Secrecy and Transparency

Paper to be presented at the ECPR General Conference in Glasgow, September 3-6, 2014. Panel: Freedom: Historical and Systematic Approaches

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Abstract
Democratic decision-making as well as democratic control require knowledge and basic insights into political processes and outcomes. Thus, conceptions of democracy include transparency as a necessary precondition. Nevertheless, there are spheres of secrecy within democracies. State security, executive privilege and privacy are forceful motives used by political actors to legitimize secrecy. These spheres of secrecy, it is argued here, are more than just aberrations from transparency. They have their own function in the political process, as transparency rules do. Therefore, we cannot understand the two as being their respective opposite, but as different political instruments. The paper focuses on the relationship between democracy, transparency and secrecy. It retraces changes in the theoretical understanding of this relationship and the varying value attached to secrecy and transparency from a historical perspective. Furthermore, it discusses their different and specific functions as well as possible ambiguities and conflicts in their interaction.

1. Introduction

Secrecy and transparency seem to be their respective opposite. Still, they are more than just negations of the other one, but also distinct (political) instruments. Thus they are not pure antagonisms, but might exist in parallel, for example regarding different aspects of the same subject or regarding process and outcome: While one might be transparent, the other could still be secret (e.g. Thompson 1999: 185).
This paper argues that transparency and secrecy limit some actors' scope of action while enhancing it for others and thus play an “important role in distributing influence” (Roberts 2002: 177). The paper traces changes in the definitions and evaluations of both concepts. It shows how the position of each in political thought were reversed over time. Furthermore, it argues that there is an increasing conflict between their political functions and the normative role ascribed to them in democracies. It holds that the attempt to legally legitimize and institutionalize secrecy and its relation to transparency can never fully succeed as it is unable to limit secrecy effectively. The rationality of secrecy incorporates not necessarily the use, but always the possibility of secrets that elude these norms.

To discuss secrecy and transparency, some preliminary definitions are indispensable. Secrecy can be defined as intentional non-information (Sievers 1974: 18, Stok 1929: 4, Bok 1983: 5). It is furthermore characterized by opposing claims for disclosure and the preservation of the secret (Simmel 1923: 272; Sievers 1974: 18). Secrecy can be understood as “non-information against expectation” (Westerbarkey 1991: 23, author's translation). Thus it produces difference, even hierarchy, as it distinguishes the in- and outsiders of a secret (e.g. Hahn 1997: 27, Westerbarkey 1991: 141, Horn 2011: 109). Secrecy's functions therefore can be differentiated between social ones and instrumental ones. The latter include producing an information advantage vice versa other actors (Müller 2004: 20), avoiding blame or enabling negotiations (e.g. Hahn 2002: 24). These functions remain unchanged, but ascriptions and evaluations are altered over time and in different contexts.

Transparency, on the other hand, can equally be understood as intentional, this time intentional information-provision. It can be understood as an instrument for providing publicity, but is not synonymous with publicity or truth (see for example Fenster 2010: 623): it only “increases the chances of publicity.” (Naurin 2002: 9, own emphasis)

Thus both transparency and secrecy are based on decisions, there need to be actors that keep or disclose information vice versa other actors and therefore both constitute social relations. Furthermore, both have impacts on the scope of action of actors as they enhance it for some and limit it for others: While secrecy enhances the secret-keepers'
room for manoeuvre, transparency enhances it for the recipients of information. Equally, secrecy limits the possibilities for those excluded from a secret and transparency confines those that have to disclose information (e.g. De Fine Licht et al. 2014: 112). Both transparency and secrecy may relate to different levels of information: Concerning content and process. While a specific bit of information might itself either be disclosed or secret, the same goes for how and what kinds of information are transparent or secret. Thus secrecy and transparency are not necessarily mutually exclusive. A secret might exist concerning concrete information, though how these secrets are produced and concerning what type of information could nevertheless be transparent.

2. Secrecy and Transparency – Two Concepts and their Changes

There has been a fundamental shift in understanding transparency's and secrecy's role in politics over time (e.g. Westerbarkey 1991: 18). This includes changes in who the actors are. Several scholars have elaborated on that shift, although there remains disagreement. Beginning with the “mysteries of state”, that drew upon Christian concepts and applied them to the Prince (Kantorowicz 1955) in the late Middle Ages, the idea of state secrecy arose. The secret became a “powerful symbol not just in theological, but also in political communication” (Wegener 2006: 38, own translation). Mysteries of the state or “arcana imperii” therefore implied that the sovereign's authority stems from religious vocation and thus needs to be followed (Luhmann/ Fuchs 1992: 116 et seqq.). The (modern) state is based on the secret (ibid., Wegener 2006: 39). Representative of this is Macchiavelli's praise of astuteness and the ability to deceive where necessary, symbolised by the fox as opposed to the lion that relies on physical strength (and coercion) (Macchiavelli 1513: 87). “From Machiavelli and Guicciardini to Gracian and Richelieu, secrecy is a defining element in the politics of reasons of state, in the art of simulation and dissimulation.” (Bodei 2011: 889). Secrecy therefore can be understood as “a recognized and necessary dimension of political action” (Hölscher 1979: 7, own translation). In absolutism, state and bureaucratic secrets became central (Wegener 2006: 32). Secrecy thus was upvalued and institutionalized (e.g. in the establishment of secret
jurisdiction or cabinets) (Wegener 2006: 40). The secret was both an instrument and a symbol: An instrument of sovereignty and exclusive decision-making, and a symbol of the sovereign's superior knowledge (Wegener 2006: 39). In other words, the secret was seen as a display of cleverness, as necessary and useful (Wegener 2006: 43) as well as the sovereign's closeness to god (ibid.: 56). In contrast to the secrecy granted to the sovereign, the subjects were increasingly subdued to a demand of transparency of their individual lives, which was illustrated by the stately inspection rights, “potestas inspectoria” (Wegener 2006: 117; Foucault 2007).

Publicity and transparency as an instrument for providing the former, however, were only rudimentarily developed. In the literature there is disagreement as to whether there is proof for an existence of transparency prior to the absolutist rise of secrecy. On the one hand, it is argued that the medieval jurisdiction relied heavily on openness, making the verdict and the punishment public (e.g. Hölscher 1979: 16). On the other hand, there are dissenting perspectives, assessing medieval publicity as partly “stage-managed transparency” and arguing that the picture drawn of the Middle Ages was romanticized (Wegener 2006: 37). For absolutism, it is more clear: If there is publicity, then it is only a representative one (Velten 1996: 20).

Enlightenment marked a turning point in the understanding of secrecy's and transparency's role for politics. The assessment of secrecy became ambivalent (Luhmann/Fuchs 1992: 119) and even challenged. “The Enlightenment with Voltaire or Diderot undermines the legitimacy of the constituted political and religious powers; it subjects them in a Kantian way to the ‘tribunal of reason’, inviting everyone to think and decide for themselves. Public argument and the will to truth (the Greek parrhesia) take the place of secrecy, simulation and dissimulation.” (Bodei 2011: 894) This change in secrecy's assessment can be traced very vividly in the use of metaphors (Wegener 2006: 122): Negative connotations are produced by referring to darkness and night with regard to secrecy and to light concerning publicity (Westerbarkey 1991: 21 et seqq.). “Transparency is substituted for opacity, light for darkness.” (Bodei 2011: 894) This also shifted the origin of legitimacy that now was not any more based in (god-like) opacity and mysteries, but became linked to publicity (Wegener 2006: 142), or, to put it in Weber's terms, traditional legitimacy was replaced by rational legitimacy (Weber 1985: 124). There is an inversion of the role of secrecy and transparency: While the
absolutist state had been marked by state secrecy in combination with the enforcement of individual openness, now it turned the other way round. The individual henceforth has a right to secrecy while the state has to be open (Hahn 1997: 29). Privacy rights such as privacy of correspondence, the right to refuse to give evidence or secrecy of the ballot were implemented (Wegener 2006: 193). To secure them, especially vice versa the state, the state itself in this view had to be more transparent (Wegener 2006: 187).

“Individualistic or liberal democracy as it has developed in the West has combined privacy in the affairs which are the business of the individual or a corporate body, with publicity in the affairs of government, which are the business of the citizenry as a whole.” (Shils 1956: 22 et seqq.)

This shows that there were three types of changes. Firstly, the definitions shifted, especially with regard to who is or can be the bearer of secrets. Secondly, the changes are normative ones that concern the legitimacy and normative necessity of secrecy and transparency. These changes can be explained with normative perspectives and the rise of democracy as a concept as well as the rule of law that includes knowledge of the rules one is subjected to (e.g. Velten 1996: 20). But they are also based on practical changes. The emergence and increase of bureaucracies produced more possibility for secrecy (Elukin 2002: 73). “The extent to which bureaucratic secrecy was to be regarded as a problem depended upon the perceived power of bureaucrats. In the early part of the twentieth century, the bureaucracies of Western governments were still comparatively small.” (Roberts 2006: 17) As the bureaucracies grew in size and scope, their importance and power did as well, which led to increased possibilities of secrecy as well as public perception of the latter. In addition to that, the technical possibilities for “collecting, distributing, and accessing data” (Roberts 2006: 17) were enhanced too and thus provided opportunity for demanding more transparency.

Thirdly, with the loss of a quasi god-given legitimation of state secrecy, with the loss of its “cosmological status” (Luhmann/Fuchs 1992: 118), secrecy could no more rely on being an end in itself (Wegener 2006: 426), and thus needed to be justified otherwise. Thus other ends now are given to legitimize secrecy (Müller 1991: 58). I will address this idea of legitimation of secrecy again later in this article.
3. Explaining the Changes – Secrecy, Transparency and Democracy

The relation to secrecy characterizes the form of government significantly (Rösch 1999: 15). Therefore change in the evaluation of secrecy and transparency is closely linked to the rise of the concept of democracy. The latter is “like no other type of state based on publicity” (Feik 2007: 89, own translation, Simmel 1923: 277) and, to attain publicity, it needs transparency (Rösch 1999: 71) as an instrument of making information on government available. The reason for this lies in the idea of representation: The represented claim information of what the representatives do with the delegated power (see for example Velten 1996: 22). Democratic elections (Fairbanks et al. 2007: 23) as well as decision-making, and, in a second step, democratic control (Steffani 1971: 20) thus require information. Transparency therefore is thought to bridge a “gap that arises naturally between the state and its public” (Fenster 2010: 619, see also De Fine Licht et al. 2014: 111).

Transparency became charged with a range of expectations: legitimacy (Roberts 2006: 20; Feik 2007: 100), accountability and efficiency (Moore 2011: 506, Stirton/Lodge 2001: 475, Schauer 2011: 1346) as well as better bureaucratic behaviour (Hahn 2002: 33 et seqq.) are supposed to be attained through transparency. Aside from these instrumental understandings of transparency as a means, there are also perspectives that see transparency as a distinct end (e.g. Feik 2007: 91). Just as secrecy in absolutist states, transparency now becomes a legitimation of power in itself and has “attained quasi-religious significance in debate over governance and institutional design” (Hood 2006: 3). Democracy in this perspective relies on transparency as a core feature (e.g. Wegener 2006: 422) and, in a way, takes the symbolic place left void by the partly delegitimized secrecy. Now, transparency is a basic legitimizing motive. State bureaucracy, in this view, “can only in this way find its legitimacy” (Feik 2007: 100), by being transparent.

Secrecy, on the other hand, is seen as problematic. “In modern democracies, the secrets of the state are suspected to be the crimes of the state.” (Horn 2011: 104) It is argued that “secrecy is corrosive: it is antithetical to democratic values and undermines democratic processes; it serves to entrench incumbents and discourage public

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2 Bröhmer for example argues for Germany that transparency is an implicit principle of the Constitution (Bröhmer 2004: 374).
participation in democratic processes; and it is based on mistrust between those
governing and those governed, and at the same time it exacerbates that mistrust. Secrecy
provides fertile ground for special interests and undermines the ability of the press to
provide an effective check against the abuses of government.” (Stiglitz 2002: 34)
Other perspectives avoid such a generalized “condemnation” (Hölscher 1979: 7, own
translation) of secrecy. They argue that secrecy, too, might be part of self-government,
for example for free deliberations or effectiveness (Schoenfeld 2010: 21). This
instrumental understanding of secrecy as a means to attain specific goals is based on the
idea that secrecy might be democratically legitimized and decided upon. “To suggest
that secrecy may be encouraged under certain conditions by democratic notions
themselves casts into question the more comfortable assumption that secrecy is
basically undemocratic, within strict limits an unpleasant necessity, but otherwise an
aberration from true democracy.” (Romoser 1974: 74) Thus, secrecy might be “dictated
by the democratic process”, meaning that former decisions might provide for it (Burke
1986: 189). Legally codified justifications put down formal reasons for state secrets in
laws that are produced within the democratic decision-making process and within a
constitutional framework. State secrets thus get legitimized and institutionalized (Hahn
1997: 29) through law with regards to different goals whose attainment is argued to
require secrecy. Paradigmatic are three motives: state security, efficiency, and privacy
(e.g. Piotrowsky/ Van Ryzin 2007: 309). Separation of powers is sometimes included in
this enumeration, too (Müller 1991: 78). This argument is based on the idea that the
branches of democratic states have to be sufficiently independent from each other to
enable effective control and oversight. This independence is reflected in the granting of
autonomous spheres of decision-making that include secrecy. As “executive privilege”
(as defined by the US Supreme Court) or “Kernbereich exekutiver Eigenverantwortung”
(as defined by the German Bundesverfassungsgericht), to cite two examples, this
argument can be found in jurisdiction.
In this, secrecy is fanned out to legitimate and illegitimate secrets (Schirmeister 2004:
133, Pozen 2010: 260), to “allowed, forbidden and bidden secrets” (Hahn 1997: 29).
This increases the leeway in decision-making about which secrets are supposed to be
legitimate. Several scholars show that there is an increasing sphere of discretion on
secrecy, a discretion that either the executive or the judiciary have to execute (e.g.
Rösch 1999: 131) or that has to be – if possible – defined by the legislature (e.g. Lerche 1981: 119). While it is clear now that secrecy has to be legitimized with regard to other ends, it is not pre-defined how to decide the individual cases. This especially goes for cases where state secrecy, which in general is deemed problematic, is legitimized with regard to individual privacy, which is seen as desirable and does not have to be justified as the state secret does (e.g. Lerche 1981: 119). In these cases, different normative perspectives might clash notably and produce a tension (Rösch 1999: 51). The discretionary space produced by the fact that the tensions and normative conflicts can not be solved in a generalized manner, empowers executive actors, i.e. the ones providing or keeping information. As those are the ones supposed to be scrutinized through transparency rules, a paradoxical situation arises (Riese/ Lorenz 2014) which Sagar compares to “asking the suspect to provide the evidence.” (Sagar 2007: 408). The evaluation and classification of concrete situations can never be totally foreclosed legally, if the rules include exceptions. As there are no rules for absolute transparency in modern states, not least due to individual privacy but also with regard to other goals (such as efficiency, state security), even rules on transparency include discretionary spaces for secrecy, whose application is also a discretionary decision and thus also strengthens those taking the case-by-case decision. Therefore, those in charge of releasing or keeping information have a power advantage. Several scholars have pointed out that this kind of discretion is used in favour of the executives’ scope of action (Rösch 1999: 142) or for strategies of blame avoidance (Hood 2007: 199; Möllers 2011: 194), thus declining or obstructing transparency claims. This includes increasing the costs – both literally and in a broader sense (hiding the relevant in irrelevant information, providing raw data etc.), internal strategies (oral culture, processing information requests according to their “sensitivity”), delays etc. (e.g. Roberts 2002: 190; Gingras 2012: 233 et seqq.). The problem of discretion adds to the general ambiguity produced by the relation of secrecy and democracy.
4. A Fundamental Asymmetry – Why Secrecy and Transparency are More Than Each Other's Negation

Are transparency and secrecy then just their respective opposite and just a simple inversion of the other? It is argued here that they are not, as there is a fundamental asymmetry of the two concepts, based on two arguments. The first argument shows that transparency has a much smaller range than secrecy, and a structural disadvantage. The second argument is based on the idea that non-transparency is not identical to secrecy, as it lacks the aspect of intention, and elaborates on the reasons of this difference. Both arguments equally address the question of which actors gain or lose room for manoeuvre and how this influences their relationship.

The first argument concerning the difference of secrecy and transparency is based on the impossibility to legally capture secrecy. The intent to frame legitimate and illegitimate secrecy through laws reaches its limit when secrecy is reflexive (e.g. Thompson 1999: 193). We can differentiate two types of secrets along the question of whether their very existence is a secret itself. While simple (Sievers 1974: 31) or shallow (Pozen 2010: 260) secrets are known to be and only their content is unknown, deep (Pozen 2010), reflexive (Sievers 1974: 31) or second-order (Thompson 1999: 185) secrets are characterized by the fact that not only their content, but also their existence is unknown to those excluded from the secret. It is clear that the first kind of secret might be legally provided for. Classic examples are classification (Kitrosser 2008) systems in bureaucracies, where it is relatively clearly defined what kind of secrets there are and regarding which topics they might arise. This kind of secret might be justified by parliaments by providing for it in laws or statute, thus granting executives a space for non-disclosure (e.g. Pozen 2010: 287). “Since democracies actually choose to allow their governments to keep secrets in order to secure preservation, the institution of state secrecy is arguably compatible with—rather than opposed to—the ideal of democratic government.” (Sagar 2007: 408)

The second type of secrecy, on the other hand, is more problematic. It challenges

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3 Thompson uses the term “second-order” with regard to transparency, meaning the transparency of the decision to keep a secret. But, as this transparency – as his claim that it is necessary shows – is not automatically there, second-order secrecy is a possibility in the above-mentioned sense.

4 Though several scholars have pointed out that classification is used extensively and in excess of its possible necessity (e.g. Wise 1973: 163; Kitrosser 2008: 895).
notion of legitimized secrecy, as the idea of public consent put forward by Pozen is not applicable any more. He compares consent to deep (or second-order or reflexive) secrecy to giving up the right to vote and judges it to be an “abandonment of self-rule” (Pozen 2010: 291). If the existence of secrecy is not disclosed, then no public discussion of whether it is supposed to be a necessary and thus justified secret is possible (Thompson 1999: 183). The power of definition (Velten 1996: 92) then lies exclusively with the secret keepers and can not be challenged. This typology therefore helps understand the structural difference between secrecy and transparency. Transparency as a claim for disclosure and as an instrument of those excluded from a secret depends on prerequisite knowledge of what information to ask for (Pozen 2010: 324). Thus, only “simple” secrets can be challenged through transparency. If the existence of a secret is unknown, transparency rules or the right to ask for information do not help to uncover it – no one knows what to ask for. The discretion, and that is the main difference, remains with the one providing the information or keeping it. Of course, transparency can also be understood and organized not as “information on demand” (Fung 2013: 187) but as “naked government” (Ibid.) or disclosure as default option (without having to ask for) (e.g. Düwel 1965: 112). But this, although it shifts the obligation to justify claims for secrecy and transparency from those wanting information to those keeping it (e.g. Wegener 2006: 425), nevertheless does not altogether eliminate the underlying difference that those in charge of information have a comparative advantage.

Nevertheless, the attempt to fence legitimate secrecy by defining and institutionalising it legally can never fully succeed as there always remains the possibility of deep secrets. It is exactly what secrecy is about that it can not be entirely grasped. “[T]he state secret is the exception of the political in the modern age, the moment in which the transparent legal order, the commitment to representation and legality, willingly suspends itself in the name of the functioning of the state apparatus, thus creating space for something beyond the reach of its principles.” (Horn 2011: 114).

A second argument concerning the difference of secrecy and transparency as concepts is based on the idea that non-transparency is not necessarily secrecy, as it is inherent to the state and its complexity, and not necessarily intentional non-disclosure. When Fenster criticized that “transparency's symbolic pull […] leads us to fetishize means at the cost of ends” (Fenster 2010: 623) he also refers to the fact that transparency in its symbolic
meaning creates the illusion that “real” transparency, “seeing the state” is possible: “The state is too big, too remote, and too enclosed to be completely visible. The very nature of the state, in other words, creates the conditions of its obscurity. It can never be fully transparent, at least not in the sense that the term and its populist suspicions of the state require.” (Fenster 2010: 623) Therefore there exists something in between secrecy and transparency. Even where there is no secret, understood as intentional non-information, the state not necessarily becomes transparent in the sense of a “house of glass” (Bodei 2011: 894). “[P]erfect transparency, total transparency, is as much an illusion as perfect, total objectivity.” (Marsh 2011: 533) This again shows that transparency and secrecy are not simply each other's negation. An understanding of transparency in a sense that is not merely as technical as defined in the introduction produces an inherent conflict with states' reality. “As a result of modern democracy's ideal of transparency and of the moralization of politics, secrecy has become precarious and problematic, something seen as both necessary and noxious, something constantly in need of legitimization yet never really legitimate” (Horn 2011: 105), being both a stabilization and a threat to democracy (ibid.: 106).

## 5. The Conflict of Functions and Assessment

In addition to the fundamental change in the relation of secrecy and transparency to the state and its legitimacy described in the second paragraph, there are contemporary developments that are worth mentioning. While the latter do not include any essential changes, they nevertheless still shift the framework of secrecy and transparency. This especially increases, I argue, the gap between the factual existence of transparency and its functions on the one hand, and the normative evaluation of secrecy and transparency on the other hand.

First, there has been an immense rise in transparency laws since the 1990s, the “decade of openness” (Blanton 2002: 50). After the end of the Cold War, many of the transformation states used transparency rules as an instrument for the transition and for coming to terms with their history (Blanton 2002: 53). Transparency became a “key concept of the present” (Stehr/ Wallner 2010: 10, own translation), its emergence “in
Europe and the whole world” being described as a ”triumph” (Riemann 2004: 17, own translation). Especially the change from secrecy as default to transparency as default option that for example was enforced in the UK (Müller 2004) and Germany through Freedom of Information laws is exemplary for this shift. And this has an impact on who is obliged to justify themselves, the requesters of information as before, or the executive keeping the information (Wegener 2006: 425). But parallel to this elevation of transparency as a concept, factual secrecy increased especially from 9/11 onwards (Blanton 2002: 50), due to an “executive anxiety about the capacity to govern effectively in this new environment.” (Roberts 2006: 20)\(^5\) Increasingly there were restrictions on information for example on “so-called ’critical infrastructure’” or on “the monitoring and inspection work of federal agencies”, as Roberts shows for the US case (Roberts 2006: 37).

All these changes have not fundamentally altered the place of secrecy and transparency in democracies. Rather, they have shifted the weighting of different claims and justifications and thus had an impact on how opposing claims are resolved. In the Cold War, for example, security had functioned as an “absolute trump” (Roberts 2006: 33) as compared to other values and thus shifted the balance in favour of secrecy. Similarly, 9/11 marked a “dramatic comeback” (Blanton 2002: 50) of secrecy.

As argued, the evaluation of secrecy and transparency has changed. One major factor for this change has been the rise of democracy, which includes claims to openness. Within the logic of democracy that is fundamentally based on an informed public and parliaments for exercising democratic rights such as elections and control, secrecy can not without tension be accepted. Horn therefore states that “modern governments tend to make a secret of their dependence on secrets” (Horn 2011: 104). I already addressed the question of formally authorized secrecy. In addition to that, normative conflicts arise that can be grasped with Scharpf's differentiation between in- and output legitimacy (Scharpf 1999). Central to this is the idea that there might be aspects where secrecy, even second-order or “deep” secrecy might be necessary to attain a specific goal, a specific policy “output”. Some policies might only be successful if their existence is not priorly known. A good and recent example are the financial policies in the context of the

\(^5\) Though Roberts argues that this is not exclusively because of 9/11, but was “part of a larger concern about the proliferation of constraints on executive authority since the early 1970s” (Roberts 2006: 19).
financial crisis following the 2007 collapse of Lehman Brothers. Some political
decisions and measures, such as saving a bank from bankruptcy, fundamentally rely on
not triggering escape reflexes before (e.g. Stiglitz 2002: 36) and thus being secret. Thus
“government often needs to operate in secret in order to shape and execute socially
desirable policies, and excessive transparency requirements can have an ossifying effect
that prevents government from responding in innovative ways to changed
circumstances.” (Epps 2008: 1556)
As defined in the beginning, secrets are characterized by opposing claims to disclosure
and non-disclosure. Both might get justified with regard to different values. While
disclosure might be claimed with the argument that democratic procedures, control etc.
make it necessary (input), non-disclosure might be motivated with regard to the targeted
goal (output). Both claims might be legitimate in some respect (Sagar 2007: 405). Their
appreciation depends on the estimation of effects of disclosure or non-disclosure, a
prediction that, in Fenster's view, is not even possible (Fenster 2012: 805).

6. Conclusion

Secrecy and transparency both are important concepts for understanding (modern) states
and their evolution. The relation to both is closely linked to the form of government.
The article took three argumentative steps to carve out some central aspects of the
relationship of secrecy and transparency and their role for politics.
It first showed conceptual and normative changes in secrecy and transparency over
time. While secrecy had a legitimizing function in absolutist states, it became
increasingly ambiguous with the rise of democracy. Democracy is strongly based on the
idea of transparency of government and therefore cannot easily accept secrecy, not least
due to the power this gives to executives automatically. The legitimizing function thus
was taken over by transparency.
Second, the article argued that secrecy and transparency are not simply negations of
each other, but structurally different. Two main reasons for this position were put
forward. On the one hand, there is a power imbalance. Transparency requires

6 Stiglitz puts this idea nicely as “crying fire in a crowded theater” (Stiglitz 2002: 36).
cooperation on both sides, those giving and those wanting information. Secrecy is based on opposing actors and can unilaterally be produced. Therefore it creates difference. As far as transparency tries to level this difference, we could think of both as being their opposite. But what makes them structurally different is that in both cases, the discretion ultimately remains with the providers of information. On the other hand, non-transparency and secrecy are not identical, as secrecy requires intentionality, but non-transparency also arises from the complexity of the state itself and is an inherent aspect of modernity.

A third argument made by this article is the assumption of a conflict of assessment and functions. In democratic states, too, there are spheres of secrecy that are functionally necessary for attaining specific goals, even, in the case of privacy, such that are inextricably linked to the idea of democratic, rule-of-law states.

Further research on how these tensions and ambiguities as well as inherent conflicts manifest and are carried out in democracies is necessary. As Sarcinelli argued, there is still more research to be done to empirically analyse the phenomenon of state secrecy (Sarcinelli 2009: 73). How do legislative and executive actors deal with discretion, the inability to fence secrecy and the impossibility of “true” transparency? These questions shall be addressed in my further research in order to carve out whether and how these theoretical considerations play out in political practice.

**Literature**


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