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Amitai Etzioni. "NSA: National Security vs. Individual Rights." *Intelligence and National Security* 30:1 (2015): 100-136. DOI: 10.1080/02684527.2013.867221.

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In "NSA: National Security vs. Individual Rights," Amitai Etzioni examines a challenging set of questions surrounding the existence of National Security Agency's (NSA) clandestine data collection programs including whether the threat to national security justify them, whether the programs are effective, to what extent they may violate the privacy of Americans, whether such programs are in line with the Constitution and laws, and whether there is sufficient accountability of oversight of these programs.

In carrying out his analysis Etzioni reviews the arguments made by opponents and supporters of the NSA surveillance programs, giving particular attention to the arguments raised by those opposed to it. He organizes his analysis around a liberal communitarian perspective which holds that in making policy decisions, leaders are confronted with a set of competing goals which cannot be individually maximized, fully reconciled with one another, or dismissed as not worthy of attention. The inevitable resulting tension requires that leaders must work to establish a balance between them. In the case of the NSA surveillance programs two such competing goals are present: promoting national security and protecting individual rights.

His principle conclusions regarding the national security dimension of the problem are that 1) given the level of risk posed by terrorists, measures to enhance national security are justified so long as they are no more than

minimally intrusive on individual rights; 2) these measures need to go beyond a criminal justice approach to dealing with terrorists and 3) these programs can be considered to be effective. In examining the extent to which the NSA programs undermine Americans' individual rights, Etzioni concludes the NSA programs have not violated the Constitution or the law and that their intrusiveness is low and therefore should be tolerated.

The next question addressed is whether the programs might yet still be terminated out of a concern that the NSA has failed to comply with specific laws governing its operation or misled overseers. Etzioni's position is that "one can accord the government more license to surveil the population commensurate to the degree to which its surveillance programs are themselves subject to surveillance" (129). He then argues for a strategy of enhanced accountability rather than increased transparency as the most effective line of action. Etzioni then examines a final issue that has been raised: should the NSA programs be terminated out of a fear that they could be used against the American public by a possible future tyrant. He concludes that such a position lacks merit given the limited nature of the actions being taken by the NSA.

Etzioni's liberal-communitarian based analysis provides readers with a wealth of information to consider in reaching their own conclusions as to the where they place themselves on the continuum of the committed opponents to the NSA surveillance programs found on one extreme to the staunch defenders at the other. His analysis establishes a strong case for a middle-ground position that some form of surveillance program is justifiable, given the nature of the threat facing the United States, provided that its impact on civil liberties is constantly monitored and evaluated. The exact positioning of that middle ground is left undefined.

One area where I would have liked to have seen the discussion extended (and given the wide-ranging nature of the analysis carried out in this article, space constraints may have precluded this) is to apply the logic of the libertarian communitarian philosophy to a more fundamental and practical problem with NSA oversight than that created by the possible arrival of a tyrant into office. It is the problem that under normal conditions, intelligence accountability is made difficult and challenging by the presence of inescapable political and organization forces. It strikes me that unless the influence of these forces is recognized and addressed, future controversies over the extent of surveillance on Americans are inescapable and the programs created may come to exceed the boundaries of permissible activity as identified by Etzioni.

The political forces are most pronounced in the manner in which presidents and members of Congress approach their responsibility for oversight of intelligence organizations. Amy Zegart cites limited expertise and weak budgetary power over the intelligence community as persistent problems rooted in electoral disincentives to engage in oversight and internal congressional turf battles.¹ Loch Johnson chronicles a repeated pattern of congressional intelligence oversight in which anticipatory police patrolling is far less common than after-the-fact fire-fighting oversight which in turn gives way to another period of congressional inattention.² And, as the highly partisan and accusatory rhetoric of the hearings over who was responsible for the successful attack on the U.S. diplomatic post in Benghazi reveal, congressional intelligence oversight hearings and investigations may just as easily be about setting fires as they are about extinguishing them.

¹ Amy Zegart, "The Domestic Politics of Irrational Intelligence Oversight," *Political Science Quarterly* 126 (Spring 2011), 1-27.

² Loch Johnson, "A Shock Theory of Congressional Accountability for Intelligence," in Loch Johnson (ed.), *Handbook of Intelligence Studies* (Abingdon: Routledge, 2009), 343-60.

Within the White House, the primary political imperatives are to avoid being held responsible for foreign policy failures and to be in a position to claim credit for foreign policy successes. Intelligence is vital to both. Assertions by intelligence officials that ‘we do not know’ produce calls for finding answers and finding them quickly. From the intelligence community’s perspective, at the heart of any strategy for finding answers is the need to gather more information. As NSA Director General Keith Alexander put it, you need a haystack to find a needle.³

A set of organizational imperatives can be identified that are present in organizations which work against externally situated accountability mechanisms and transparency. The NSA is no exception. Foremost among these is the perceived need to control its environment in order to ensure its own survival. A central element to the survival strategies is placing boundaries around the organization that are sufficiently porous to allow needed information to reach organizational leaders yet sufficiently thick to protect core processes from being undermined by disruptions and uncertainties in the environment. A major source of these disruptions and uncertainties are efforts by outside shareholders to control an organization’s actions. Commonly used strategies include acquiring prestige, coopting threatening forces, and forming coalitions with key external forces.

Organizational responses to uncertainty in its task environments are not simply a function of repositioning boundaries in order to protect core technologies or taking steps to contain the influence of powerful external forces. They also reflect the collective set of values and beliefs of those inside the organization. Most significantly, in responding to environmental turbulence, “organizations observe and interpret events according to theories of action encoded in their strategies and ideologies.”⁴ The goals and values central to an organization’s culture potentially serve as powerful tools that can be used by organizational leaders in their dealings with forces outside the organization. In this regard, Harold Wilensky wrote in 1967 that “there is a general tendency for agencies charged with gathering intelligence on internal security to magnify the internal threat and for agencies responsible for external security to magnify the power of the outside enemy.”⁵

Organizational culture presents a significant challenge to efforts at increasing transparency and accountability because it is not readily engineered by management or external stakeholders. On more than one occasion in its recent history, NSA directors have sought to better understand its culture with an eye to changing it. Upon assuming the position of Director, Lt. Gen. Michael Hayden organized two different groups, one composed of insiders and one of outsiders, to examine the NSA’s inner workings and make recommendations for changes. The insider group called for attacking the existence of internal barriers to communication, characterized the NSA as an organization whose individual capabilities transcended its organizational capabilities, and spoke of an “insular, sometimes arrogant culture.” The outside team criticized its “secrecy

³ David Sanger, and Eric Schmitt, “N.S.A. Imposes Rule to Protect Data Stored on Its Networks,” *The New York Times*, July 19, 2013, 16.

⁴ Alan Meyer, et al., “Organizations Reacting to Hyperturbulence,” in George Huber and William Glick (eds), *Organizational Change and Redesign* (New York: Oxford, 1995), 70.

⁵ Harold Wilensky, *Organizational Intelligence* (New York: Basic Books, 1967), 136.

driven culture.”⁶ Hayden was succeeded by Lt. Gen. Alexander, who ordered another internal study. It concluded the NSA lacked a unity of purpose and an identity crisis. Fragmentation, it argued, had created a lack of trust within the organization.⁷

Further compounding the oversight problems is the limited ability of laws to control and direct the behavior of public organizations. David Feldman observes that a legal rule may establish broad parameters and standards for organization behavior that may not be justiciable.⁸ Furthermore, he notes that organizations perceive and respond to power-conferring rules differently than they do to power-constricting rules. The former are embraced while the later are likely to be seen as counterproductive and having a limited impact on organizational behavior.

Taken together, these political and organizational forces do not negate Etzioni’s underlying argument that a middle ground exists between the libertarian and authoritarian positions on NSA surveillance, but they do point to an urgent need for continued analysis if a middle ground is to be found that can be successfully subjected to external oversight.

Glenn Hastedt received a Ph.D. in political science from Indiana University. He is Professor and Chair of the justice studies department at James Madison University. His articles have appeared in *Intelligence and National Security*, *International Journal of Intelligence and Counterintelligence*, and *The Journal of Intelligence History*. He is also the author of *American Foreign Policy: Past, Present, Future* (10th ed., 2015).

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⁶ James Bamford, *Body of Secrets* (New York: Anchor Books, 2001), 471.

⁷ James Bamford, *The Shadow Factory* (New York: Anchor, 2009), 331-2.

⁸ David Feldman, “The Limits of Law: Can Laws Regulate Public Administration?” in B. Guy Peters and Jon Pierre (eds.), *Handbook of Public Administration* (London: Sage, 2003), 279-91.