

# 7 The anatomy of political impunity in New Zealand

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## Introduction

Two intelligence and security agencies foster a cadre of New Zealand intelligence professionals and, together, currently employ about 800 people. The Government Communications Security Bureau (GCSB), which specialises in signals intelligence and delivers information assurance and cybersecurity services, was formally established in 1977, though New Zealand's SIGINT capabilities existed since the Second World War and were initially managed within the Defence establishment.<sup>1</sup> Specialising in human intelligence and delivering protective security services, the New Zealand Security Intelligence Service (NZSIS) was established in 1956, though New Zealand's HUMINT capabilities had previously been part of the Special Branch of the New Zealand Police.<sup>2</sup> New Zealand intelligence professionals became foundational members of a transnational guild, which coheres around the National Security Agency (NSA) of the United States and its global surveillance network, upon joining the UKUSA Agreement in 1956.<sup>3</sup> Despite their position at the centre of different national bureaucracies, this politico-social group is a transnational guild in the sense that it comprises "actors whose struggles and solidarity at a distance are connected with a profession and, inside this profession, with a specific craft explaining the common dispositions between individuals who are very distant from each other."<sup>4</sup> The bonds of membership to this guild are forged not only through the regular exchange of information and the sharing of surveillance technologies and technical expertise, but also through staff exchanges, secondments, and the creation of liaison positions within foreign agencies, all of which create an *esprit de corps*, shared goals and a common worldview. As these transnational bonds strengthen over time, the liminality of New Zealand intelligence professionals might mean they have more in common with their foreign counterparts than with many members of the public they serve.<sup>5</sup>

The laws specifically concerning New Zealand intelligence and security agencies have evolved since they were first passed in 1969 but continue to facilitate New Zealand's ongoing engagement with this transnational guild. Because New Zealand's obligations under the UKUSA Agreement were kept

secret from the public and most parliamentarians, the NZSIS Act 1969 only states that in performing its functions the NZSIS “contributes to the participation of New Zealand in the maintenance of international security,”<sup>6</sup> and the GCSB Act 2003 only states that one of the Bureau’s objectives is to provide “foreign intelligence to meet the international obligations and commitments of the Government of New Zealand.”<sup>7</sup> The Intelligence and Security Act 2017 leaves open the possibility of sharing intelligence with international partners through the objective of contributing to “the international relations and well-being of New Zealand.”<sup>8</sup> These international partnerships are anchored in the GCSB’s obligations under the UKUSA Agreement, but also include so-called third-party agreements, such as SIGINT Seniors Pacific and SIGINT Seniors Europe,<sup>9</sup> though the 2017 Act explicitly requires ministerial approval before any more such agreements can be joined. Generally speaking, New Zealand law is highly permissive when it comes to authorising New Zealand intelligence activities and sections 110 and 111 of the Intelligence and Security Act 2017 provide immunity to the Director-General of an intelligence and security agency, and any employee of those agencies, from criminal liability for any act done in good faith to obtain an intelligence warrant or for carrying out any authorised activity, respectively. Lawful limits of these activities are enacted by the New Zealand Government’s obligations under international human rights law, but international humanitarian law, international criminal law, or public international law concerning the use of armed force in international affairs are not mentioned in the Act.

Democratic control over New Zealand intelligence activities is exercised through ministerial responsibilities which form part of the public accountability arrangements that are the cornerstone of New Zealand’s Westminster-styled system of cabinet government,<sup>10</sup> as well as through three inquisitorial oversight measures: the parliamentary Intelligence and Security Committee (ISC) that scrutinises the policies, administration, and expenditure of the GCSB and the NZSIS;<sup>11</sup> periodic statutory reviews undertaken to assure parliamentarians the legislative frameworks that enable and constrain activities undertaken by New Zealand intelligence professionals are fit for purpose;<sup>12</sup> and the Inspector-General of Intelligence and Security (IGIS) who offers assurance to parliamentarians that the intelligence professionals working at the GCSB and the NZSIS act lawfully and, following an amendment in 2013, with propriety.<sup>13</sup> These ministerial responsibilities and oversight measures have occasionally been augmented by ad-hoc inquisitorial reviews.<sup>14</sup> While parliament acts here as a kind of proxy for the watchful gaze of the body politic, the agencies make unclassified versions of their annual reports available to the public, and the ISC, statutory reviewers, and the IGIS have followed suit in an ongoing effort to provide a greater degree of transparency around non-secret intelligence matters. However, far from restricting the engagement of New Zealand intelligence professionals with the transnational guild, this chapter argues that these controls provide the politico-legal

conditions required for those professionals to maintain and develop their membership of that guild. Put simply, intelligence professionals need not navigate legal constraints imposed by oversight measures because these measures are designed to facilitate an increasing interdependence among their disciplinary counterparts located in the bureaucracies of other states.

A by-product of widespread methodological nationalism and an unwavering ontological commitment to the state as the primary entity of contemporary world affairs, the academic literature on the GCSB and the NZSIS gives focus to the establishment and development of the agencies,<sup>15</sup> their external relations,<sup>16</sup> related legislative reform,<sup>17</sup> and governance arrangements.<sup>18</sup> However, scholars have not yet offered a detailed examination of the role played by professionals of politics in enabling and constraining New Zealand intelligence activities.<sup>19</sup> This is somewhat surprising because ministers, as elected representatives of the public, are ultimately responsible for maintaining state sovereignty, ensuring the integrity of democratic institutions, and protecting the population from harms associated with various types of political violence. They are the national authorising agents allowing New Zealand intelligence professionals to operate within a transnational field of surveillance and intelligence populated not only by their counterparts from western democracies, but also their adversaries from Russia, China, and a host of non-democratic regimes.<sup>20</sup> This chapter aims to help remedy that deficiency while adding a too-often neglected case study to the intelligence studies literature concerned with the control of intelligence activities within western liberal democracies: specifically Australia, Canada, and the United Kingdom as well as the United States; but others too.<sup>21</sup> The ensuing examination of this case shows how, and explains why, public accountability arrangements and oversight measures are designed and reformed in ways that allow for, and legitimise, secret violence undertaken on behalf of governments and, more significantly, their foreign partners, thereby augmenting the criminal immunity enjoyed by intelligence professionals when they support that secret use of violence. This matters because “[t]he intensity and visibility of violence may seem to decrease in open conflicts, but as soon as the changes of forms of violence are taken into consideration, as well as the size of their targets and the implications for everyone, it is clear that violence performed by secret services in less visible ways than before continues and extends, nevertheless.”<sup>22</sup> Drawing on Pierre Bourdieu’s concept of the field to explain why political impunity was created and is seemingly strengthened at every opportunity, the case analysis that follows should be of interest not so much for what it shows about how a small state deals with far more powerful states within an alliance framework, but more for what it reveals about professionals of politics who, struggling within their national field of power over the right to rule their realm through legislative and executive power, position themselves in relation to those New Zealand intelligence professionals who belong to that transnational guild.

The chapter is structured in three sections. The first section demonstrates how successive scandals embroiling intelligence professionals have been

seized upon as opportunities to remediate democratic controls over New Zealand intelligence activities while shielding responsible ministers from any blame. The second section shows that inquisitorial oversight measures constitute important politico-legal conditions that facilitate New Zealand intelligence professionals' ongoing engagement with the transnational guild and, by extension, legitimise their complicity with various forms of state violence. The final section explains how cultivating an uninformed citizenry undermines the public's ability to hold responsible ministers to account and functions as a guarantor of political impunity.

### **Intelligence scandal as political opportunity**

While several controversies feature in the history of New Zealand's intelligence and security agencies, more recent scandals continue to shape the public's low trust and confidence in intelligence professionals today.<sup>23</sup> In 2013, the public became aware that the GCSB unlawfully conducted surveillance of Kim Dotcom, a German-Finnish entrepreneur with permanent residence status in New Zealand, when it monitored his personal communications to assist the New Zealand Police with the execution of a search warrant on 22 January 2012.<sup>24</sup> In a spectacular raid that involved 76 black-clad armed officers, some arriving in helicopters, Dotcom and his associates were arrested that day for alleged violations of US copyright law in accordance with a Mutual Legal Assistance Treaty between New Zealand and the United States.<sup>25</sup> As the Dotcom affair unfolded, Edward Snowden's unauthorised disclosure of official information belonging to the NSA raised uncomfortable questions about the GCSB's partnership with the American spy agency and the extent to which their surveillance activities capture New Zealanders' private information and communications.<sup>26</sup> Concern grew over New Zealand intelligence professionals' awareness of, and involvement with, the torture and rendition programme operated by the United States Central Intelligence Agency (CIA) following Senator Feinstein's documentation of torture and abuse at US Prisons in Abu Gharib, Iraq and Guantanamo Bay, Cuba, which was declassified in 2014.<sup>27</sup> In 2015, two investigative journalists made serious allegations that the New Zealand Special Air Service (NZSAS) committed war crimes in Afghanistan after the United States had attacked, invaded, and occupied that country as part of its so-called war on terrorism.<sup>28</sup> At the heart of these scandals lies an unease about the relationship between New Zealand intelligence professionals, the United States Government, and the secret use of state violence.<sup>29</sup>

John Key, prime minister of New Zealand between 2008 and 2016, became embroiled in these scandals, among others. By insisting he had not heard of Dotcom until 17 September 2012, Key misled the public over when he first became aware of Dotcom's existence and learnt of the GCSB's interest in him because Key received a briefing that included a photo of Dotcom on a visit to the GCSB on 29 February 2012. Confronted with evidence that he misled the

public, Key corrected the Hansard record on 16 October 2012.<sup>30</sup> It then came to light in April 2013 that Key had appointed Ian Fletcher as Director of the GCSB, and that Fletcher was a family friend during Key's childhood and had not been aware of the vacancy until Key had called him about it. Having denied the allegation until Fletcher confirmed the facts of the matter, Key conceded he had intervened in the process, citing a faulty memory as his excuse. In 2014, the public became aware that the NZSIS released redacted documents in 2011 – concerning a meeting between the Director of NZSIS and the Leader of the Opposition that included a briefing on an investigation into Israeli intelligence activities – to a well-known blogger named Cameron Slater who claimed a close association to the Prime Minister and is the son of a former National Party President (the party to which Key belonged), but refused media requests for the same information.<sup>31</sup> A staffer within the prime minister's office gave more information provided by the NZSIS to Slater who then used that information to criticise the Opposition leader for Key's political advantage during an election year.

Official investigations responding to those scandals were seized upon as opportunities to undertake remedial intervention into the democratic controls over New Zealand intelligence activities while diffusing and obfuscating any ministerial responsibility. Following her review of the lawfulness of the GCSB's surveillance of New Zealanders, Rebecca Kitteridge found the GCSB conducted surveillance of a further 55 cases involving 85 individuals to support law-enforcement agencies that may have been unlawful because they contravened New Zealand law at the time, though the IGIS subsequently found these to be lawful.<sup>32</sup> Kitteridge's report made 80 recommendations, most of which concerned internal compliance processes and the organisation's capability to comply with its obligations to protect the privacy rights of New Zealanders. While the role played by the minister in charge of the GCSB was ruled out of scope by the terms of reference, Kitteridge recommended strengthening the IGIS by "broadening the pool of candidates, increasing the resources and staff supporting the IGIS, and making the work programme, audits and reporting expectations of the IGIS more explicit."<sup>33</sup> Following the implementation of Kitteridge's recommendations, Sir Michael Cullen and Dame Patsy Reddy were engaged to conduct the first comprehensive review of the legal framework governing the work of New Zealand intelligence professionals and to consider their proper role and what New Zealanders should expect of them.<sup>34</sup> Cullen and Reddy recommended a single act of legislation to consolidate the objectives, functions, and powers of the two intelligence and security agencies, as well as the provisions for oversight measures. However, when it came to strengthening the ministerial responsibilities for New Zealand intelligence activities, they merely suggested that "the Agencies should continue to consult with the Leader of the Opposition about matters relating to security and the GCSB's intelligence gathering and assistance functions. The Agencies should also, as they see fit, consult with the leader of any other political party in Parliament as defined in the Standing

Orders of the House of Representatives about such matters.”<sup>35</sup> They recommended preserving the political independence of the IGIS while enhancing its functions and powers; increasing the membership of the parliamentary ISC to achieve a greater representation of political views while suggesting the prime minister need not always be the chairperson of the committee; and that the ISC be able to request the IGIS conduct an inquiry into matters of their concern.<sup>36</sup>

In response to the abovementioned scandals, Prime Minister Key reformed the public accountability arrangements for intelligence activities – which were focused on the prime minister who had traditionally served as minister-in-charge of the GCSB and the NZSIS – by creating separate ministerial portfolios for both agencies and then handing these ministerial responsibilities to a senior member of his cabinet in 2014. This change was then included in the Intelligence and Security Act 2017, which ensured the prime minister was no longer involved in authorising intelligence warrants as parliament introduced an authorisation regime using two types of intelligence warrants that required their ministerial sign off: the first of which are issued jointly by the minister responsible for the NZSIS and/or the GCSB and a commissioner of intelligence warrants; the second are issued only by the authorising minister(s) but can involve the minister of foreign affairs in certain situations. This new authorisation regime replaced the explicit prohibition on intercepting the communications of New Zealanders, making what was clearly unlawful under the GCSB Act 2003 lawful under the 2017 Act.<sup>37</sup> Whereas under the previous arrangement the prime minister was, in effect, holding him or herself to account for the conduct of the intelligence and security agencies, the minister responsible for the GCSB and the NZSIS is now held accountable for the proper and efficient performance of agency functions by the House of Representatives, through the ISC is still chaired by the prime minister.<sup>38</sup>

Yet those changes preserved the limits of ministerial responsibility for New Zealand intelligence activities. While separate ministerial portfolios now exist for the GCSB and the NZSIS, there appears to be an emerging custom whereby these two portfolios are allocated to the same minister.<sup>39</sup> When a senior cabinet minister holds multiple portfolios, crises in other portfolios, including a global pandemic, have limited their ability to lead on intelligence matters. Furthermore, having one minister responsible for both intelligence and security agencies creates a single intelligence account that removes the contestability of official advice on intelligence matters to cabinet. In discharging their ministerial duties, the minister responsible for both agencies necessarily consults with other ministers holding related portfolios concerning foreign affairs, defence, and law and order, and remains bound by the collective responsibility of cabinet. However, the scope of this ministerial responsibility does not extend to all intelligence activities conducted by all government departments that collect, analyse, and assess intelligence for their own organisational purposes.<sup>40</sup> This means that much of New Zealand’s intelligence activities, including commercial intelligence services performed by

former state intelligence professionals, occur beyond the minister's purview.<sup>41</sup> Nor does it cover the conduct of those officers in the police or military who act forcefully on any such intelligence.

Bourdieu's concept of the field helps explain how and why this political impunity was created and seemingly strengthened at every opportunity by parliamentarians.<sup>42</sup> As agents in the national field of power, professionals of politics become parliamentarians when they gain membership to their national assemblies and then, as parliamentarians, usually seek to occupy the so-called Treasury benches to obtain and hold the authority to rule through legislative and executive power. As ministers, these professionals of politics tend to use their executive power in ways that help them prevail over their parliamentary opponents and rivals. Ministerial performance becomes an object of contestation among parliamentarians – with poor performances exposed and ridiculed by members of the opposition and, sometimes, the cause for demotion among rivals within cabinet – as elected representatives within liberal democracies are more often concerned with defending their actions (or inactions) and avoiding blame than they are with claiming credit. This is because voters are more inclined to cast their ballots to register their disapproval of a politician's performance than to signal approval.<sup>43</sup> Unlike high-profile portfolios, such as finance or foreign affairs, that are sought after in part because these can be used to enhance a minister's prestige, ministerial portfolios for intelligence offer very little ammunition in the wider struggles that constitute parliamentary politics. In other words, like a metaphorical "ticking timebomb" intelligence portfolios constitute a high-risk but low-reward proposition for ministers. The contestation over ministerial responsibility for intelligence agencies appears lacklustre when compared to parliamentary struggles over, say, managing the economy, advancing tax policy, or delivering health and education outcomes, because most of the agents in the field, including the leader of the opposition and the opposition's spokesperson for intelligence matters, adopt conservative strategies. According to Bourdieu:

Those in dominant positions operate essentially defensive strategies, designed to perpetuate the status quo by maintaining themselves and the principles on which their dominance is based. The world is as it should be, since they are on top and clearly deserve to be there; excellence therefore consists in being what one is, with reserve and understatement, urbanely hinting at the immensity of one's means by the economy of one's means, refusing the assertive, attention-seeking strategies which expose the pretensions of the young pretenders. The dominant are drawn towards silence, discretion and secrecy ...<sup>44</sup>

Equipped with the power to set the legislative and executive agendas, the prime minister sits at the apex of parliamentary politics and wields a monopoly on the capital needed to consecrate parliamentary agents as ministers or to relieve ministers of their portfolios. Indeed, the national field of

power is not only structured by the relationship of each agent to the prime minister's dominance, but also by the struggles among those agents to secure the benefits associated with that dominant position. Few agents involved in parliamentary politics and who covet the prime minister's position wish to see its power fettered. Indeed, most agents have an interest in ensuring their dominance in the field by protecting the post's prestige from scandals and controversies flowing from intelligence activities. That is why, using their law-making powers, parliamentarians insulated the prime minister from further scandals through the introduction of the Intelligence and Security Act in 2017. It is a Faustian pact that allows intelligence professionals to inhabit the national bureaucracy while belonging to a transnational guild, but where intelligence scandals embroil responsible ministers those intelligence professionals must carry the blame.

### **Using oversight measures to turn a blind eye**

Whereas intelligence scandals are seized as opportunities to remediate the democratic controls over New Zealand intelligence activities in ways that shield the responsible ministers from blame, inquisitorial oversight measures not only place those ministers beyond scrutiny but also facilitate the ongoing engagement of New Zealand intelligence professionals within the transnational guild while paying little regard to ways in which that guild enables the secret use of state violence.

The ISC performs its oversight by questioning the Directors-General of the GCSB and the NZSIS on matters expressed in their classified annual reports. Unlike regular select committees of the House of Representatives, the ISC is more or less closed to the public and does not call for public submissions to inform its deliberations.<sup>45</sup> While the ISC has a statutory responsibility to provide a report on its business to the House of Representatives each year, until very recently the committee issued reports which merely noted the dates upon which it met. It now notes changes in membership and the official information it received but remains silent on its deliberations.<sup>46</sup> The committee's inquisitorial gaze does not cover sensitive intelligence activities, nor is it self-reflective.<sup>47</sup> The quality of inquisitorial oversight is limited by the composition of the committee as few of its members have the subject-matter expertise on intelligence needed to engage meaningfully on complex and dynamic intelligence matters. While the ISC remains chaired by the prime minister and includes members of the opposition, its membership was expanded from five to seven parliamentarians in 2017. In any case, the minister responsible for the GCSB and the NZSIS is caught in a conflict of interest because they are a standing member of the committee, instead of being called before it to answer questions on the agencies. When that minister is involved in authorising intelligence warrants, they become deeply entangled in the agencies' routine operations and this can jeopardise the committee's willingness to hold the agency to account if required to do so. Chairing the ISC as the minister responsible for national security and



intelligence places the prime minister in a conflict of interest too. Put simply, the oversight performed by the ISC is compromised because the committee is holding itself to account and the executive power over intelligence matters wielded by prime minister is largely unfettered.

Periodic statutory reviews are a way of bolstering the ISC's limited inquisitorial reach, but only one such review has been completed, though a second is currently underway. These statutory reviews focus on the legislative frameworks governing the two intelligence and security agencies in part to demonstrate the oversight measures "provide sufficient safeguards at an operational, judicial and political level to ensure the GCSB and NZSIS act lawfully and maintain public confidence."<sup>48</sup> While the first reviewers' recommendations were wide-ranging, their report did not consider the roles played by relevant ministers and ISC members, thereby exempting those with executive power from scrutiny. Nor does it include an independent and expert assessment of the significance of the transnational dimension of New Zealand's intelligence activities and its relationship to state violence. It did not consider the material and ideational conditions that gave rise to the GCSB and the NZSIS in the first place, and whether or not those conditions had changed or are in the process of changing.

The scope of the IGIS's investigatory powers was recalibrated to match the intelligence agencies functions under the Intelligence and Security Act 2017. The prohibition on inquiring into any matter that is operationally sensitive, including matters relating to intelligence collection, methods, and sources, was removed in 2013 following the abovementioned revelations that the GCSB had unlawfully undertaken surveillance of Dotcom. The role also became a fulltime position too, having previously been held by a retired Judge who worked part-time without any investigatory capacity.<sup>49</sup> Notwithstanding those changes, important limits to the powers of the IGIS remain and the scope the Inspector-General's inquisitorial gaze still does not extend to parliamentarians. The Inspector-General cannot declare intelligence warrants invalid where serious deficiencies are identified in those authorisations and the IGIS's powers are easily undermined when intelligence professionals refuse to cooperate.<sup>50</sup> IGIS is not empowered to examine the use of all products and services provided by the NZSIS and the GCSB to all of its "customers" within the wider intelligence community or examine the use of all products, services, and capabilities shared by the NZSIS and/or the GCSB with its "cooperating agencies" who are authorised to use force.<sup>51</sup> Furthermore, the Inspector-General is not empowered to examine the use of intelligence reports by ministers of the Leader of the Opposition. The IGIS is not empowered to examine all information that flows between New Zealand intelligence professionals and their transnational guild, as well as the activities of New Zealand intelligence professionals working at foreign intelligence organisations and foreign liaison officers working at the NZSIS or the GCSB. IGIS does not have the power to inquire into the use of New Zealand intelligence, equipment, or techniques by foreign intelligence professionals.

These limitations mean the responsible minister is insulated from the IGIS's scrutiny when controversy arises. Having undertaken a *motu proprio* inquiry into any possible involvement of the GCSB and the NZSIS with the CIA's detention and interrogation programme between September 2001 and January 2009, the IGIS reported she was satisfied, neither New Zealand intelligence professionals were directly involved in the CIA's unlawful activities, nor were any complicit in any unlawful conduct, though she conceded that "the nature of signals intelligence activity means GCSB involvement of that kind cannot be completely ruled out. In any event such involvement would have been a step distant from any kind of direct involvement."<sup>52</sup> While the IGIS found evidence of New Zealand intelligence professionals receiving information from CIA detainee interrogations, and of the NZSIS providing questions for the CIA to put to a detainee and receiving intelligence reports in response to those questions, blame was put exclusively on the agencies as "the Prime Minister and ministers were not informed and enabled to make decisions about how to deal with the risks in the context of New Zealand's overall relationship with its foreign partners."<sup>53</sup> Moreover, having undertaking a *motu proprio* inquiry into the role played by the GCSB and the NZSIS in supporting the NZSAS in Afghanistan,<sup>54</sup> where the focus was broader than the legality of New Zealand intelligence activities by considering the propriety of those activities, the Acting IGIS found that the intelligence agencies "could have done more to ensure that the reasonable possibility there had been civilian casualties was considered at an interagency level and reported to ministers." It further insulated the ministers responsible when it states: "Our inquiry finds that the intelligence agencies must take responsibility for identifying and managing risks from their participation in the wider New Zealand military enterprise. These risks are not solely the responsibility of other parts of Government."<sup>55</sup> When the IGIS investigated the release of information concerning an NZSIS briefing to the Leader of the Opposition on Israeli intelligence matters, it found that the NZSIS provided information to Slater that was incomplete, inaccurate, and misleading and provided similar, yet more detailed, information to the Prime Minister and his office.<sup>56</sup> It found, too, that the NZSIS not only failed to clarify or correct the information they had disclosed after the impact of these errors became apparent, but also denied the information requests made by political news reporters while granting the request made by Slater. The report arising from the inquiry was highly critical of the NZSIS and of the Director-General's lack of judgement in managing the controversy. Even though the report revealed that a staff member from Key's office provided the NZSIS information to Slater for Key's political advantage, the inquiry could not focus on the conduct of the Prime Minister's office.

If these oversight measures facilitate the ongoing engagement of New Zealand intelligence professionals in the transnational guild that enables the secret use of state violence while shielding from scrutiny those who have the greatest responsibility for the agencies in question, then the invention of a

national security system has been an effective way of refocusing attention on the value New Zealand intelligence activities deliver to the New Zealand public. New Zealand intelligence professionals have long heralded the contribution their protective services make to preserving the integrity of New Zealand's democratic institutions, values, and traditions, as well as the role intelligence plays in protecting the population of New Zealand and New Zealanders abroad from harms caused by political violence.<sup>57</sup> However, defining national security as "the condition which permits the citizens of a state to go about their daily business confidently free from fear and able to make the most of opportunities to advance their way of life. It encompasses the preparedness, protection, and preservation of people, and of property and information, both tangible and intangible" radically expanded the "value add" of intelligence to a wide variety of policy areas.<sup>58</sup>

Constructing a national security system around this expansive definition enables the GCSB's responsibilities and duties under its international intelligence agreements to be reframed as a means of pursuing national security ends, that is, as strategic and operational capability extenders. Even though the GCSB's routine surveillance operations on Solomon Telekom, Vodafone Fiji, and Nauru Digicel are undertaken in accordance with its division of effort responsibilities under the UKUSA Agreement,<sup>59</sup> these types of activities are justified publicly as adding value to New Zealand diplomacy in the region, especially in relation to questions of stability and security. The radio interception capability at Tangimoana and the satellite communications interception capability at Waihopai, both now decommissioned, which were essential for the GCSB to fulfil its division of collection effort responsibilities, were nonetheless portrayed as key to New Zealand national security.<sup>60</sup> Moreover, an Annual Report from the GCSB claims that:

[i]t is not possible for an organisation the size of GCSB to collect foreign intelligence on all matters relevant to New Zealand's interests. However, through long-standing relationships with our Five Eyes partners we can draw on greater support, technology and information than otherwise be available to us.<sup>61</sup>

This reframing of international intelligence partnerships as indispensable means of achieving the ends of New Zealand's national security is uncritically accepted by intelligence professionals whose job security depends on accepting this logic, which has itself become conventional thinking and is now received wisdom within intelligence reviews.

In addition to its division of effort arrangements, the GCSB also makes so-called "niche" contributions to service the UKUSA Agreement, which are important to other signatories but are of no interest to New Zealand's security professionals.<sup>62</sup> The intelligence operations targeting the Bangladesh Rapid Action Battalion is case in point; the GCSB-led counter-terrorism operations in Bangladesh were useful to the CIA and served as one of the

primary sources of signals intelligence to the NSA.<sup>63</sup> Contributions, niche or otherwise, made by New Zealand intelligence professionals to the international partnerships are often cast as “paying our dues” and are heralded as a great return on a modest investment,<sup>64</sup> though few reports written for policymakers in Washington D. C. will speak directly to the most pressing concerns of New Zealand policymakers based in Wellington.

This invention of a national security system serves the interests of those ministers with responsibilities for New Zealand intelligence agencies because it reduces political risk accompanying ministerial portfolios. When intelligence activities are managed by public servants as part of the national security system, ministers can push blame onto them if scandals unfold, remaining above the fray when controversy attaches to espionage, torture, extraordinary rendition, black sites, and the intentional killing of civilians. Regardless of the definition at its heart, the invention of a national security system distracts attention away from the secret use of violence that intelligence enables, drawing debates over intelligence matters in terms that seek to “balance” between “security” and “liberty.” Ministers are thus recused of justifying how and why New Zealand intelligence professionals support and enable the United States’ use of violence in a global battlespace, which is currently without temporal and geographic restriction, and includes signature drone strikes that do not require target identities to be confirmed.<sup>65</sup> More than a direct form of violence against its adversaries, US-led economic globalisation is a form of war with disastrous consequences for the Global South and “US strategy – the framework by which it seeks both peace and security for itself and its allies – is essentially one of annihilation, derived from, and sustained at almost every turn by the historical development of the United States.”<sup>66</sup> At the same time, security officials advise the prime minister that “... national security is also a way to promote and protect the achievement of national goals and outcomes; it is a lever that supports the pursuit of economic opportunities and the progression of international relationships, and helps to build a sense of community among citizens when faced with challenges.” For instance, New Zealand’s ongoing engagement with the transnational guild can be used as a diplomatic key to unlock doors in the corridors of power in Washington, D.C.<sup>67</sup> Instrumentalizing New Zealand’s agency on the transnational field of surveillance and intelligence in this way is valuable to ministers seeking to prevail in contestations animating the national field of power. Minimising political risks and maximising political gain keeps New Zealand intelligence professionals engaged with their transnational guild.

### **Public ignorance as a guarantor of impunity**

This chapter has argued that public accountability arrangements and oversight measures do not constitute strong forms of democratic control over New Zealand intelligence activities. This is, in part, because ministerial

responsibility is not effectively checked by an informed opposition, or by informed political news reporters, community leaders, academics, or members of the wider public that, together, might constitute a vibrant or robust civil society. This is also, in part, because the inquisitorial gaze that lies at the heart of the oversight measures genuflects to its authorising configurations of power and does not take a wide view that encompasses the transnational dimension of New Zealand's strategic and operational intelligence activities and its complicity with state violence. While the prime minister and the minister(s) responsible for the GCSB and the NZSIS have made occasional speeches on New Zealand's intelligence activities within and beyond parliament, widening the window of transparency on unclassified aspects of intelligence work, the primary concern of such speeches seems to be promoting the prime minister's or minister's performance.<sup>68</sup> Similarly, when the ISC, statutory reviewers, and the IGIS peer beneath the veil of secrecy that shrouds intelligence activities, they enact the limits of public knowledge on these matters because they cannot convey those secrets to the public. In situations when the classifications imposed by an originator of intelligence reports can restrict circulation and elude oversight, collection methods and targeted individuals remain secret but so too are some of the activities of the transnational guild which might be inimical to the interests and values of local communities and individual citizens.<sup>69</sup> Public gestures towards transparency do little to lift the veil of official secrecy that shrouds these agencies; even though accurate, timely and reliable information is important, this limited transparency is a necessary but insufficient condition because more information does not equate to a better informed public if the public do not possess the capability to understand that information or to act collectively on it. Consequently, those individuals with the greatest responsibilities for New Zealand's intelligence activities – by which I mean the prime minister, who remains responsible for New Zealand's national security and intelligence, and the relevant minister(s) responsible for the GCSB and the NZSIS – are granted the gift of impunity that ensures they are never held accountable for any violence committed at home and abroad which is enabled by the transnational guild.

This is not to say there is no dissent on intelligence matters within the national field of power. Agents adopting radical strategies, which aim to transform the field by redefining what is at stake in the professional struggles, tend to belong to minor political parties with little prospect of leading the government in the near term.<sup>70</sup> These agents tend to be newcomers or longer-standing agents who have weak prospects of being consecrated as a minister. Any radical strategies pursued within conventional practices, such as question time in the House of Representatives, appear naïve or out of order because they push against the received wisdom of the national field (or what Bourdieu might call the *doxa*) by questioning the value of New Zealand's involvement with the so-called Five-Eyes intelligence arrangement, disregarding the prestige that ministers might gain from attending high-profile

diplomatic gatherings overseas, including ministerial Five Eyes meetings and the occasional speaking opportunity at NATO. According to Bourdieu, “attempts at radical subversion have some chance of succeeding only if they can import the effects of external social change, such as morphological changes or economic constraints, and exploit them by retranslating them into the internal logics of the field.”<sup>71</sup> The prospects of success in transforming this field are weak, however. While there is a large degree of homology between the social milieu and the national field of power which emerges from within that milieu, there is little public understanding of, interest in, or concern for intelligence activities within wider New Zealand society, except in the immediate aftermath of shocking events, such as Brenton Tarrant’s attack on two Christchurch Mosques on 15 March 2019.

Indeed, Tarrant’s attack was an act of terrorism that brought the activities of New Zealand’s intelligence and security agencies into sharp focus for many parliamentarians, political news reporters, community leaders, and academics, prompting serious questions about the extent to which New Zealand’s security arrangements were fit for purpose. Throughout the previous two decades, both the GCSB and the NZSIS had repeatedly justified their existence by highlighting their counter-terrorism credentials.<sup>72</sup> However, despite ever-growing budgets and staff numbers, as well as increased information collection and surveillance powers,<sup>73</sup> neither agency was able to help protect members of a religious community marginalised within New Zealand society from an Australian citizen who, livestreaming on social media, murdered fifty-one individuals and attempted to murder another forty. Perhaps more pernicious than the fear of harm from terrorist acts, a public unease developed around those intelligence professionals who conduct counter-terrorism activities within New Zealand.<sup>74</sup> Members of New Zealand’s minority communities complained that, despite their well-founded fear of becoming the subject of hate crime and terrorism, they were regularly treated as a suspect community when intelligence professionals engaged with them for the sole purpose of cultivating informants as sources of information on their co-religionists. “They were watching us, not watching our backs,” remarked one New Zealand Muslim for instance.<sup>75</sup> Public confidence in the intelligence and security agencies appeared to be quite low before Tarrant’s attacks, however.<sup>76</sup> The ongoing circuits of exchange between the government’s intelligence professionals and its violence workers lie at the heart of this unease.<sup>77</sup> This close working relationship is salient given the controversy surrounding the New Zealand Police’s armed raids in the Urewera mountain range in October 2007 which, authorised under the Terrorism Suppression Act 2002, have been used to highlight New Zealand’s history of colonial violence against Māori and the ongoing over-policing of indigenous communities.<sup>78</sup> More recently, unease arose around intelligence professionals’ connection to the police surveillance team that shot at point blank range and killed Ahamed Aathil Mohamed Samsudeen (a Tamil Muslim refugee from Sri Lanka, with mental health problems) as he attacked shoppers with a knife

in a supermarket.<sup>79</sup> New Zealand intelligence professionals function as the eyes and ears of a new apparatus of control that emerges as the New Zealand Defence Force continues to undergo a process of civilianisation and the New Zealand Police become more militarised.<sup>80</sup>

It is to say, however, that there is not much in the way of electoral capital to contest ministerial power. Lacking here is an enfranchised public that can form an electorate rewarding or punishing at the ballot box those parliamentarians holding intelligence portfolios. While the limited degree to which the New Zealand public is informed about intelligence matters undermines this safeguard, the public's umpiring function is further circumscribed by New Zealand's Mixed Member Proportional electoral system and the pathways it provides for professionals of politics to become parliamentarians; that is, by winning 1 of 65 general electoral seats, or 1 of 7 Māori electorates, or by ranking sufficiently high on the list of a party that achieved more than 5% of the party vote an individual may enter the House of Representatives. When a minister's membership to the House of Representatives is obtained or maintained through the party list, as has been the case with the current and previous ministers for the GCSB and the NZSIS, the electorate's disapproval of that minister's performance is neutered. In the week preceding the 2014 General Election, new minor party Internet Mana hosted a public event, dubbed the "Moment of Truth," which sought publicly to "indict and convict the Prime Minister and his government in a single evening, based on testimony from celebrated 'leakers' [Edward Snowden and Julian Assange], joined by a US journalist [Glenn Greenwald] and Kim Dotcom himself."<sup>81</sup> The voting public did not appear to care, or if it did, it did not seem to harm the National Party's electoral fortunes as Key's political party was returned for a third term with its party vote, at 47%, consistent with its 2011 result.

Although the public accountability arrangements for New Zealand intelligence activities might be in the process of changing, this transformation is not intended to empower the citizenry to create new forms of capital that can restructure the national field of power. The Royal Commission of Inquiry into the Terrorist attack on Christchurch masjidain on 15 March 2019 kept blame off the minister by stating that "the subjects of counter-terrorism, intelligence and security had become politically and publicly toxic."<sup>82</sup> The inquiry recommended a minister be given responsibility to lead and coordinate New Zealand's counter-terrorism effort and be supported by a new national intelligence and security agency. Yet this proposal, if implemented, will likely obfuscate, rather than clarify, the line of accountability between intelligence activities and the minister responsible. The inquiry also recommended the ISC be strengthened "so that it can provide better and informed cross-parliamentary oversight of the national security system (including the counter-terrorism effort) and priority setting, and members can access sensitive information for such oversight."<sup>83</sup> Taking its lead from the government's social cohesion policy agenda, the inquiry forged strong links not only with the survivors and families of the victims, but also with Muslim groups and

indigenous communities as well. The commitment to social cohesion is evident, too, in the recommendations to introduce “public voice” to the governance aspects of the national security system.<sup>84</sup> However, the minister holding the intelligence portfolio is also now the minister leading the implementation of the inquiry’s recommendations, undercutting the full remedial potential of the inquiry’s intervention into intelligence oversight. Notwithstanding recommendations to include community representation on new committees and panels, and the establishment of the National Centre of Research Excellence for Preventing and Countering Violent Extremism, nothing appears to have been done to foster an informed citizenry. It seems that civil society participation in the national security system relies on winning coalitions built upon existing consensus between officials and civil society groups, which co-opts community leaders who are listened to but seldom heard, while marginalising dissenting voices. Although a poorly informed public and weak civil society make the art of governing populations easier, a docile and passive population undercuts the constitutional safeguards which comprise a set of umpiring-like practices that buttress the public accountability arrangements over intelligence matters. The minister’s transformation agenda aims to enshrine a guarantee that the public remains unable to question the political impunity enjoyed by those who are supposed to be accountable to the public.

There are, of course, other actions that parliamentarians could choose to take, embracing a more inclusive notion of democratic security that rests on whole-of-society, rather than whole-of-government, approaches to security. The scrutiny performed by the ISC could be better informed by concerns integrity assurance officers raise over privacy rights and other human rights.<sup>85</sup> The terms of reference for periodic statutory reviews could include ministerial responsibilities. The scope of the IGIS’s investigatory ambit could be expanded to include all users of intelligence products and services, including parliamentarians and security professionals who undertake violence work on behalf of their state. Parliamentarians could introduce a new function to be performed by the GCSB and the NZSIS where they must take active steps towards fostering a civil society sector, and complement these efforts with new rules on declassifying information as quickly as possible.<sup>86</sup> As I have argued elsewhere, parliamentarians could establish a Parliamentary Commission for Intelligence and Security as an independent source of authoritative information, analysis, and advice on New Zealand’s security challenges.<sup>87</sup> The commission could raise the level of public awareness of intelligence matters and improve the public’s capability to understand those matters, thereby fostering an informed citizenry. As an Officer of Parliament and independent from the executive, the lead commissioner(s) could investigate any matters where New Zealand’s security may be adversely affected and they could assess the national security system – including New Zealand’s intelligence professionals and violence workers, and their connections to each other, as well as transnational intelligence work – and the current public accountability arrangement and oversight measures. But intelligence executives and, more importantly, their



minister(s) and prime minister would balk at such scrutiny and the attention it would draw because that would not help them to survive in the national field of power.

## **Conclusion**

The anatomy of political impunity for those with the greatest responsibilities for New Zealand's intelligence and security agencies, including the ongoing engagement of New Zealand intelligence professionals with a transitional guild that coheres around the NSA and its global surveillance network, has two important elements that, in design and in practice, operate in symbiosis. The first element lies in a set of public accountability arrangements that comprise ministerial responsibilities, a parliamentary ISC, periodic statutory reviews, and an IGIS, as well as by occasional ad-hoc inquiries. The second element lies in official responses to various intelligence scandals, which are usually seized upon as opportunities to diffuse or obfuscate ministerial responsibility by allocating blame elsewhere, but always ensure the ongoing engagement of New Zealand intelligence professionals within the transnational guild. Despite the ongoing assurance, first given by former Prime Minister Sir Geoffrey Palmer but frequently echoed in official documents and reviews, that "[t]he reasons for having intelligence and security agencies to protect our countries interest at home in abroad are overwhelming ... . The protections against misuse of powers are substantial ... they are carefully regulated and controlled in the public interest,"<sup>88</sup> the public accountability arrangements are, in fact, made and remade to protect the interests of a transnational guild of intelligence professionals whose primary purpose is to enable various forms of state violence in contemporary world affairs without the citizenry's informed consent.

Bourdieu's concept of the field unlocks a compelling explanation for why this state of affairs prevails. New Zealand parliamentarians have long recognised that the ministerial portfolios for the GCSB and the NZSIS are a high-risk but low-value proposition, which makes ministerial responsibility, performance, and accountability for those agencies something of a comparatively minor, if not a trivial, sideshow in the wider struggles over the right to rule the realm that comprise the national field of power. Given most parliamentarians covet the position of the prime minister as the dominating agent in that field, they tend to pursue conservative strategies through their law-making powers because they want to benefit from the legislative and executive agenda-setting power of that position. Working together, parliamentarians have used their legislative power to remove the responsibility for intelligence matters from the prime minister. This chapter argues almost all the professionals of politics involved in parliamentary struggles pursue conservative strategies that tend to endorse efforts to insulate the position of the New Zealand prime minister from any serious blame flowing from intelligence scandals or failures for no other reason than because they hold in

common an ambition to become the dominant agent in the field or to maximise their benefit from that agent. Comparatively few professionals of politics prioritise the wellbeing of democracy ahead of their own parliamentary aspirations. The greatest obstacle to enacting stronger democratic controls over New Zealand intelligence activities is the conservative strategies used by parliamentarians to survive within their professional field and to ascend that field's hierarchy as far as their immediate circumstances, and own talents, allow.

This raises interesting questions about the position of New Zealand intelligence professionals as agents on the transnational field of surveillance and intelligence. New Zealand intelligence professionals were exceptional because they are the weakest of the five founding members of the transnational guild centred around NSA, though the fourth Labour Government's anti-nuclear policies placed that membership in jeopardy.<sup>89</sup> Many officials resisted this policy from its outset, frustrating then-Prime Minister David Lange.<sup>90</sup> But this indicates the strong degree of autonomy of that transnational field in relation to the national field of power. Given a raft of other smaller cadres of intelligence professionals from Belgium, Denmark, the Netherlands, Norway, and Sweden, among others, have joined the global surveillance network under SSEUR since the 1980s, New Zealand intelligence professionals might now be exemplary, offering a model of engagement for third parties. Given the expanding membership of this transnational guild, future research could cast more light on how the NSA manages its relationships with those who belong to the transnational guild in ways that ensure it continues to dominate the wider transnational field. How, for instance, does the NSA diffuse emerging surveillance technologies – from capabilities to intercept, firstly, radio communications and, secondly, satellite-borne communications and, now, digitalised communications over fibre-optic cables – among the transnational guild, enabling them to restructure the field in conservative ways? To what extent does the NSA's legal expertise inform surveillance laws passed by other national assemblies? What goes on in Five Eyes ministerial meetings? What is the degree of autonomy that the transnational field enjoys from the wider field of power that constitutes the politics of contemporary world affairs, and who are the communities of interests or practice that might emerge from a global social milieu to enable strategies of resistance within that transnational field? If we want to better understand the ways in which the public accountability arrangements over intelligence activities operate in practice, then answers to these questions will be instructive, especially in efforts to dissect the anatomy of political impunity wherever it manifests.

## Notes

- 1 Desmond Ball, Cliff Lord and Meredith Thatcher, *Invaluable Service: The Secret History of New Zealand's Signals Intelligence During Two World Wars* (Auckland: Resource Books, 2011).

- 2 Mary Wharton, "The Development of Security Intelligence in New Zealand, 1945–1957" Master of Defence Studies Thesis, Massey University, 2012.
- 3 New Zealand, alongside Australia, signed the UKUSA Agreement in 1956, eight years after Canada had done so and a decade after the Agreement was signed by its first parties: the United States of America and the United Kingdom. The original purpose of the UKUSA Agreement was to govern the relations of its parties in communications intelligence matters, which included the exchange of collateral material required for technical reasons. More specifically, each party agreed to exchange outputs produced by the following operations relating to foreign communications: collection and analysis of traffic; cryptanalysis, decryption, and translation; and acquisition of communications documents and equipment as well as information regarding communications organizations, procedures, practices, and equipment.
- 4 Didier Bigo, "Sociology of Transnational Guilds," *International Political Sociology* 10 (2016): 407–408.
- 5 I make this point in Damien Rogers, "Transversal Practices of Everyday Intelligence Work in New Zealand: Transnationalism, Commercialism, Diplomacy," in *Problematising Intelligence Studies: Towards a New Research Agenda*, ed. Hager Ben Jaffel and Sebastian Larsson. (London / New York: Routledge, 2022), 132–155. See also Didier Bigo, "Shared Secrecy in a Digital Age and a Transnational World" *Intelligence and National Security* 34, no. 3 (2019): 379.
- 6 S. 4AAA(1)(b) of the New Zealand Security Intelligence Service Act 1969 (repealed).
- 7 S. 7(1)(b) of the Government Communications Security Bureau 2003 Act (repealed).
- 8 S. 9(b) of the Intelligence and Security Act 2017.
- 9 SIGINT Seniors Pacific Group comprises agency leaders from Australia, Canada, France, India, Korea, New Zealand, Singapore, Thailand, the United Kingdom, and the United States, each with intelligence interests in the South Pacific region. SIGINT Seniors Europe Group includes agency leaders from Australia, Belgium, Canada, Denmark, France, Germany, Italy, Netherlands, New Zealand, Norway, Spain, Sweden, the United Kingdom, and the United States.
- 10 The *Cabinet Manual* (2017) states that: Ministers decide both the direction of and the priorities for their departments. They are generally not involved in their departments' day-to-day operations. In general terms, Ministers are responsible for determining and promoting policy, defending policy decisions, and answering in the House on both policy and operational matters. [...] Ministers are concerned not only with the short-term performance of their departments, but also with the capability of their departments to continue to deliver government objectives in the longer term. Ministers' priorities for departments and the standard of performance expected of their departments are specified in key accountability documents. See paragraphs 3.7 & 3.14, respectively.
- 11 Part 6, subpart 2 of the Intelligence and Security Act 2017. See also Intelligence and Security Committee Act 1996 (repealed 28 September 2017).
- 12 S.235 of the Intelligence and Security Act 2017.
- 13 Part 6, subpart 2 of the Intelligence and Security Act 2017. See also Inspector-General of Intelligence and Security Act 1996 (repealed 28 September 2017).
- 14 See, for instance, William Young and Jacque Caine, *Report of the Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain on 15 March 2019*; See also the inquiry into the case of Dr William Sutch by Sir Guy Powles (16 July 1976), available at <https://www.nzsis.govt.nz/assets/media/SutchOmbudsmanReport.pdf>
- 15 Andrew D. Brunatti, "The architecture of community: Intelligence community management in Australia, Canada and New Zealand," *Public Policy and Administration*, 28 (2013): 119–143; Alexander Gillespie & Claire Breen, "The Security Intelligence Agencies in New Zealand: evolution, challenges and

- progress,” *Intelligence and National Security* 36, no. 5 (2021): 676–695; Geoffrey R. Weller, “Change and Development in the New Zealand Security and Intelligence Services,” *Journal of Conflict Studies* 21, no. 1 (2001); and James Whibley, “One Community, Many Agencies: Administrative Developments in New Zealand’s Intelligence Services,” *Intelligence and National Security* 29, no. 1 (2014): 122–135.
- 16 Paul G. Buchanan, “Foreign Policy Realignment, Issue Linkage and Institutional Lag: The Case of the New Zealand Intelligence Community,” in *New Zealand and the World: Past, Present and Future*, ed. Robert G. Patman et al. (Singapore: World Scientific, 2018): 373–390; Austin Gee & Robert G. Patman, “Small state or minor power? New Zealand’s Five Eyes Membership, intelligence reforms, and Wellington’s response to China’s growing pacific role,” *Intelligence and National Security* 36, no. 1 (2021): 34–50; and Anthony L. Smith, “Informing the National Interest: The Role of Intelligence in New Zealand’s Independent Foreign Policy,” in *New Zealand and the World: Past, Present and Future*, ed. Robert G. Patman et al. (Singapore: World Scientific, 2018): 343–358.
  - 17 Robert G. Patman & Laura Southgate, “National security and surveillance: the public impact of the GCSB Amendment Bill and the Snowden revelations in New Zealand,” *Intelligence and National Security* 31, no. 6 (2016): 871–887; and Valarie Redmond, “I Spy with My Not So Little Eye: A Comparison of Surveillance law in the United States and New Zealand,” *Fordham International Law Journal* 37, no. 3 (2014): 733–776.
  - 18 Jim Rolfe, “Intelligence, Accountability and New Zealand’s National Security” in *New Zealand and the World: Past, Present and Future*, ed. Robert G. Patman et al. (Singapore: World Scientific, 2018): 359–371.
  - 19 For an exception, see David Wilson, “The use of secret evidence in the New Zealand House of Representatives,” *Australasian Parliamentary Review* 28, no. 2 (2013): 25–35.
  - 20 For an excellent treatment of the genesis, autonomy, and heteronomy of this field, see the chapter by Ronja Kniep in this volume.
  - 21 See, for instance, Andrew W. Neal, “The Parliamentarianism of Security in the UK and Australia” *Parliamentary Affairs* 74, no. 2 (2021): 464–482; Andrew Defty, “‘Familiar but not intimate’: executive oversight of the UK intelligence and security agencies,” *Intelligence and National Security* 37, no. 1 (2022): 57–72; Andrew Defty, “Coming in from the cold: bringing the Intelligence and Security Committee into Parliament,” *Intelligence and National Security* 34, no. 1 (2019): 22–37; and Ruth Blakeley, “Dirty Hands, Clean Conscience? The CIA Inspector General’s Investigation of ‘Enhanced Interrogation Techniques in the War on Terror and the Torture Debate,” *Journal of Human Rights* 10, no. 4 (2011): 544–561.
  - 22 Didier Bigo, “Violence Performed in Secret by State Agents: For an Alternative Problematisation for Intelligence Studies,” in *Problematising Intelligence Studies: Towards a New Research Agenda*, ed. Hager Ben Jaffel and Sebastian Larsson (New York / London, Routledge, 2022), 223.
  - 23 These controversies include: allegations of Soviet espionage by William Sutch, a senior public servant; the sabotage of the Greenpeace’s Rainbow Warrior by French Secret Service agents; revelations about the GSCB’s involvements in the secret Five Eyes alliance; Dr David Small’s chance discovery of the NZSIS’s unlawful surveillance of Aziz Choudhary, an anti-globalisation activist; and the deflation of a protective dome at GCSB Waihopai satellite communications interception station by peace protestors. See Graeme Hunt, *Spies and Revolutionaries: A History of New Zealand Subversion* (Auckland; Reed Publishing, 2007); Michael King, *Death of the Rainbow Warrior* (Auckland: Penguin, 1986); Nicky Hager, *Secret Power: New Zealand’s Role in the International Spy Network* (Nelson: Craig Potton 1996); and Adi Learson, “Ploughshare at Waihopai” in *Pursing Peace in*

- Godzone: Christianity and the Peace Tradition in New Zealand*, ed. Geoffrey Troughton & Phillip Fountain (Wellington: Victoria University Press, 2018).
- 24 This was unlawful because the Government Communications Security Bureau Act 2003 stated that “the Director, any employee of the Bureau, and any person acting on behalf of the Bureau must not authorise or do anything for the purpose of intercepting the private communications of a person who is a New Zealand citizen or a permanent resident of New Zealand.”
- 25 Darren Palmer & Ian J Warren, “Global Policing and the case of Kim Dotcom,” *International Journal for Crime, Justice and Social Democracy* 2, no. 3 (2014): 105–119; and Damien Rogers, “Extraditing Kim Dotcom: a case for reforming New Zealand’s intelligence community?” *Kotuitui: New Zealand Journal of Social Sciences Online* 10, no. 1 (2015): 44.
- 26 Kathleen M. Kuehn, “Framing mass surveillance: Analyzing New Zealand’s media coverage of the early Snowden files,” *Journalism*, 19, no. 3 (2017): 402–419; Kathleen Kuehn, *The Post-Snowden Era: Mass Surveillance and Privacy in New Zealand* (Wellington: Bridget Williams Books, 2016); and Damien Rogers, “Snowden and GCSB: Illuminating neoliberal governmentality?” in *Cyber Security and Policy: A Substantive Dialogue*, ed. Andrew Colarick et al. (Auckland: Massey University Press, 2017): 325–350.
- 27 United States Senate Select Committee on Intelligence, Committee Study of the Central Intelligence Agency’s Detention and Interrogation Program (December 2014) (Senate Report); Executive Summary, available at [https://www.intelligence.senate.gov/sites/default/files/press/executive-summary\\_0.pdf](https://www.intelligence.senate.gov/sites/default/files/press/executive-summary_0.pdf); see also Elsbeth Guild, Didier Bigo and Mark Gibney (ed.), *Extraordinary Rendition: Addressing the Challenges of Accountability* (London and New York, 2018).
- 28 Nicky Hager and Jon Stephenson, *Hit & Run: The New Zealand SAS in Afghanistan and the meaning of honour* (Nelson: Pottton and Burton, 2017).
- 29 For more on intelligence scandals and public trust and confidence in New Zealand, see Damien Rogers and Shaun Mawdsley, “Restoring Public Trust and Confidence in New Zealand’s intelligence and Security Agencies: Is a Parliamentary Commissioner for Security the missing key?” *Policy Quarterly* 18, no. 1 (2022): 59–66; Damien Rogers and Shaun Mawdsley, “Reconfiguring the relationship between intelligence professionals and the public: A first step towards democratizing New Zealand’s National Security?” *National Security Journal* 2021, 23 p. [online first September 2021, doi 10.36878/nsj20210929.02.]
- 30 Editorial, “Editorial: Kim Dotcom sets off year of fireworks for politicians” *New Zealand Herald* (online ed, Auckland, 27 December 2012); John Key, “PM releases results of the GCSB file review” (press release, 4 October 2002).
- 31 Nicky Hager, *Dirty Politics: How attack politics is poisoning New Zealand’s political environment* (Craig Pottton Publishing, Nelson, 2014).
- 32 Rebecca Kitteridge, *Review of Compliance at the Government Communications Security Bureau* (March 2013), 18.
- 33 *Ibid*, 9, but see also the full text of Recommendation 35, 75.
- 34 Michael Cullen and Patsy Reddy, *Intelligence and Security in a Free Society: Report of the First Independent Review of Intelligence and Security in New Zealand* (29 February 2016), 14.
- 35 *Ibid*, 152.
- 36 *Ibid*, see also Annex C: Full List of Recommendation, 152–165.
- 37 Damien Rogers, “Intelligence and Security Act 2017: A Preliminary Critique” *New Zealand Law Review* 4 (2018): 656–692.
- 38 S. 193 of the Intelligence and Security Act 2017.
- 39 See Government Communications Security Bureau and the New Zealand Security Intelligence Service, *Briefing to the incoming minister* (2017); and Government

- Communications Security Bureau and the New Zealand Security Intelligence Service, *Incoming Minister's briefing* (2020).
- 40 This includes New Zealand Police and the New Zealand Defence Force as well as Immigration New Zealand within the Ministry for Business, Innovation & Employment, the New Zealand Custom Service, the Ministry for Primary Industries, Department of Internal Affairs and the Inland Revenue Department, among others.
- 41 See Doug Martin and Simon Mount, *Inquiry into the Use of External Security Consultants by Government Agencies*, 2018.
- 42 According to Pierre Bourdieu, a field is brought into existence through a recognition of the everyday struggles among a particular set of agents over some object or outcome those agents value. Fields emerge for a time out of some wider social space, or milieu, and are best conceptualised through the positions held by dominating and dominated agents, the evolving relations among them, and by the temporality of those relations. Hierarchies of agents are established, preserved or contested within the field through the conservative or radical strategies of those agents, some of whom are consecrated while others are newcomers, all of whom, however, rely on their own access to unequally distributed economic, social or cultural capital to exercise power over others. See Pierre Bourdieu, *Habitus and Field. General Sociology, Volume 2. Lectures at the College de France* (1982–1983) (Cambridge: Polity Press, 2020); Pierre Bourdieu, *The Field of Cultural Production* (New York: Columbia University Press, 1993); Pierre Bourdieu, *Homo Academicus* (Stanford: Stanford University Press, 1984).
- 43 R. Kent Weaver, “The Politics of Blame Avoidance,” *Journal of Public Policy* 6, no. 4 (1986): 371–398.
- 44 Bourdieu, *Cultural Production*, 3.
- 45 Young and Caine, *Report of the Royal Commission*, 737.
- 46 See Intelligence and Security Committee, *Report of the Intelligence and Security Committee: Activities of the Intelligence and Security Committee in 2021*. The available transcript of the meeting shows members of the committee asking basic question on how the agencies operate.
- 47 Young and Caine, *Report of the Royal Commission*, 737.
- 48 Cullen and Reddy, *Intelligence and Security in a Free Society*, 148.
- 49 Cheryl Gwyn, “Speech” New Zealand Centre for Public Law Public Officeholders” Lecture Series “Spotlight on Security” Victoria University of Wellington’s Faculty of Law, 4 May 2016.
- 50 This occurred during 2015, 2016 and 2017 when the Inspector-General undertook a review of the NZSIS’s access and use of information held on a system managed by the New Zealand Customs Service, but found the NZSIS “reluctant to engage with [her] office on the substantive issues.” Cheryl Gwyn, *Annual Report: For the year ended 30 June 2017*, 16.
- 51 That is, the New Zealand Defence Force and the New Zealand Police
- 52 Cheryl Gwyn, *Inquiry into possible New Zealand intelligence and security agencies’ engagement with the CIA detention and interrogation programme 2001–2009* (Wellington: Office of the Inspector-General of Intelligence and Security, 2019) 6.
- 53 *Ibid*, 7.
- 54 The Inspector-General of Intelligence and Security’s investigation occurred at the same time as the Burnham Inquiry, established by the Attorney-General under the Inquiries Act 2013. See Terrence Arnold and Geoffrey Palmer, *Report of the Government Inquiry into Operation Burnham and Related Matters* (2020).
- 55 Madeleine Laracy, *Report of Inquiry into the role of the GCSB and the NZSIS in relation to certain specific events in Afghanistan* (Wellington: Office of the Inspector-General of Intelligence and Security, 2020).

- 56 Cheryl Gwyn, *Report into the release of information by the New Zealand Security Intelligence Service in July and August 2011* (Wellington: Office of the Inspector-General of Intelligence and Security, 2014).
- 57 Unclassified annual reports can be found here: [www.nzsis.govt.nz](http://www.nzsis.govt.nz) and [www.gcsb.govt.nz](http://www.gcsb.govt.nz).
- 58 These priorities were last updated in 2021. See <https://dpmc.govt.nz/our-programmes/national-security/national-security-intelligence-priorities>.
- 59 Radio New Zealand, “Solomons officials ‘suspected’ NZ was spying,” *Radio New Zealand*, 18 March 2015.
- 60 Department of the Prime Minister and Cabinet, *Securing Our Nations’ Safety: How New Zealand Manages its Security and Intelligence Agencies* (Wellington, 2000), 27.
- 61 Government Communications Security Bureau, *Annual Report 2016*, 19.
- 62 Government Communications Security Bureau, *Annual Report 2009*, 6.
- 63 Hager and Gallagher 2015, cited in Damien Rogers, “Snowden and GCSB: Illuminating neoliberal governmentality? In *Cyber Security and Policy: A Substantive Dialogue*, ed. Andrew Colarik et al. (Auckland: Massey University Press, 2017): 217–238.
- 64 Cullen and Reddy, *Intelligence and Security in a Free Society*, 45. In their review of the agencies, Cullen and Reddy suggest that “New Zealand also gains considerably more from its international partnerships than we provide in return. For every intelligence report the NZSIS provides to a foreign partner, it receives 170 international reports. Similarly, for every report the GCSB makes available to its partners, it receives 99 in return.” They conclude that “[t]he Five Eyes is by far New Zealand’s most valuable intelligence arrangement, giving us knowledge and capability far beyond what we could afford on our own,” 46. This reasoning is cited verbatim by Young and Caine in their report of the Royal Commission of Inquiry into the terrorist attack on Christchurch mosques on 15 March 2019.
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- 66 Michael McKinley, *Economic Globalisation as Religious War: Tragic Convergence* (London / New York: Routledge, 2007), 213.
- 67 Rogers, “Transversal Practices,” 132–155.
- 68 See, for instance: John Key, “Speech” New Zealand Institute of International Affairs, Wellington 6 November 2014; and Andrew Little “Opening Address to the Massey University National Security Conference 2018,” Auckland 5 April 2018.
- 69 For the dangers associated with the third-party rules which permit intelligence professionals to withhold partner-provided intelligence from parliamentary committees because such a release would violate transnational confidentiality, see Kniep chapter in this volume.
- 70 Only the Green Party of Aotearoa New Zealand voted against the passing of the intelligence and Security Act 2017, for example (21 March 2017) 721 NZPD 16833.
- 71 Bourdieu, *Habitus and Field*, 198.
- 72 See recurring statements made in both agencies’ annual reports over the past twenty years, found at [www.nzsis.govt.nz](http://www.nzsis.govt.nz) and [www.gcsb.govt.nz](http://www.gcsb.govt.nz). For an analysis of those statements, see Damien Rogers and Shaun Mawdsley, *Turning the Dial from ‘Social Licence’ to ‘Democratic Security’: New Zealand’s Intelligence and Security Agencies and the Case for an Informed Citizenry, July 2021*, accessed 7 August 2022, <http://www.damienrogers.ac.nz>.
- 73 Rogers, “Intelligence and Security Act 2017,” 657.
- 74 The term is taken from Didier Bigo, “Security and Immigration: Towards a Critique of the Governmentality of Unease”, *Alternatives* 27 (2002): 63–92. For more on transnationally circulated intelligence, see Sophia Hoffmann, “Circulation, not Cooperation: Towards a new understanding of intelligence agencies as

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- 75 William Young and Jacqui Caine, *Summary of Submissions*, (28 November 2020), 140.
- 76 Rogers and Mawdsley, “Reconfiguring the Relationship,” *National Security Journal* 2021 [Online first 29 Sept 2021, doi 10.36878/nsj20210929.02].
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- 80 I make this point in Rogers, “Intelligence and Security Act 2017,” 688.
- 81 Stephen Levine, “Moments of Truth: The 2014 New Zealand general election,” in *Moments of Truth: The New Zealand General Election of 2014*, ed. Jon Johansson and Stephen Levine (Wellington: Victoria University Press, 2015), 49.
- 82 Young and Caine, *Report of the Royal Commission*, 15.
- 83 *Ibid*, 24–25.
- 84 *Ibid*, 23–27.
- 85 These are the Chief Human Rights Commissioner, Race Relations Commissioner, the Privacy Commissioner, the Chief Ombudsman, and the Auditor-General.
- 86 Rogers and Mawdsley, “Reconfiguring the relationship.”
- 87 Rogers and Mawdsley, “Restoring Public Trust and Confidence.”
- 88 Department of the Prime Minister and Cabinet, *Securing Our Nation’s Safety*, 16.
- 89 Gerald Hensley, *Friendly Fire: Nuclear Politics and the collapse of ANZUS, 1984–1987* (Auckland: Auckland University Press, 2013).
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