

Book Review

The Silent State: Secrets, Surveillance and the Myth of British Democracy, Heather Brooke, William Heinemann (2010)

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Review by Rosalind McInnes, BBC Scotland

Heather Brooke's work is a marvellous, informative and emotionally engaging read, but essentially it is a polemic, rather than a thesis. One can describe what she says and advocates; one can agree with almost all of it. But the book is, essentially, a good natured, well-sourced, perhaps slightly overegged rant on the power inequality between paying citizen and bloated state, replete with instances of the latter's grabbing informational power at the expense (democratic, personal and economic) of the former; specific failures of transparency as regards the courts, Whitehall and of course Parliament; and an account of her famous and, from her perspective, ultimately futile attempts to use the Freedom of Information legislation to counter these problems.

From a jurisprudential perspective, it's a slightly crude book, in that it assumes the primacy of free information in a democracy without examining its parameters. She doesn't, for instance, seem to have contemplated what the right reaction would be if a court ordered a journalist to hand over a State-sponsored source. She rejoices in having obtained a Conditional Fee Arrangement to defend her Information Tribunal victory over MPs' expenses in the High Court without the risk of bankruptcy, but doesn't examine the consequences of the CFA regime for newspapers defending a defamation action against a rich powerful claimant. She doesn't set out to explore the balancing exercise to be done in those circumstances where a failure to protect information might ultimately result in the availability of less reliable information- indeed, that that exercise may ever need to be done does not seem to have occurred to her. She strongly deprecates the State's seeking more and more data from the citizens, but on the grounds that that is the cart leading the horse, rather than that it is informationally counterproductive. She can be critical at p41 of the state for not keeping enough information on children being taken out of schools, eight pages after saying, "In a free society the family is sacrosanct. The state only intervenes where there is a risk of harm or negligence to a child." Occasionally, too, she lets the populace off the hook rather easily; that "about half the country had no idea who their MP was" is indeed a "shocking fact", but perhaps one for which that half of the electorate should take responsibility and not just Parliament's resistance to the Up My Street website's finders' proposal to make this readily available free online.

But it is churlish to carp at "The Silent State" on these grounds, because Heather Brooke is not setting out to delineate the parameters between the public and the private in a healthy democracy. Sometimes she makes concrete proposals which could most usefully be the basis of legislation- for example, a requirement that public bodies publish line item budgets, staff directories and organisation charts. For the most part, however, she is pointing out undeniable, expensive, bureaucratic secrecy in areas- access to information about criminal trials, say, or following the public pound- where one would not have expected there to be much doubt as to the relevance or appropriateness of openness.

And yet there has been, which is what makes this book so readable and so valuable. Her description of the High Court proceedings over the MPs expenses Freedom of Information request is extraordinary in a supposedly mature democracy:

“We heard Nigel Griffin QC twist himself in knots trying to argue how it was an unseemly invasion of MPs’ privacy for the public to know how MPs spent public money in the course of their public duties. We heard how MPs would be likely to be shot in their beds if their second-home addresses were made public. No evidence was put forward to indicate any of these threats were anything more than the self-important delusions of a paranoid conspiracy theorist.”

The verdict of the High Court would support this version. Her remarkably unembittered account of being scooped by *The Telegraph* with a leaked disc of the expenses data as the parliamentarians fought over a private members bill to exempt them for the freedom of information legislation altogether in the wake of her long fought High Court victory is stark evidence that Heather Brooke is right about all the most important things: Information is power. An ability to check the accuracy of information without the intervention of publicly funded PR bamboozlement and to debate its interpretation is at the core of democratic legitimacy, far more regularly and saliently than the franchise. Anonymity of public officials to those who pay them does nothing for accountability or efficiency. The practice of the state’s coercing information from the citizens and selling it back to him or her militates against informed, unfettered discussion, as well as individual privacy. The processes of court and the proceedings themselves should be meaningfully open to those who fund them and are bound by their outcomes. The essential documents, recordings and transcripts should be available to the public to this end, not just a suspicious assent to the public’s being there.

In particular, the book’s description of just how warm a welcome a genuine public visitor can expect in our ostensibly open court, will chime with anyone, lawyer or layperson, who has happened to be a stranger in a sheriff court with no specific legal role to play (lawyer, witness, juror) and no press pass. Any reader who doubts this should try the experiment and see how truly well-informed they feel by the end of the day. The Scottish Parliament comes out of “*The Silent State*” well comparative to its southern neighbour; I very much doubt that our court system would. As Brooke summarises it, “Those few people who attend court either individually or on behalf of the public face a barrage of obscure, illogical and mercurially enforced rules. . . And if the public can’t see justice being done then the entire system is little more than a cloistered club for the benefit of the judges, lawyers and their lackeys, a sort of care in the community for the upper-middle classes and their servants.” To judge by recidivist figures, our courts deter far more visitors than they do criminals. Her entertaining but thought-provoking chapter on the semiotics of the courtroom upholstery says it all. The public who are paying for the seats get the cheap ones.

The best element of the book, and the major contribution Heather Brooke has made to Freedom of Information, is her outsider’s perspective. Although she knows more about the British constitution than the majority of native Britons, she retains a thoroughly American suspicion of the state, emphasis on self-reliance, enthusiasm for the entrepreneurial (“how many Googles has our government killed because of its short-term, petty, bureaucratic control freakery?”) and commitment to free speech: “I grew up in Seattle where you can go online right now and find the name, direct telephone number and email of public employees. . . . [Residents] can drill down to see who is collecting their rubbish. . . .” From the brave new world to the *Silent State* and very much for our benefit.