

# Making Sense of Political Transparency: The Case of Legislatures

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## ABSTRACT

My dissertation examines the concept of political transparency. I am primarily interested in two broad questions. First is a question of intellectual history: How did this concept crystallize, and how did it take on such an important place in our thinking and speaking about democracy? Second is a question of normative theory and institutional design: Why, from within the framework of modern constitutional democracy, should we care about transparency in the first place, and what counts as sound transparency policy in particular institutional settings?

The research presented here forms a portion of my chapter on transparency in representative assemblies. I advance three objections to the existing paradigm for thinking about legislative transparency. Next, I step back to evaluate the various normative grounds on which transparency is defended. Finally, I suggest an alternative conception that avoids the problems of existing approaches.

The argument proceeds as follows. (1) According to the dominant conception of transparency, the legislative process ought to be rendered perfectly visible, if possible by video broadcasting. (2) But this is problematic for a number of reasons, including that it would tend to harm the prospects for deliberation and compromise. (3) Supporting this dominant conception are some putative normative grounds for transparency that are themselves dubious. (4) By contrast, the normative rationales that I argue we should endorse suggest a different conception of legislative transparency, one that eschews the goal of maximum visibility. (5) On this more plausible account, legislative transparency would involve familiar measures such as publishing members' votes and sharing all manner of parliamentary documents, but it would also preserve spaces for confidential deliberation throughout the policy process.

## The Dominant Conception and Its Problems

Popular discourse, as well as activist and some academic discourse, reveal a dominant paradigm for thinking about political transparency, which I call "**Transparency as Visibility**" (TV). TV has two salient features. First is its focus on rendering institutions and official activity *visible*. In this vein, Jeremy Bentham wrote that state institutions should be made subject to "the superintendence of the people." The second important feature of TV is its implicit maximalism. Transparency is an absolute concept: we can see perfectly through transparent, as opposed to translucent or opaque, material. That absolute character has led many to assume that in politics, too, perfect (optimal) transparency is perfect (complete) transparency.



In the legislative context, these two features suggest that every activity of representative assemblies and their members should be brought into public view. Woodrow Wilson claimed, for example, that "[t]he light must be let in on all processes of law-making." Modern advocates of this view add that technologies such as live video broadcasting (e.g., C-SPAN) make such transparency feasible.

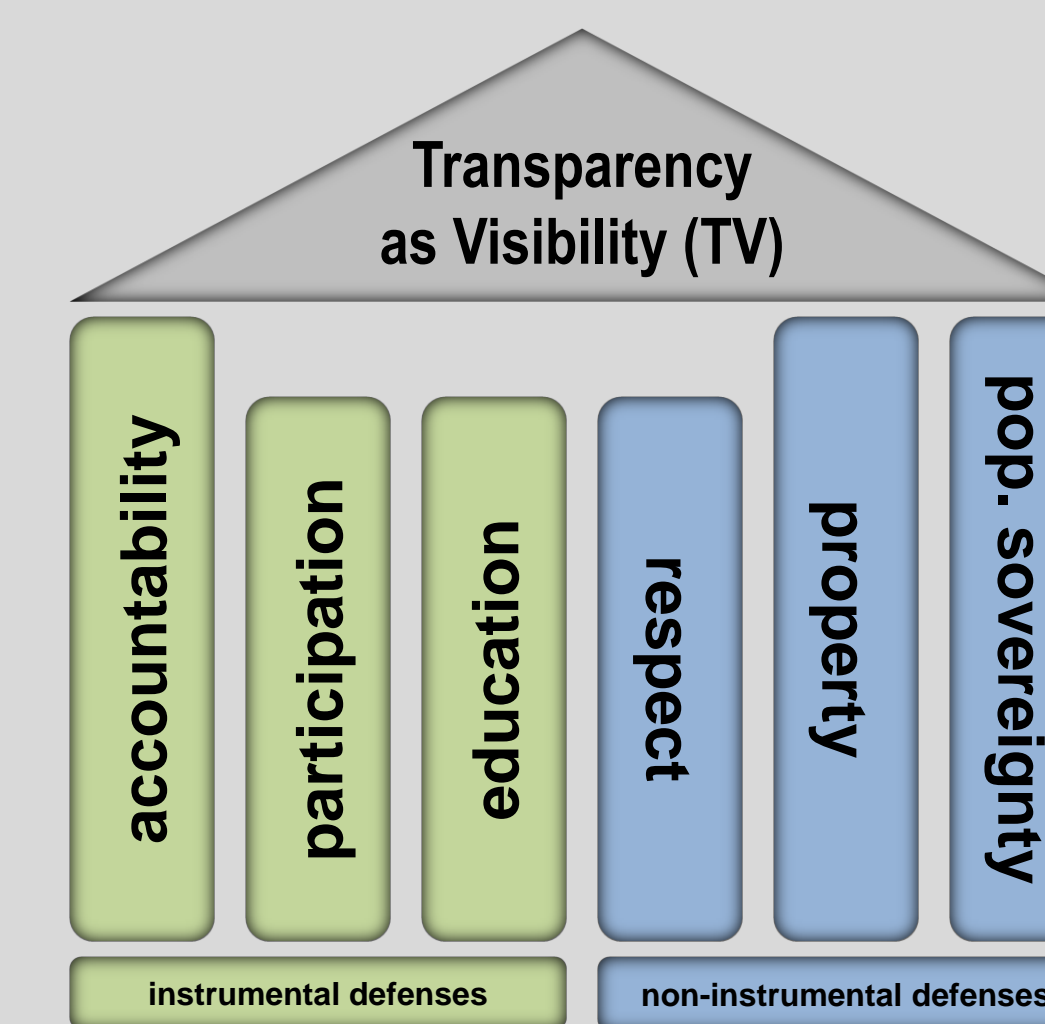
But there are significant problems with this approach, including that:

1. The elimination of spaces for confidential discussion among legislators would harm prospects for deliberation and compromise, two central legislative functions;
2. The focus on visual representations tends to promote a phony, shallow politics; and
3. The emphasis on "watchdogging" reinforces excessive distrust of government.

## Examining Transparency's Normative Grounds

Normative defenses of legislative transparency fall into two broad categories. Some are instrumental, locating the value of transparency in its tendency to promote a distinct good. Others are non-instrumental, understanding transparency as required by some antecedent ethical or political principle.

The dominant conception TV seems to rest on three main ideas, as shown in the highly stylized figure here. I consider those claims, along with three other rationales that need not support TV, in my research.



### i. **Transparency promotes civic education**

- I accept a thin version of this rationale, according to which legislative transparency promotes an informed citizenry. But I argue that we should reject thicker claims about transparency's educative function (cf. Bentham and Hegel), because they are unsupported by evidence.
- The thin version need not support a maximal conception such as TV.

### ii. **Transparency promotes citizen participation**

- Among contemporary theorists, Philip Pettit, among others, has endorsed this claim. I argue that it is basically sound, at least with respect to informal modes of participation (e.g., persuasion, protest), which are difficult to pursue when target institutions are opaque.
- However, the participatory rationale does not provide a basis for TV in particular, and suggests a less absolute conception of transparency.

### iii. **Transparency promotes accountability**

- I distinguish "public accountability" from "representative accountability." The former can apply to any sort of public official, ensuring responsibility and non-corruption, while the latter applies only to representatives, and is focused on responsiveness to constituent interests or opinions.
- I see both types as democratic goods, but reject as implausible any interpretation of rep. accountability that would demand absolute transparency (e.g., a pure delegate model).

### iv. **Transparency is required because gov't information is publicly owned**

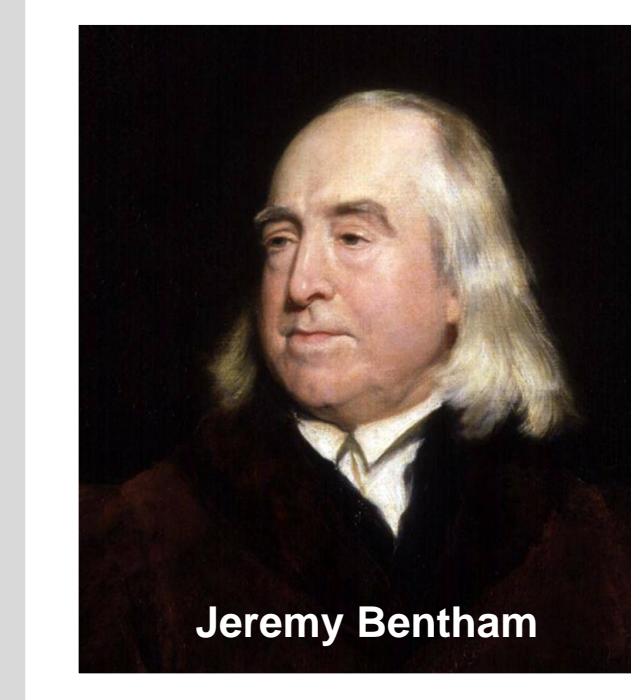
- Joseph Stiglitz, among others, has endorsed this claim. But I argue that it is mistaken: government information must be used for public benefit, but is not actually owned by (nor perforce accessible by) the public.

### v. **Transparency is required by a principle of popular sovereignty**

- This view, inspired by Bentham, holds that under modern circumstances the rule of the people *just is* popular oversight of the state, which requires maximally transparent institutions.
- I reject this conception as too single-minded.

### vi. **Transparency is required to express respect for citizens' rational agency**

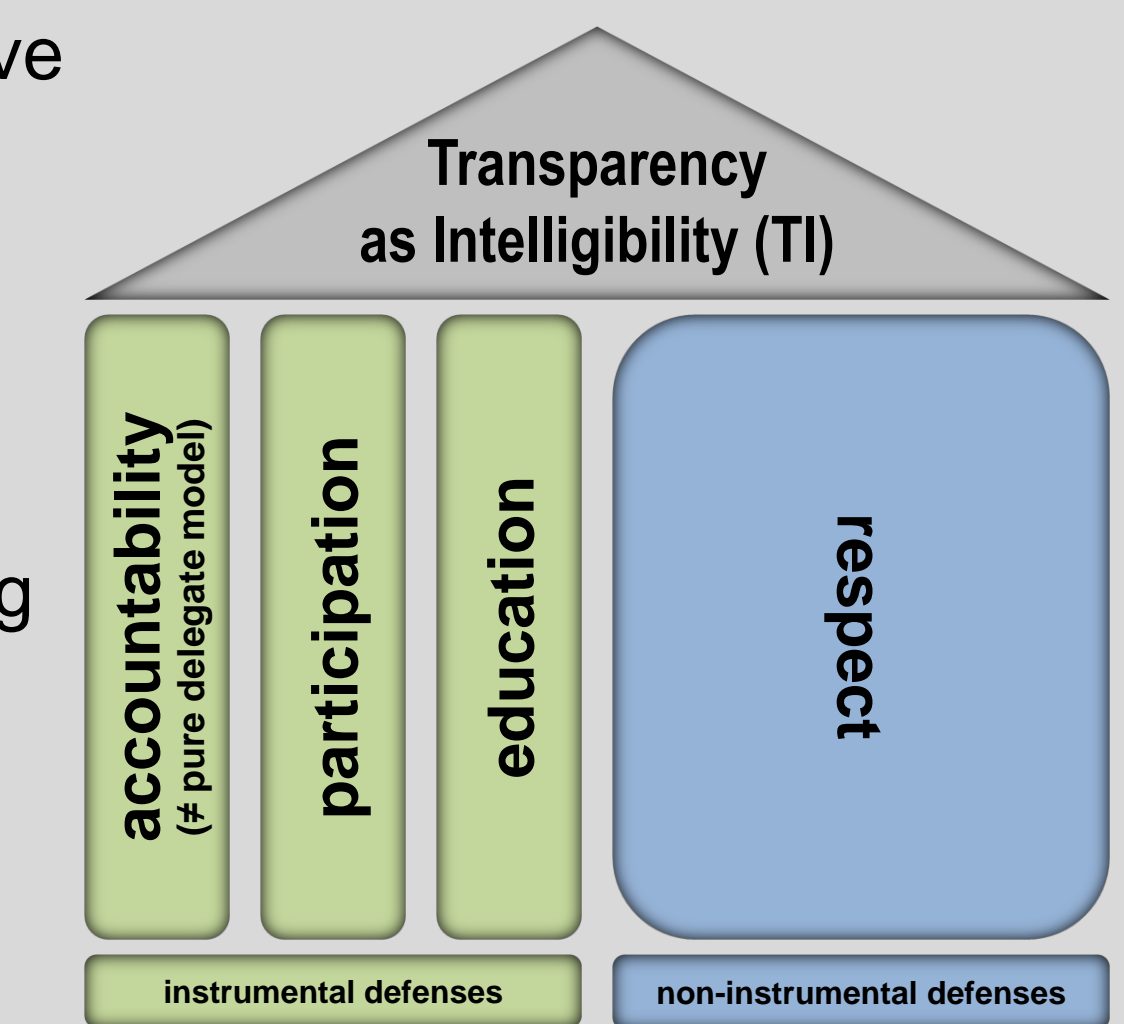
- This claim is at the core of my positive case for transparency, but it demands that the state become understandable, not necessarily visible.



## An Alternative Conception

In my dissertation I advance an alternative conception of transparency that rejects TV's problematic features—its focus on visibility, and its implicit maximalism. I am tentatively calling that alternative "**Transparency as Intelligibility**" (TI). TI shifts the focus from supervising the state's action to understanding the state's action. This better reflects the normative grounds for transparency that I argued we should endorse.

As applied to the legislative context, the important point about TI is that it maintains a strong commitment to transparency without: (1) denying that some confidential spaces for deliberation are legitimate; (2) fomenting distrust and suspicion; or (3) fetishizing visual modes of publication such as television. While avoiding these pitfalls, TI affirms that all of the following should be public: the legislative agenda, bills and other proposals, at least some deliberations, the documents produced by committees and other official arms of the assembly, legislators' votes and other behavior (including obstructive action), and the outcomes of the policy process (laws, resolutions, and the like).



## Conclusion: The Promise and Limits of Transparency

- Legislative transparency can promote citizens' information and participation, and legislators' accountability, but is not sufficient to secure these goods.
- It is also an important expression of respect for citizens' rational agency.
- Nevertheless, institutional transparency policies are concerned purely with the provision of information, whereas real intelligibility also requires a rich ecosystem of (competing) mediating narratives, which illuminate, interpret, and give meaning to information. It is in entertaining and interrogating such narratives that we can really learn something about what the state is up to.
- Finally, a transparent state is not necessarily a just state, as utopians claim.

## References and Acknowledgements

André Bächtiger et al., "The Deliberative Dimensions of Legislatures," *Acta Politica*, vol. 40 (2005), 225-38; J. M. Balkin, "How Mass Media Simulate Political Transparency," *Cultural Values*, vol. 3, no. 4 (1999), 393-413; Richard W. Bauman & Tsvi Kahana, eds., *The Least Examined Branch: The Role of Legislatures in the Constitutional State* (New York: Cambridge University Press, 2006); David Beetham, *Parliament and Democracy in the Twenty-First Century: A Guide to Good Practice* (Geneva: Inter-Parliamentary Union, 2006); Jeremy Bentham, *The Works of Jeremy Bentham*, ed. John Bowring (Edinburgh: William Tait, 1838-1843); Simone Chambers, "Behind Closed Doors: Publicity, Secrecy, and the Quality of Deliberation," *Journal of Political Philosophy*, vol. 12, no. 4 (2004), 389-410; Congressional Research Service, "Congressional Lawmaking: A Perspective on Secrecy and Transparency," by Walter J. Oleszek, R42108 (Nov. 30, 2011), 13-16; Amital Etzioni, "Is Transparency the Best Disinfectant?" *Journal of Political Philosophy*, vol. 18, no. 4 (2010), 389-404; G. W. F. Hegel, *Elements of the Philosophy of Right*, ed. Allen W. Wood (Cambridge: Cambridge University Press, 1991); Daniel Naurin, "Transparency, Publicity, Accountability: The Missing Links," *Swiss Political Science Review*, vol. 12 (2006), 90-98; Wynn Netherland & Chris McCroskey, "Case Study: Tweet Congress," in *Open Government: Collaboration, Transparency, and Participation in Practice*, ed. Daniel Lathrop & Laurel Ruma (Sebastopol, CA: O'Reilly Media, Inc., 2010), 177-82; Barack Obama, "Transparency and Open Government: Memorandum for the Heads of Executive Departments and Agencies," [http://www.whitehouse.gov/the\\_press\\_office/TransparencyandOpenGovernment](http://www.whitehouse.gov/the_press_office/TransparencyandOpenGovernment); OpeningParliament.org, *Declaration on Parliamentary Openness* (2012); Hannah Pitkin, *The Concept of Representation* (Berkeley: University of California Press, 1967); Christopher Reid, "Whose Parliament? Political Oratory and Print Culture in the Later 18th Century," *Language and Literature*, vol. 9, no. 2 (May 2000), 122-34; Pierre Rosanvallon, *Counter-Democracy: Politics in an Age of Distrust*, trans. Arthur Goldhammer (Cambridge: Cambridge University Press, 2008); Nancy Rosenblum, *Bentham's Theory of the Modern State* (Cambridge, MA: Harvard University Press, 1978); Philip Schofield, *Utility and Democracy: The Political Thought of Jeremy Bentham* (New York: Oxford University Press, 2006); David Stasavage, "Polarization and Publicity: Rethinking the Benefits of Deliberative Democracy," *Journal of Politics*, vol. 69, no. 1 (Feb. 2007), 59-72; Joseph Stiglitz, "Transparency in Government," in *The Right to Tell: The Role of Mass Media in Economic Development* (Washington, D.C.: World Bank, 2002), 27-44; Woodrow Wilson, *The New Freedom: A Call for the Emancipation of the Generous Energies of a People* (Garden City, NY: Doubleday, Page & Co., 1913).

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