

wills and trust agreements; that he realized the limitations on the use of forms; but thought that they served a useful purpose. (He said that he wanted a work limited to forms for wills and trust agreements, and which did not include everything like labor and retirement agreements.) My unhappiness with Mr. Johnson's treatment of marital deduction formulae will not deter me from telling my inquirer that Mr. Johnson's book is exactly what he needs and that it is the best of its kind.

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Secrecy and Publicity: Dilemmas of Democracy. By FRANCIS E. ROURKE. Baltimore: Johns Hopkins Press, 1961. Pp. x, 236. \$5.00.

Mr. Rourke has written a useful, sane, and modest book about an exciting theme. The theme is the increased role of modern democratic government, in the field of communication and in the formation of public opinion. More specifically, he charts three developments: (1) the increase in official secrecy; (2) the increase in the use of official publicity as a sanction; and (3) the increase in the use of publicity, or propaganda, on behalf of government and its policies. Since there is a presumption in a democracy against official secrecy, official propaganda, and extra legal sanctions, he sees secrecy and publicity, as his title makes evident, as twin dilemmas for a democracy.

Moreover, by the time the concluding chapter is reached, he appears willing to push seriously a suggestion he plants early in the essay, namely, that this increased reliance in democracies on the moulding of public opinion is narrowing the gap between democratic and totalitarian societies, whatever the formal legal arrangements may be.

Mr. Rourke thus lays claim to a theme of major importance, and his essay by linking official secrecy and official publicity invites the reader to note and reflect on what could prove to be a decisive shift in the basic organization of his society, as portentous perhaps as the so often noted shift in the role of government in the economic sphere. We appear to be invited to think "big" about the society we live in. Yet in the end I was unclear as to just how seriously Mr. Rourke was taking his big theme and I found the essay so sane and modest as, paradoxically, to be somewhat disappointing. I should like to explore a few of the reasons for my reactions to the theme and to the essay.

First, the theme to remain exciting must involve some assessment of a departure from a model of proper government communication activity in a democracy. Mr. Rourke cites no such model. He recognizes at many points, to be sure, the normative aspects of his problem, but his chief interest lies in describing what is going on and in inventorying the current balances of power in the political process. Perhaps this is inevitable since there is certainly no traditional model of democratic free speech which covers his issue, and he

would have had to develop his own. It is not the least arresting aspect of his essay that it points up a gap in free speech theory. Such theory as we have seems to have assumed that the one threat to a healthy communication system was official intervention in the form of making certain speech content criminal. There was no attention paid to other roles the state might play, such as withholding information or being an aggressive participant itself in public debate. Thus a systematic restatement of classic free speech theory in the context of contemporary communication issues emerges as a sharp current need.

Beyond this I have some difficulties with each of the three main points in the essay. It is easy to talk of the emergence of the Government, with mass communications at its disposal, as a dangerous participant in the market place of ideas. Mr. Rourke has a chapter on this headed "Manipulating Public Opinion." The chapter cites impressive figures on the scope of governmental communication activities today—the Hoover Commission estimated that an army of 50,000 government employees were so engaged at an annual cost of over \$100,000,000 a year. We are also told of the investigations of the Harness and Buchanan Committees into lobbying *by government*. There is no doubt that the Government is increasingly interested in its own public relations and in the popular image it creates, and there is no doubt that the actual process by which national political news is generated has become complex and interesting to isolate and describe. But it is hard to find in Mr. Rourke's description of the government use of publicity any cause for alarm.

First, it is not apparent that there is any real departure from practices of the past. The Government has always been news, and one might argue that the capacity to commandeer an audience that Pericles had was greater than that of Mr. Kennedy.

Second, while there has been controversy over the Government's role here, it appears to have been motivated chiefly by such homely concerns as the sheer cost to taxpayers of the government apparatus, the aggrandizement of certain individual officeholders who are publicized at public expense, the triviality of much of the information the Government solemnly supplies, congressional jealousy of the glamour of the executive, and perhaps most of all, partisan political uneasiness over the publicity given a government policy.

Third, the dangers of massive government publicity arise only when government becomes the primary channel for information to the public, but as Mr. Rourke makes evident, there are obvious counter-forces in the pluralism of the United States and there is little sign that government prestige is becoming so great that it will dwarf all other debaters on public issues.

Fourth, official publicity cannot be equated with propaganda. Mr. Rourke stresses the U-2 incident as an occasion where the Government deliberately falsified the news and, had he written later, he might have added the Cuban invasion. But these incidents are memorable precisely because they are dramatic exceptions to a recognized norm. They do not, I think, suggest a trend

to a new policy of lying to the public. And one might well cite innumerable recent evidences which point the other way, such as the TV coverage of our space flights, the full coverage of Khrushchev's visit, or the sharp debate generated by the official pronouncements on fallout shelters.

In fact, it is likely that the problem of the national government in the United States lies more in finding an effective channel of communication to the public on public issues than in dangerously exploiting the means available to it. We appear to have no forum comparable to the House of Commons; and the development of the presidential press conference and of the presidential "fireside" chat via television are not so such Madison Avenue gimmicks as they are functional substitutes for the English ceremony of putting questions to the party in power.

I have somewhat similar reactions to Mr. Rourke's two other principal points. He inventories an impressive list of instances in which official secrecy is today employed, and he adds substantially to our knowledge of the current scope and pressures toward official secrecy. Here we indeed appear to have a new feature in American democracy. But on a closer look, the impression is considerably modified. One can isolate five or six major reasons for official secrecy: (1) protection of military or scientific secrets; (2) protection of diplomatic negotiations at least while they are in progress; (3) protection of official deliberations, as best illustrated by the jury; (4) protection of official stupidity (5) protection of the records of private individuals which have come into government hands, as best illustrated by income tax records; and (6) protection of the identity of informers to law enforcement officials. Further, it appears that often the secrecy is only temporary, as with respect to diplomatic negotiations or with respect to efforts to prevent insiders from capitalizing in the market on special information as to imminent government action. Finally, it appears that much of the legislative basis for official secrecy centers not so much on secrecy as on concentrating the power to disclose in the hands of a superior by requiring that subordinates make information public only through proper channels.

The secrecy of military data, and diplomatic negotiations, and the identity of informers, have been traditional practices in a country committed to "open government." The protection of individual privacy into which the Government has intruded, as with the income tax, seems a highly sensible policy carrying no overtones of dangerous official secrecy. The protection of official deliberations to induce candor in discussion again seems wholly legitimate as applied to the jury, or the cabinet and other executive level discussions. And the effort to protect official stupidity seems to be a human failing that could hardly be absent in any form of government.

Thus what emerges as distinctive and possibly dangerous is the protection now given to scientific data relevant to national defense. This, since the development of the bomb, has been a familiar feature of American life, and Mr.

Rourke canvasses it effectively, discussing particularly well the psychology of a classification system, the difficulties of declassification, and the incredible proliferation of classified documents today.¹ This is a disturbing fact of contemporary life, and Mr. Rourke balances the pro's and con's soberly. He does not, however, rise to the wisdom of Leo Szilard's wisecrack some years ago: "There is no secret and we intend to keep it." Nor does he spell out the worst implication of secrecy in this realm, namely the need to classify people as well as documents to determine who is loyal enough to have access to classified information.²

Mr. Rourke's discussion opens up a number of attractive issues but once again what we miss is a more normative concern. The norms for official secrecy would be an inviting topic for close analysis but Mr. Rourke's interests lie elsewhere. Having inventoried as many examples as possible of official secrecy, his attention shifts to a detailed discussion of the role of the Congress, the executive, and the courts, with respect to secrecy.³ This is interesting in terms of the forces that shape the actual practices; and the chapter on the controversies between the President and Congress is exceptionally vivid, but if Mr. Rourke's big thesis about the gap between democracy and totalitarianism is to survive it requires more sustained exploration of the lines between proper and improper official secrecy. Once again I feel he has been led to generalize well beyond his description of the details.

The third of Mr. Rourke's shifts in government communication practices is closest to the interests of the lawyer. His point is that the use of officially generated publicity as a sanction has created a means of legal control that exists outside the rule of law. Again, we confront a point which seems to erase differences between democratic and totalitarian forms of government. Mr. Rourke marshalls the congressional investigating committee, the loyalty-security program, the executive press release, and certain practices of administrative agencies as evidence for his point that publicity is today a conscious sanction of government, and then devotes a chapter to the notable lack of success the courts have had in "domesticating" these practices. He adds a shrewd observation that the motivating force behind much congressional investigation today is the need for Congress to match the President as a focal point of news, the need, as he puts it, to avoid being "upstaged" by the President. Congressional inquiries, if they are little else, are newsworthy.

¹ He states that the Moss Committee charged in 1960 that the government was then producing classified documents "at a rate which created each week a stack of classified documents higher than the Empire State building." P. 77.

² He discusses the loyalty-security program but solely as an aspect of government use of publicity as a sanction; see pp. 164-70. Oddly enough, although he has a solid chapter on the courts and secrecy, he does not discuss in this context the non-disclosure of the employee in the loyalty-security program of the confidential evidence against him.

³ The texture of his discussion of secrecy is thus interestingly different from that in Edward Shils' brilliant essay a few years ago on the same theme, *THE TORMENT OF SECRECY* (1956).

In so flatly asserting that in these instances publicity is being used as a sanction, he seems to be taking a handy metaphor literally. He does not isolate sharply enough the phenomenon he wishes to discuss from the adverse publicity which is a necessary by-product of any law enforcement. Any criminal prosecution exposes the accused to awkward publicity that an acquittal may not altogether cure, and often Mr. Rourke seems to be saying no more than this. Publicity is only meaningfully a sanction when it is the only or the dominant sanction threatened, and when it is intended as a sanction. Thus, the loyalty-security program, whatever its many weaknesses, cannot be charged with intending publicity as a sanction. We are left then basically with the congressional committee, and here his point is scarcely news. He is dealing with issues that have been widely debated in the law journals and in the courts. The difficulty here is not so much that he has exaggerated an evil as that he has added little to the analyses already available and has not probed deeply enough the formidable difficulties in the path of effective judicial policing.

In the end we are tempted to say that Mr. Rourke has taken scientific secrecy, the Government press officer, and the investigating committee, and embroidered onto them a formidable thesis about basic changes in American democracy. A person with the gifts of a Thurman Arnold or a David Riesman might have taken the same materials and persuaded us to push them this far. But Mr. Rourke's basic virtues of sanity and accurate reporting at every point tend to dampen his large scale thesis. The book thus leaves the reader with a perplexing double image. It appears to be an essay on a large exciting and central theme. The theme, however, constantly evaporates under Mr. Rourke's execution of it, and we have instead a competent and professional description of contemporary Government communication activities.

I have often wondered precisely what it is that distinguishes modern law study from modern political science. Mr. Rourke's essay offers a kind of case study in point. What would a law man have done with these materials? The comparison suggests some points that are all in Mr. Rourke's favor. The law man would not have had a comparable reach and would not have seen his problem on so broad a canvas. He would have been less astute about the political processes involved and very likely would not have unearthed anything like Mr. Rourke's range of data which goes far beyond appellate cases. But there is one difference in favor of the law man's perspective, and, on stating it, I find it somewhat surprising. The law man would have been more concerned with values and norms and policy. It is not that as a person he is more involved and more value committed, but rather that as a professional he is constantly dealing with structured value systems even when he may say he is simply analyzing legal doctrine.

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