


imaginative work, and as debates about the proper relationship between politics and science continue to develop, *Politics and Expertise* is guaranteed to remain a touchstone in and beyond the field of political theory.

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Brian Kogelmann: *Secret Government: The Pathologies of Publicity*. (Cambridge: Cambridge University Press, 2022. Pp. x, 215.)

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From the middle of the previous century through the beginning of the present one, the concept of “transparency” became a leading governing principle for public and private institutions. Its status ascended in academic fields such as law and public administration, advocacy groups formed to promote it, and international governmental organizations such as the World Bank incorporated it as a component of the reforms they pressed upon those seeking assistance and funding. (For accounts of this rise, see Mark Fenster, *The Transparency Fix* [Stanford University Press, 2017] and Michael Schudson, *The Rise of the Right to Know* [Harvard University Press, 2015]). But in the wake of disappointing results, academic reappraisal, and the rise of right-wing populist movements that embraced the concept’s antibureaucratic spirit but ignored its rules upon assuming power, transparency has faced significant critique and lowered expectations over the past decade (for critique see, e.g., Emmanuel Alloa and Dieter Thomä, *Transparency, Society and Subjectivity: Critical Perspectives* [Palgrave Macmillan, 2018]; for reappraisal see Gregory Porumbescu, Albert Meijer, and Stephan Grimmelikhuijsen, *Government Transparency: State of the Art and New Perspectives* [Cambridge University Press, 2022]). Transparency’s stock has fallen in the conceptual marketplace almost as quickly as it had risen.

Jeremy Bentham’s fascination with the state’s visibility notwithstanding, Anglophone liberal political philosophy did not play a key role in transparency’s rise and fall. Brian Kogelmann’s *Secret Government: The Pathologies of Publicity* addresses that absence directly, offering a historical and contemporary gloss on the usefulness for democratic institutions of visibility as a metaphor for governance. Beginning with a summary of leading pre-twentieth-century philosophers who considered the role that “publicity” (a concept close enough for purposes of this short review to use interchangeably with transparency) and secrecy play in a liberal state, *Secret Government* considers, among other issues, publicity’s role in democracy, deliberation, and the ideals

of the rule of law and justice. The book's clear and schematic account will prove useful for political philosophy as well as for those outside the field interested in the subject matter.

Skeptical of publicity, Kogelmann concludes that it serves best as a secondary value that should operate to advance other, more significant goals—goals that can be advanced in some instances more by secrecy than by openness. The book's most intriguing chapters (2 and 3) question publicity's role in democratic legislatures. Kogelmann shows that a more visible state inhibits a representative government from achieving the goal of political equality by allowing powerful groups and individuals to wield more influence and gain excessive and unfair access to public information (52). The point is counterintuitive and Kogelmann is not the first to make it, but it is logical: secret legislative deliberations and votes can stop the excessive influence of wealthy and entrenched interest groups by disrupting the exchange of money for legislation. Unable to see contemporaneously the fruits of their bribes or campaign donations, the entitled can no longer be certain they have received the benefits of their bargain; unable to be seen as they make their decisions, legislators can more freely negotiate, change their minds, and vote their conscience rather than limit themselves to narrow partisan and pecuniary interests. Darkness can sometimes foster democracy and limit the corruption that visibility otherwise assists.

But having persuasively argued that publicity is often an unnecessary hindrance to democracy, Kogelmann faces the problem of identifying when, to what extent, and how secrecy can further it. Although he proceeds with the same care and patience in offering his conceptual prescriptions as he did in his critique of publicity, the case he makes for them is less convincing. Consider his attempt to counter the problem of democratic accountability: How can citizens of a representative democracy know that their elected agents are advancing their interests without direct observation of their deliberations and votes? He argues that this concern can be addressed with a combination of testimonial accountability (representatives should be allowed to testify after the fact about closed legislative proceedings) and plural representation (deliberators should be elected to advance the citizenry's positions in rough proportionality to citizens' relative commitment to those positions) (89–94). Although these institutional arrangements may enable some degree of accountability, they are either insufficient or impossible to establish in a mass democracy. Citizens cannot trust deliberators' retrospective testimony, especially in the absence of observation or transcript. To support his claim, Kogelmann relies on accounts of the famously secretive US constitutional convention (77). But Madison's account of the proceedings was tendentious and strategic (see Mary Sarah Bilder, *Madison's Hand: Revising the Constitutional Convention* [Harvard University Press, 2015]) while the reports in the *Federalist* and *Anti-Federalist Papers* were more argument than objective description. The convention might have been more an exception that proves the rule than a deliberative model. He also asserts that

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proportional representation can reflect the pluralism of citizens' positions, but he uses Israel as one of two countries that exemplify its possibility (93) without noting either that nation's recent history of corruption scandals and its short-lived, failed governments, or its long-standing exclusion of a large minority of residents within its borders from democratic representation.

Kogelmann's discussions of the rule of law and the institutional establishment and knowledge of justice (chapters 4, 6, and 7) share the same rhythm: persuasive critique, thoughtful but unpersuasive solutions. He explains why a legal system within a democracy that obeys the rule of law cannot meet the goals of absolute legal publicity and a visible model of justice because the former requires too much of law and its subjects and the latter proves too costly and can interfere with the substantive commitment to actual justice. But his solutions to the problems publicity creates as both policy and standard would create as many problems as they solve. His proposal to impose legal culpability only on those aware of a law they violated (109–11) would, for reasons that he concedes but dismisses, prove difficult to administer and result in other forms of unfairness. He also wishes away the difficult task that a legislature would face in simplifying a mature but sprawling and complex legal code so that it could be more legible (112), and that a judge or jury would face in drawing lines between the clear, abstract principles he lays out.

My complaint is not an indictment. Kogelmann admirably takes on the extremely difficult task of vindicating his effective critique of publicity with a better philosophical conclusion that justifies secrecy as a democratic norm. Given the improbability of meeting the necessary conditions for secrecy he lays out, a clear solution for publicity's democratic pathologies seems unattainable. In the United States, federal courts and the Congress have struggled in good faith for over fifty years to balance in the federal Freedom of Information Act the general desire for transparency with the specific governmental needs for secrecy, regularly frustrating advocates and skeptics of publicity alike. Although it may not have found the elusive philosophical answers to confounding questions of theory, law, and politics, *Secret Government* impressively and provocatively decenters publicity as a democratic value.

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