

Atomic Energy and Congress. By Morgan Thomas. Ann Arbor: University of Michigan Press, 1956. Pp. ix, 301. \$4.75.

A decade has elapsed since the Atomic Energy Act of 1946 created a governmental framework for dealing with the revolutionary implications of atomic energy. Generally accepted in the great congressional debates of 1945 and 1946 was the belief that the atom's revolutionary force required a revolutionary approach to atomic control. There emerged a structure for governmental control unique not only in the mechanics of control but also in the relationship between the executive and legislative branches.

This structure was founded upon an unprecedentedly broad grant of authority to an executive agency—the Atomic Energy Commission—to build a vast industrial enterprise (operating initially as a governmental monopoly) and to regulate private activity in the atomic energy field. The broad authority vested in the AEC for exercise in a field which most laymen apathetically assumed was mysterious beyond their comprehension,¹ as well as super-secret, created a vacuum which was filled by creation of the uniquely powerful Joint Committee on Atomic Energy, created to oversee AEC activities. To a large extent this Committee largely became in effect the Congress, where atomic energy matters were concerned. The authority of the Committee, always exercised vigorously and expansively, has tended to blur the established lines of demarcation between executive and legislative responsibility, authority and function. Consequently, atomic energy policy and administration have remained almost exclusively within the orbit of the Commission and the Committee, for the most part beyond the pale of public discussion and the normal checks and balances of our government.

Surprisingly, this novel experiment in democratic government has escaped the attention of scholars for almost a decade. Surprising also is the fact that when a political scientist, Morgan Thomas, finally has undertaken such a scholarly study, his book, *Atomic Energy and Congress*, concentrates attention upon the efficacy of this novel executive-legislative relationship in achieving sound operational results and treats only lightly the implications of this relationship to sound, democratic government.

In considering *Atomic Energy and Congress*, one must stress this necessary caveat: The real story of atomic energy and the Congress, particularly AEC-Joint Committee relationships, is largely obscured by the omnipresent curtain of security. Mr. Thomas observes in the preface that available documentary

¹ This attitude persists even today. In the recent House debate on H.R. 12,061, 84th Cong. 2d Sess. (1956), a bill directing the AEC to embark upon a large-scale program for development and construction of power reactors, Rep. Howard Smith of Virginia stated, "I have been unable to learn the merits of it [the bill], and I think you will be unable to learn the merits, because none of us are scientists." 102 Cong. Rec. 12,996 (July 24, 1956). In the same vein, Rep. Thomson of Wyoming stated, "Congress has no business legislating in this field because it lacks the information necessary to direct the Executive Branch intelligently." 102 Cong. Rec. 13,002 (July 24, 1956).

material leaves much unsaid and that most of the important decisions have been made behind "closed doors." Although Mr. Thomas undoubtedly has done a thorough, competent job of analysis through study of available documents and interviews with knowledgeable individuals, it is doubtful that the real story can be told without access to the substantial body of information locked behind the security curtain. Many events of critical importance are regarded as so highly secret that published materials bear no hints, and it is unlikely Mr. Thomas' interviewees would discuss them. The result is, of course, that the documentation available to Mr. Thomas on some important issues represents only a small fraction of the real story, and his treatment of these issues can be no more than an educated, but sometimes erroneous or incomplete, inference. His effort to bridge the gap through interviews with experienced officials, though the best technique available, results in acceptance of some erroneous or misleading conclusions of fact.²

Mr. Thomas' book is concerned largely with the evolving relations between the AEC and the Joint Committee. His central thesis is that Congress sought to compensate for the extraordinary powers granted the AEC, and especially for the necessary secrecy cloaking the AEC's activities, by creation of an unusually powerful committee to conduct continuing surveillance of the Commission. He describes the growth of the Committee from its initial gropings and reluctance to assume responsibility to its more recent assumption of responsibility for the atomic energy program and identification with the AEC. He obviously is impressed with the competence and "solid record of achievement and sound judgment" of the Committee. His ultimate conclusion is that the AEC-Committee relationship constitutes an admirable, effective technique for adapting the democratic system to the problems of secrecy, which otherwise would prohibit operation of the checks inherent in the principle of separation of powers.

The secrecy concept is central to Mr. Thomas' analysis. Unfortunately, he accepts uncritically the hypothesis that problems of secrecy and security necessitated a special governmental technique in order to preserve democratic processes. Even assuming that the AEC's secrecy standards have been warranted and proper, the area of AEC activities permeated with security considerations, and thereby legitimately removed from public scrutiny, is much smaller than is generally believed. Unfortunately, too many responsible people, including those in high positions, have thrown up their hands in despair because of their preconception that secrecy factors and complexities of abstract science preclude comprehension of the atomic energy program. Moreover, the Atomic Energy Commission is not the only, or first, executive agency to operate largely

² An example is Mr. Thomas' conclusion that the AEC has been willing to permit the Joint Committee staff access to AEC files. The fact is that, although the AEC has usually been willing to give the Committee any information it requests, it has never been willing to permit the Committee access to its files or to any "internal documents."

behind a security curtain, and Congress apparently has been able to handle satisfactorily other such agencies without creating special committees such as the Joint Committee on Atomic Energy.

It is clear that neither the Atomic Energy Act of 1946 nor the Act of 1954 in any way precludes members or committees of Congress from delving into secret areas of the atomic energy program to the extent they deem necessary. The AEC is quite willing to honor requests for Restricted Data³ needed in performance of legislative functions.⁴ No security investigation or clearance is required for members of Congress, although congressional staff personnel must have appropriate AEC clearance.⁵ The only other requirement is that any Restricted Data communicated be handled in accordance with AEC security standards. Thus, notwithstanding the secrecy surrounding the AEC program, all members of Congress and all congressional committees may have access to all information necessary for adequate performance of their legislative function. It seems, therefore, that the existence of the Committee cannot be justified on grounds of secrecy alone.

Without question, the Committee has been effective in the sense that it has had a major impact upon the atomic energy program. Also, the Committee has assisted immeasurably in defending the AEC's interests before the Congress and the public. And, as Mr. Thomas points out, on many occasions the Committee actually has taken the lead in forcing the AEC to proceed more boldly and imaginatively than it had contemplated. These factors have contributed greatly to such superior position as the United States now maintains in the atomic energy field. But the major difficulty, and with this Mr. Thomas does not deal, is that the public is unable to measure and evaluate with objectivity our progress in atomic energy. If the AEC and the Committee have been wise and able in their leadership, the results probably have been sound. If they have not been wise and have made serious mistakes, we will know of the failures only in the dim light of history. In entrusting our atomic energy program to the groups within this small, closed circle, we have lost the benefits of exposure and correction inherent in democratic processes.

The impact of the AEC-Committee relationship upon government processes is somewhat easier to analyze because there we have traditional standards by

³ "Restricted Data" is a statutory term designating all classified atomic energy data subject to the information-control provisions of the Atomic Energy Act.

⁴ Replies From Federal Agencies to Questionnaire Submitted by The Special Subcommittee on Government Operations, a committee print of the House Committee on Government Operations, 84th Cong. 1st Sess. 29 (1955).

⁵ Hearings before a Subcommittee on Reorganization of the Senate Committee on Government Operations on S. J. Res. 21, 84th Cong. 1st Sess. 247 (1955). If, however, derogatory information concerning a member of Congress is brought to AEC's attention it will be considered. Replies From Federal Agencies, *op. cit.* supra note 4, at 43. Mr. Thomas' book makes no mention of the significant case of Rep. Robert L. Condon of California, who was denied access to an AEC weapons test in 1953 on security grounds.

which to judge. In this area, largely ignored by Mr. Thomas, the AEC-Committee relationship has produced some highly interesting and perhaps questionable results.

Mr. Thomas discusses with great cogency the natural development of a sort of "personality" by executive agencies and their inevitable tendency to participate in political struggle for attainment of agency objectives. This he regards as the explanation of the AEC's attachment to the Committee as a source of external support. He does not, however, discuss the opposite side of the coin—the fact that congressional committees also develop a "personality" and participate in political struggle for maintenance and expansion of power and influence. Particularly is this true in the case of a powerfully constituted committee, such as the Joint Committee, which is able to exercise a virtual monopoly over legislative activities in one of the most important and exciting areas of government activity. The eighteen members of the Committee, with their unique specialization in a security-hedged field of paramount public interest, stand in an unmatched position from which to project themselves into the foreground of national politics. Similarly, the Committee's staff, operating under the Committee's broad statutory authority, have considerable opportunity and incentive to direct the Committee's activities in an aggressive manner which will enhance their own influence and prestige.

The Committee always has been conscious and jealous of its authority and has sought from time to time to expand the area of its influence to, and perhaps beyond, the periphery of atomic energy. Through its full control over the AEC and its jurisdiction over the broadening area in which the atom is involved, it has been able to exercise authority and responsibility in the areas within the purview of the State Department, the Department of Defense, the Joint Chiefs of Staff, the Central Intelligence Agency and the Federal Civil Defense Administration.

The AEC-Committee relationship is really symbiotic in nature. The AEC is tied to the Committee by its statutory duty to keep the Committee "fully and currently informed" and by its recognition that it must have the Committee's support, while the Committee's authority and prestige rest in turn upon public confidence in the atomic energy program and upon the AEC's cooperation in maintaining the Committee's legislative monopoly.⁶ Both groups recognize their mutual dependence for accomplishment of their political objectives and consider the national atomic energy program as their joint venture.

The nature of this interdependence furnishes an added insight into the problem of secrecy. The Committee's position has been strengthened greatly by the

⁶ In a revealing statement, AEC Chairman Strauss recently reminded the Joint Committee that he had on many occasions "expressed concern to you about the fact that other committees in the Congress have called upon us repeatedly for testimony on various parts of our program, that originally, and in former days was concentrated here, but there is nothing that we can do about it." Hearing Before the Joint Committee on Atomic Energy on a Bill Providing for a Civilian Atomic Power Acceleration Program, 84th Cong. 2d Sess. 36 (1956).

exclusion of much important atomic energy information from public scrutiny and the concomitant inaccessibility of such information for other members and committees of Congress. Furthermore, when information falls within the definition of "Restricted Data," the Committee acquires a measure of jurisdiction, even though the activities involved functionally may fall primarily within the jurisdiction of other committees. Significantly, when the Committee, at the urgent request of the Department of Defense, approved a provision in the 1954 Act for removal of information relating primarily to weapons utilization from the Restricted Data category, it simultaneously incorporated in the Act a provision requiring Defense to keep the Committee fully and currently informed on its atomic energy interests and activities.

This symbiosis between the AEC and the Committee has, as might be expected, thrived under conditions of security-imposed secrecy. But, as if security restrictions were not sufficient, the Committee has found it convenient to hold closed-door hearings on many occasions when not warranted by security factors. During 1956 the Committee or its subcommittees met in executive, rather than public, session to hear testimony by Army representatives on radiation sterilization of food, by Bureau of the Budget representatives on disposal of AEC communities, by a representative of the U.S. Chamber of Commerce on industry activities in atomic energy development and by the McKinney Panel⁷ staff on the Panel's report and recommendations. The Committee also held a two-day executive-session "seminar" in which representatives of the legal profession and the insurance and nuclear industries discussed problems of providing insurance for losses from civilian reactor accidents.

The tendency of the Committee to act in executive session has been marked even in consideration of legislation; it is in this area that the dangers to democratic processes are most pronounced. The implication of this tendency, which certainly would appear to warrant close scrutiny and analysis by political scientists, appears unfortunately to have escaped Mr. Thomas' attention.

Atomic Energy and Congress also treats lightly the enormous authority vested in the Committee and its impact on the traditional doctrine of separation of powers. The book does deal with the inescapable fact that the Committee is vested by statute with unusually great authority, but it makes no reference to the Committee's own expansive interpretation of its authority, responsibility and role.

Three specific grants of authority to the Joint Committee impinge upon the doctrine of separation of powers. First, the statute expressly requires the AEC to keep the Committee "fully and currently informed" on all AEC activities and similarly requires the Department of Defense to report on all activities relating to the development, utilization or application of atomic energy.⁸ Sec-

⁷ The Panel on the Impact of Peaceful Uses of Atomic Energy was formed by the Joint Committee in 1955 with Mr. Robert McKinney as Chairman.

⁸ 68 Stat. 956 (1954), 42 U.S.C.A. § 2252 (Supp., 1955).

ond, it authorizes the Committee "to utilize the services, information, facilities, and personnel of the departments and establishments of the Government."⁹ The third power of the Committee, review of investigative reports and security files, is not founded upon any express statutory provision, but rests upon the other two authorities.

Regardless of differences of opinion members of the Committee may have among themselves, they have been monolithic in their insistence on the broadest conceivable interpretation of the requirement that the Committee be kept "fully and currently informed." When in the course of the Committee's hearings on the 1954 legislation, Chairman Cole characterized the AEC's responsibility in this respect as "all-inclusive" subject to the possible exception of activities relating to the nation's "war plans," a former Committee chairman, Senator Hickenlooper, immediately took issue with the exception and Chairman Cole quickly withdrew it.¹⁰ Similarly, Senator Hickenlooper has contended that the AEC must submit for the Committee's scrutiny all proposed contracts prior to execution,¹¹ and the present Committee chairman has strongly asserted that even "internal working papers" of the AEC must be furnished.¹² The extent of the Committee's inroads on AEC privacy is reflected further in some Committee members' complaint that the chairman of AEC failed to meet his responsibilities by neglecting to notify the Committee of the general manager's intention to resign, even though he had received privately, as a matter of personal confidence,¹³ notice of such intention. In short, the Committee believes that it is entitled to any information, of whatever nature, in the AEC's possession. This view is founded upon the interesting legal theory that the AEC and the Department of Defense waived whatever privilege they may have enjoyed under the doctrine of separation of powers by presidential approval of the 1954 Act with its "fully and currently informed" provisions.¹⁴

Although the Committee's statutory authority to "utilize the services, information, facilities, and personnel" of the Executive Branch has been cited by the Committee in support of its power to obtain data from the AEC and the Department of Defense, there is no available evidence of other exercise of the authority. However, Senator Hickenlooper, in some enlightening floor remarks during debate on the 1954 legislation, contended that under this authority the Committee could direct the Attorney General to "[d]etail X number of people

⁹ 68 Stat. 957 (1954), 42 U.S.C.A. § 2255 (Supp., 1955).

¹⁰ Hearing Before the Joint Committee on Atomic Energy on S. 3323 and H.R. 8862, 83d Cong. 2d Sess. 672-73 (1954).

¹¹ 100 Cong. Rec. 10,179-80 (July 16, 1954).

¹² 101 Cong. Rec. 9,575-83 (July 21, 1955).

¹³ Hearings before the Joint Committee on Atomic Energy on Development, Growth and State of the Atomic Energy Industry, 84th Cong. 1st Sess. 38-41 (1955).

¹⁴ A legal opinion to this effect by the Committee's counsel was inserted in the Congressional Record. 101 Cong. Rec. 9,581-82 (July 21, 1955).

on the staff of the FBI and have this matter investigated" or could direct the Department of Defense to "perform certain acts in the interest of the furtherance of the atomic energy program . . . provided it went to the development of the atomic energy program."¹⁵

Congressional access to security files and investigative reports long has been a matter of heated dispute among members of Congress and successive Presidents, with the Executive consistently maintaining that congressional access to these materials would prejudice seriously the usefulness of the investigative agencies and therefore not be in the public interest. Nevertheless, the Executive has acceded, since the earliest days of the Committee, to the latter's contention that it is entitled to access to investigative reports and security files on participants in the atomic energy program. The Committee and its staff have, as a matter of course, inspected these documents throughout the years, not on the basis of any express statutory authority, but only upon its general authority to be kept "fully and currently informed" and "to utilize the services, information, facilities, and personnel" of the Executive Branch.

No discussion of the role of the Committee would be complete without consideration of the Committee's own conception of its role. Fortunately, there is available a 1956 Committee report¹⁶ which provides this information in succinct form. In this report, the Committee characterizes itself as a "watchdog" replacing "the public scrutiny which ordinarily follows normal government operations," and observes that its findings "have had to be accepted by the rest of the Congress and by the public because the Commission has of necessity had to operate behind very strict security regulations." The Committee contends also that, in its endeavor to bring a "measure of perspective" to the atomic energy program, it has taken the lead in hydrogen bomb development, in opening the atomic energy industry to private enterprise and in sponsoring "an effective missiles program" assuring deliverability of atomic weapons. And, most remarkable of all, the Committee maintains that it has "had to examine the operations of the Commission to see whether or not such operations came within the law since there is no way that the Commission's operations can be reviewed by a court."¹⁷

There can be no questioning of the tremendous—indeed, almost unlimited—power of the Joint Committee on Atomic Energy. The ever widening impact of atomic energy has made the Committee an important factor in military policy, foreign relations, civil defense, maritime affairs and power policy. Its asserted, and not often contested, power to delve into every detail of AEC activities,

¹⁵ 100 Cong. Rec. 10,180 (July 16, 1954).

¹⁶ H.R. Rep. No. 1,746, 84th Cong. 2d Sess. (1956). This report was issued in approval of a resolution to increase the compensation of the executive director of the Committee's staff.

¹⁷ The 1954 Act expressly provides for judicial review of AEC's licensing and regulatory actions. AEC's operations in other areas are subject to review by the General Accounting Office to assure that funds are expended only as authorized by law, and it is not at all uncommon for affected parties to seek judicial review of GAO determinations.

enables it to engage in the formation and implementation of all policy decisions in atomic energy and related areas. By skillfully nurturing the myth of super-secrecy in atomic energy,¹⁸ it has succeeded to a great extent in preserving, without significant interference by other committees and by other members of Congress, its position as the sole determinant of legislative policy in atomic energy. On many occasions it has formulated basic policy decisions which a reluctant AEC ultimately accepted, and has caused the AEC to modify or adjust its decisions to conform with the Committee's point of view, and apparently has had a voice in the AEC's assignment to key positions of its own personnel.¹⁹ The Committee's self-restraint, undoubtedly a product in large part of differences of opinion among Committee members, has been the only check restraining encroachment on Executive prerogatives. The Committee's ability to assume this dominating role rests fundamentally upon its ability to secure passage of legislation compelling AEC compliance, but the Committee has found such action unnecessary. Actually, the Committee's acknowledged role as the congressional arbiter and interpreter of atomic energy policy, coupled with the AEC's isolation from other segments of the Congress and its dependence upon Committee support, assure that the AEC will generally be responsive to the Committee's "moral suasion." For such "moral suasion" to exist, there must, of course, be unanimity or near-unanimity among the Committee members.²⁰ Such unanimity has prevailed in fact during most of the Committee's history until recently, especially with respect to fundamental policies.

The net result has been that there remains a meaningful separation of powers between the Executive and Congress only in the area in which the Committee "watchdogs" the AEC's administration, though even here the AEC has far less privacy and independence than other agencies. In the area of policy formulation the Committee's encroachments upon Executive prerogatives and the interplay of AEC-Committee influences has led to such a breakdown of separation of powers that the policy leadership of a responsible, specialized agency has been diluted by the influence of a less specialized, politically-constituted legislative body. As a corollary, the nation is deprived of democratic

¹⁸ Only in recent years has the Committee taken a vigorous position favoring declassification of atomic energy data. Previously, the Committee was inclined to favor vigorous secrecy standards.

¹⁹ The present Committee chairman, Senator Anderson, told the Senate that his "violent objection and exception" to appointment of an AEC official as AEC general manager resulted in the passing by of this official when a new general manager was appointed in 1955. 101 Cong. Rec. 9,583 (July 21, 1955).

²⁰ As Senator Hickenlooper has put it: "[O]n a few occasions the joint committee has been quite unanimous in its opinion, which was not controlling over the Commission, but it had moral suasion over the Commission. On 2 or 3 occasions the joint committee has been quite close to unanimity or has been unanimous in believing that the Commission should not do a certain thing or should do a certain thing. The Commission has agreed with us in the end. The moral suasion of our committee over the actions of an administrative agency is great." 100 Cong. Rec. 10,181 (July 16, 1954).

influences upon policy formulation inherent in normal arms-length relations between the Executive Branch and Congress.

Difficult to accept without question is Mr. Thomas' conclusion that the Joint Committee device provides an effective means for preserving democratic control over the atomic energy program. In a sense the five-man Commission operating on a majority rule basis provides some measure of democratic control of policy development, but even assuming that the AEC and the Committee dealt at arms length, it would mean at best that the closed-door decisions of a five-man Commission would be subject to legislative review only by, in effect, an eighteen-man closed-door Congress. However, considering the Committee's frequent self-identification with AEC policy objectives and its active initiation and sponsorship of AEC policies, what means are available for preserving democratic control over the AEC-Committee joint venture? Quite possibly the existence of the Committee makes possible more democratic control than would exist in its absence, but it is clear that the Joint Committee device provides somewhat less than adequate democratic control.

Atomic Energy and Congress is a valuable contribution to the unfortunately small body of literature relating to the politics of atomic energy in the United States. Mr. Thomas undoubtedly is correct in his conclusion that the nation has benefited substantially, from the standpoint of its national resources and strength, from the Joint Committee on Atomic Energy. It is much more likely, however, that history will attribute these benefits to the responsibility, integrity, devotion and ability of the members and staff of the Committee, rather than to the Committee as a unique governmental institution. In any event, it is unfortunate that Mr. Thomas has concentrated his efforts on an historical summary of events, based largely upon personalities, rather than probing more deeply the significance to our traditional democratic political institutions of existing legislative control of atomic energy.

HAROLD P. GREEN*

* Member of the Illinois and Washington, D.C. Bars.

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Our non-profit institutions and foundations, one of whose principal sources of income is the return from their own capital endowment, have been particularly hard hit by inflation. Consequently a search for new benefactors began some time ago. It was apparent that the vast number of relatively small individual contributions would continue to be the main support, although an inadequate one. Large additions on a grand scale were required to meet the ever increasing needs, but the Rockefellers, Carnegies, Vanderbilts, and Dukes of a past era were no longer available.