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In Washington, the Real Power Lies With the Spooks, Eavesdroppers and Assassins

by MATTHEW HARWOOD

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Almost two months after the first stories about whistleblower Edward Snowden appeared in June 2013, libertarian-minded Rep. Justin Amas—a Michigan Republican—and liberal Democrat Rep. John Conyers, also of Michigan, co-sponsored an amendment to the defense appropriations bill that would have defunded the National Security Agency's call records program.

What looked like a Hail Mary of democratic accountability for the spy agency nearly passed, losing by a vote of 217 to 205 after the White House lobbied hard for its defeat. While the close vote demonstrated a revulsion against the NSA's secret surveillance of Americans, it also showed where true power resides in Washington when it comes to national security.

During the debate over the amendment, then-chairman of the House Intelligence Committee Mike Rogers—a Michigan Republican who was charged with overseeing the intelligence community—vigorously opposed the bipartisan effort to shut down the NSA's domestic spying program.

“What they’re talking about doing is turning off a program that after 9/11 we realized we missed—we the intelligence community—missed a huge clue,” Rogers stated.

It’s easy to see Rogers’ conflation of his committee’s oversight role with the intelligence community’s mission as an innocent, meaningless mistake. But Rogers’ gaffe isn’t a gaffe at all to Michael Glennon—it’s a slip of the tongue that unintentionally reveals the truth.

“*We the intelligence community*: the overseers and the overseen had, at length, become one,” Glennon, a professor of international law at Tufts University’s Fletcher School of Law and Diplomacy, writes in his deeply disturbing book, *National Security and Double Government*.

If you’ve noticed that the national security policies of Pres. Barack Obama’s administration are almost indistinguishable from those of the previous, Republican administration and wondered why, Glennon has a “disquieting explanation” for you.



At top—a U.S. Customs and Border Patrol drone crew. Photo via Wikipadia. Above—a U.S. Air Force drone in Afghanistan.

There are two governments—a double government—operating today in the realm of national security. There’s the one the voting public thinks they control when they go to the polls—what Glennon refers to as the “Madisonian institutions.” Congress, the courts and the presidency.

And there’s the “Trumanite network,” the labyrinthine national security apparatus that encompasses the military, intelligence and law enforcement communities that Pres. Harry Truman created when he signed the National Security Act of 1947.

Our social studies classes teach us that the Madisonians control the Trumanites, but that's a myth. "The courts, Congress and even the president in reality impose little constraint," Glennon writes. "Judicial review is negligible, congressional oversight dysfunctional and president control nominal."

Glennon offers NSA surveillance—specifically the domestic collection of Americans call records and access to the content of their internet communications through the cooperation of Internet companies—as a case study to validate his theory that all three branches of government genuflect before the Trumanites, and it's convincing.

Full disclosure—I work for the ACLU, which has constitutionally challenged NSA domestic surveillance under Section 215 of the Patriot Act and Section 702 of the FISA Amendments Act.

After 9/11, the NSA turned its considerable surveillance powers around on its own citizens, a plan it formulated before the terrorist attacks, and which Pres. George W. Bush approved without consulting with Congress. Bush justified the plan via a series of secret interpretations of the Patriot Act and presidential authority.

When judicial oversight eventually occurred, it fell under the purview of a secret national security court that retroactively approved—and continues to greenlight—NSA domestic surveillance. The court also approves the overwhelming majority of government surveillance warrant requests, which isn't surprising since it only hears from one party—the U.S. government.

Most damningly, nearly the entire Congress didn't know the extent of the NSA's domestic surveillance programs, particularly the call records program, because only members of the Senate and House intelligence committees get briefed on such secret programs.

And those legislators that did know—aside from two committee members speaking in what amounted to code—didn't feel it was something the American public had a right to know, much less have some say over.

Systemically, what this amounts to ... is frightening.

The commanding influence over whether the U.S. goes to war, drones suspected terrorists or engages in dragnet surveillance of Americans' communications lies with unelected bureaucrats who are making decisions that only members of Congress should.

And when these decisions must be made, the Trumanites are always going to pick security over liberty.

This isn't necessarily sinister. It's in the nature of an institution to do what it's designed to do. But when the Madisonians fail to check the Trumanites, according to Glennon, the results aren't pretty. "Greater centralization, less accountability and emergent autocracy."

What this means is that we fear what the Trumanites tell us to fear. We kill those the Trumanites tell us to kill. We fund counterterrorism and security programs without knowing whether they make us any safer because the Trumanites say we're safer.

As Glennon succinctly puts it, "no reliable outside threat assessment is available" to give members of Congress or the public a second opinion. And that inability to be truly questioned is power distilled to its essence.

Generally, it would be easy for certain readers to ignore Glennon's argument as the ravings of some conspiracy theorist, yet his insider credentials deflect such dismissiveness. As the former legal counsel to the Senate Foreign Relations Committee, he has the experience to criticize the Madisonian institutions' interaction with the Trumanite network and tell Americans who's the puppet and who's the puppeteer.

He was in the middle of it all, which is why his diagnosis is so alarming.

Buy 'National Security and Double Government.'

It's also hard to deny the strength of his thesis when finding the evidence of double government is as easy reading the paper. For instance, in mid-March, the government announced that former CIA director David Petraeus would plead to misdemeanor charges for leaking classified information to his biographer and mistress.

It's an absurdly light sentence that the Obama administration, the most zealous prosecutor of national security leakers ever, agreed to. But harsh punishments aren't for those in good standing with the Trumanites. They're reserved for the apostates, like Chelsea Manning and Snowden, who pierce the veil of the national security state and expose its excesses to public scrutiny.

Glennon ultimately concludes on a somber note, arguing that the only way to constrain the Trumanites is through civic virtue. Average citizens, he argues, must once again take their public responsibilities seriously and elect representatives who will take their oversight duties to heart and bind down this technocratic Leviathan with the chains of the Constitution.

That's a tall order when the public's participation in the political process—and its trust in the Madisonian institutions—is anemic.

“An unrestrained security apparatus has throughout history been of the principal reasons that free governments have failed,” Glennon reminds us.

It’s a lesson we’d better take seriously.