities representing value. Data are

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[40] H. Farell, 'There is no alternative. Governments now answer to business, not voters. Mainstream parties grow ever harder to distinguish. Is democracy dead?', in *Aeon Magazine*, 2013. http://www.aeonmagazine.com/living-together/henry-farrell-post-democracy/.

[41] Loader, I. 'Governing European Policing: Some Problems and Prospects', in *Policing and Society*, 2002, Vol. 12, No. 4, pp. 291-305.

[42] See for instance: Glenn Greenwald, 'Fisa court oversight: a look inside a secret and empty process', *The Guardian*, 19 June 2013.

becoming, in the words of the World Economic Forum, a new 'type of raw material that's on par with capital and labour'; 'Personal data will be the new "oil" - a valuable resource of the 21st century. It will emerge as a new asset class touching all aspects of society. At its core, personal data represents a post-industrial opportunity.'[43]

The main question the World Economic Forum is concerned about is how to 'unleash value creation', and persuade individuals to 'participate in the creation, sharing and value generation from personal data'[44] as 'data needs to move to create value'. Data sitting alone on a server is 'like money hidden under a mattress. It is safe and secure, but largely stagnant and underutilized'.[45] Although the WEF is reluctant to apply strict privacy and data protection regulations, or limitations to the time during which data can be stored and used, as this could harm value creation, it recognizes the need to restore trust and to empower the individual as the main provider of data. A consequence of this line of reasoning could be the recognition that individuals have ownership of their data. The coming economic battlefield or 'data war' could then be about the question of how much a company has to pay an individual in order to obtain the right to use and process these data - which could set an important limit on the unhindered collection, storage and exploitation of personal data which, in turn, also limits or hampers the opportunities of intelligence agencies to harvest data.

Further, some business initiatives are emerging which recognize the individual ownership of personal data and the importance of privacy and acknowledging the need to set clear limits on reusing personal data. In that way, new market players can challenge the dominant business models of the current data multinationals. Next to that, as a consequence of the revelations by Snowden, a renationalisation of data markets could occur that counters the internationalization of intelligence collection. *Deutsche Telekom*, for instance, has used concerns over US surveillance as part of its marketing campaign 'E-mail Made in Germany'. E-mail messages within the service are encrypted, and users are warned when a message is being sent outside the safety of the trusted network. Brazil is introducing a bill that could require that data about Brazilians be stored on servers in the

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[43] World Economic Forum, *Personal Data: The Emergence of a New Asset Class*, WEF, Geneva, 2011.

[44] World Economic Forum, *Personal Data: The Emergence of a New Asset Class*, WEF, Geneva, 2011; World Economic Forum, *Unlocking the Value of Personal Data: From Collection to Usage*, WEF, Geneva, 2013.

[45] World Economic Forum, *Rethinking Personal Data: Strengthening Trust*, WEF, Geneva, 2012.

country. India plans to ban government employees from using email services from Google and Yahoo Inc.[46]

Undersight

Second, scholars should acknowledge that almost every intelligence scandal has been revealed by investigative journalists and/or whistle-blowers. None by the institutions formally in charge of overseeing intelligence. That is a track record that cannot simply be ignored or downplayed. This, however, is not only an empirical observation; it can also be fruitfully conceptualized in the context of post-democracy and puts the question of power again at the forefront of researching intelligence and oversight. As individuals lose their faith and trust in formal democratic structures and institutions or the protection offered by laws and institutions, and as power shifts towards private entities and international institutions seemingly immune from any democratic cure, actors from civil society will fill the gap. Whistleblowers like Bradley Manning and Edward Snowden, working together with investigative journalists and organisations like *WikiLeaks*, therefore represent at the moment the *de facto* counter-powers within post-democratic constellations. This manifestations of 'regulation by revelation'[47] therefore deserves more academic attention, for instance by studying different initiatives to strengthen the relationship between whistle-blowers and investigative journalism, or the protection of whistle-blowers in general, such as for instance the 'PubLeaks' initiative in the Netherlands.

In general terms, influenced by the same technological developments that enable private companies and intelligence services to monitor vast amounts of data, individuals are becoming more capable of 'looking back' and sharing their revelations with a world audience. 'With mobile and pervasive computing quickly becoming part of our reality, the possibility for sousveillance - that is undersight of political and corporate entities, the 'watchers' - becomes increasingly possible,' as Mann and Ferenbok

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[46] Elisabeth Dwoskin and Francis Robinson, 'NSA Internet Spying Sparks Race to Create Offshore Havens for Data Privacy,' *Wall Street Journal*, 27 September 2013. This is not to suggest that any form of intelligence collection would then be prohibited or that German or other intelligence agencies in Europe are not interested in hovering data. See for instance: Adam Entous and Siobhan Gorman, 'U.S. Says France, Spain Aided NSA Spying', *Wall Street Journal*, 29 October 2013.

[47] Richard J. Aldrich, 'Global Intelligence Co-operation versus Accountability: New Facets to an Old Problem', in *Intelligence and National Security*, 2009, no. 1, pp. 26-56.

argue.[48] Sousveillance could therefore create a 'social check-and-balance to potentially serve as a mechanism for helping to regulate the scope and socio-political boundaries of institutional surveillance practices'.[49] Also these kinds of developments and initiatives from civil society deserve more academic attention, as do other initiatives for instance aimed at 'Staying out of the Grid' or countering the general trends of 'governance through surveillance'[50] in modern societies.[51]

Conclusion

The suggestions for new directions of conceptualizing, researching and understanding the relationship between intelligence collection and oversight mentioned above are based on empirical observations. It is not a normative statement in which the economic battles surrounding the commodification of personal data and current manifestations of undersight are heralded simply as superior forms of true democratic oversight. Questions of course can and should be asked about the democratic legitimacy of individuals deciding to go public with national secrets; especially if it manifests itself in a 'full-blown' type of total transparency like some parts of the *WikiLeaks* project, regardless of the consequences. Further, whether 'regulation by revelation' has a future remains to be seen. The crack-down by the US administration on whistle-blowers[52] and the comparable crack-down by the UK government on the *Guardian* journalists and the freedom of the press provide an idea of the risks involved in 'speaking truth to power' from a de-institutionalized position.[53] Also the

[48] S. Mann and J. Ferenbok, 'New Media and the Power Politics of Sousveillance in a Surveillance-Dominated World', in *Surveillance & Society*, 2013, no. 1/2, pp. 18-34.

[49] S. Mann and J. Ferenbok, 'New Media and the Power Politics of Sousveillance in a Surveillance-Dominated World', in *Surveillance & Society*, 2013, no. 1/2, pp. 18-34.

[50] Monica den Boer and Jelle van Buuren, 'Security Clouds' in *Journal of Cultural Economy*, 2012, No. 1, pp. 85-103.

[51] See for instance O. Leistert, 'Resistance against Cyber-Surveillance within Social Movements and how Surveillance Adapts', in *Surveillance & Society*, 2012, No. 4, pp. 441-456.

[52] Jeffrey T. Richelson, 'Intelligence Secrets and Unauthorized Disclosures: Confronting Some Fundamental Issues', in *International Journal of Intelligence and CounterIntelligence*, 2012, no. 4, pp. 639-677.

[53] Jay Rosen, 'The NSA's next move: silencing university professors?', *The Guardian*, 10 September 2013; *The Guardian*, 'Glenn Greenwald's partner detained at Heathrow airport for nine hours: David Miranda, partner of Guardian interviewer of whistleblower Edward Snowden, questioned under Terrorism Act', 19 August 2013; Alan Rusbridger, 'David Miranda,

commodification of personal data and competitive struggles in which privacy protection serves as a competitive advantage has its downsides; in fact it strengthens the domination of market mechanisms as an organising principle of society and in that way it reinforces some of the pathologies of post-democracy as democratic institutions serving the public interest no longer decide on the scope and nature of intelligence collection but instead marketised power relations.

In general, national democratic institutions face the unattractive position of being bypassed both by a parallel global executive power structure of hybrid public and private intelligence assemblages - 'covernments' and 'gorporations' as Mann and Ferenbok[54] call these entities - as well as by a parallel civil society power structure that no longer bothers with politics and democratic institutions. The facts however suggest that currently the prime oversight actors are situated in civil society and that institutionalised oversight is chiefly a secondary actor or mechanism: only when the reality of internationalized and privatized intelligence collection is being exposed or challenged by civil society actors does institutionalised oversight come into play - and then indeed has the very important function of confronting executive and market power and setting the record straight. From a normative, liberal democratic point of view this division of roles is maybe far from satisfactory. However, as international intelligence collection turns nodal and hybrid, the academic study of oversight should act accordingly.

schedule 7 and the danger that all reporters now face', *The Guardian*, 19 August 2013; see for the use and misuse of media outlets by intelligence services Shlomo Shpiro, 'The Media Strategies of Intelligence Services', in *International Journal of Intelligence and Counterintelligence*, 2001, no. 4, pp. 485-502.

[54] S. Mann and J. Ferenbok, 'New Media and the Power Politics of Sousveillance in a Surveillance-Dominated World', in *Surveillance & Society*, 2013, no. 1/2, pp. 18-34.