

ON THE DISADVANTAGES OF TRANSPARENCY FOR GOVERNMENT

REFLECTIONS ON SOME ARGUMENTS AGAINST TRANSPARENCY AS A DEMOCRATIC REFORM STRATEGY

Ricardo Cruz Prieto

Abstract

Transparency has become democracy's newest value. It has been embraced by governments and civil society as a preferred reform strategy for improving governance. As there are good reasons for this optimism, scarce attention is being paid to its limits and risks. Playing devil's advocate, this paper investigates two strong arguments against transparency as a democratic reform strategy, one from each end of the political spectrum. From the conservative end, it explores the notion that decision making should be left to the experts and ruling is made best in isolation from pressures from the public. From the left side, the idea that transparency is a strategy for legitimizing questioned states and putting aside substantive reform. Both criticisms are found wanting against the arguments for transparency, while suggesting that there might be closely delimited spaces for governmental deliberation that could benefit from some privacy, and agreeing that the full benefits of transparency policies can only be achieved in conjunction with broader reform strategies.

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Paper prepared for the Transatlantic Conference on Transparency Research.
Utrecht, June 7 – 9, 2012

On the disadvantages of transparency for government

Reflections on some arguments against transparency as a democratic reform strategy

Ricardo Cruz Prieto

Transparency has become one of the newest values of democracy. In a surprisingly short time, it has come to be acknowledged globally as a centerpiece of democratic politics and essential to good government. The multiplication of transparency laws around the world, the continuous increase in academic and civil society work on the area, as much as the attention paid by international organization, the establishment of the regime-aspiring Open Government Partnership, and this same conference, signal the mainstreaming of transparency as an instrument of governance.¹

¹ The rapid spread of transparency legislation is a well known fact. While the first transparency legislation go back to the Swedish 1766 Freedom of the Press Act, and the notion of open government has a long pedigree in Enlightenment thought (Rousseau's *Considerations on the Government of Poland*), until 1992 there were only 12 transparency laws. The number skyrocketed to around 90 by 2011. (cf. Toby McIntosh, "FOI laws: Counts vary depending on definitions" available at <http://www.freedominfo.org/2011/10/foi-laws-counts-vary-slightly-depending-on-definitions/>) Transparency International, a crucial forerunner of the transparency agenda, was only funded in 1993. Most democratic core concepts (such as participation, rule of law, division of powers) are centuries and even millennia old, the quick hold of the transparency agenda in the democratic imagination is both a reflection of the rapidly changing face of democracy and of the weight of technological change. Cf. Christopher Hood, "Transparency in Historical Perspective," in C. Hood and D. Heald, *Transparency. The Key to Better Governance*, Oxford UP, 2006, & Helen Derbshire, "Proactive Transparency: The Future of the Right to Information?," World Bank Institute, 2010, available at <http://siteresources.worldbank.org/EXTGOVACC/Resources/DarbshireProactiveTransparency.pdf>.

The presumed benefits of transparency for all the actors involved have been heralded generously. It reduces corruption, strengthens accountability, empowers citizens, improves performance and efficiency, benefits fair market competition, improves public policy, targets resources, among other goods.² It is an instrument seen as rebuilding citizens' trust in government and their representatives, strengthening financial market standing, and reinforcing national status in the international community--³though, presumably, and hopefully, it all depends on what transparency reveals.⁴ While there is still work to do demonstrating some of these benefits and sharpening policy instruments, these presumptions about outcomes are widely shared on both civil society and government circles.⁵

Resistance to transparency reform is usually perceived and depicted as coming from fear of exposing corruption and mismanagement, affected public officials fearing increased workloads or political and career repercussions, or entrenched and obscure interests.⁶ That is, aside from contingent resource and capacity constraints, resistance to transparency is perceived as coming

² OCDE, "The Call for Innovative and Open Government: An overview of country initiatives," OCDE, 2011.

³ Cf. Frank Bannister and Regina Connolly, "The Trouble with Transparency. A critical view of Openness in e-Government," *Policy & Internet*, 3 (1), 2011, available at http://microsites.oii.ox.ac.uk/ipp2010/system/files/IPP2010_Bannister_Connolly_Paper.pdf.

⁴ Caroline Tolbert and Karen Mossberger, "The effects of e-government on trust and confidence in government," *Proceedings of the 2003 annual national conference on Digital government research*. Also, cf. Onora O'Neill, "A question of trust. Lecture 4. Trust and Transparency," Reith Lectures 2002 (available at http://downloads.bbc.co.uk/rmhttp/radio4/transcripts/20020427_reith.pdf).

⁵ Here I leave temporarily aside the issue of resistance among some actors (public officers, interest groups, sometimes the media, among others). Resistance exists and frequently represents an important role particularly when transparency policies are put into practice; however it seldom takes the form of substantive argument exposed in the public sphere.

⁶ For a similar evaluation see Stephan Grimmelijsen, "The shady side of sunlight," paper presented at the annual conference of the European Group of Public Administration, Bucharest, Sept. 8-10, 2010.

from the same behaviors and problems it aims to reveal and disincentive.⁷ In this discussion, I pretend to play devil's advocate, asking whether there are relevant and valid arguments against government transparency (and which would those be), in order to shed light into its nature.

Arguing against transparency

It might be thought that arguing against transparency is oxymoronic, like those annoying yet somehow alluring diatribes against goodness or health.⁸ Given that transparency is widely recognized as a positive quality,⁹ there may be no use in analyzing the badness of the good. However transparency has not always been recognized as a good thing, and more relevantly, not the particular kind that is taking hold of the public imagination and the democratic reform community. Its effects generally remain a matter of further research, and its intermediary and mediated consequences are still to be seen. It would appear, in this context, that it is not a waste of time to explore its potential negative consequences.

⁷ As Clare Birchall put it, "to go against transparency in the 'west' today is to be opposed to progress (conservative in the general sense); corrupt (if there is nothing to hide, why fear transparency?); or anti-democratic (the link between transparency and democracy has become unassailable)." "Questioning the moral attachment to transparency" available at http://spaa.newark.rutgers.edu/images/stories/documents/Transparency_Research_Conference/Papers/Birchall_Clare.pdf

⁸ Though of course both things have been done to great advantage. Cf., e.g., Roger Scruton, *The Uses of Pessimism, and the Dangers of False Hope*, Oxford UP, 2010; Eric Wilson, *Against Happiness. In Praise of Melancholy*, Farrar, Strauss & Girard, 2008, and even Kundera's *The Unbearable Lightness of Being*.

⁹ The standard critiques focus on upwards transparency and forms of hegemonic social control over individuals, as images like the panopticon and the Big Brother suggest, not on government and public transparency.

This discussion will concentrate on governmental transparency, i.e., mechanisms for people to have free access¹⁰ to public information in hands of state (and related) agencies,¹¹ and to the procedures for, rationale of, and deliberation about, making public policy and law (upward and outward transparency, in David Heald's terms).¹² It concentrates in "its strong form—rather than [...] its weak, supplementary form," to follow Etzioni's use.¹³ The analysis will take a basic democratic viewpoint, alternating between the requirements of an effective democratic administration and the rights, needs and demands of a democratic public and civil society. A broader understanding of transparency could be taken,¹⁴ and other perspectives (as those of the media or the private sector) can be accounted for, but this simple arrangement seems more direct to engage the issues discussed here.

I will review two of the possible arguments against transparency that I consider both strongest and most viable—leaving aside those that can be considered merely technical or

¹⁰ Meaning both unimpeded access, and free of charge (besides reproduction and mailing costs), as good practices in the field suggest.

¹¹ I won't get into the discussion of exactly what defines and which ones comprise these agencies; common usage seems enough for the purposes of this investigation. Let's generally say that these are the ones that are funded with public resources, involve elected officials, and serve purposes understood legally as public, or some combination of these characteristics.

¹² "Varieties of transparency" in Heald and Christopher Hood (eds.), *Transparency: The Key to Better Governance?*, Oxford: Oxford University Press, 2006, pp. 23–45. Also, cf. their definition at p. 26.

¹³ "Is transparency the best disinfectant?," *The Journal of Political Philosophy*, 2010. He insists that "the critical question is whether transparency constitutes a reliable mechanism of promoting good governance and sound markets under most circumstances—or whether it is a rather weak means that itself relies on other forms of guidance and can supplement regulation but not serve a main form of guidance." I will explore closely related themes but unlike Etzioni, I do not focus mainly in the substituting regulation aspect, but I am concerned with governmental transparency. In any case, I will address the stronger claims for transparency and not be concerned with their weakest forms. Etzioni, however, takes a much more radical approach from the one pursued here; here we regard, with Heald, transparency as more of an instrument, with costs and intermediaries, than of a good in itself, or a self sufficient mechanism of governance (though we agree that those positions are adopted by some people out there, and that those seem sadly unsustainable).

¹⁴ As Kristin Lord does in her useful *The perils and promise of global transparency*, NY, SUNY press, 2007.

procedural ones. As a matter of systematicity and symmetry, I chose one criticisms that can be characterized as coming from the left and one from the right, following Bobbio's sometime influential description.¹⁵ On the right hand, I will explore an argument whose modern configuration can be thought as technocratic, but which has a long lineage: decision making requires isolation from the pressures of public opinion and scrutiny. On the left hand, the main argument addressed would be that transparency distracts activism from more substantive and effective strategies for reforming and deepening democracy.¹⁶

This investigation is not designed to find convincing answers against these criticisms. Those abound in the literature, and I am sure they will be coming to the readers' mind as the arguments are presented. Furthermore, currently the onus would appear to be on the arguments against transparency. Thus, this exploration is aimed at figuring out whether there are reasons to be less automatic in our endorsement of the transparency agenda.

Transparency is a very constrained and specific instrument of governance, with the advantage that can be relatively cheap and quick to implement, thus rapidly showing improvement in its indicators. As has been noted, transparency is hailed in developing countries as a tool against corruption, and in North Atlantic industrialized countries as promoting democratic participation and government efficiency. However, its widespread and comprehensive implementation is still in its initial stages, and no long term perspective is yet possible; its still every time the *promise* of transparency. And though some voices are skeptical

¹⁵ *Left and Right. The significance of a political distinction*, trans. by A. Cameron, University of Chicago Press/Polity Press, Cambridge, UK, 1996.

¹⁶ Perhaps I should clarify that I do not take these to be ideological critiques, in the sense of merely being part of a particular agenda or belief system, with no independent force. I take them to be potentially serious criticisms; I merely classify them according to their most plausible political location and the general perspective they exemplify.

about its strength as a tool of public policy, little has been directly explored with regards to potential negative consequences of transparency as a strategy of democratic reform. The next sections pursue two possible avenues for arguing against transparency.

No room of one's own?

“But his unbiased opinion, his mature judgment, his enlightened conscience, he ought not to sacrifice to you, to any man, or to any set of men living...Your representative owes you, not his industry only, but his judgment; and he betrays, instead of serving you, if he sacrifices it to your opinion.”

Edmund Burke, “Speech at Mr. Burke’s Arrival in Bristol”

All the way back to Plato’s hierarchical republic, there have been those who hold the notion that the job of governing needs to be left in the hands of those who know best. The ship needs a captain; even the guardians are just to act on the philosophers’ rulings; correct leadership is everything and important matters cannot be left in the hands of the many. The matching argument, from Plato to Converse to today, is that citizens are incapable of, and disinclined to, dealing with abundant and complex goals, processes and information.¹⁷

An aristocratic or technocratic perspective of this sort can lead to a multiplicity of objections against transparency. Many of these will have to do with the restricted utility of transparency for governance, and the need for intermediaries (Etzioni), or the problems of

¹⁷ This, as has been widely noticed, only gets worse as ICTs increase the capacity to transmit information, and as transparency policies and laws make disclosure and publication compulsory. See Etzioni for a quick review of the second kind of arguments. He makes a very persuasive case in favor of what he refers to as substantive regulation, but does not deal with the main question pursued here regarding governmental transparency. Given that the focus here is government transparency, the Brandeis-like argument about mobilizing individual choice, problematic as it is in itself, will not be pursued here. On the conditions of that kind of thesis, besides Etzioni, see the discussion of targeted transparency in A. Fung, M. Graham & D. Weil, *Full Disclosure. The Perils and Promise of Transparency*, New York, Cambridge UP, 2007.

overseeing and contrasting the information, and the effects on trust and governmental legitimacy and authority (O'Neill, Grimlikhuisen). The most technocratic views will embrace the need for transparency in budgetary issues (taxation, budgeting, expenditures, etc.) as well as outputs and outcomes (public management), while being skeptical regarding planning and policy making. It is in a subset of these last kind of question that I want to concentrate here.

There is every reason to support transparency regarding the framing of policy and law. The capacity to know the agenda, aims, justification and projects of public policy is indispensable for citizens' and civil society's incidence in policy- and law-making. In due course, the possibility of questioning, deliberating, and providing inputs to policy design and legislation is a substantial condition for their legitimacy and adequacy. It is a citizen's entitlement to be informed about the reasons that sustain particular policies, their objectives, characteristics and detailed content. Knowing the agenda, projects and context; having access to public hearings and legislative debates; being able to access the evidence and reasonings that support choices; all of these are conditions of democratic making. Detailed information about procedures, implementation, expenditures, etc., as well as mechanisms to process and oversee such information are indispensable for accountability. However, perhaps not all steps of the policy process and legislation design gain from enhanced transparency.

Even before the exposure of wrongdoing and the abundance of misinformation, Grimlikhuisen is worried that the "exposure of muddling through" will lead to the "demystification of government."¹⁸ The *awe* that Hobbes considered indispensable for the

¹⁸ *Op. cit.*, *passim*.

authority of the sovereign would be lost at the sight of the all too human, fallible and prosaic task of governing. It would necessarily undermine trust and legitimacy, and destroy the faith of the citizenry on the capacity of the government to manage public affairs and rule authoritatively. This would break the implicit contract that grants the members of the public the confidence to put common issues in the government's hands. However this might be, it may be already too late for restoring the charisma of government infallibility. Even more, it is not only important that those instances of mismanagement and error be made public and subject to accountability, but citizens' awareness of the fallibility is indispensable to foster engagement in public affairs. The benefits of public participation depend on the citizens' consciousness of the mistakes they can correct and the value of their contribution, as much as of the need to oversee and hold the government accountable. This is precisely where transparency can be as much a motivation as it can be a resource. Evidence of mismanagement and wrongdoing, as well as information about performance and the dealing with issues close to our interests and concerns, are fundamental to encourage participation and with that, democratic decision making.

Still, how far should we go with the ever growing push for increased transparency in government? Even without pressing the issue of transparency beyond the fair grounds of government and private enterprise (which need to be held transparent and accountable in as much as they affect the interests of the public directly and indirectly),¹⁹ the call for transparency is becoming increasingly invasive. Beyond the explicitly public spaces of audiences, hearings,

¹⁹ For the issues beyond these realms, see, e.g., Gérard Wajcman, "The Universal Eye," *Lacanian Ink*, 35 (2010). The need for transparency in private business is as well established as for government agencies, as the addresses on this issue by US president Barack Obama linking the economic crisis to opaque financial dealings makes clear. At the same time, the insufficiency of transparency to make them accountable is a key issue in the critical literature.

official documents, projects, agendas, etc. (it is an open but potentially specifiable list), transparency is being demanded for every aspect of public officials' activities. There are good reasons for this, it is not casual that Watergate is a universal underpin of transparency discussions (not to speak of worst cases everyone can bring to mind).²⁰

Specific contextual problems with transparenting public officials' information have been sporadically noticed. Some of them particularly urgent and troublesome from a transparency perspective. In countries with high levels of insecurity and violence, in South America, to give a troublesome example, publicizing salaries and patrimony, has reportedly put in danger the wellbeing of public officials and their families. These local issues require decisive local responses, but they are not rooted in the nature of the practice. However, the issue that concern this discussion is both more universal and contentious.

The issue at hand is: can the profound and committed deliberation and analysis necessary for evaluating policy conditions and alternatives and for effective policy design have place under conditions of complete transparency? Allow me to clarify: the issue, as should be clear from my remarks up to this point, is not whether policy choice should occur behind closed doors, in smoke filled backrooms. We all know very well the ongoing dangers of such behavior. It is about whether the objective, open and honest consideration of alternatives, consequences and reasons for policy and law choice can from its very starting point be done by public officers conscious of being observed and potentially challenged by the public and the media. While it is necessary for democratic policy and law making that projects should be publicly deliberated about through the

²⁰ Of course, Sen's *Poverty and Famines (An Essay on Entitlements and Deprivation)*, Oxford, Clarendon Press, 1982) is the reference on the dangers of radically unaccountable government. Still, Watergate bring to the fore the key issue here: hidden action by government officials is a peculiarly salient risk for democratic regimes.

discussion and adoption process, it is not so evident that the emergence of those projects (in as long as they are not originally submitted by interested parts outside of government)²¹ should be constantly monitored.

Paralleling Donald Davidson's dualism, a particular project can be subject of two independent accounts. On the one hand, it may emerge from reasons that would not survive close public oversight—let's call them “realist” reasons, in homage to the tradition going back to Machiavelli. While, on the other, the same project may be autonomously sustained and justified in its finished form by reasons that can be endorsed (and questioned and rejected) by everyone. For conceptualizing this, one could take a strategy similar to Rawls' with regards to the place of religion belief in the public sphere.²² The point is not promoting hypocrisy and relying on PR spinning, but to discourage unreasonable self-censorship in evaluating matters that can have serious public consequences.²³ In fact, from that perspective, privacy for deliberation can be taken as discouraging hypocrisy in debating complex and sensitive public policy affairs.

Onora O'Neill has noticed that our images of trust do not link with transparency and that mutual respect precludes rather than requires across-the-board openness.²⁴ The issue, she notices perceptively, is the relationship between transparency and honesty. While we reasonably believe that public oversight (the famous disinfecting sunlight) can contribute to holding civil

²¹ I take it that communication between government officials and interested third parties should be transparent and accountable to the public. The issue here is a secure and open space for discussion within the government.

²² Cf. “The idea of public reason revisited” in his *The Law of Peoples. with “The Idea of Public Reason Revisited*, London, Harvard University Press, 2000.

²³ I take it, also, that some reasonable degree of self-censorship (better: self-control against some officers' potentially offensive, criminal or morally reprovable positions, whose existence cannot be discarded offhand) can result from the same deliberative environment within government. The issue, this time, is to allow serious deliberation involving unpopular or sensitive facts.

²⁴ *Op. cit.* Her examples are family life and doctor-patient relationships.

servants accountable,²⁵ its effect on honesty in the holding of reasons is less obviously positive. Most people have the experience of holding or expressing a minority or unpopular opinion, and the reactions it produces. It gets worse if its expression can directly impact your employment or career prospects. At the same time, we ask our civil servants to consider all the relevant facts and possible consequences of policies and programs. This setting can create common moral conundrums, and those same public officials are not required to be courageous or selfless in the same sense that some elected officers or firefighters or soldiers are. Good policy may require creating open and free spaces of discussion, in which expression is protected from public judgment, instead of from vertical censorship. It's a particular instance of Tocqueville's tyranny of the majority concern; the looming danger of government by the polls. The risk, this time, is not the decline of civilization, but impoverished analysis and less effective policy choice.

As you can see, this argument parallels the favorite conservative battle against political correctness. However, while that critique aims at restoring putatively eroding values (say, as in Antonin Scalia's defense of morally charged language), or recognizing the value of common prejudices, the object in this case would be the maintenance of a space of open and critical evaluation of public matters, unconstrained by unrelated interference. Its well known functional equivalent would be parliamentary privilege against judicial investigation (in Spanish, *fuero*)—the protection legislators enjoy, explicitly in many constitutional systems, from being prosecuted as a result of the opinions and values they express. This argument, too, mimics the critique of Habermas' model of deliberation,²⁶ which restricts discourse to legitimate rational arguments.

²⁵ Cf. though, O'Neill's general argument regarding trust.

²⁶ See his *Between Facts and Norms. Contributions to a Discourse Theory of Law and Democracy*, trans. by W. Rehg, MIT Press, 1998.

The problem could, in a preliminary way, be avoided—as it could for Habermas’ and Rawls’ positions too—, by delimitating clearly those cases that count as public deliberation: in this case, as subject to complete disclosure.

In this case, public officials would be protected from scandal and judgment in the media for exposing issues that may be relevant in considering public issues, whether or not they are politically unpopular or costly. Public condemnation can destroy a public official’s career way quicker and with way more opaqueness than judicial intervention. Again, this concern only involves the preliminary, evaluative stage of policy, law and decision making, where alternatives, objectives and costs should be evaluated in their own terms. If the resulting choice cannot sustain public scrutiny and deliberation, if it cannot gain political support in its own terms, the worst for it; the procedures of democratic decision making should take care of it before it is enacted or implemented. But no important reasons would have been left out for fear of public condemnation, political losses or scandal.²⁷ As Virginia Wolf and Habermas remind us, the evolution of autonomous critical faculties require spaces protected from external intervention and criticism,²⁸ so the objective and honest evaluation and analysis of public matters may also require protected spaces of deliberation and speculation. Transparency may be leaving policy makers without a room of their own.

²⁷ The institutional implementation of such protection of free speech in intra-governmental deliberation is beyond the reach of this discussion. But a delimitation of which meetings and papers are immediately to be made available and those communications and spaces that can remain internal does not seem to far fetched to imagine. It might be in the same public officials self interest to keep these at minimum and have good reasons to protect them, since a piece of information marked as confidential that is leaked or made otherwise public is more attractive as a source of scandal.

²⁸ See her *A Room of One’s Own* [1929], and his *The Structural Transformation of the Public Sphere. An Inquiry into a Category of Bourgeois Society*, MIT press, 1991.

A pragmatic, perhaps cynical, retort to the question pursued in this section is to notice that public officials—like their private sector correlatives—will always find new ways to avoid oversight, and such being the case, the best response is increasing transparency as much as possible. And, naturally, that answer implies precisely the Sisyphean return of the problem: would we be pushing responsible public officials to pursue alternative, unofficial and hidden ways of communication by restricting their capacity to engage in free and open evaluation and deliberation? Are we pushing them into the dark?

Legitimizing practice or democratic mechanism?

The question about the risks of transparency only took us to a, perhaps minor, overlooked *aporia*, always increasing transparency (even if it means always increasing accountability) is not necessarily always better for expected public policy choice. In any case, even embracing the strongest version of the argument, it is found that, in a setting of democratic policy and law making, it can only be a matter of delimitation, since citizen and civil society oversight of these process is a fundamental element of the regime. Notwithstanding, despite all the emphasis on transparency's benefits in the literature, the previous review also suggested a whole range of misgivings about the actual outcomes of pursuing transparency policies. The issue here is, given all those limitations, is transparency the most effective way of reforming and deepening democracy, of improving democratic policy making?

The effect of transparency on trust remains unclear, and there are reasons to believe it may increase distrust in government;²⁹ as much as it adds to the information available it adds to

²⁹ Cf. O'Neill, *op. cit.*, and Bannister & Connolly, *op. cit.*

misinformation through “structural insinuations” and “systemic misunderstandings,” as Lessing phrases it. Transparency by itself does not guarantee oversight—without actors capable and willing to perform that oversight (and there are reason to suppose that citizens are neither)—, nor results in better public accountability—without an effective legal and institutional framework which guarantees oversight and is capable and willing of imposing sanctions.³⁰ Giving amounts of information produced and disclosed, available capacity for processing it, and attention span issues, there is no way to assume that it produces better citizen choice, and the available evidence suggest its impact is actually both low and slow.³¹

While in principle it creates more options, it is not clear that (or how) transparency produces engagement or participation. The same goes for promoting better, more effective and efficient, or more egalitarian policy and law making or better outcomes,³² which depend on other institutional channels. Finally, more transparency benefits the most those comparatively more capable of taking advantage of increased available information, reinforcing already existing social inequalities (much in the way that private businesses tend to be the first benefitted and most intensive users of disclosed information).³³

³⁰ And these in principle could guarantee accountability without the kind of public transparency discussed here; the best argument would be that they would be more effective if transparency allows civil society to contribute to their work. Though shaming and scandal are powerful mechanisms they remain short of producing public accountability. Cf. J. Fox, “Transparencia y rendición de cuentas” in J. M. Ackerman, *Más allá del acceso a la información. Transparencia, rendición de cuentas y estado de derecho*, México, Siglo XXI, 2008; N. Dasen & A. Guillán Montero, *El fortalecimiento de la responsabilidad de los funcionarios públicos. Construyendo puentes entre organismos de control y la sociedad civil*, Buenos Aires, Poder Ciudadano, 2009, and Aránzazu Guillán Montero, *As If: The Fiction of Executive Accountability and the Persistence of Corruption Networks in Weakly Institutionalized Presidential Systems. Argentina (1989-2007)*, Ph.D. Dissertation, Georgetown University, 2011.

³¹ See Etzioni, *op. cit.*, and Lawrence Lessing, “Against Transparency. The perils of openness in government,” *The New Republic*, Oct. 9, 2009, available at <http://www.tnr.com/article/books-and-arts/against-transparency>.

³² Breton, A., G. Galeoitti, P. Salmon and R. Winrobe, “Introduction” in A. Breton, G. Galeoitti, P. Salmon and R. Winrobe (eds), *The Economics of Transparency in Politics*, Aldershot, Ashgate Press, 2007.

³³ See, e.g., Birchall, *op. cit.*, who also argues that it tends to reduce singularities and reinforce hegemonies.

In this context, why is transparency a central element of a democratic reform agenda? While it may help financial markets and investment security, how does it advance the project of inclusion, empowerment, equality? Can it not be interpreted as a Lampedusan charade for governments to appear more democratic and responsible? Can this agenda not be conceived as a way to draw attention away from more substantive and urgent reforms to political institutions and policies? It is not one of its key attractions that it can show quick advances without cumbersome and (economically and politically) costly changes? Is it “a weak solution in search of a problem.”³⁴ In sum, has civil society worldwide not been tricked into committing a large share of its resources into a project whose promised outcomes cannot be gained by the instrument promoted? Isn't, that is, a strategy for legitimizing heavily questioned states facing a skeptical citizenry instead of a strategy for promoting and deepening democracy?

There might be at the very least a grain of truth to each of those claims. Transparency by itself does not amount to much as a democratic reform agenda. If the information cannot be understood, interpreted and used, it is no different from the legal strategy of burying evidence in piles of paperwork—and it has been exactly that in some cases. That is the reason why it is important to remember that the transparency agenda only makes sense as part of a broader reform and democratization project. Transparency should be seen as the banner of a comprehensive project for making governments more accountable and responsible to the population. Transparency can be a powerful way of insinuating far-reaching reforms as add ons to its less menacing and daunting agenda.

³⁴ Winston, Clifford, “The Efficacy of Information Policy: A Review of Archon Fung, Mary Graham, and David Weil’s *Full Disclosure: The Perils and Promise of Transparency*,” *Journal of Economic Literature*, 46(3), 2008.

I cannot be missed, naturally, that in theory government transparency is expected to be met halfway by an active, capable and motivated civil society. There is no credible and viable equivalent to well designed government mandated targeted transparency which works for government oversight that would not create skepticism; and even if there were, that would meet only the easier goals attached to transparency. In fact, no small part of the attractive of transparency is its potential for mobilizing and engaging non governmental actors. But such civil society, in many places, cannot be expected to pop up automatically, much less is to be expected to be the plural, inclusive and otherwise desirable civil society one would desire. Thus, for transparency to fulfill its stated ends, there need to be more comprehensive and profound complementary reforms on both sides of the issue: more accountable and participatory state institutions, and social policies that promote a civil society that can actually take advantage of the disclosed and published information.

On the state reform side, it is indispensable to establish effective accountability and participatory mechanisms. Transparency reforms themselves require a complex legal and institutional framework in place to work effectively—from independent oversight bodies and trustworthy judicial or other mechanisms with teeth to demand and appeal the government's fulfillment of its disclosure obligations, to effective mechanisms, processes and infrastructure to guarantee that the information reaches its specific audiences. However, way more than that is required to give the availability of government information real effectiveness.

For the purpose of reinforcing trust and to disincentive corruption and mismanagement, transparency needs to be matched with effective and credible accountability institutions with real

bite.³⁵ This demands effective mechanisms of vertical and horizontal accountability, and strong and trusted judicial institutions. Penalties should be clear and proportional to criminal and negligent acts against the public good, and administrative sanctions should be applied predictably when necessary. Mechanisms for civil society to initiate, collaborate with accountability institutions, and oversee processes of this kind should be available and accessible. That is, transparency is an input, and the whole accountability system needs to be effective in practice to have real impact. Like some medicines, too little can be worse than nothing; without broader institutional support, transparency can breed more cynicism, disenchantment and discontent in the citizens, instead of rebuilding trust and fomenting good government.

For promoting a more responsive government and more democratic decision making, transparency needs to feed into effective and multiple channels for citizen participation, not merely in oversight but in law and policy making. And these, as well, need to be actually actionable and not merely a matter of going through the motions. For transparency to have desirable effects in this case, it needs to be more than voting and writing letters to your representative—independently of how many signatures they can accumulate online. The whole policy and law making processes, from agenda setting to implementation, should be public³⁶ and permeable from below. Otherwise, transparency could make little difference in state responsiveness—particularly given the relation between an issue’s saliency and specificity and the motivation to make the effort required for processing information and for personal engagement.

³⁵ See references in fn. 30.

³⁶ See the previous section, though.

On the other hand, that of promoting a desirable civil society capable of taking advantage of transparency, the task is more daunting and less clearly outlined. It requires effort on both sides of governance. Naturally, efforts need to come from civil society itself to mobilize, engage and advocate. In some parts of the world, the process of organizing, mobilizing resources and people, and investing time in participating and developing skills, is not yet a normal practice, and that is an important challenge. However, these capacities are becoming increasingly common with the contribution of transnational civil society, processes of democratic learning and the support of international institutions. Notwithstanding, what should concern us more is the shape of that civil society.³⁷ The danger is that the opportunities created by transparency and its companion mechanisms be hijacked by the more educated and skilled sectors of society, in detriment of the less well off. Here, the whole social policy apparatus needs to be engaged in addition to specific capacity building activities. Marginal populations without health, food, education and infrastructure can hardly be expected to do more than protest or demand vaguely. Even in the best conditions, it can take generations to develop the mindset and skills to engage government productively; to expect that they will naturally develop in isolation, in some undead version of a Modernization scheme, is in the most generous case, overly optimistic.

Transparency is a meaningful strategy for democratic reform, thus, only considered as a part of a larger project of institutional and social democratization. It is tempting to take an either/or stance, choosing between embracing transparency as a separate good with its own

³⁷ The capability approach to development is centered around this question. See M. Nussbaum & A. Sen (eds), *The Quality of Life*, Oxford, Clarendon Press, 1993, and related literature. D. Clark, "The Capability Approach. Its development, critiques and recent advances" (Global Poverty Research Group working paper, available at economics.ouls.ox.ac.uk/14051/1/gprg-wps-032.pdf) provides a useful overview.

automatically attached benefits, or rejecting it as a misguided goal that leaves aside and retards more substantive reform. Fortunately, this is not the only way. Transparency can contribute by itself to promote some discrete benefits (however constrained they are), but it only makes sense as a democratization strategy if it is seen as an element for putting into work more complex mechanisms to make government accountable and responsive.

Conclusion

In a way parallel to the end of the 20th century literature on democratic elections, there is now increasing awareness that transparency by itself and under any guise does not imply an improvement in democratic quality. It depends on the way its mechanisms are shaped and on preconditions in the institutional and social context in which it exists. While this may be true of every type of institutionalized practice, as Orwell would have it, it is always important to insist on the obvious. At the same time, transparency is not a self standing good to be embraced under any circumstances; one should consider that privacy may have a place in every sphere of life.

The upshot of the discussion pursued here is that probably there is not any overall valid argument against the positive impact of transparency. As a rule of thumb, the disinfectant solution seems preferable to dubious secrecy. The risks include asking from transparency more than it can provide, misdefining its reach, and acting as if any transparency measure is actually effective and desirable.

Perhaps the biggest peril is two-headed: that transparency may become a cheap cosmetic that hides necessary reform and oversight,³⁸ and that it is actually presented instead of necessary substantive reforms. Transparency informs choice, control and distribution. But as it does so, it requires capacity of choice, effective oversight and sanction mechanisms, and resources. It does not solve policy making questions, efficiency somewhere else is not a response to need here. Even diffuse transparency implies potential for shaming and scandal, risk for maladministration and benefits for the public.³⁹ It should have a deterrent effect, by increasing risks for actors involved in fraudulent schemes and an incentive for improving performance. But these effects are hazardous, depend too much on limited, temporal commitment (say, investigative journalism), and stay well short of the potential of transparency mechanisms. This investigation thus did not find a blanket counter argument against transparency optimism, but it does sketch a more sober understanding of its limits and risks.

³⁸ This risk reproduces itself at the inside of the transparency agenda, with open data taking the place of stronger transparency mechanisms. See Global Integrity, “Taking Stock of OGP,” available at <http://globalintegrity.org/blog/taking-stock-ogp>. The worst case scenario for the transparency agenda is that it not only remains disconnected from broader democratization strategies, but that it itself is reduced to mere open data initiatives. Still, as put in GI’s ad lib: “that is not to say that the low hanging fruit of open data should not be picked.”

³⁹ See Fox, *op. cit.*, on “opaque transparency.”