

# **On Liberty, the Right to Know, and Public Discourse: The Role of Transparency in Public Life**

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## INTRODUCTION

Amnesty International has long been an effective champion of free speech, one of the basic human rights. Free speech is both an end in itself—an inalienable right that governments cannot strip away from the citizenry—and a means to other equally fundamental goals. Free speech provides a necessary check on government: a free press not only makes abuses of governmental powers less likely, it also enhances the likelihood that basic social needs will be met. Amartya Sen, the winner of this year's Nobel Prize in economics, has argued forcefully that famines do not occur in societies in which there is a free press.<sup>1</sup> It is not the lack of food in the aggregate that gives rise to famines, but the lack of access to food by the poor in famine regions. A free press exposes these problems; once exposed, the failure to act is absolutely intolerable.

I want to push the argument one step further, and argue that there is, in democratic societies, a basic right to know, to be informed about what the government is doing and why. To put it baldly, I will argue that there should be a strong presumption in favor of transparency and openness in government. The scourges of secrecy during the past seventy years are well known— in country after country, it is the secret police that has engaged in the most egregious violations of human rights. I want to talk today about the kind of secrecy that is pervasive today in many democratic societies. Let me be clear: this secrecy is a far cry from that pursued by the totalitarian states that have marred the century that is drawing to a close. Yet this secrecy is corrosive: it is antithetical to democratic values, and it undermines democratic processes. It is based on a mistrust between those governing and those governed; and at the same time, it exacerbates that mistrust.

Francis Bacon pointed out long ago that "Knowledge itself is power." Secrecy gives those in government exclusive control over certain areas of knowledge, and thereby increases their power, making it more difficult for even a free press to check that power. In short, a free press is necessary for a democratic society to work effectively, but without access to information, its ability to perform its central role is eviscerated.

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<sup>1</sup> Sen (1981).

The consequences of secrecy can be grave. Consider one example that loomed over much of this century. In his recent book, Senator Moynihan has argued powerfully that the Cold War and many of its manifestations, such as the arms race, were greatly exacerbated by the secrecy imposed by the military establishment.<sup>2</sup> A more open discussion of the evidence would have shown what is now all too apparent—Russia was not the formidable opponent, the industrial giant, which it was depicted as for almost half a century.

In this lecture, I want to set forth the case for greater openness and transparency in government. It may seem ironic that I, an American, should be delivering this lecture here, in the United Kingdom: after all, the United States and the United Kingdom are two of the most open and transparent societies in the world. And indeed, they set an example for much of the rest of the world. Yet we should not take comfort in that relative virtue: our countries are still bedeviled by far too much secrecy, far too little transparency. If we are truly to set an example for the rest of the world, we must confront our own issues of transparency and openness head on.

## **SECRECY AND TRANSPARENCY IN RECENT PUBLIC POLICY DEBATES**

Before turning to the analytics of the subject—to the causes and consequences of secrecy—I want to begin with a few more personal words. My interest in openness has been long-standing. As with so many others of my generation, for me the Vietnam War brought home forcefully this and other fundamental issues facing our society. I remember vividly conversations we had back in Cambridge, Massachusetts, in the mid-1960s concerning the dilemma facing the members of the Council of Economic Advisers, which advises the US President. One of the Council's duties was to make economic forecasts. It was apparent to many of us that the government was spending far more on the Vietnam War than it was admitting. One of the problems was that not only did we not know for sure *how much* it was spending, but we did not even know *who knew*, and so we did not know the true extent of culpability of President Johnson's economic advisers. You will

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<sup>2</sup> Moynihan (1998).

recall the context. Johnson was trying to avoid the proverbial guns vs. butter trade-off; he wanted both his War on Poverty and his War on Vietnam. The major consequence of his attempt to deceive the American people through secrecy was inflation—the inflationary episode that was subsequently reinforced by the oil shock, and that wreaked such havoc during the subsequent decade. We, the young assistant professors at Harvard and M.I.T., debated among ourselves the responsibility of the President’s economic advisers. How open should they have been about the situation? Should they have resigned in protest if the Administration refused to put forward an honest forecast? How would we act in a similar situation? During my tenure as Chairman of the Council of Economic Advisers, I would repeatedly confront similar—though fortunately, far less dramatic-- issues and find myself reflecting back on those conversations of three decades ago.

A few years later, while I was the Drummond Professor of Political Economy here at Oxford, I was approached to do some consulting for the British government. In that capacity, I was asked to sign the Official Secrets Act. This troubled me. Britain was not at war, and nothing that I might do would even remotely touch upon matters of national security. What rationale could there be for such secrecy? It was, in my case, mainly a formality—but a formality that raised important questions that I promised myself I would revisit someday. It is thus fitting that I use this opportunity, here at Oxford, to return to the broader issues of openness.

As an economist of the public sector, I have long argued for the virtues of transparency and openness. In one of my earlier textbooks, I contrasted two views of taxation: one view described the art of taxation as akin to plucking a goose in a manner that ensures that it does not squawk.<sup>3</sup> The value-added tax is consistent with this mindset; one of its alleged virtues is that individuals pay the tax in drips and drabs, so that they are never fully conscious of how much they pay for public services. I had taken the contrasting view of taxation, arguing that one of the major attributes of a *good* tax system

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<sup>3</sup> A minister to Louis XIV cunningly described taxation as follows: “The art of taxation consists in so plucking a goose as to obtain the largest amount of feathers with the least possible amount of hissing”. See Newsweek, (1984).

was transparency.<sup>4</sup> One of my major criticisms of the corporate tax, for example, was that the burden of that tax was not transparent.

Later, when I turned my attention to monetary economics in the aftermath of the U.S. savings and loan crisis, I had been one of the many who had argued for more transparent accounting systems in the United States.<sup>5</sup> Specifically, I argued for moving to mark-to-market accounting—that is, requiring banks to record all assets at their current market value.<sup>6</sup> I had pointed out the huge distortions associated with current practices<sup>7</sup>. To be sure, since it will be difficult to mark to market non-marketed assets, not all assets will be treated the same; the realization of this may affect how we use the more accurate information that marking-to-market provides. But how could one really argue that it is better to have an accounting system that is less accurate? Similar issues of transparency arose in establishing risk-based capital-adequacy standards. The question was how to gauge the risk of long-term bonds. What is relevant is the risk of a change in market value; given their substantial market volatility, long-term bonds can hardly be considered perfectly safe.

These are but two examples—in public finance and monetary economics—illustrating the importance of transparency in public life. Indeed, for the past thirty years, I have spent a large fraction of my professional life on the “economics of information,” on the consequences of imperfections of information and on the incentives for gathering—and hiding—information. It is thus, perhaps, natural, that, as the issue of transparency has moved front and center in the public debate, I should turn to the question, of what have we learned—both from theory and practice—concerning the role of information in public decision making.

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<sup>4</sup> Atkinson and Stiglitz (1976)

<sup>5</sup> See Chapter 2 "Well-Kept Secrets" in Greider (1992) for the role of secrecy in the S & L crisis.

<sup>6</sup> Stiglitz (1992)

<sup>7</sup> Banks have an incentive to sell assets that have increased in market value, thus increasing their “book” value, while retaining assets that have decreased in value—so that they will not have to recognize losses.

## THE RATIONALE FOR OPENNESS

With these remarks as prelude, let me turn now to the case for openness. I shall divide my remarks into seven sections. In the first, I shall give the most basic rationale for openness. In the second, I shall describe the incentives *of those within government* for secrecy. In the third, I shall trace through some of the adverse consequences of secrecy, as it is often pursued by public officials. In the fourth, I shall comment on how it is in fact that secrecy is enforced. In the fifth, I shall discuss the variety of circumstances that represent the exceptions to the presumption for openness, reviewing the arguments put forward for secrecy by the advocates of secrecy. In the sixth, I shall discuss some of the elements required for implementing a regime of greater openness in public discourse. In the final section, I shall try to pull together the arguments, summarizing my case for greater openness in democratic societies.

It is, perhaps, worth noting that the issue of secrecy in matters of public affairs has been long a source of public concern.<sup>8</sup> The arguments against secrecy cohabit with the arguments against censorship and in favor of free speech.<sup>9</sup> The classic case was made in John Milton's *Areopagitica* (1644),<sup>10</sup> but James Madison, the architect of the First Amendment of the U.S. Constitution guaranteeing the right of free speech, captured the crux of the argument.

A people who mean to be their own governors must arm themselves with the power that knowledge gives. A popular government without popular information or the means of acquiring it is but a prologue to a farce or a tragedy or perhaps both.<sup>11</sup>

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<sup>8</sup> See Bok (1982) for a comprehensive overview.

<sup>9</sup> See Emerson (1967) and (1970) for a survey.

<sup>10</sup> "And though all the winds of doctrine were let loose to play upon the earth, so Truth be in the field, we do injuriously, by licensing and prohibiting, to misdoubt her strength. Let her and Falsehood grapple; who ever knew Truth put to the worse, in a free and open encounter?" Milton's argument was later echoed by Jefferson in his 1779 Virginia "Bill for Establishing Religious Freedom" which argued in part that truth "is the proper and sufficient antagonist to error, and has nothing to fear from the conflict unless by human interposition disarmed of her natural weapons, free argument and debate; errors ceasing to be dangerous when it is permitted freely to contradict them."

<sup>11</sup> Letter from James Madison to W. T. Barry, August 4, 1822 in Padover 1953. Quoted in Carpenter 1995, 1.

Jeremy Bentham based his constitutional system on the motive of "personal interest corrected by the widest publicity" and took publicity as the principal check against misrule.<sup>12</sup> John Stuart Mill, in his famous essay *On Liberty* (1859), held that subjecting arguments to public scrutiny was unconditionally beneficial and provided the most assured way of sorting out good from bad arguments.<sup>13</sup> In *Considerations on Representative Government* (1861), Mill extended the argument for "publicity and liberty of discussion" to emphasize the virtues of popular participation.<sup>14</sup>

Walter Bagehot developed a strong case for "government by discussion" and played an important role in fostering those ideas during his editorship of *The Economist*. The modern economics of information emphasizes that once knowledge is made public, then it becomes a public good that cannot be made private again. Bagehot makes the same point in his inimitable way pointing out at the same time the role of information in free choice.

"Democracy," it has been said in modern times, "is like the grave: it takes, but it does not give." The same is true of "discussion." Once effectually submit a subject to that ordeal and you can never withdraw it again; you can never again clothe it with mystery, or fence it by consecration; it

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<sup>12</sup> "Without publicity, all other checks are fruitless: in comparison of publicity, all other checks are of small account. It is to publicity, more than to everything else put together, that the English system of procedure owes its being the least bad system as yet extant, instead of being the worst." [Bentham 1838-43, vol. iv. p. 317. Quoted in Halévy 1972, 403]

<sup>13</sup> Mill argues "(t)he peculiar evil of silencing the expression of an opinion is, that it is robbing the human race; posterity as well as the existing generation; those who dissent from the opinion, still more than those who hold it. If the opinion is right, they are deprived of the opportunity of exchanging error for truth: if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error." See Mill 1961 (1859).

<sup>14</sup> "As between one form of popular government and another, the advantage in this respect lies with that which most widely diffuses the exercise of public functions;...by opening to all classes of private citizens, so far as is consistent with other equally important objects, the widest participation in the details of judicial and administrative business; as by jury trial, admission to municipal offices, and above all by the utmost possible publicity and liberty of discussion, whereby not merely a few individuals in succession, but the whole public, are made, to a certain extent, participants in the government, and sharers in the instruction and mental exercise derivable from it." [Mill 1972 (1861), 262]

remains for ever open to free choice, and exposed to profane deliberation.  
[Bagehot 1948 (1869), 167]

To me, the most compelling argument for openness is the positive Madisonian one: meaningful participation in democratic processes requires informed participants. Secrecy reduces the information available to the citizenry, hobbling their ability to participate *meaningfully*. Any of us who has participated in a board of directors knows that the power of a board to exercise direction and discipline is limited by the information at its disposal. Management knows this, and often attempts to control the flow of information.<sup>15</sup> We often speak of government being accountable, accountable to the people. But if effective democratic oversight is to be achieved, then the voters have to be informed: they have to know what alternative actions were available, and what the results might have been. Those in government typically have far more information relevant to the decisions being made than do those outside government, just as management of a firm typically has far more information about the firm's markets, prospects, and technology than do shareholders, let alone other outsiders. Indeed, managers are paid to gather this information.

The question is, given that the public has paid for the gathering of government information, who *owns* the information? Is it the private province of the government official, or does it belong to the public at large? I would argue that information gathered by public officials at public expense is owned by the public—just as the chairs and buildings and other physical assets used by government belong to the public. We have come to emphasize the importance of intellectual property. The information produced, gathered, and processed by public officials is intellectual property, no less than a patentable innovation would be. To use that intellectual property for private is just as serious an offense against the public as any other appropriation of public property for private purposes. There are, to be sure, circumstances in which fully sharing that

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<sup>15</sup> "Every bureaucracy seeks to increase the superiority of the professionally informed by keeping their knowledge and intentions secret." [Weber 1958, 233] Weber gave the authoritative treatment of the role of secrecy in a bureaucracy.

information may not be appropriate—the important “exceptions” to the presumption for openness that I will discuss later in this talk.

One might argue that, in a society with a free press and free institutions, little is lost by having secrecy in government; after all, there are other sources of relevant information. Indeed, modern democratic societies, recognizing the importance of information for effective governance, try to protect the freedom and independence of the press and endeavor to promote independent think-tanks and universities—all to provide an effective check on government in many areas. The problem is that often, government officials represent the only or major timely source of relevant and *timely* information. If officials are subjected to a gag order, then the public has no real effective substitute.

To reiterate, openness is an essential part of public governance. Albert Hirschman<sup>16</sup> described exit and voice as instruments for discipline in organizations. For public organizations, exit is typically not an option, and therefore greater reliance is placed on voice. In the private marketplace, how a firm organizes itself—whether it keeps secrets or not—makes little difference. Customers care about the products and prices; and regardless of how the firm organizes production, if it produces good products at low prices it will succeed. There are transparency issues, of course: firms often lack the incentive to disclose fully the attributes of their products, and government, accordingly, enforces a variety of disclosure requirements,<sup>17</sup> including truth in advertising, disclosure requirements on loans, disclosure requirements on firms seeking to raise capital publicly and fraud laws. But by and large, market mechanisms (including reputation) provide essential governance to firms.

But public organizations are not subjected to the same kind of discipline. It is only through voice—through informed discussion of the policies being pursued—that effective governance can be exercised. Because in many of the areas in which public agencies operate, they have an effective monopoly, exit is not an option. Consider the difference between a doctor in a community in which there are many physicians and a doctor who is

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<sup>16</sup> Hirschman (1970).

<sup>17</sup> For a discussion of market incentives for disclosure, and the need for government intervention, see, e.g. Stiglitz (1975a, 1975b, and 1998a) and Grossman (1981).

the only source of advice in the community. The doctor might be tempted to blame the patient when his prescription fails to work: the patient did not do exactly what was asked. But *if there is competition* if the prescriptions of the doctor do not work—possibly because no patient can follow them precisely—the doctor will eventually lose his practice, his reputation will be tarnished, and his patients will exercise “exit.” If there is monopoly however— if there were a single doctor dispensing treatment – the doctor might well try to control information: He might well argue that doing so is necessary to maintain confidence in his cures (and, because of the placebo effect, there may even be a grain of truth in the argument); and he knows that competitive pressure will not force him to disclose information and that exit is not an effective option.

In all organizations, imperfections of information give rise to what economists call *agency* problems. As a result, there may be important disparities between, say, the actions of managers and the interests of shareholders. Similarly, in the public sector agency problems may give rise to a disparity between, say, the actions of those governing and those that they are supposed to serve. In modern parlance, the lack of an exit option may exacerbate the consequences of these agency problems. Quite obviously, improvements in information—decreases in secrecy—can reduce the magnitude and consequences of these agency problems.

### **THE INCENTIVES FOR SECRECY**

The arguments presented in the preceding section provide, I think, a compelling case for openness. Yet even seemingly public-spirited public servants often engage in secrecy. In some cases, it is because they worry about demagoguery, fearing that openness allows demagogues to enter the fray and to sway innocent voters. Anyone who has ever lost a public debate is convinced of the importance of demagoguery, especially as used by special-interest groups to advance their own interests. Yet this is the fundamental quandary of democracy: although we recognize its pitfalls, there is no real alternative to public debate.<sup>18</sup> In the end, we are committed to having voters make decisions at least

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<sup>18</sup> A key issue, as society increasingly faces complicated and technical issues, is how to integrate expertise, democratic accountability, and representativeness. See, e.g. Stiglitz (1998b)

about the decision-makers. Shouldn't we prefer that they be better informed—that is, in a better position to evaluate the quality of decision-making?

But compelling as these public interest arguments for openness may be, they run up against powerful private incentives, the private incentives of government bureaucrats, elected officials, and the special interest groups which try to influence them. Public Choice theory has emphasized the importance of these incentives.<sup>19</sup> In this section, I shall take a closer look at these private incentives.

Two such incentives have received extensive attention. The first is that secrecy provides some insulation against being accused of making a mistake. If a policy fails to produce desired results, government officials can always claim that matters would have been even worse but for the government policy. While we all recognize human fallibility, government officials seem particularly loath to own up to it, and for good reason: the public judges mistakes harshly. But there is a vicious circle: given that so little information is disclosed, the public must rely on results in judging government officials. The officials receive credit for good results, whether they deserve the credit or not; and they are condemned for bad results, whether they are the result of government action or inaction. With more information, the public might be able to discern more accurately the *value added* of public action.

Conversely, secrecy breeds more of itself.<sup>20</sup> Given that so little information is disclosed, any disclosure of a policy failure is taken as a far more important piece of news. There are thus even greater pressures not to disclose. If more information were disclosed, then the adverse consequences of disclosing a failure would be smaller, and the adverse consequences of not disclosing (of hiding) a failure might be far greater. Given that secrecy is the norm, however, the public does not attach great opprobrium to those who engage in the practice. It is what they have come to expect of public officials, who, after all, they suspect of not really serving in the public interest.

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<sup>19</sup> See Mueller (1997).

<sup>20</sup> In more technical terms, the practice of secrecy leads to an inefficient Nash equilibrium.

While those engaged in making the policy may well have an incentive to suppress such a discussion, the question is, from the framework of the architecture of public policy, shouldn't there be a presumption in favor of, and an insistence on, openness?

The second incentive that public officials have for pursuing secrecy is that secrecy provides the opportunity for special interests to have greater sway. In some societies, this takes the naked form of corruption and bribery. But even in societies where this is viewed as unacceptable, politicians need campaign funds to get elected and re-elected. The special interest groups who provide the funds do not do so for the greater public good, but because they believe that by doing so they can influence policy in ways that enhance their profits and profitability. But if these actions in support of special interest groups are subject to public scrutiny, the scope for favoritism is greatly circumscribed. It is in the midnight meetings of the tax committees that the special provisions benefiting one firm or another are introduced. In the words of Justice Brandeis, "sunlight is the most powerful of all disinfectants." Secrecy is the bedrock of this persistent form of corruption, which undermines confidence in democratic governments in so much of the world.

These, as I have said, are the traditional arguments for openness. There are three others that I want to discuss today. The first is that lack of information, like any form of artificially created scarcity, gives rise to rents. The adverse consequences of rent seeking have long been of concern. There is an unhealthy dynamic: the public official has an incentive to create secrets, which earns him rents. The existence of secrets give rise to a press determined to ferret out the secrets. One of the ways in which public officials reap the rents is to disclose "secrets" to those members of the press that treat them well. Thus, not only is the public deprived of timely information—which I have argued is theirs by right—but government officials use their control of information to distort information in their favor. It is not just the puff pieces of which public officials are so fond. Rather, it is the very characterization of events and circumstances. Woe be to the reporter who breaks the implicit contract! Ostracism—being cut off from the source of news—is the consequence; and even a liberal minded editor has no choice but to reassign the reporter. One reporter from a reputable newspaper, having offended the powers that be that he depended upon for his stories, went from covering prominent national issues out of

Washington to reporting from and on Detroit. This symbiotic relationship between the press and officialdom undermines confidence in both, and interferes with the ability of a free press to carry on its essential functions. Can a reporter be an effective critic, if his access to the information he requires to be informed can be curtailed upon the submission of an excessively critical article?

There is another, even more corrosive effect of secrecy and an incentive for secrecy by public officials. I referred earlier to management's attempt to control information in limiting the ability of shareholders and their elected directors to exercise discipline. Elsewhere, I have also shown how by *creating* information asymmetries, managers can create barriers to the entry of outside managers, to takeovers, and by doing so, they can increase their managerial rents (at the expense of shareholders.)<sup>21</sup> The same is true of public managers—elected officials. If outsiders have less information, voters may feel less confident that they will be able to takeover management effectively. Indeed, the lack of information of outsiders does increase the costs of transition, and make it more expensive (for society) to change management teams. The fact that the alternative management teams have less information means that there is a higher probability of any proposals that they put forward will be ill-suited to the situation. By increasing the mean cost of transition and increasing the subjective variance, secrecy puts incumbents at a distinct advantage over rivals.<sup>22</sup>

By the same token, secrecy undermines participation in democratic processes even by voters. Voters are more likely to exercise independent judgments—both to vote, and to vote independently of party—if they feel confident about their views. And this in turn requires that they be informed. There is a cost to becoming informed. While most voters are not perfectly selfish—if they were, it would be hard to rationalize participation in the political process at all (after all, the public good is a public good)—they have a threshold, a limit to the amount of their time and energy they are willing to invest in the pursuit of

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<sup>21</sup> See Edlin and Stiglitz (1995). See also Shleifer and Vishny (1989).

<sup>22</sup> In arguing against the Alien and Sedition Acts at the end of the 1700s, James Madison noted how the incumbents "will be covered by the 'sedition-act' from animadversions exposing them to disrepute among the people" while the challengers would have no such protection so he asked "will not those in power

the public interest. Secrecy raises the price of information—in effect, it induces more voters who do not have special interests not to participate actively, leaving the field more to those with special interests. Thus, it is not only that special interests exercise their nefarious activities under the cloak of secrecy, but that the secrecy itself discourages others from providing an effective check on the special interests through informed voting. This highlights the importance of "public information institutions" designed to ferret out information for the benefit of the public: a free and if-need-be adversarial press (as opposed to a captive or lapdog press), the legitimate opposition always playing a probing and possibly devil's advocate role (buttressed by practices like the Opposition's questioning of Government in Parliament), and a myriad of public interest organizations (such as Amnesty International) to blow the whistle on the cloaked activities of the special interest groups.

In addition, secrecy may discourage potential competitors, not only because their prospects of success in the voting process are (rationally) reduced, but because it increases their own subjective uncertainty about whether they can improve matters. How often have officials become elected on a platform, only to discover that the budgetary situation is far worse than had been envisioned, forcing them to abandon all their previously designed plans and engage in a budget balancing act (for which they may have neither a comparative advantage nor a passion)?

### **THE ADVERSE EFFECTS OF SECRECY**

In the previous section, I set forth some of the reasons that public officials so ardently pursue secrecy, even when openness is so apparently an essential part of democratic processes. One of the reasons for devoting so much time to understanding the incentives for secrecy is that unless we understand the drive for it, we cannot succeed in uprooting it. But another reason is that it provides deeper insights into the adverse effects of secret.

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derive an undue advantage for continuing themselves in it; which by impairing the right of election, endangers the blessings of the government founded on it?" [Madison 1966 (1799), 225]

I have already called attention to several of these adverse effects: Secrecy provides the fertile ground on which special interests work; secrecy serves to entrench incumbents, discourage public participation in democratic processes, and undermines the ability of the press to provide an effective check against the abuses of government.

But the adverse effects are more pervasive. To maintain secrecy, often the circle of those involved in decision making is greatly circumscribed; those who are able to provide valuable insights are cut out of the discussion. The quality of decision making is thereby weakened. There is, again, a vicious circle. With more mistakes, public officials become more defensive; to protect themselves, they seek even more secrecy, narrowing in the circle still further, eroding still further the quality of decision-making.

Public programs may be designed not on the basis of the impact that they have, but on (government officials' beliefs about) the perceptions of those impacts. Those perceptions will be affected by the information that is publicly available; program design may be as sensitive to those perceptions (and the extent to which they can be controlled) as to their real impact.

There is still one more, related effect: as the space of informed discourse about a host of important issues gets circumscribed, attention gets focused more and more on *value* issues. It takes an enormous amount of information to make judgments concerning complex economic issues. It takes far less (or a far different kind of) information to come to a view concerning abortion or family values. Thus, secrecy has distorted the arena of politics. The adverse effects of secrecy are multiple: not only are important areas of public policy not dealt with effectively, but also debate focuses disproportionately on issues which are often far more divisive.

#### *Adverse Economic Effects*

While most of this paper is concerned with the adverse effects of secrecy on the political process, I should also note the adverse *economic* effects. The most obvious concern the *economic* consequences of *political* decisions: A large fraction of the decisions taken in the political arena have economic consequences—not only for aggregate output, but also for its distribution. Openness affects the decisions that get

made—including who bears the costs of the risks inevitably associated with the uncertainties of public policy making.

It is now generally recognized that better, and more timely, information results in better, more efficient, resource allocations. The increasingly large fraction of the workforce involved in gathering, processing, and disseminating information bears testimony to its importance. Ironically, many of these are engaged in ferreting out information from the public sector—information which, one might argue, of right out to be public. While businesses have legitimate reasons for maintaining secrecy in some of their activities (after all, the fact that information is valuable means that disclosing information is giving away something of value to their rivals), the same reason leads to the conclusion information that is paid for by the public should be publicly disclosed. Does it make sense, if better information leads to better resource allocations, for the government to deliberately not disclose information—letting the market itself decide what is or is not relevant?<sup>23</sup>

But the most adverse economic consequences are associated with the corruption that so often follows from excessive secrecy. It is not an accident that the leading international non-government organization fighting corruption is called Transparency International. Research at the World Bank, reported in the *1997 World Development Report*, has shown that corruption has strong adverse effects on investment and economic growth.

Public officials do have strong incentives for secrecy. But if we are to avoid the myriad adverse political and economic consequences of secrecy, in the design of the architecture of public institutions, we need to take this into account: we need to force more openness than public officials might willingly offer.

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<sup>23</sup> To be sure, some of the value of information is associated with asymmetries: obtaining information *before* one's rivals; some of the returns to information are thus private returns, not social returns. Still, it is hard, especially in government bond markets, to argue for the value of the market's "discovery" function, and at the same time not argue for more public disclosure of the public information that the market is expending so many resources "discovering."

## THE IMPLEMENTATION OF SECRECY

Given the strong interests of public officials in secrecy, it is not surprising that so many governments have engaged in such extensive secrecy, going well beyond the requirements of national security. But while it may be in the interests of the government as a whole to maintain secrecy, it may not be in the interests of particular individuals. Indeed, that is what gives rise to the whole problem of leaks. As in the case of other forms of collusive behavior, there are incentives for individuals to deviate. If a secret is shared among a number of individuals, any one of the individuals can reap the scarcity rents for himself by disclosing the information to the press.

Here again reputation mechanisms become important: the press must be relied upon not to disclose the source of their leak. If they do, their source dries up. Indeed, if the source of the leak becomes public knowledge, others within the government are likely to “sanction” the individual, denying him access to the information or ostracizing him in some other way.

The press and the officials thus have an incentive to engage in symbiotic activity. But as in any reputation model, there is always a danger of unraveling in any finite game. From the point of view of the government official, what matters is the reputation of the reporter: can he be discreet in keeping his sources confidential? Since new government officials will quickly become apprised of each reporter’s reputation, he has a strong incentive to maintain this confidentiality.

Still, the nature of the bilateral relationship is such as to give an advantage to some public officials over others: it pays to develop a good relationship with someone who leaks more regularly and more exclusively (excessive leaking diminishes the value of the information being leaked), and who is likely to be a source for a long time. (If a reporter has a limited supply of puff pieces to give out, it is better to use them on those for whom the present discounted value of the information disclosed is high.)

Secrecy serves another sociological function. Many clubs, not to mention secret societies,<sup>24</sup> have secret rituals. Secrets serve to set apart those “with” the secret from

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<sup>24</sup> See Chapter IV "Secret Societies" in Bok 1982.

those that do not have the secret. It provides a form of bonding. I described earlier the “sanctions” which make each hostage to the bond, but the sanctions are only part of the story. Ethical values, subscribing to group norms, affect most members of the group. If the group norm is to keep a secret, they feel an individual responsibility to conform to that norm.

In recent years, however, there has been weakening of these norms. This is partly because of the increasing recognition of the undemocratic and corrosive effects of secrecy. While many directly involved with government condemned the leaking of the *Pentagon Papers*, many outside thought this an act of moral courage.<sup>25</sup> But there is another reason. As norms more generally have broken down, there are more instances of individuals who do not feel or at least react to the “peer pressure,” who put their own interests above that of the group, who recognize the nature of the secrecy game, recognize that even if it comes to be widely believed that they are a source of leaks, it is sufficiently hard to prove that they may be immune from sanctions. Worse still, their special relationship with the press gives them a kind of immunity: they can use this special relationship to fend off any attacks. (Individuals who establish this special relationship may, in an almost hypocritical way, be the strongest advocates of secrecy; for their rents depend on *their* controlling the flow of information; their position is undermined if there are independent sources of information.) It would thus appear that the “complete” secrecy equilibrium may be somewhat fragile. But the partial secrecy equilibrium is just as distortive of democratic processes. Indeed, because not all government officials are equal players in the “leaking game” the information flow may be particularly distorted.

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<sup>25</sup>In affirming the New York Times' right to publish the *Pentagon Papers*, Supreme Court Justice Hugo Black wrote, "In my view, far from deserving condemnation for their courageous reporting the New York Times, The Washington Post and other newspapers should be commended for serving the purpose that the Founding Fathers saw so clearly. In revealing the workings of the government that led to the Vietnam war, the newspapers nobly did precisely that which the founders hoped and trusted they would do." See New York Times, (1971). Furthermore, a public opinion poll conducted in the weeks after the disclosure of the Pentagon Papers reflected that 58% of the public felt the newspapers did the right thing (whereas 29% felt they had been in the wrong) in publishing the top-secret papers. See Roper (1989).

## THE EXCEPTIONS

In their quest to maintain secrecy, public officials do not, of course, appeal to the effects that I have just described. They do not argue that secrecy is important because it gives incumbents an advantage over outsiders. They point to a number of problems that *excessive* openness gives rise to. (In today's world, no one argues against openness, only against *excessive openness*.) In this section, I try to provide taxonomy of the arguments against secrecy that I have heard. I conclude that while there are indeed limits to openness, governments today, even the most open governments in the West, are far too secretive. Many, if not most of the arguments are simply self-serving rationalizations.

### *The Privacy Exception*

The most important and convincing exception concerns privacy matters affecting individuals (and organizations.) The government, in the exercise of its duties, gathers enormous amounts of information concerning individuals (such as income and health statistics). But few if any of the issues with which I am concerned here fall within the privacy exception.

### *Confidentiality Exception*

A closely related exception concerns certain information the receipt of which would be impaired by the knowledge that it would be subsequently disclosed. For instance, the World Bank is sometimes asked by a country to help it restructure its banking system. In the process of doing so, certain weaknesses in the banking system might be uncovered. If it were known that the World Bank would disclose those weaknesses—at least, before they are repaired—the countries would have a strong incentive not to come to us for advice. There has been a worry that more extensive disclosure of letters of recommendation may have resulted in less informative letters. The importance of confidential of doctor patient and lawyer-client relationships has long been recognized; there are a limited number of interactions within the public sector that should fall within the confidentiality exception.

### ***The National Security Exception***

The importance of secrecy in times of war has long been recognized. When a nation's survival is at stake, it must do everything in its power to increase its chance of winning. The success of a military attack may well depend on surprise—on the enemy not being able to take the necessary precautions.

The problem is that the national security exception has been extended to issues where clearly national security is not what is at issue. What is often at issue is covering up mistakes. This was brought home forcefully by the *Pentagon Papers* that looked not at how the country was currently engaged in the Vietnam War, but how it got into the war in the first place.

There will remain hard choices; one of the hardest questions the U.S. faced in the late 1960s and early 1970s was whether to continue the war in Vietnam. Critical to that decision was information about how the war was faring. Yet that information itself might have been of value to the perceived enemy.

The worry is that much of government secrecy extends well beyond issues of national defense

### ***Crying "Fire" in a Crowded Theatre.***

Occasionally, the disclosure of information can have life-threatening effects. Typically, the issue is not *whether* to disclose the information, but *how*. Justice Holmes' famous exception to the right of free speech was based on *causing a panic* by crying "Fire" in a crowded theatre.

In matters economic, this particular exception takes on a special form; open discussion of certain issues (such as monetary policy) might roil the market, leading to instability. Curiously, those who take this position are typically those who are strong advocates of markets: while they have a great deal of confidence in the market, they evidently believe that market allocations are affected by irrelevant "noise." If, of course, the information being discussed or disclosed is of relevance, that is, it affects economic fundamentals, then disclosing the information as soon as possible allows the more efficient allocation of resources.

A particular variant of this focuses on monetary policy. There has been extensive discussion of the extent to which central banks should act in secret; should they disclose their proceedings, and if so, with what lag and with what fullness of detail? Again, there is a certain irony in these discussions: while market advocates praise the price “discovery” function of markets, much of the price discovery function in the bond market is directed at figuring out what the central bankers believe and are likely to do. Rather than having this indirect “dance”, would it not make far more sense to have the Central Bank directly disclose the information? If the market believes that that information is of value—as evidenced by the huge number of individuals who watch the actions of central banks throughout the world—then shouldn’t government make that information available? And in a timely way? Evidently, central banks (and their governments ) are less than committed to transparency when it comes to their own operations!

Neither theory nor evidence provides much support for the hypothesis that fuller and more timely disclosure and discussion would have adverse effects. Indeed, since information eventually comes out, the current procedures, which attempt to bottle up information, result in periodic disclosures of large amounts of information. Just as the economy is likely to be more stable with frequent small adjustments in exchange rates than few, large ones, so too is the economy more likely to be stable with a steady flow of information. With a flow of information, less attention would be paid to any single piece; and there would be smaller revisions in posterior distributions.

Similarly, there seems to be no evidence of increased instability following the U.K. decision to have greater transparency on the part of its central bank.

Secrecy in matters economic may not only contribute to overall instability, but in many countries can be a major source of corruption, undermining confidence in government more generally.

At best, however, the argument that fuller disclosure and discussion might roil markets is only an argument concerning the timing and manner of disclosure; it is not an argument for an indefinite postponement of public discussion. To return to the metaphor of “crying fire in a crowded theatre”: No one would argue that, if one knew that there was a fire in the theatre, that the patrons should not be informed in a way that allows an

orderly evacuation. No one would argue, I think, that after the fire is over, there oughtn't be a thorough investigation of the fire, to determine what caused the fire, and if there were deaths or severe injury, to see what might be done (both in the construction of the theatre and in the design of the response) to avoid similar disasters in the future. And no one would argue that, because it might "roil" theatre goers, one shouldn't have lighted exit signs, to indicate how to evacuate the theatre in case of fire—since we know that no matter how well theatres are constructed, there is still a danger of fire.

In the case of information that, it is feared, might disturb markets, there is another point: Shouldn't we have enough confidence in democratic processes and in the market to believe that the market can see through the cacophony of voices, assess the fundamental arguments, and weigh the evidence?

I am not convinced that there is any real trade-off between the pursuit of democratic transparency on one hand and the stability and growth of the economy on the other. But in the event there is a conflict, I put my voice solidly behind the importance of democratic processes of openness.

To be sure, democratic societies must find and have found ways of engaging expertise in complicated and technical decision-making in a manner that reflects both shared values and expertise. But the decisions cannot reflect just the interests of the industry groups which are likely to have a disproportionate share of expertise and should be forged in ways that leave open both the decisions and the framework within which those decisions should be made to democratic processes. Indeed, to the extent that there has been greater delegation of responsibilities, e.g., to independent agencies, to engage greater expertise and to isolate the decision-making from the vicissitudes of the political process, there appears an even greater need for openness and transparency.

*Open covenants not openly arrived at.*<sup>26</sup>

A part of the American credo that every school child learns is Woodrow Wilson's dictum in the aftermath of World War I: Open covenants openly arrived at. Eighty years ago, transparency was at the top of the international public agenda. It was widely

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<sup>26</sup> I am indebted to Alan Blinder for this articulation.

perceived that secret treaties secretly arrived at were a major problem prior to and during the First World War. But both before and after, there has been little enthusiasm for *excessively* open deliberations. The worry is that open discussions will inhibit free expression of ideas, and special interests will take advantage of the situation to weigh in, before the delicate compromises and complex coalitions which are at the heart of successful democratic processes have a chance to work themselves out. Secrecy is needed for the successful completion of delicate negotiations.

There is, I think, some validity to this argument. The question is, how much weight should we give it? After all, the proposals will have to be put forward to public debate eventually. Special interests will still have time to undermine any coalitions that have been formed. And indeed, if there were more public disclosure of the debate as it proceeded, the news that a particular idea was being explored would carry far less weight than today, when the very fact that an idea becomes public leads to the belief that it is being very seriously considered, bringing down the full force of close scrutiny.

The thrust of this exception is again one of timing: there may be a period of secrecy, while deliberations proceed, but eventually positions—and the arguments that went into them—should be fully disclosed.

As a practical matter, I have observed two dangers however with this position. First, the time is never ripe for public discussion. One “delicate” moment is followed by another. And secondly, the public is all too often treated disparagingly: it is entitled to know the arguments for the proposal, but not the pros and cons that went into it—like a child who should not witness disagreements between the parents. But the public knows that few matters are black and white. Issues of public policy involve judgments, often about matters concerning which there is considerable complexity and uncertainty.

Positions are asserted with a confidence that the available evidence simply did not warrant. At the very least, public agencies should be honest and more transparent in describing the uncertainties. One of the arguments for not doing so is that confidence in these institutions would be undermined.

*Undermining Authority, or Don't Air Your Dirty Linen in Public.*

The argument that public discussions—including discussions of uncertainties and mistakes—will undermine the authority of public institutions is one of the most corrosive of democratic processes. It is akin to the kinds of arguments that authoritarian regimes conventionally use. I would argue, on the contrary, that were governments to deal honestly with their citizenry, confidence in government and public institutions would increase, not decrease. We all know, in the immortal words of Alexander Pope, that “to err is human.” Human fallibility is at the cornerstone of the design of our political institutions. It is why we have systems of checks and balances. We all know that there is imperfect information and that these imperfections of information play out in some of the most important decisions we have to make.

Thus, to pretend that any institution is infallible, or that there is perfect confidence in the actions being undertaken, is to fly in the face of reality. Only those who want to be fooled will be. Admission of fallibility and demonstration that one can learn from one's mistakes should enhance public confidence in an institution, at least by demonstrating that the institution has enough confidence in itself and in democratic processes to engage in open discussions.

Yet organizations cannot function without a certain degree of loyalty and structure.<sup>27</sup> Democratic processes cannot work without well-functioning organizations within it. It is here that the most delicate issues arise. Making the democratic system work in its entirety may indeed necessitate working to increase the credibility of the institutions within it (though to repeat—this does not mean trying to persuade anyone either of an infallibility or a degree of certitude which is simply not there), and this may entail circumscribing full disclosure.

Again, what is most at stake is the question of timing. Once a decision has been made, any government must convince others of the correctness of its views. This may not be effectively accomplished if the disagreements that existed prior to a decision being made continue to be aired in public. More broadly, one can view any government as a

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<sup>27</sup> On the delicate issues of whistle-blowing, see Peters and Branch 1972 or Bok 1982.

*team*. Before decisions are made, there needs to be open discussions, at least within the team, though within any government, there will be a division of responsibility, with each agency taking ultimate responsibility for the decisions which fall within its purview—though often within the public sector there are several agencies with significant interests at stake. Without effective participation in the decision making over which they have some jurisdiction, there will, of course, not be “ownership” and “buy-in” of the decision, and it will be difficult for the team to work smoothly. After a decision is made, the team must work together in the agreed upon strategy. Part of that strategy for public agencies is a strategy to convince others of the appropriateness of the actions.

But to repeat what I said a minute ago, the public might be more effectively convinced if there were more openness both in the process of decision making and concerning the nature of the disagreements. Openness in process assures the public that the decision does not reflect the exercise of special interests. And a summary of the argument convinces the public that all of the important arguments were considered, all sides were looked at: a judgment was made that the weight of evidence came down in favor of the course of action being undertaken. After all, governments are elected in part to make these difficult judgment calls. What the public wants to know is that there has been real deliberation.

But government needs to be committed to openness *after the fact*: there must eventually be honest and open evaluations of the actions. Otherwise, there will be no basis for learning from experience.

Like the preceding argument, while worries about “undermining credibility” and “being a member of the team” have considerable validity, they are often exaggerated and taken too far. The incentives for secrecy of incumbents that I described earlier make leaders of these organizations particularly prone to invoke this argument.

Each of us in public life must weigh what we say in public and in private, mindful of the abuses to which excessive secrecy is prone. In the end, my confidence in the democratic processes leads me to the conviction that there is far more scope for open disclosure, far less risk of “undermining” the authority of institutions, than those who invoke this argument claim. My predecessor as chairman of the Council of Economic

Advisers under Ronald Reagan, Martin Feldstein, engaged in an honest discussion of the consequences of the huge deficits that were then mounting. Though he did not succeed in changing the policies, he played an important role in the formation of the consensus that eventually led to the deficit reductions of the 1990s. The fact that there could be such an open discussion I think actually enhanced confidence in democratic processes and institutions.

### **THE IMPLEMENTATION OF OPENNESS**

I have tried to make a case for greater openness in government. How can such greater openness be implemented? At the same time, I have tried to describe the strong incentives on the part of those in the government for secrecy. While the incentives for secrecy are great, so too are the opportunities for evading the intent of any disclosure regulations. If formal meetings have to be open, then all decisions can be made in informal meetings. If written material is subject to disclosure, there will be an incentive to insure that little is written down, and what is written down will be for the public record. Because of these limitations of legalistic approaches, emphasis must be placed on creating a *culture* of openness, where the *presumption* is that the public should know about, and participate in *all* collective decisions. We must create a mindset of openness, a belief that information that public officials possess is “owned” by the public, and to use it for private purposes—if only an exchange of favors with a reporter—is as much a theft of public property as stealing any other form of property.

There is a narrow set of exceptions that I have laid out in the preceding section. But these exceptions need to be highly circumscribed. The objective should be to make them as small as narrowly defined as possible. And there should be public discussion about the extent of those exceptions.

One basic framework for public access to information is contained in the Freedom of Information Act that the U.S. Congress passed in 1966. In principle, this law enables any citizen to gain access to any information in the public domain, with narrow exceptions for privacy. But such legislation can only be partially successful, unless there is a real

commitment to openness. Government officials may be careful in what they write down and what remains a “mouth-to-ear” secret, precisely because they do not want to disclose important information to the public.

One of the strong incentives for secrecy is to provide cover for special interests to do their work. Requirements on disclosure of campaign contributions have been valuable—they have at least sensitized the electorate to the role, for instance, of tobacco money in affecting legislative outcomes. But I must confess that while the United States has strong disclosure requirements (including those affecting lobbyists), special interests still seem to have considerable scope. Presumably matters might have been even worse without these requirements.

The press plays an essential role in the battle for openness. But the press, as we have seen, is at the same time a central part of the “conspiracy of secrecy.” The Press must commit itself to working for openness. It is too much to expect them to disclose their secret sources inside the government, or to seek out exclusive sources of information. But there needs to be more reporting on the reporting process itself, exposing the nefarious system, if not the key players.

Non-government organizations, like Amnesty, also have an important role to play in helping create a culture of openness—and in checking the proclivity of government officials for secrecy.

## **CONCLUDING REMARKS**

Amnesty International has long been devoted to ensuring that all governments protect basic human rights. It has been one of the most effective voices for human dignity in the world. Openness—transparency—is one of the most important instruments for achieving this goal. It is behind the cloak of secrecy that the rights of individuals are most frequently abrogated.

I have long been concerned with a special aspect of human rights and dignity: in the words of Franklin Delano Roosevelt, with the right to “freedom from hunger.” There can be no human dignity, no basic rights, when an individual sees his child die of starvation or his/her daughter sold into a life of prostitution for mere survival. There is little doubt

that decisions by governments do have profound implications for this basic human right. These decisions should be made openly, and with the active and open participation of those affected by them. I am convinced that *openness* and *participation* will affect the nature of the decisions being made.

Greater openness can be justified on *instrumental grounds*, as means to ends—ends like reducing the likelihood of the abuse of power. Greater openness is an essential part of good governance. A powerful case has been made that greater openness might have avoided the extremes of the Cold War. I believe that better decisions would have been made than emerged from the reliance on the secret wisdom of the cognoscenti. The end of the Cold War has laid bare the failures of the culture of secrecy and undermined the necessity of continuing it further. Perhaps the greatest irony of the Cold War is that in the attempt to preserve democracy and democratic values, we adopted policies that undermined democratic processes. The culture of secrecy was a like a virus, spreading from one part of the government to another, until it invaded areas where national security played no role at all.

But I also believe that greater openness has an intrinsic value. Citizens have a basic right to know. I have tried to express this basic right in a number of different ways: the public has paid for the information; for a government official to appropriate the information that comes to his or her disposal in his role as a public official for private gain (if only for the non-monetary return of good newspaper coverage) is as much a theft of public property as the stealing of any other public property. While we all recognize the necessity of collective action, and the consequences of collective actions for individual freedoms, we have a basic right to know how the powers that have been surrendered to the Collective are being used. This seems to me to be a basic part of the implicit compact between the governed and those that they have selected to temporarily govern them. To be sure, there are exceptions, and I have dealt at length with these exceptions; but I have tried to argue that they are, or at least should be, limited in scope.

It also seems to me that the less *directly* accountable a governmental agency is to the public, the more important is it that its actions be open and transparent. By the same token, the more independent, the less directly politically accountable, a government

agency, the greater the presumption for openness. Openness is one of the most important checks on the abuse of public fiduciary responsibilities.

We are at an exciting time. The end of the Cold War has provided us the opportunity—I would say, has made it necessary for us—to re-examine the role of secrecy and openness. At the same time, new technologies have provided mechanisms through which information can be more effectively shared between government and those governed. We can now have a more informed electorate than in any time in history. Further, advances in education, of a kind unthinkable a century ago, have put more and more citizens in a position to evaluate and assess the information that can so readily be made available.

We need but one step more: a commitment by government to greater openness, to promote dialogue and open discussion, to eschew secrecy in all of its myriad of forms. While I have outlined concrete legislation to which all governments might subscribe, I have recognized the limitation of such legislation. The incentives of secrecy are simply too great, and the scope for discretionary actions is too wide. I have therefore stressed the importance of creating a culture of openness—a task where organizations like Amnesty International have an essential role to play. Such openness may not guarantee that wise decisions will always be made. But it would be a major step forward in the on-going evolution of democratic processes, a true empowerment of individuals to participate meaningfully in the decisions concerning the collective actions that have such profound effects on their lives and livelihoods.

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