

Book Review

Arnold, J. 2014. *Secrecy in the Sunshine Era: the Promise and Failures of U.S. Open Government Laws*. Wichita: University Press of Kansas.

542pp. Hardback. US\$45.00 ISBN 978-0-7006-1992-4.

Kevin Walby

Department of Criminal Justice
University of Winnipeg, Canada
k.walby@uwinnipeg.ca

Spanning the past four decades of United States history, and with a primary focus on the federal government, *Secrecy in the Sunshine Era* is one of the top books I have read on freedom of information (FOI) law and information management. Despite the passing of so-called “sunshine laws” in the 1970s, designed to render transparent the workings of government, the various administrations since have developed strategies and practices to retain secrecy. Beginning with the Reagan-Bush administration and ending with the Obama-Biden administration in 2012, Arnold reviews security and surveillance practices (and cover-ups) of organizations such as the National Security Agency, and others, as well as the related violations of law and FOI policy. The book further addresses secrecy, surveillance, transparency, and government power, so will appeal to readers of this journal who are not FOI specialists.

The main purpose of this text is to compare FOI performance of sunshine-era administrations over time (pg. 6). Freedom of information law is one of the most prominent of what in the United States are referred to as sunshine laws. A key claim that Arnold sets out to test is whether secrecy under the Bush-Cheney administration was “...unprecedented in scale and scope” (pg. 8). In Chapter 2, Arnold reviews theories of secrecy and various exemptions under FOI law. This allows Arnold to contrast the letter of the law in the United States with how FOI law works in action in subsequent chapters. Arnold argues that excessive secrecy has been a characteristic of all administrations, including the Obama-Biden administration. He suggests excessive secrecy is problematic because it undermines intergovernmental relations, erodes trust, and enables corruption (pg. 34).

According to Arnold, when it comes to surveillance and secrecy, the events of September 11, 2001 were a critical juncture for the Bush-Cheney administration. Bush-Cheney re-established a program of minimal disclosure similar to the FOI regime that existed under Reagan-Bush. This had the consequence of providing a cover for the surveillance and security initiatives hastened by Bush-Cheney. Bush-Cheney designated any information that had anything to do with “critical infrastructure” as a state secret (pg. 74). However, as Arnold explores in Chapters 3 and 4, changes in the law are not the only indicators of secrecy. Arnold also compares rates of classification, declassification, and overclassification. Arnold finds that “the Bush-Cheney administration classified many fewer pages than Bush-Quayle and not many more than Clinton-Gore” (pg. 89).

This key finding and others like it substantiate Arnold’s claim that despite changes in rhetoric regarding openness and transparency, secrecy is entrenched in the US federal government. This is not to suggest that

Walby, Kevin. 2017. Review of Arnold's *Secrecy in the Sunshine Era: the Promise and Failures of U.S. Open Government Laws*. *Surveillance & Society* 15(2): 352-353.

<http://library.queensu.ca/ojs/index.php/surveillance-and-society/index> | ISSN: 1477-7487

© The author(s), 2017 | Licensed to the Surveillance Studies Network under a Creative Commons BY-NC-ND 4.0 license: <https://creativecommons.org/licenses/by-nc-nd/4.0/>

the Bush-Cheney administration offered some boon to transparency. As Arnold notes, not only did the Bush-Cheney administration ratchet up secrecy in relation to FOI, they basically ignored open meetings law (pg. 100). Surprising, Bush-Quayle were more compliant with open meetings law than Clinton-Gore. To deter these violations from occurring in the future, Arnold argues that laws should be strengthened and judges should be bolder in regulating executive prerogative.

In Chapter 5, Arnold then compares the enactment of secret laws or secrecy laws, some of which provide cover for surveillance (e.g. the National Security Agency domestic spying program, the warrantless domestic wiretapping saga) and some of which directly undermine FOI. Arnold's argument is that the Bush-Cheney administration did not invent secrecy laws but utilized them with greater frequency. The Bush-Cheney administration also utilized secret evidence to a greater degree in various judicial proceedings, including in relation to Canadian Maher Arar's rendition to Syrian torture and subsequent listing on a no-flight list (pgs. 194-197). Relatedly, in Chapter 6, Arnold reflects on the work of the Foreign Intelligence Surveillance Court.

Chapter 9 explores the issue of document destruction and secrecy, specifically the practice of shredding and using burn bags to discard of contentious files. As Arnold notes, "government secrecy is already inherently difficult to study. Secrecy about shredding is even trickier, as shredders take great care to hide their tracks and to minimize accomplices and witnesses" (pg. 283). Document destruction happens when blocking access becomes too difficult to justify. Examples include a number of missing emails under Bush-Cheney, as well as disappeared files related to Abu Ghraib and post-9/11 torture of detainees. Arnold explores the many fights that archivists with the National Security Archive have mounted against the federal government on this front.

Chapter 10 tests the claim that the Obama-Biden administration would be the most open and transparent in history. The specific focus in this chapter is on how the Obama-Biden administration handled FOI related to US drone surveillance and killings. Arnold also compares data on Obama-Biden administration enactment of secrecy laws, use of secret evidence, as well as rates of classification, declassification, and overclassification. The conclusion offers reflections on leaking and whistleblowing, which have become highly pertinent issues under the Trump-Pence administration.

Secrecy in the Sunshine Era has three very minor limits. First, because of the nature of these controversies and the pace at which records are released, Arnold was not able to fully investigate the Obama-Biden administration. As noted, Arnold does briefly explore Obama's drone program as well as rates of FOI disclosure under Obama-Biden. Second, some scholars might find the book lacking when it comes to theoretical and conceptual interventions. I do not think conceptual innovation is Arnold's purpose, but in his defense he does review contemporary theories of secrecy that will appeal to Surveillance Studies scholars. Third, Arnold does not refer to FOI as a legal and social science research tool (e.g. Brownlee and Walby 2015) useful for studying surveillance and security, which could have made for an interesting postscript or appendix. I must stress that these are all minor points. I cannot recommend *Secrecy in the Sunshine Era* highly enough. Any scholars interested in government practices, FOI law, secrecy, surveillance, and recent United States history should read this book.

References

Brownlee, Jamie and Kevin Walby (eds). 2015. *Access to Information and Social Justice: Critical Research Strategies for Journalists, Scholars and Activists*. Winnipeg, MB: Arbeiter Ring Publishing (ARP) Books.