

INTELLIGENCE AND ACCOUNTABILITY PRINCIPLES: DILEMMAS FOR LEGITIMACY IN SPAIN AND BRAZIL

YAURI-MIRANDA, Jaseff Raziel
(University of the Basque Country (UPV/EHU))

Copyright: Research Institute for European and American Studies (www.rieas.gr)
Publication date: 9 June 2019

Note: The article reflects the opinion of the author and not necessarily the views of the Research Institute for European and American Studies (RIEAS).

How is the relationship between intelligence and accountability in the last years? In different countries, this dilemma has been treated in a different fashion according to four principles: a) Responsibility, in the internal controls and institutional designs to configure the community of intelligence. b) Regulation, in the oversight and control of intelligence by Parliamentary bodies. c) Justice, as in the judicial authorization and control of intelligence activities that affect fundamental rights of citizens (Bovens et al., 2014); and d) Trust, in the participation of citizens in governmental policies or in the closer connection between authority and legitimacy. This text shows the basic patterns of accountability in those points, as well as the dilemmas and forms to improve the legitimacy of intelligence services in Spain and Brazil.

Those places are selected as representative samples of Southern European and Latin American regions in their historical legacies of intelligence experiences after regimes and dictatorships in the late 20th Century (Zegart, 2000; Cepik, 2001; Ugarte, 2002; Numeriano, 2007; Estévez, 2014). The selection is logical and theoretical, as they could enable an analytical generalization for other cases although without statistical generalizations in each region.

In the case of the first principle, responsibility, enabling new administrative and institutional designs to manage and construct the activity intelligence can be considered as forms of internal control. That is, they work as self-restraining mechanisms that Governments and the administration use to control the activity of intelligence, giving preeminence either to CNI or to ABIN in each country. The institutional designs were product of several decades of negotiations and political evolution and show that the intelligence services are structurally sui generis public agencies, hierarchically linked to the Executive Branch - who periodically elaborate a national intelligence policy - and are subject to a special regime that regulates their organization and functioning. Thus, the institutional designs also can be considered as attempts to demonstrate that “something is being done” in terms of intelligence. They are the first step that encompass and demonstrate the functions, tasks, principles and rules that guide this activity, in order to reconsider the mandates and the authority given to those institutions,

via indirect forms such as election of governments and coalitions that in turn will establish the directives and missions to intelligence.

As this kind of control is a basic and insufficient form of accountability, it is important to consider the Regulatory principle enacted by the role of Parliamentary commissions in each country. Parliaments are new actors and have the capacity to demand accounts from intelligence leaders. However, the restraining mechanisms of the authority of the Executive is hampered insofar members of the Parliament lack knowledge to scrutinize the intelligence activity or depend on the very information and discretionary power of those agencies to request information and correct the directives of intelligence. Moreover, most of the Parliament commissions worked in a reactive base, demanding answers after scandals or evident wrongdoings. In the case of Brazil, only in 2013 the Commission of Intelligence Activity was enacted and constituted as a permanent legislative body.

Notwithstanding, the Parliament role is an ongoing process of trial and error that could be improved in order to enhance accountability. In that case, members of the parliamentary commissions responsible for financial control should have sufficient human and technological resources to understand the finances of the intelligence services in order to conduct valid scrutiny.

Moreover, they should have sufficient powers and will to change and implement recommendations in the intelligence services. In that sense, representatives of the people should ensure that there are links between external audit bodies so that the results of ex post reviews and audits can be used to support future proposals. Finally, they should prepare public versions of their actions and make periodic reports of their activities.

In terms of the principle of Justice, Courts and Judges should have capacity to oversight the interference against fundamental rights, such as privacy, individual autonomy, not interference in communications and personal data. Yet, since intelligence and security reasons are exceptions to those rules, the exceptional character and intromission on those right needs to be regulated.

In Spain, this oversight is conducted by one State Magistrate whereas in Brazil there is no legal control and authorization to carry out those interferences. However, the real practices and interferences of those rights demand a caution approach to regulate intelligence, promoting individual rights and justice as teleological principles that orient their contingent suspension based on intelligence and security grounds, avoiding, thus, a spurious conflict between liberty and security.

The principle of trust remains untouched insofar the civil agency and role of citizens to oversight intelligence needs prospective studies and approaches. Aside of the role of social groups of pressure, independent media, investigative journalism, and scholars, the direct involvement of citizens to constitute commissions of audit and control, as well as to expand the principles of direct democracy and participatory democratic standards are

still debatable in a field encompassed by top-down policies. Yet, the incorporation of the latter principle could be a last barrier to be overpassed in order to expand the base of legitimacy of the intelligence activity.

References.

Bovens, M., Goodin, R. E., & Schillemans, T. (Eds.). (2014). *The Oxford handbook of public accountability*. Oxford: University Press.

Cepik, M. (2003). *Espionagem e democracia*. Rio de Janeiro: FGV Editora.

Estévez, E. E. (2014). "Comparing Intelligence Democratization in Latin America: Argentina, Peru, and Ecuador Cases". *Intelligence and National Security*, 29(4), 552-580.

Numeriano, C. R. M. (2007). *A inteligência civil do Brasil, Portugal e Espanha: Legados táticos como constrangimentos à democratização da inteligência de estado na transição e consolidação democrática*. Thesis Dissertation, Recife: Universidade Federal de Pernambuco.

Ugarte, J. (2002). *Control Público de la Actividad de Inteligencia: Europa y América Latina, una visión comparativa*. Buenos Aires: Centro de Estudios Internacionales para el Desarrollo. Documentos de trabajo, 16.

Zegart, A. B. (2000). *Flawed by Design: The Evolution of the CIA, JCS, and NSC*. Stanford, CA: Stanford University Press.