

Secrets and Leaks: The Dilemma of State Secrecy

Rahul Sagar. (Princeton University Press, 2013) 281 pp., bibliography, index.

Reviewed by Jason Manosevitz

Here is a harsh reality: We need secrecy to ensure our national security, but the clandestine nature of intelligence programs leaves them vulnerable to abuse and unauthorized disclosures. The result is damage to the very security we seek. As we have seen with Edward Snowden's leaks about National Security Agency programs, it is hard for those without inside knowledge to know whether the revelations truly serve national security objectives or conceal wrongdoing. How then can even an informed public know whether or not to support such programs in the interest of national security. We can be sure that sensationalized media coverage will make difficult any careful thinking or discussion about the subject.

Thankfully, Rahul Sagar's book *Secrets and Leaks: The Dilemma of State Secrecy* provides a thoughtful and well-researched analysis of the regulation of intelligence activities. Sagar, currently teaching at the National University of Singapore following a stint as an assistant professor at Princeton, starts by accurately stating that the "contemporary debate... is not about the legitimacy of state secrecy per se, but rather about ensuring that state secrecy is used only to further national security," putting to rest notions that intelligence activities go against democracy. (3) Given this, Sagar sees a "dilemma" in designing an effective regulatory framework that keeps pace with the "dramatic transformation in scope and scale of the president's national security powers" while still ensuring that the state can conduct the covert actions it needs. (5)

Sagar then walks readers through the problems of judicial review, congressional oversight, media watchdogs, and the role of whistleblowers and leakers in checking the executive's power to direct secret activity. At the heart of the problem is the executive's control over information about intelligence programs. Sagar sees whistleblowers and leakers, helped by the press, as more effective than the courts or Congress in discovering questionable

intelligence activities, biting describing the mismatch between those who *should* (Congress) and those who *do* (whistleblowers and leakers) serve as regulators of secret state action. (51)

This is Sagar's first book, and he takes care to address the vast literature dealing with US intelligence programs. He makes extensive use of rhetorical questions in each chapter, a device that allows him to address previous academic work and point out his perspectives on that work. The chapters read like short, self-contained lectures, and he strives to bring readers along by summarizing his arguments throughout the book. Sagar's wide use of key court cases and exposures of intelligence activities to back up his arguments also makes his work a handy guide for further reading.

In setting up his analysis, Sagar is dead-on in observing that problems with state secrecy in the United States have grown more complex as our national interests have expanded. He argues that before the creation of a permanent US Intelligence Community (IC), "Covert activities did not emerge from or stay within the recesses of a security apparatus shrouded in deep secrecy." Rather, secret state action was tightly defined, of limited duration, and unavoidably made public after a short time. (34-35)

Undoubtedly, combating terrorism adds yet more complexity, because it blurs the lines between foreign and domestic intelligence activities, though Sagar does not mention this himself. He does, however, point out that several institutional developments have fostered the executive's ability to exercise greater secrecy privileges, beginning with Executive Order 10290,^a which addresses the president's implied powers.

a. Harry Truman signed the order in September 1951. Its imposing full title is "Prescribing Regulations Establishing Minimum Standards for the Classification, Transmission, and Handling, by

Having identified the problem in his first chapter, Sagar begins the next by asking if the judiciary can regulate secrecy. He reviews key court cases dealing with intelligence issues and finds, as others have, that the courts often side with the executive in favor of protecting state secrets. For example, he cites *US v. Reynolds* (1955), which reaffirmed the state's right to withhold evidence on the grounds that its revelation in court might harm national security. (41)

However, Sagar argues, judges are poorly positioned to assess the damage exposure of intelligence programs might cause. He warns that pressing the courts to make cost/benefit calculations about disclosures will merely “encourage the politicization of the relevant benches and thereby defeat the whole point of turning to the courts” for impartial adjudication. (74) Sagar also rightly puts little stock in arguments that the courts could help promote transparency by requiring intelligence officials to explain why acknowledging the existence of a secret program would itself harm national security. However, making such explanations in public without compromising details would be nearly impossible and defeat the purpose of the approach. (73–74, 76)

Sagar forcefully argues Congress is unable to proactively regulate the president's intelligence activities because it has to rely on the executive branch for information. Congress does do well, however, in investigating cases whistleblowers and unauthorized leaks reveal. In assessing Congress's role, Sagar points out that select members of Congress are routinely briefed on the executive's intelligence activities, but, absent some other catalyst, these members cannot lawfully disclose the activities or conduct public investigations of them. For precisely this reason, Sagar is skeptical that members of Congress do not leak secrets, although he admits there is no proof that they do. (90–91)

Whistleblowers, anonymous leakers, and the press—the most proactive in exposing secret activities—all receive close attention. Sagar deems these actors to be the most effective in keeping the executive in check because they galvanize the judiciary and Congress into action. Sagar hits the most important problems with these disclo-

tures for our democracy, writing that the “parties involved in disclosing, reporting, and publishing classified information are neither elected by the people nor appointed by their representatives.” (114) As a result, they are not necessarily acting in the public interest.

Sagar calls for closely examining the motivations of those revealing secrets and warns against encouraging greater protections for them because, like the judiciary and Congress, they are poorly positioned to assess what should or should not be disclosed in the name of national security. Whistleblowers and leakers, Sagar argues, pose a serious problem because they expose intelligence activities out their own sense of right and wrong, without regard to legal stipulations or considerations of national security.

Sagar's book has been criticized—unfairly I think—for containing few ideas about how to address the dilemma of state secrecy. Sagar is simply realistic about the obvious—the executive branch governs information about secret programs, and in our political system, an inquiring free press will constantly challenge the executive to reveal its secrets. Moreover, Sagar makes clear that most ideas for refining regulation of intelligence activities merely worsen oversight or create more layers of it.

Finally, in setting out the dilemma, Sagar implicitly underscores the tangible damage unauthorized disclosures cause in dollars and lives lost. To fully calculate the costs, however, we must also recognize the less visible effect of the loss of vital information streams national security leaders and organizations rely on to inform decisions and protect the nation from those who would do it harm.



Departments and Agencies of the Executive Branch, of Official Information Which Requires Safeguarding in the Interest of the Security of the United States.” It was revoked and replaced in 1953, and multiple versions have appeared in the years since.