



THEORY IN PRACTICE

Free Sampler

Open Government

Transparency, Collaboration, and Participation in Practice

Edited by
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& Laurel R.T. Ruma

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Wiki Government: How Technology Can Make Government Better, Democracy Stronger, and Citizens More Powerful.

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Open Government and Open Society

*Archon Fung
David Weil*

Perhaps more than any other national leader, President Obama has stressed his commitment to “creating an unprecedented level of openness in Government” (see the Appendix).^{*} His administration has followed up these words with impressive actions—expanding the quality and quantity of data available on USAspending.gov, laying the groundwork for making the economic stimulus and recovery expenditures public, and creating a high-level process—*itself* conducted in a highly inclusive way—to develop open government policies under the Office of Science and Technology Policy.

Transparency’s Moment?

Complementing these federal initiatives, a host of skilled civic organizations—composed of groups such as Sunlight Foundation, OMB Watch, and the League of Women Voters—now comprise a capable transparency movement that both presses for greater openness in government and develops tools to enable citizens to take advantage of that openness. Coming somewhat later to the issue of transparency, these groups and others have caught the eye of important funders at philanthropies such as the Open Society Institute, the Omidyar Foundation, and the Ford Foundation.

^{*} “Transparency and Open Government,” President Barack Obama, Memorandum for the Heads of Executive Departments and Agencies, January 21, 2009 (http://www.whitehouse.gov/the_press_office/TransparencyandOpenGovernment/).

These developments converge in a perfect storm (the good kind) that may in several years result in a federal government that is much more open to public scrutiny than it has ever been. Indeed, this government may in time become more open than any other major government in the world. This would be a remarkable democratic achievement.

Enthusiasts of transparency, which most readers of this book are, should be aware of two major pitfalls that may mar this achievement. The first is that government transparency, though driven by progressive impulses, may draw excessive attention to government's mistakes and so have the consequence of reinforcing a conservative image of government as incompetent and corrupt. The second is that all this energy devoted to making *open government* comes at the expense of leaving the operations of large private sector organizations—banks, manufacturers, health providers, food producers, drug companies, and the like—opaque and secret. In the major industrialized democracies (but not in many developing countries or in authoritarian regimes), these private sector organizations threaten the health and well-being of citizens at least as much as government. The remedy for this second pitfall is to marshal forces in government and the civic sector into a movement for an *open society*. The aim of this chapter is not to celebrate the current hopeful moment for transparency, but to draw attention to these blind spots and to suggest some correctives.

The Dark Side of Open Government

The principle that government—not just its laws and policies, but the reasons and processes of decisions that generated those policies and the flows of money that fund their implementation—should be open seems not just unobjectionable, but an essential component of democratic government. Without that freedom of information, citizens cannot hold their government accountable, evaluate officials' claims, and hold them responsible when they veer too far from the tether of democracy.

This reasoning becomes problematic when transparency focuses primarily—or even exclusively—on accountability. Campaign finance disclosure, contracting disclosure, and much of the freedom of information activity aims to create a “gotcha” game in which the information provided by open government measures is used by journalists, advocacy groups of the right and left, and political opponents to catch official wrongdoing. This cat-and-mouse game forms a civic check-and-balance mechanism that is fundamental to curbing the misbehavior of the powerful. In this regard, our society is fortunately blessed with many independent journalists whose personal interests and professional ethos press them to sniff out official malfeasance. The American public, going back to the time of Tocqueville and before, have had a skeptical strain in their view of government, particularly the possibilities of malfeasance. When pollsters asked whether “this country is run by a few big interests looking out for themselves” or whether it is run “for the benefit of all the people” in 2004, 54% of respondents thought that it was run

by a few big interests.† Open government efforts can thus plug into a media apparatus and public political culture that together make a very effective “gotcha” machine.

But the larger responsibility of citizens is not just to judge when officials behave badly, but also to provide feedback on their performance in more nuanced ways, including registering approval when government performs well—when it protects people’s interests and solves public problems effectively and justly. Unfortunately, the current discourse of transparency—focused as it is on accountability and issues such as corruption—produces policies and platforms that are particularly sensitive to government’s mistakes but often are blind to its accomplishments. Transparency in this sense is like a school report card that only reports when a student is sent to detention, plays hooky from class, or fails courses, but does not register when she earns As in her course. The systems of open government that we’re building—structures that facilitate citizens’ social and political judgments—are much more disposed to seeing the glass of government as half or even one-quarter empty, rather than mostly full.

Thus the progressive impulse for transparency—shared famously by Justice Brandeis as well as most of the authors of this volume—may well produce conservative or even reactionary effects of delegitimizing government activity quite broadly as public disclosure feeds more and more stories of government waste, corruption, and failure. To illustrate, consider current efforts to disclose federal stimulus spending activity. Much of that disclosure aims to make public the flow of funds through contracts, enabling journalists and citizen-auditors to “follow the money.” This is a worthy contribution to forming public judgments about the stimulus package. But its main thrust provides less information on project progress, its capacity to provide employment to parts of the labor force particularly hard hit by the recession, or the public value created by the spending (e.g., how much local users of an improved transportation line benefit from decreased commuting time or more predictable service). Instead, the approach tends to focus on costs and not the commensurate public benefits arising from the spending. Imagine if Amazon or Internet Movie Database (IMDb) reviews only allowed users to point out problems with books and movies but not to highlight what they thought was artful and creative about them. People who looked at Amazon and IMDb reviews would think that the overall quality of books and movies was very poor indeed. That’s what stimulus transparency—and much government disclosure generally—does.

The solution to this problem is not to reduce government transparency, but rather to create a fuller accounting of it. Instead of focusing solely on disclosure systems that produce accountability, we should press for disclosure systems that allow citizens to identify and express their evaluation of government activities as they would private products and services. One promising set of examples of this are public accounting systems developed by a number of local

† The American National Election Studies (<http://www.electionstudies.org>), *The ANES Guide to Public Opinion and Electoral Behavior* (University of Michigan, Center for Political Studies). In a similar vein, Tocqueville famously noted, “The American Republic will endure until the day Congress discovers that it can bribe the public with the public’s money.” (Alexis de Tocqueville, *Democracy in America* [1838, reprinted by Harper Perennial, 1988].)

governments that provide a platform for citizens, civic groups, and other organizations to provide ongoing feedback on the service provision of specific government agencies or key providers such as the police.[‡]

But these fledgling examples need to be ramped up, particularly given the escalating scale and scope of government activity in response to the economic crisis. Disclosures about federal economic stimulus activities, for example, need to be organized around projects rather than contracts—that is, on the users who ultimately benefit from expenditures. They might report many dimensions of performance—such as the number of jobs created and the quality of those jobs. And they might enable residents in local communities to rate those projects—as they rate books, movies, and hotels on commercial sites—on criteria such as how they are serving specific public needs and the quality of services provided.[§] Americans might be justified in feeling pretty good about the stimulus in areas with many five-star projects and suspicious where there were lots of projects with just one or two stars. In essence, we need transparency that provides a full accounting of the benefits as well as the costs of government activities. The information technologies are readily available;^{||} what we need is the political drive to foster a more complete form of open government.

The Missing Diagnosis

A broader and more important question for transparency advocates is this: what is the problem for which transparency is the solution? One natural answer to this question is that transparency is the solution to the particular challenges of democratic *government*. Governments exercise enormous power—including the power to put people in jail and seize their possessions. Democratic governments are also supposed to express the will of the people. Transparency can both check power and help to make government responsive. A quite different answer to this question, however, is that many large organizations in society—not just national governments, but also corporations, social service agencies, and public service providers—create harms and risks to individuals, and transparency is a general method that can help citizens understand these harms, protect themselves, and press organizations of all kinds to behave in more socially responsible ways.

‡ See, for example, “What Exactly Is City Stat?”, Bob Behn, *The Operator’s Manual for the New Administration*, Rowman and Littlefield Publishers, 2008.

§ One interesting example of the elements of such a system was created by the nonprofit news organization, ProPublica, on its website. The “Stimulus Progress Bar” and associated materials provide ongoing tracking of the progress of stimulus spending across the country (see <http://www.propublica.org/ion/stimulus>).

|| Many of the burgeoning information technologies developed by the private sector could be readily adapted to this task. This has been recognized by a growing number of organizations, including an offshoot of Google, Google Public Sector (<http://www.google.com/publicsector>), which focuses on developing new applications for public sector organizations.

From this second perspective, should transparency enthusiasts invest their energies in *open government* or in creating an *open society* in which organizations of all sorts—in particular, private corporations—are much more transparent? The answer to this question depends on a sober evaluation of the social facts on the ground; where do the risks and harms to citizens come from? In societies where government is the major force, where it has few mechanisms for public accountability, and where other organizations are, by comparison, innocuous—China, Iran, and nations with still-embryonic forms of democratic governance where the boundary between public and private spheres is opaque and often corrupt—transparency should aim primarily to make government more open.

The United States and other industrialized democracies, however, possess quite a different organizational ecology. Governments at the federal, state, and local levels are large and powerful, to be sure. But the well-being of citizens—their employment; the purity of the food they eat and the air they breathe; whether their waterways are fishable and swimmable; their housing prices, mortgage rates, and credit charges; the reliability and safety of transportation; even the very soundness of the economy—also depends on the actions of large and often secretive organizations in the private sector, such as banks, manufacturers, and other corporations.

Therefore, a very substantial part of the energies of transparency advocates should be redirected toward making corporations and other organizations in society meet the same standards increasingly demanded of open government. This shift requires the transparency movement to reorient itself in several substantial ways. Government assumes a different role in the political imagination. Rather than a looming specter of threat that society must tame through transparency, government becomes an ally of society whose strength is required to make businesses transparent. In many cases, private and civic organizations will not disclose information voluntarily, and the force of law and policy—and the kind of authority that can come only from government—will make them do so. Complementing a citizen’s right to know about general processes within government, measures to create an open society produce information that is geared at reducing specific risks and harms, such as health threats, pollution, and economic risks.

Targeted Transparency

To open government partisans, the open society agenda may seem quite foreign; where to begin? Fortunately, laws and policies that compel corporate disclosure have emerged in various policy domains in recent decades. In other work, we have called these measures “targeted transparency” because they aim not just to provide general information, but rather to achieve specific public objectives such as better schools, high-quality hospitals, and safer consumer products.[#]

[#] *Full Disclosure: The Perils and Promise of Transparency*, Fung, Graham, and Weil, Cambridge University Press, 2007.

In 1997, for example, the Los Angeles County Board of Supervisors adopted an ordinance that requires restaurants to post highly visible letter grades (A, B, C) on their front windows that are based on the results of County Department of Health Services inspections. This transparency system makes it much easier for patrons to avoid restaurants with dirty kitchens or otherwise unsafe practices. There is substantial evidence that the system has worked. Revenues at “C” restaurants declined and those of “A” restaurants increased after the policy was implemented. Over the course of a few years, the number of “C” restaurants decreased and the number of “A” restaurants increased. Perhaps most importantly, fewer people are getting sick from food poisoning after the implementation of the report card system. Studies estimate that hospitalizations from foodborne illnesses have decreased from 20% to 13%.^{*} This transparency innovation has spread to several other cities and two states.

At a larger scale, Congress passed a law in 1975 (and has updated it several times), called the Home Mortgage Disclosure Act (HMDA), that compels banks to disclose detailed information about their mortgage lending. HMDA requires banks and other lending institutions to amounts, geographic distribution, and other characteristics of their mortgage applications, including race, gender, and income of applicants. Advocacy groups such as National People’s Action and community-based organizations have used data produced by HMDA to show how many lenders discriminate and to help negotiate fairer lending practices with those institutions. Furthermore, banking regulators used the data both to establish the extent and patterns of discrimination as well as to conduct their enforcement efforts under laws such as the Community Reinvestment Act.[†]

These are just two examples of how methods of transparency have been applied to the actions and products of private sector organizations. Transparency has also been used—sometimes quite effectively and sometimes less so—to address problems such as automobile safety, nutrition and health, hospital safety, credit risk, environmental quality, and workplace health and safety.

Analyzing the effectiveness of transparency incentives is important because measures that succeed can reduce critical public risks and improve public services. Those that miss the mark can distort incentives in ways that waste resources and expose people to risks they do not fully comprehend. In addition, some transparency systems in areas of health care and for certain consumer products are gaining momentum as information and communication technologies increase the capacity of citizens and consumers to use them to make more informed choices—

^{*} Ibid, pp. 192–194.

[†] Ibid, pp. 203–205. HMDA and CRA have also been cited recently as one of the precipitating causes of the subprime mortgage meltdown. In our view, transparency surfaced wide-scale and pernicious discrimination in bank lending practices. How much it also contributed to the inappropriate use of subprime and other forms of complex mortgage instruments during the housing boom—versus other factors such as the securitization of mortgages and the agency problems arising within the housing finance sector that allowed brokers to approve borrowers with little capacity to meet the terms of their mortgages—requires separate treatment.

and to circle around corporate secrets and political obstacles to collaborate on their own transparency efforts. Technology is also transforming the capacity of entities that create public risks to pick up signals from consumers' changed choices and respond by reducing those risks.

A Matter of Politics

These efforts to make the private sector of society, as opposed to government, more transparent have emerged in fits and starts. Unlike the open government movement, there is no focused and organized effort to create an open society through these kinds of measures. Instead, they have emerged bit by bit in particular fields. Health advocates see some advantage in pressing for hospital disclosure in one place. In another, environmentalists press for toxics disclosure as part of their antipollution efforts. Worker advocates push for disclosure of chemical exposures in the workplace somewhere else. Furthermore, targeted transparency often emerges as a response to some kind of crisis. Congress, for example, passed a law requiring automobile manufacturers to disclose the propensity of their cars to roll over in 2000 after a series of widely reported fatal SUV accidents earlier that year. The current economic crisis is engendering its own calls for transparency in regard to regulating the financial sector, including more responsible disclosure of risks to potential borrowers for home loans to redress information failures in the subprime mortgage market, and better disclosure of systemic risks from complex securities.‡

These dynamics limit the reach of targeted transparency because of common political dynamics. As with open government, efforts to make private organizations more transparent often face substantial opposition. It is no surprise that the California Restaurant Association opposed the Los Angeles health grade report system. Generally, companies and other associations will act in the political arena to oppose laws and policies that compel them to provide information to the public.

Conclusion

The contest between these groups and transparency advocates is usually rigged against transparency. In the open society domain, transparency laws and policies usually create requirements upon some small group of organizations—restaurants, car manufacturers, hospitals, and the like—to tell the public information that most organizations wouldn't voluntarily disclose. At a minimum, it is cumbersome to comply with these requirements. Often, disclosure can harm some of these organizations by highlighting their bad behavior and

‡ For example, a Federal Trade Commission study conducted in 2007 demonstrates that the methods of disclosure used by banks to provide information on standard 30-year mortgages are often misunderstood by mortgagees, to say nothing of the more complex features of subprime loans. See James M. Lacko and Janis K. Pappalardo, "Improving Consumer Mortgage Disclosures: An Empirical Assessment of Current and Prototype Disclosure Forms," Federal Trade Commission Bureau of Economics Staff Report, June 2007.

embarrassing them. On the flip side, those who benefit from greater social transparency—sometimes consumers, investors, citizens, and the public at large—are much more numerous and diffuse. As a matter of practical politics, it is usually far easier for smaller groups of concentrated interests to organize to oppose or undermine transparency policies than it is for the much larger groups of consumers and citizens to organize to support and defend those very same policies. Political scientists and political economists have called this the problem of “asymmetric organization.” The dynamic explains why so many disclosure policies end up being toothless and ineffective.[§]

For these reasons, the current sophisticated movement for Open Government should expand its agenda and become a movement to Open Society. In American society, the threats to citizens individually and to society generally come as much—perhaps much more—from powerful private sector actors as from government. Therefore, it is appropriate, even urgent, that the champions of transparency and disclosure train their sights on all of these threats: those coming from economic and civic organizations as well as those coming from government. They should build on the burgeoning lessons of IT-enabled social networks to create responsive, evolving, and vibrant transparency platforms. Absent such a broader movement of targeted transparency to create an open society, many of the real sources of social risk—those that have been responsible for widespread food contamination, the meltdown of the housing market, the broader economic crisis, and the exploitation of the poor through usurious lending practices—will remain shrouded in secrecy, mysterious to citizens, and beyond the reach of democratic control.

§ For a full discussion of political sustainability, see *Full Disclosure*, chapter 5.

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