

PRELIMINARY DRAFT
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The Power of Transparency

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The cliché is not quite right: Information by itself is not power. But it is an essential first step to the exercise of political and economic power. Opening up flows of information changes who can do what. That is why there are few more important struggles in the world today than the battle over who gets to know what.

But the debate over transparency and access to information is more than a power struggle. It is also a war of ideas about what transparency is good for and when secrecy may better serve the public interest. This is no trivial or arcane debate. The arguments for and against transparency reflect fundamental issues about the nature of democracy, good governance, economic efficiency, and social justice, at levels ranging from villages to global institutions.

The debate is encapsulated in part in competing words: “transparency” and “the right to know” versus “privacy” and “national security.” It is showing up in a host of skirmishes, in arenas ranging from the offices of municipal governments to corporate boardrooms to the halls of major international organizations. By and large, “transparency” – the term – has been winning the rhetorical debate, so much so that Webster’s proclaimed it the “Word of the Year” for 2003. But the outcome of the fight for widespread access to information is yet to be decided.

Over the past few decades, citizens in all parts of the world have shown themselves to be increasingly unwilling to tolerate secretive – and often corrupt - decision making. Their arguments for greater disclosures by governments come on many grounds.

One is related to democracy. As democratic norms become entrenched more widely around the world, it is becoming apparent that a broad right of access to information is fundamental to the functioning of a democratic society. The essence of representative democracy is informed consent, and consent cannot be informed if information about government practices and policies is not disclosed. And in democracies, by definition information about government belongs to the people, not the government.

Another is a human rights claim that sees access to information as both a fundamental human right and a necessary concomitant of the realization of all other rights. Those other rights of course include the political and civil rights with which freedom of information has long been associated. As Article 19 of the Universal Declaration of Human Rights makes clear, the freedom to speak on public issues is meaningless without the freedom to be informed. Beyond this, advocates increasingly argue that information access is the right that makes possible the achievement of social and economic justice,

“one that levers and supports the realisation of rights to proper welfare support, clean environment, adequate housing, health care, or education,” in the words of one recent book.¹

And information access is seen as key to overcoming the disjunctures of globalization.² There is a huge disconnect between the global and regional scales at which problems increasingly need to be solved and rules made, and the national scope of political institutions. Without free access to information around the globe, people in one part of the world have little chance of even knowing about – much less having a say in – decisions made far away that affect them.

Yet citizens seeking information – and governments wanting to open up – find themselves up against powerful forces: entrenched habits, protection of privilege, and fear of how newly released information might be used, or misused. Arguments against disclosure abound everywhere disclosure is sought.

Sometimes those arguments are sound. No reasonable person would demand that a government release information about troop movements in time of war, or require that corporations give away trade secrets essential to their business, or insist that individual citizens sacrifice their basic right to privacy.

But the boundaries of what constitutes legitimate secrecy are rarely obvious. No country wants its adversaries to have access to details about the design, and potential weaknesses, of its weapons systems – but soldiers whose lives may be threatened by those weaknesses would benefit greatly from having those weapons subjected to widespread scrutiny. Proprietary business information may include data about potentially dangerous flaws in products sold to children, or about production processes that produce unacceptable toxic emissions. Individual privacy claims need to be weighed against the need of citizens to know whether their leaders are living lives of suspicious luxury on meager public-sector salaries.

And because information is related to power, reason is only part of the debate over how far disclosure should go, and when secrecy should reign. The battles over the right to know versus the right to withhold also reflect bitter struggles over existing patterns of political and economic privilege.

This book contains numerous stories from the battlefield. The stories range widely: the grassroots campaigns waged in India under the slogan “The right to know is the right to live;” China’s top-down effort to “informationize” its economy; the on-going international NGO campaign to improve the disclosure policies of inter-governmental organizations such as the World Bank and the International Monetary Fund; the continuing tensions over whether security is best promoted by secrecy or by greater openness.

These stories epitomize the enormous range of policy choices now facing national governments, international organizations, corporations, and citizens’ groups. What laws

should govern the rights of citizens to have access to government-held information, and how can those laws be meaningfully implemented? To what extent do international organizations, corporations, and citizens' groups have an obligation to reveal information, and to whom? Who is entitled to know what? And what good does disclosure do?

This book is intended to help decision makers and citizens understand the range of options and make the difficult choices. Its authors are members of an international Task Force on Transparency, one of a series of task forces assembled under the auspices of the Initiative for Policy Dialogue at Columbia University. The Initiative for Policy Dialogue (IPD), founded in July 2000, is now a global network of more than 200 leading economists, political scientists, and practitioners from the North and South with diverse backgrounds and views.³

Most IPD task forces work on economic issues to help developing countries explore policy alternatives, and enable wider civic participation in economic policymaking. The Transparency Task Force, however, addresses a topic crucial not only to economic development but to governance in all societies and at all levels. Its authors come from many countries, from Canada to Nigeria to China. In the course of writing this book, the authors met in countries ranging from the United States to Korea to India to Mexico. Everywhere, we have found citizens and societies grappling with the questions outlined above.

To start the book off, this chapter does three things. First, it defines “transparency” and lays out the theoretical reasoning behind the claim that publicly useful information is generally under-provided. Second, it provides the historical context, for the fight to know has a long and significant past. Third, it lays out the plan of the rest of the book.

The Meaning and Difficulties of Transparency

Although the word “transparency” is widely used, it is rarely well defined. There is no consensus on what the definition should be or how transparency should be measured. Such problems are not unique to the transparency phenomenon. Many political scientists, for example, have made valuable contributions to understanding domestic and international politics without being able to pinpoint precisely the meaning of so fundamental a concept as “power.” But we do need a working definition, something good enough to make for coherent analysis. Of whom is information being demanded? What specific information is needed, and for what purposes?

One reason for the lack of precision is that the term is being used in so many different issue areas. In politics, it is widely used to refer to enabling citizens to gather information on the policies and behavior of their governments.⁴ In economics, the Working Group on Transparency and Accountability of the Group of 22 defined it as “a process by which information about existing conditions, decisions and actions is made accessible, visible, and understandable.”⁵ In the security field, a United Nations group defined transparency

as involving the systematic provision of information on specific aspects of military activities under informal or formal international arrangements.⁶

For the purposes of this book, it is most useful to employ a broad definition: “transparency” refers to the degree to which information is available to outsiders that enables them to have informed voice in decisions and/or to assess the decisions made by insiders.

That definition gets us beyond the technological focus common to discussions of the information age. That technological dimension asserts that we are facing a future of living in a “transparent society” largely because technology is making it increasingly difficult for anyone to hide from scrutiny.⁷ That technology is indeed impressive – private companies are now launching high-resolution imaging satellites and selling the resulting imagery to the general public, video cameras seem to be recording everything everywhere, and advances in miniaturization are making it increasingly difficult for people to know whether they are being observed by some tiny monitor.⁸

But even the technological marvels now spreading around the world will not make transparency inevitable. Indeed, some of the same technologies that have fostered the information revolution are being used to control the resulting flow of information. Technology can certainly facilitate transparency, but whether it does so depends on a range of policy choices. And much of the progress toward greater transparency the world has made in recent decades has not required particularly sophisticated IT

Instead, the kind of transparency that allows outsiders to hold decision makers accountable and have informed say in those decisions requires that decision makers release information, both pro-actively and in response to requests. Those disclosures are not necessarily entirely voluntary in the sense of being left completely to the discretion of the disclosers. In some cases, governments require corporations or individuals to release information, and in others, inter-governmental or non-governmental organizations apply pressures that are not legally binding but are nonetheless powerful. Yet those requirements and pressures still leave substantial freedom of action to those who must decide whether, and to what degree, to comply.

And the holders of information often face incentives to keep information secret. Broadly speaking, transparency is valuable because it contributes to overcoming what social scientists call *agency* problems. In all governance situations, principals (such as citizens or shareholders) delegate responsibility to agents (such as a government or a corporate board) to make decisions on their behalf. Problems arise because the principals are never able to perfectly monitor their agents: the principals know less about the situation the agents face and the actions the agents take than the agents themselves do. So the agents may make misguided or self-serving decisions against the interests of their unknowing, unseeing bosses, the principals.

Why do these information asymmetries occur? To some extent, the asymmetries are the unavoidable outgrowth of a useful division of labor. Insiders such as government officials

and corporate managers are more informed than outsiders because the outsiders have delegated management to the insiders. Outsiders delegate responsibility in this way partly because it is costly to become informed and make decisions. (The other reason to delegate decision-making authority is that deliberating and making decisions is more efficient with a smaller group.) If gathering and processing the information required to make decisions were a simple matter, then there would be less of a need for representative governing institutions like corporate boards and parliaments. Principals cannot acquire the full range of information available to their agents without negating the efficiency advantage of having agents.

But this division of labor creates opportunities that agents/insiders can readily exploit by withholding so much information that accountability becomes difficult. Officials have strong motives for keeping others ignorant of their behavior. One such motive is that secrecy provides some insulation against being accused of making a mistake. It is much easier for an official to deflect criticism if important information about the situation the official faced, the decision that was made, and who made the decision remains secret. A second incentive is that secrecy provides the opportunity for special interests to have greater sway. Relationships with special interests allow insiders to exchange favorable policies for personal gain (whether in the form of naked bribery, campaign contributions, or perks), but it is more difficult to maintain these profitable relationships when financial transactions and the decision-making process are transparent.

Whence the Demand for Transparency

Demands for open flows of information have a long history in both politics and economics. Sweden claims pride of place as the first country to have a law granting its citizens access to government-held information, first enacted in the late 18th century.⁹ But other countries have grappled with the issue for a long time. One of the framers of the American Constitution, James Madison, wrote compellingly on the importance of information in a democracy:

A popular Government, without popular information, or the means of acquiring it, is but prologue to a farce or a tragedy; or perhaps both. Knowledge will forever govern ignorance; and a people who mean to be their own governors must arm themselves with the power which knowledge gives.

In the private sphere, corporations have found themselves facing demands for disclosure of financial data for almost as long as publicly held corporations have existed. Great Britain experimented with disclosure laws starting in the mid-1800s. In America, starting early in the 1900s, large numbers of small investors proved able to put substantial political pressure on the government to institute corporate disclosure standards that would protect them from deceit and insider dealings.

After World War II, with the expansion of governmental bureaucracies in many countries and with the emergence of multinational corporations and large inter-governmental organizations came new concentrations of power able to withhold information from people whose lives they affected. At the same time, the Cold War led to the rise of a

highly secretive national security complex in the traditional bastion of transparency, the United States.

Counter-pressures to all this were limited, although there were some. One notable victory for transparency came in the form of the U.S. Freedom of Information Act, first passed in 1966 and strengthened in 1974. In the 1980s, transnational networks of civil society activists launched campaigns demanding information from inter-governmental organizations, particularly the World Bank. East and West negotiated some arms control agreements that included verification provisions that made the security establishments of the two sides increasing transparent to each other.

But the real explosion of global demands for transparency came in the 1990s. Early in that decade, only around a dozen countries had laws providing for public access to government-held information. Almost without exception, these were the established democracies of the English-speaking world, Western Europe, and Scandinavia. Now, the total is over 50. The new additions include countries with varying levels of democratic traditions and varying degrees of economic advancement. All found themselves pressed by the spread of democratic norms, the increasing strength of civil society organizations, and the rise of increasingly independent media around the world to agree to release vastly more information to their citizens than ever before.

At the same time, global economic integration led international investors (and the governments of capital-rich countries) to demand disclosures on corporate and national accounts in emerging economies, especially in the wake of the Asian crisis, which many blamed on the excessive secrecy of the Asian corporations and governments. International financial institutions, which are major promoters of economic integration, began demanding information from governments and then posting that information on web sites. Those international institutions themselves faced intense pressure from activists around the world to open up their analyses and processes of decision making.

In the late 1990s, with the American economy soaring and economic crises plaguing markets in Asia, Russia, and Latin America, the American system of corporate disclosure – the rules governing accounting and auditing, the professionalism of auditors, the conventions of corporate governance that emphasized detailed and timely financial reporting to investors – was heralded as a model for the rest of the world. But with the outbreak of corporate scandals at the turn of the century, the adequacy of American-style corporate disclosure was again in doubt. The machinations of corporate insiders at such firms as Enron and Global Crossing not only deprived millions of shareholders (and employees) of savings and retirement benefits, they may have contributed substantially to the global meltdown of financial markets.¹⁰ Such responses to these scandals as the U.S. Sarbanes/Oxley legislation reflect the widespread perception that more transparency is a significant part of the solution. At the same time, corporations have faced growing demands that they release whole new categories of information: the “non-financial” disclosures related to corporate labor practices and corporate impacts on human rights and the environment – demands that increasingly are taking the form of legal disclosure requirements.

Plan of the Book

The chapters in this book paint a vivid portrait of how transparency has evolved over the past few decades, where the world now stands, and what issues are likely to be confronted in the on-going struggle between secrecy and disclosure. They show that the transparency picture is quite mixed. Information access is certainly more widespread now than it was several decades ago, but we are far from living in a truly transparent world, and some trends, particularly in the security field, may point toward a more secretive future.

To paint these pictures, we begin with a series of detailed case studies of how and why information-access laws came into being in several countries and regions, cases that are of particular interest for the lessons they can teach the rest of the world. One such case study is India. Unlike nearly every other country, whose campaigns for greater access to information access have been spearheaded by middle-class professionals, India's drive was fueled from the grassroots up. Other actors – not least an impressively independent Supreme Court – have played vital roles. But Shekhar Singh shows that the chief lesson to draw from India is how some of society's most marginalized voices can effectively demand the information they need to protect their most basic rights.

China presents a very different perspective, with the transparency trend driven from the top. Hanhua Zhou provides an insider's perspective on how the government's drive to modernize its economy has led to reforms aimed at increasing openness at many levels, from village affairs to national legislation. Jamie Horsley gives us an outsider's take on why China is evolving as it is, and what special considerations arise when a non-democratic regime attempts to ride the transparency tiger.

Ivan Szekeley's overview of Central and Eastern Europe pulls lessons from a region that has undergone a dramatic transformation in the past two decades. His chapter shows that the region presents in microcosm the whole slew of issues relevant to information access: democratization; the role of inter-governmental organizations; the role of business; the importance of learning from one country to another; the conflict with traditional conceptions of security; the special attention often given to information about the environment, and the difficulties of implementing laws on information disclosure, especially when those laws are not designed with implementation in mind.

Ayo Obe's chapter on Nigeria affords a cautionary tale about how difficult it can be to bring about passage of access to information legislation. Nigeria is a hard case for the transparency movement for reasons common to many countries: pervasive corruption; the general lack of public outrage over that corruption in a country whose wealth is based on natural resources that most citizens do not feel they own; compounded by the colonial heritage of secrecy and ethnic divisions. Nonetheless, a small but active constituency is pushing hard for greater transparency.

The book then turns to several thematic chapters. Of course, the simple passage of a law does not guarantee public access to government information, as the chapter on

implementation by Richard Calland and Laura Neuman makes clear. The successful implementation of a transparency law requires a number of supporting institutions: the bureaucratic apparatus to store information and process access requests, watchdog groups to pressure the government to follow its commitment to access, and legal institutions to uphold the access law. Without each of these components, information access can easily be stifled even with the best laws. The chapter points to a number of examples drawn from Latin America, which is not otherwise covered in this book, but lessons on implementation apply across the board. South Africa's Promotion of Access to Information Act (POATIA), for example, has been recognized as the "gold standard" of freedom of information laws but has suffered serious problems of implementation. An NGO survey of South African government agencies found that 54% of agencies contacted were unaware of the Act, 16% were aware of the Act but not implementing it, and only 30% were aware and implementing it.¹¹

Richard Calland then examines whether and when disclosure should be required of private as well as public entities. In addition to the questions of corporate financial disclosures, corporations are also facing growing pressures to release other types of information. The "corporate social responsibility" movement is calling on corporations to improve their environmental and labor practices. Because those activists doubt that either national governments or international organizations will effectively regulate business behavior in these areas, they are conducting campaigns, aimed at consumers and investors, intended to pressure corporations into adopting and complying with codes of good conduct. To demonstrate compliance with those codes, corporations find themselves pressured to release information on their practices. And because privatization is moving the provision of public goods into private hands, serious questions arise about when business-held information falls under the heading of proprietary secrets, and when the release of that information is essential for public accountability.

The transparency rules of intergovernmental organizations such as the World Bank, the IMF, and the WTO have been among the most hotly contested issues in globalization debates in recent years. Critics have alleged that these institutions work too secretively, denying outside organizations and citizens the ability to weigh in on important development debates. As Tom Blanton's chapter shows, the intergovernmental organizations are caught between different modes of thinking: the diplomatic and central banking sectors whence they came, with heavy traditions of secrecy and confidentiality, versus new expectations of openness appropriate to their expanding roles in the growing global regulatory system.

Having looked at transparency practices at the national, regional, corporate, and inter-governmental levels, the book concludes with two chapters that focus on issue areas. First, Vivek Ramkumar and Elena Petkova examine transparency as a tool of environmental governance. Over the past half-century, environmental degradation has emerged as an issue of front-rank importance, but one where good decision making has proven particularly elusive. The extent of humanity's impact on the planet, due both to population growth and to increasingly intense use of natural resources, is swiftly overwhelming the absorptive capacity of the natural environment. But because

information revealing the extent of the problem is often not even collected, much less widely distributed, those impacts are often ignored until after massive damage – perhaps irreparable damage –has already been done. Ramkumar and Petkova show how new regulatory approaches based on disclosure are leading the way toward a new paradigm of governance involving a high degree of citizen participation – a paradigm that may prove useful for global problem-solving across the board.

Finally, the crucial debate over whether secrecy or transparency best assures security took on new intensity due to the events of September 11, 2001, particularly within the United States, where the government has cited national security concerns as the rationale for a number of rollbacks in public access. In the aftermath of the terrorist attacks, the Bush Administration removed a variety of information from government websites, created new exemptions to the Freedom of Information Act, and extended classification authority to a number of domestic agencies such as the Department of Agriculture and the EPA. A number of transparency gains made in the 1990s, such as the increased disclosure of information about risks to citizens from chemical plant accidents, have been or will be lost. Outside the United States, however, September 11 has had relatively little impact on thinking about transparency. Although US backtracking makes a handy excuse for those already opposed to opening up, it has not overwhelmed the movement for greater transparency around the world. Indeed, nearly a dozen countries have adopted access to information laws since then.

Whither Transparency?

Out of all these themes and stories, two major themes emerge. First, the trend toward transparency that has emerged over the past half-decade is no certain indicator of the future. Given that there is no technological inevitability to the spread of transparency, it remains unclear whether policymakers, in both the public and private sectors, will continue to favor increasing levels of disclosure. Indeed, in some cases, as the security chapter makes clear, the trend appears to be heading toward greater opacity. Nor is it clear whether the level of civil society demand for disclosure will create sufficient pressures to overcome the continued reluctance of many decision makers to make themselves vulnerable to public scrutiny.

Second, transparency can be an effective, sometimes a transformative, tool serving the public interest. But merely demanding or disclosing information is not enough to ensure that openness achieves its intended goals. Policy makers and citizens alike have to do the hard work – designing intelligent policies, ensuring their implementation, and keeping up political pressures to ensure that private interests in preserving secrecy do not succeed. This book offers many lessons in how to achieve those goals.

¹ Richard Calland and Alison Tilley, eds., *The Right to Know, the Right to Live: Access to Information and Socio-economic Justice* (Cape Town, South Africa: Open Democracy Advice Centre, 2002), p. v.

² See Ann Florini, *The Coming Democracy: New Rules for Running a New World* (Washington, DC: Island Press 2003 and Brookings Press 2005).

³ Information on the IPD is available at <http://www0.gsb.columbia.edu/ipd/aboutus/index.cfm>

⁴ See, for example, the many references to transparency in the documents of the European Union, such as the Amsterdam Treaty.

⁵ *Report of the Working Group on Transparency and Accountability* (Washington, DC: International Monetary Fund, 1998).

⁶ United Nations Experts Group, Report to the Secretary General, UN Document A/46/301, *Study on Ways and Means of Promoting Transparency in International Transfers of Conventional Arms* (New York: United Nations, 1991). One researcher found nearly a dozen definitions, all related to the ease with which information flows among various actors. See Alex Grigorescu, "The Conceptualization and Measurement of Transparency," Paper prepared for the Annual Meeting of the northeastern American Political Science Association and International Studies Association-Northeast, Albany, New York, November 9-11, 2000, pp 16-17.

⁷ David Brin, *The Transparent Society* (Reading: Addison-Wesley, 1998).

⁸ Ann M. Florini and Yahya Dehqanzada, "Commercial Satellite Imagery Comes of Age," *Issues in Science and Technology*, vol. xvi, no. 1, (Fall 1999), pp. 45-52; Ann Florini, "The End of Secrecy," *Foreign Policy*, no. 111 (summer 1998), pp. 50-63.

⁹ For a detailed account, see Gustaf Petren, "Access to Government-Held Information in Sweden," Chapter II in Norman S. Marsh (ed.), *Public Access to Government-Held Information: A Comparative Symposium* (London: Stevens & Son Ltd., 1987), pp. 35-54.

¹⁰ Shang-Jin Wei and Heather Milkiewicz, "A Global Crossing for Enronitis," *Brookings Review* vol. 21, no. 2 (Spring 2003), pp. 28-31.

¹¹ Alison Tilley and Victoria Mayer, "Access to Information Law and the Challenge of Effective Implementation: The South African Case," pp. 72-85 in *The Right to Know, the Right to Live: Access to Information and Socio-Economic Justice*, Richard Calland and Alison Tilley, editors. Cape Town: Open Democracy Advice Center, 2002. "Public servants don't know the law, aren't implementing transparency," Media Release, October 11, 2002, freedominfo.org. <http://www.freedominfo.org/reports/safrica2.htm>