

Book Reviews

Democratic Oversight of Intelligence Services

Daniel Baldino (ed)

Australia: The Federation Press, 2010, pp 240, ISBN 978 1 8628 7741 2, \$59.95

Democratic Oversight of Intelligence Services endeavours to provide a comprehensive analysis of the accountability frameworks for intelligence services within a number of democratic states. Alongside this, the work delves into the nature of oversight and its role in democratic systems, and examines the adequacy of the existing arrangements. The volume brings together contributions from a number of respected Australian and international authors, who draw on legal and political approaches to the policy issues which arise in maintaining the balance between national security interests and the rule of law.

The unique position of intelligence services, operating under an imperative of secrecy, takes them outside many of the oversight mechanisms that would otherwise apply to government functions. In particular, traditional administrative law avenues such as judicial review have less currency in an intelligence context, as there is little opportunity for the courts to perform an ongoing evaluative role. Instead, judicial oversight is limited to rare, and often highly publicised, legal challenges to the powers of intelligence services. Other avenues for accountability open to the public, such as freedom of information, ombudsman or inspectorates are also largely precluded. As a number of the authors argue, the result of these restrictions is that the majority of the accountability structures for intelligence services rest with the executive arm of government. This brings with it concerns over the politicisation of intelligence which is debated here at length, both in the context of specific nations, and as a more general question. Indeed, the discussion of issues surrounding politicisation and its impacts on accountability is one of the strongest aspects of the work.

A number of the authors focus on the pressures on accountability mechanisms for intelligence services resulting from the global 'War on Terror' and subsequent domestic legislative action. The discussion on Australia's responses to terrorism, by Daniel Baldino, and David Neville-Wright in a subsequent chapter, is of particular interest. They draw attention to the complex position of civil liberties, which as a result of the interplay between the protection of Australia's national interests and the need for intelligence services to be accountable is brought to the fore by the stringency of Federal terrorism legislation.

This was starkly highlighted by the way in which the 2007 investigation of Dr Mohamad Haneef was carried out. Dr Haneef's case demonstrated the untested and far-reaching nature of powers granted by new terrorism legislation, alongside the lack of scrutiny of, and communication between, different branches of the intelligence services. Inadequate oversight and a politically charged approach to the intelligence enabled the investigation to continue far beyond its legal merit, much to the detriment of Dr Haneef.

The work is structured around the countries under discussion, with chapters on Australia, the United States, Canada, New Zealand, the United Kingdom and Japan. In addition there is an introductory exploration of types of oversight and the impacts of secrecy, and a discussion by Michael Wesley on issues of politicisation. A surface level of consistency is achieved across the work, particularly between the chapters that are state specific. Each author follows a similar method, setting out the structure of intelligence services within the country they are discussing and particular issues that have arisen for accountability, with recommendations for development.

There is an extensive coverage of Australia's intelligence services and their associated accountability mechanisms across two chapters. Neville-Wright's treatment of the composition of those services, though rigorous as to detail, is far more descriptive than any other part of the book and, as a result, becomes monotonous. Jez Littlewood's adept discussion in the chapter on Canada is among the most successful in the work, being both succinct and comprehensive. Littlewood's approach embraces enough description to suit the lay reader along with expertly considered analysis. The least well-integrated chapter is that by Philip H J Davies focusing on the United Kingdom. Whilst an interesting and well-executed discussion on the nature and necessity of oversight for intelligence services, the relatively consistent structure of the rest of the work is not adhered to. As a result, Davies' chapter reads more as a stand-alone piece than part of a cohesive comparative analysis.

Though there is a fairly uniform approach throughout the chapters, the actual delivery achieves varying degrees of success. Some of the authors aimed their discussion at an audience with little or no knowledge of the field of intelligence services, resulting in more description and less analysis. Others appear to have assumed a readership with a far greater level of knowledge and wrote as such, leaving the lay reader at a loss. The otherwise thorough analysis provided is diminished somewhat by this unevenness. Whilst each chapter stands well on its own, read altogether the effect is somewhat disjointed, which mars the possibilities for comprehensive comparison between different oversight systems for intelligence services.

The necessary absence of transparency in the nature and functions of intelligence services creates a barrier to thoroughly addressing issues of oversight and accountability for such services. However, this volume largely overcomes those issues to present a reasonably

consistent and in-depth analysis that allows for comparison of accountability structures of intelligence services across the featured states. It makes a complex area accessible for both a generalist audience as well as catering to members of the field. Despite some unevenness in delivery, *Democratic Oversight of Intelligence Services* expands the discourse on administrative law issues into an area of vital concern to public policy, national security and civil liberties.

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