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# Conclusion

## Whither Transparency?

Ann Florini

No single chapter can weave together all the threads spun in this book. Information flow—its causes and its consequences—is too enormous a topic for all its ramifications to fit within a few pages. Moreover, as the case studies make clear, information is a fundamental component of power and governance, inherently subject to the idiosyncracies of specific national or organizational histories and cultures. There can be no single “how-to” primer on making the best use of what transparency tools can offer for governance. Nonetheless, several broad themes cut across nations and issues. What this chapter *can* do, therefore, is to highlight some of the most significant issues that emerge from the book’s case studies. These key lessons are intended to help policy makers, executives, activists, and the public think through how this wide range of experience might apply to them.

### What Disclosure Can Do

Decision makers need to understand why they are now so often besieged with demands to disclose. To design good transparency

systems, they need to understand why those systems are wanted and what they are expected to accomplish. Only then is it possible to assess whether the disclosure systems in place are achieving those goals, or how the systems might need to be changed.

From the cases in this book, we see that disclosure is demanded because people believe it will improve governance in a variety of ways—by enabling people to enjoy a wide array of basic rights, deterring corruption, improving decision making, enabling actors to coordinate their actions, building public support for needed policies, and even serving as a direct regulatory tool.

### ***The Effectiveness and Efficiency of Government***

As was noted in this book's Introduction, the discourse around disclosure has shifted substantially over the decades. Freedom of information had long been seen primarily as a political right, both inherent in and essential to democratic forms of government. But in the twentieth century, transparency began to be viewed as an administrative tool, a way of making increasingly large and complex government agencies work more efficiently and effectively, as well as with greater accountability to the citizenry. By the end of the century, and in large part due to some of the experiences described in this book, the thinking on transparency had broadened.

Now, disclosure is seen not only as a right in and of itself but also as a crucial and necessary tool for the achievement of all other rights. As the Indian campaign for the right to know has long argued, very often "the right to know [is] the right to live."

That slogan is no mere exaggeration for campaign purposes. As Shekhar Singh's description of the struggle for information in India and Richard Calland's account of the South African experience both exemplify, the corruption that becomes endemic under conditions of secrecy frequently deprives the most vulnerable members of a society of the basic necessities of life—food, water, employment. And as Calland's chapter argues, the need for disclosure to prevent such corruption extends not only to the government itself but also to its surrogates in the private sector who are providing public goods.

But transparency can improve governance even when financial corruption is not an issue. As Alasdair Roberts argues in this vol-

ume's chapter on security, excessive secrecy has a negative impact on the quality of decision making. Although his chapter focuses on the problem in the security realm, the arguments often apply to other complex policy issues. Secrecy closes down the process of decision making, with predictable and often negative effects. There is never enough time for a small group of decision makers to consider all potentially relevant information. Transparency gives more people "the capacity to spot bad analysis or contribute data not already collected by public agencies," as Roberts argues. He also contends that transparency helps to overcome the difficulty of coordinating action across the many agencies and other actors that often must be involved in complex public policy. In cases ranging from the 2001 terrorist attacks on the United States to the outbreak of SARS in southern China, secrecy has prevented government agencies from putting together the pieces of the puzzle in time to take effective action.

Moreover, as Vivek Ramkumar and Elena Petkova point out in their study of environmental transparency, disclosure has become a powerful signal of trustworthiness. Because secrecy is perceived to indicate bad intentions, building public support for a public policy requires a degree of openness. Governments often keep problems secret because they do not trust the public to handle information about them in a responsible matter. But when the problems eventually becomes widely known—as often happens in this information age—the previous secrecy may come back to haunt the government in the form of public distrust.

### ***Regulation by Revelation***

In addition to making government work better as a provider of services and maker of policy, disclosure can also serve as a direct regulatory tool, in some cases as a more efficient and effective regulatory approach than traditional command and control mechanisms. As noted in the introduction, disclosure requirements for corporate financial information, for all their recent travails, have long served to make the U.S. stock market relatively open and efficient. The Ramkumar/Petkova chapter describes in great detail how disclosure is sweeping the field of environmental regulation, with some success. But as they show, disclosure-based regulation requires more than

a general information-access law, even if such a law applies to the public portion of privately held information. Such regulation must include specific disclosure requirements. And even then, it will not always work.

A group of Harvard scholars has recently assessed a wide range of disclosure-based regulatory systems to evaluate how well they work and why, looking at everything from nutritional labeling systems to the Toxic Releases Inventory discussed by Ramkumar and Petkova to corporate financial reporting.<sup>1</sup> They found that although disclosure-based regulation is increasingly being used, it is often not done well. In the area of nutritional labeling, for example, they found that the U.S. system was only partly effective in reaching its goals. That system requires manufacturers to list on their food products such information as the calorie content of the item, grams of fat, sugar, and protein, percentage of recommended daily allowances of particular vitamins, etc. The policy aim is to improve public health by giving consumers the information needed to make healthier choices about their food purchases. But the system assumes a substantial degree of consumer knowledge about what makes up a desirable diet. Moreover, the system does not provide good feedback to the producers, in that they have no way of knowing whether declining or rising sales are related to the nutritional information. As the Harvard researchers note, “food manufacturers may believe that declines in sales of high-sugar cereals indicate that a competitor’s advertising is more effective, whereas shoppers may actually be responding to nutritional data.”<sup>2</sup> Thus, like the TRI, the system is only moderately effective in achieving its regulatory goals because it fails to match the needs of users and disclosers with the specifics of the information-provision system.

The Harvard study argues that disclosure-based regulation works well when 1) potential information recipients are making less than ideal choices about a matter of public concern because they lack information; 2) the potential recipients could and would change their behavior if they had the appropriate information; 3) that changed behavior would cause the disclosers, in turn, to act in ways more desired by the regulators. When any of these pieces is missing, government may have to do more than order disclosure to bring about desired changes in behavior.<sup>3</sup> And even if all the pieces are present, regulatory systems need to carefully design exactly what information

is to be provided, to whom, in what format, and when, if they are to have a significant impact on behavior.

Indeed, that need for good design applies to all transparency systems, not just regulatory ones. Demands for transparency are at root efforts to use disclosure to change the behavior of the discloser, even without a specific regulatory outcome in mind. So like all transparency systems, regulation by revelation *can* work—but not always or automatically. Success depends on what information is provided, in what form, to what audience, and on what options that audience has to induce the discloser to behave differently—a point made strongly in the Ramkumar/Petkova chapter’s discussion of the need for “access to justice” to accompany “access to information.”

### ***Transparency as a Principle of Democratic Government***

In addition to the growing number of instrumental arguments for transparency, the long-standing claim that disclosure is an inherent principle of democracy remains robust. Yet even here, the nature of the debate is changing. No longer is disclosure primarily seen as an instrument for enabling the public to hold decision makers accountable, although it still serves the vital purpose of allowing “we the people” to determine if “you the government” is doing its job the way the citizens want it to. Increasingly, transparency is demanded to enable people affected by decisions to participate in making those decisions. Thomas Blanton’s chapter on intergovernmental organizations (IGOs), for example, describes numerous cases of public protest against projects funded by such entities as the World Bank leading to demands for disclosure as a necessary step to enabling a stronger public voice in decision making over projects. Ramkumar and Petkova describe a growing trend toward participatory, rather than purely representative, democracy, based on principles that include equity and the legitimacy of decision-making processes.

### **Achieving Transparency**

The authors in this volume are all too aware that despite its potential utility, transparency is hard to come by. Effective and sustained

demand for information is essential, given the nature of bureaucracies that almost instinctively horde information, whether or not they have something to hide. As the introduction notes, demands for information are needed to overcome resistance due to corruption, fear of being held accountable for decisions that may prove unpopular or unwise, distrust of the public, and simple competing demands for resources. As Neuman and Calland point out in their extensive discussion of the challenges of implementing information access laws, transparency costs money—money to develop or improve archives, train and pay civil servants, purchase needed equipment such as photocopiers, and make public the large categories of information that should be disclosed even in the absence of a specific law—such as the existence of a transparency law itself.

Many analysts, including Neuman and Calland, argue that the single most important source of demand for disclosure comes from civil society. Civil society groups can excel at creating political pressures by mobilizing political coalitions. They often do so for reasons that originally seem far removed from traditional ways of thinking about freedom of information as a political liberty. In the case of India, Shekhar Singh's chapter describes how the extraordinary national movement that succeeded in 2005 in getting a sweeping freedom of information law adopted originated in the early 1990s as a grassroots uprising to demand payment of wages due to some of the poorest of the poor. The trend toward regulation by disclosure on environmental issues took off after the 1984 Bhopal disaster that poisoned thousands, as Ramkumar and Petkova show. In Nigeria, the efforts of civil libertarians to redress horrendous human rights abuses in prisons proved the spark for that country's continuing struggle for a freedom of information law. Wages, toxins, and prison reform would seem to have little in common, but in all these cases citizens found transparency to be a needed part of the solution.

Pressure for increased disclosure can also come from outside. As Ivan Szekely shows in his description of the emergence of new transparency laws in Central and Eastern Europe following the fall of communism, demand for transparency within those societies largely focused on information about the previous regimes. Although indigenous civil society groups played important roles, outside pressure in the form of European Union membership requirements and sup-

port from U.S. and other donors significantly shaped the laws that emerged in the region. Jamie Horsley's chapter on China points out that part of the shift toward greater openness in that nondemocratic country reflected the desire of the Chinese leadership to take full part in the global economy, including meeting the membership requirements of the World Trade Organization. Nigeria may now start to find itself under external pressures, according to Ayo Obe, as frustrated activists turn to outside sources of pressure such as the New Economic Plan for Africa to push their country's leadership to adopt a more open government. Yet outside pressures do not necessarily push in the direction of enhanced transparency. As Roberts shows in his discussion of NATO secrecy requirements, outside pressures can also push countries toward greater secrecy.

Two other sources of demand, however, play a surprisingly minor role in this book's cases: market forces and the media. Although scholarly research has indicated both theoretically and empirically that greater economic transparency can make countries more attractive to investors and less subject to market volatility,<sup>4</sup> by and large those concrete advantages have not induced governments to change their economic policies in favor of greater transparency. (China, as Horsley's and Zhou's chapters show, is something of an exception.) This may be because the economic advantages of an open and transparent government and market system accrue to society as a whole, creating a significant free-rider problem. No one within the country has sufficient incentive to pay the costs of demanding economic disclosure, while a handful of actors who benefit from information asymmetries have every reason to maintain secretive systems. Obe's compelling account of the distorting effect of oil revenues shows just how difficult the politics of transparency become when the few find the advantages of secrecy to be extremely remunerative.

The other plausible source of demand for greater transparency that is noticeably absent from the stories described in this book is the media. One might assume that journalists of all types, whether print, on-air, or online, would be at the forefront of demands for greater public disclosure. But the media show up only occasionally in these accounts—and not always on the side of the transparency angels. As Szekely points out, in Slovakia the press have helped both bring about the information law and ensure that it is effectively implemented,

but in Romania the media “did not support the campaign for freedom of information because they have become complicit in a range of largely dishonest information-related activities,” including blackmail. More broadly, although the media benefit greatly from rules requiring proactive government disclosure, the systems in place for requesting specific information generally work too slowly to be of use to journalists facing deadlines.

### ***The Motives of Disclosers***

Whether information gets supplied depends not only on the actions of demanders but also on the incentives facing disclosers. One condition that can be extremely helpful to the original passage of a law is to have top political leadership committed to transparency. In several of the cases described in this book, individuals or political parties adopted pro-transparency platforms to distinguish themselves from political opponents or discredited predecessors, as was the case in South Africa, India, several Central and Eastern European countries, and (in a case not covered in this volume) Mexico, whose first freely elected non-PRI President, Vicente Fox, made governmental information disclosure a centerpiece of his political agenda.

But leadership from the top is not enough to make for sustained open government. In the case of Mexico, for example, where none of his potential successors has indicated much interest in Fox's push for transparency, the future of the Mexican information access law is in doubt. Ultimately, countries achieve significant sustained governmental openness when a culture of transparency becomes widespread within the governmental bureaucracy. As Laura Neuman and Richard Calland say in their discussion of the politics of implementation, “The notion of transparency is invariably far beyond the range of experience and mindset of most public bureaucrats. Therefore, a fundamental mind shift is necessary.”

Such changes in political culture are difficult, but achievable. In the United States, for example, staff positions in charge of compliance with Freedom of Information Act requests have become a separate professional track, whose standards frequently—although not always—favor compliance with the law over bureaucratic obstructionism. Blanton's discussion of the transparency struggle at

the World Bank reveals the development of “its own realization that internal barriers to information-sharing led to bad decisions and trapped the bank in bad projects.”

### ***Practical Considerations***

However, even if these various sources of demand prove sufficient to bring about information access laws, and even if disclosers are willing in principle to disclose, considerable practical problems still have to be overcome to create an effective transparency system that can achieve the governance and/or regulatory goals described above.

One key issue is what, if any, agencies and types of information should remain immune to disclosure requirements. Most laws carve out substantial areas of exemption, most notably in the national security area. As Roberts discusses, even through the recent explosion of right to information laws around the globe, “the national security establishments within most governments remained enclaves in which the presumption of secrecy held fast.” Yet Roberts points to mounting evidence that very often such secrecy serves no security purpose, and often actually “corrodes the capacity of government agencies to perform their mission of promoting better security.”<sup>5</sup>

Information disclosure laws vary widely in terms of how far outside the national government their coverage extends. Mexico’s law, for example, covers only federal agencies, not states or localities, while India’s applies to all levels of government. A growing number step outside government altogether to address information in private hands. Calland’s chapter raises the two crucial questions that apply to transparency in the private sector: “Should corporations that are playing quasi-public roles and providing public goods and services be held to the same standards of public transparency and accountability as their public sector brethren? Does voluntary disclosure of environmental and other social impact information adequately fill the existing regulatory gap, or should such disclosures be standardized and made mandatory?” His chapter, and particularly his analysis of the South African law that has gone farther than any other in addressing the private sector, provides guidance on an increasingly urgent set of issues related to private sector disclosure.

International organizations—and their member states—are similarly grappling with issues of how far the organizations' disclosure policies should extend. Blanton's discussion of a recent comparative study of ten key international financial institutions such as the World Bank and the International Monetary Fund shows the range of information policies and practices now prevalent. The study found that overall, both the policies and the procedures remain seriously constrained, in particular by "a plethora of exceptions that turn disclosure on its head and only allow those documents specifically listed as releasable to come out." Moreover, the organizations have failed to develop procedures for appeals when information is denied. Although most of the organizations studied are far more open than was the case as recently as the early 1990s, their disclosure policies still reflect considerable deference to norms of diplomatic secrecy. The question is whether such deference is appropriate now that the organizations have so much more direct power over the lives of millions around the world.

As the Neuman/Calland chapter notes, however, far too often policy makers spend an excessive amount of time and energy considering what agencies and categories of information a disclosure law should cover and much too little on designing a law that will work effectively for whatever categories are covered. That is why their chapter goes into great detail about the difficulties of implementing even the best-intentioned information disclosure laws and edicts. Frequently, laws are drafted with inadequate attention to the feasibility of implementing their provisions. Their chapter gives detailed practical advice on the provisions needed if laws are to work (the Ramkumar/Petkova chapter similarly provides guidance for disclosure-based regulation).

As many of the chapters indicate, a key challenge is how to get information provided at reasonable cost. Any potential discloser, whether governments or intergovernmental organizations or the private sector, must make records of the information that is to be disclosed; keep those records in some kind of organized fashion; establish systems for disseminating information; and train and pay people to do all the above.

The costs are coming down to some degree, thanks to advances in information technology, but they remain substantial. However, as described throughout this volume, secrecy can also impose substantial costs: corruption, poor decision making, and public distrust.

## Issues for the Future

Transparency is a spreading, but far from universal, norm. Some 70 countries now have freedom of information laws—but the majority of the world’s roughly 200 sovereign nations lack any such law. And even where transparency is nominally embedded, rhetoric frequently outstrips reality. Despite the rapid spread of freedom of information laws around the world, the new disclosure policies at a wide array of intergovernmental organizations, and the growing number of both voluntary and mandatory disclosure systems covering the private sector, many of the fundamental issues about transparency remain far from consensus, both within countries and across borders.

In particular, as globalization and privatization shift ever more information of public concern into the hands of the private sector, questions of who has the right to have access to that information will become ever more significant. The private sector often depends on information asymmetries for its profits, so the answer cannot be simply to require the private sector to disclose everything to anyone who asks. In the absence of any systematic debate on, much less consensus about, what constitutes a public function the public is entitled to know about even if the function is being handled by a private entity, we are making do with a hodgepodge of voluntary standards and occasional disclosure requirements. A few national laws, notably those of India and South Africa, do address the private sector, but most do not. That more systematic debate, within and across countries, is long overdue.

But even were that issue to be settled, the future of transparency would remain open to question. Until recently open government, or more broadly open governance, was a Western and particularly American ideal. Yet a glance at the headlines makes clear that power is shifting. With the rise of Asia, a key question becomes what road Asian governance will take. The two Asian giants have to date taken very different paths, as the chapters on China and India make clear. China’s approach to transparency is driven largely by the leadership’s desire to “informationize” the Chinese economy, part of a larger effort to transform China into an economic great power. India’s new laws and policies arose from a grassroots movement of impressive staying power. Will either, or both, prove a successful model for Asia, and for

the world as a whole? What policies will these countries advocate and adopt toward information disclosure in the intergovernmental organizations of which they are increasingly powerful members? What, if any, information disclosure requirements will, and should, they impose on corporations or civil society groups within their borders?

Moreover, the transparency revolution is taking place within the context of rapidly changing technologies. In the twentieth century, the pendulum swung between fears of information technology leading to a “big brother” police state that would watch everyone everywhere to assertions about the technological inevitability of a fully transparent world where secrecy would become impossible. Clearly, neither has (yet) come to pass, and information technology remains an arms race between efforts to ferret out information and efforts to protect that information. It is not at all clear which side will win—if, indeed, either ever does.

For there are few, if any, inevitabilities in the struggle for greater transparency. Because the fight for information is so often a struggle for power, the battle for transparency will continue as long as human beings contend for power.

#### NOTES

1. David Weil, Archon Fung, Mary Graham, and Elena Fagotto, “The Effectiveness of Regulatory Disclosure Policies,” *Journal of Policy Analysis and Management* 25 (1) (2006): 155–181.

2. *Ibid.*, 164.

3. *Ibid.*, 175.

4. For a brief overview, see Shang-Jin Wei and Heather Milkiewicz, “A Case of ‘Enronitis’? Opaque Self-Dealing and the Global Financial Effect,” Policy Brief #188 (Washington, DC: The Brookings Institution, 2003).

5. For an extended discussion of the connection between transparency and security, see Campbell Public Affairs Institute, *National Security and Open Government* (Syracuse, NY: Campbell Public Affairs Institute, 2003).