

(Some) Transparency is a Paradox

Open Government: Defining, Designing, and Sustaining Transparency
Panel on Designing Transparency
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Our movement has radically changed in just the past few years. The combination of “Web 2.0” as a buzz-word and grassroots digital campaigning has a lot to do with that change. Today’s movement focuses on building apps around large scale government databases, and I’m proud that that idea has come as far as it has. Just to take two example apps, my own project GovTrack.us tracks legislation in Congress, and FedThread.org, developed here at CITP, provides an innovative view into the Federal Register, which is another component of U.S. law. Apps like these are becoming more and more buildable as federal data managers start subscribing to the idea of sharing their large databases with the public. Some of our movement’s wins in 2009 were getting the Senate to start publishing roll call votes in the XML data format and the Government Printing Office to make available the Federal Register and the Code of Federal Regulations in bulk in XML for free.

And we’ve gotten much more particular about how we want our government data delivered to us. I’ve identified some eighteen principles people have proposed for what makes government data open. Let me run down the list real quick you can find the full list on my website.¹ Public government data should be online and free, not aggregated, timely, accessible in both a disability and digital sense, machine-processable to search sort and transform the data, available on a non-discriminatory and license-free basis in a data format that is not encumbered by patents, in a format that promotes analysis and reuse, does not impose computer security risks to users, retains provenance through digital signatures, is crafted with public input and interagency coordination and is subject to ongoing public review, uses permanent web addresses and globally unique identifiers for records, is web searchable, and is published with Linked Open Data methods.

The principles can serve as a benchmark. So when the Obama Administration finished its Open Government Directive last month, a memorandum that set goals for the coming months, we could see how many of our data needs were addressed. In fact to my surprise, the directive addressed nearly all of the 18 open government data principles, and essentially added two of its own: being pro-active about data release and creating accountability by designating an official responsible for data quality. The directive is even very strong in public input, public review, and interagency coordination, which are normally the weakest spots of government data. (It could have been stronger in the area of machine processability.)²

But I think there’s a difference between two types of information coming out of the government, and the distinction is important for making the most out of each. One the one hand, we can have access to government records so we can do things like read the law³, or avoid bad drinking water⁴, or get tomorrow’s weather forecast⁵. Then on the other hand we have access to government records for the

1 <http://razor.occams.info/pubdocs/opendataciviccapital.html>

2 <http://razor.occams.info/blog/2009/12/09/open-government-directive-evaluation-on-principles/>

3 <http://www.washingtonpost.com/wp-dyn/content/article/2009/10/04/AR2009100402533.html?hpid=sec-politics>

4 <http://www.nytimes.com/2009/12/08/business/energy-environment/08water.html>

5 <http://razor.occams.info/pubdocs/opendataciviccapital.html>

purposes of policing government, like access to White House visitor logs⁶. In November, the House of Representatives began publishing its disbursement data⁷, meaning a record of every payment going out of the House such as for the salaries of representatives and their staff, and to service providers. I'll talk about bundled contributions and secret holds in a moment.

The information on the left side is directly empowering. It makes our lives more efficient, more rich, and it supports civic engagement. The point of the information on the right is to be disempowering to those we think should not be influencing policy. And while the information has some value, the point of asking for this information is far less about actually looking at the information than it is as a deterrence to prevent government actors from doing things we don't like, like inviting lobbyists to the White House or paying family members as part of your staff, or what have you.

The question for this panel was how should we design transparency, and I think the answer differs substantially depending on what type of transparency we're looking at.

The Wonderlich Transparency Paradox. This is one of those terms that is bound to make the textbooks one day. The paradox is this: "How ever far back in the process you require public scrutiny, the real negotiations . . . will continue fervently to exactly that point."⁸ Or, to paraphrase, no matter how much transparency you put into the system, the players in that system are always going to find a back room to work in. This was said by John Wonderlich, who is speaking later.

Let's take an example. Congress passed an ethics reform bill back in 2007 called the Honest Leadership and Open Government Act (HLOGA)⁹. The bill had three types of provisions: bans on unethical behavior by Members of Congress, new or improved disclosure of conflicts of interest, and new or improved public record keeping of official business.

Here are the record-keeping provisions of the HLOGA. Since HLOGA's passage, the number of Senate committee meetings with video records publicly available online has gone up dramatically. Is that really so great? I'll come back to this one. What of the bans?

The New York Times reported last month¹⁰ that a ban on some lobbyist-financed trips by Members of Congress successfully cut the number of such trips in half or more. But they continue. The times article said, "Some lawmakers and even their families continue to take trips hosted by private groups and companies that revel in their access to Washington power brokers. An examination by The New York Times of 1,150 trips shows that some of them bent or broke rules adopted in 2007 to limit corporate influence in Washington. Others exploited glaring loopholes in the guidelines."

Another provision in HLOGA was called a ban on what are called secret holds, a practice in the Senate by which a Senator can anonymously hold up consideration of a bill. It's something like an anonymous filibuster. Citizens for Responsibility and Ethics in Washington found several ways Senators can get around the ban, through what they called functional holds and informal holds, and they can get away with it if no other Senator objects to the hold. Since HLOGA, they reported 12 nominations and bills still held up anonymously by getting around HLOGA's new rules.¹¹

Bundling campaign contributions is a practice where lobbyists curry favor with Members of

6 <http://blog.sunlightfoundation.com/2009/12/30/white-house-visitor-logs-25k-records-released-for-late-september/>

7 <http://reporting.sunlightfoundation.com/2009/sunlight-puts-house-office-disbursements-database-form/>

8 <http://groups.google.com/group/openhouseproject/msg/94060a876083d86a>

9 <http://www.govtrack.us/congress/bill.xpd?bill=s110-1>; I reviewed it at the time at <http://razor.occams.info/blog/2007/08/01/s-1-revised-ethics-reform-bill/>

10 Rules for Congress Curb but Don't End Junkets, The New York Times, December 6, 2009. <http://www.nytimes.com/2009/12/07/us/politics/07trips.html>

11 <http://www.citizensforethics.org/node/43518>

Congress by rounding up campaign contributions. The HLOGA intended to require disclosure of who is bundling what, but the Federal Election Commission watered down the requirements before making any regulations so bundling continues.¹²

Another Times article reported that after HLOGA imposed stricter lobbying reporting requirements the number of registered lobbyists started to dramatically decline.¹³ The article's headline said it all: "Law to Curb Lobbying Sends It Underground."

So does regulation decrease bad behavior, or is it just a game of cat and mouse? Does each new regulation make any real difference, or does the same behavior just find a new loophole or back room to operate in?

I have a second paradox which I'll call Shirky's Transparency Paradox, named after Clay Shirky. The idea here is that transparency may not be the stick we want to measure success by. We should be looking at public benefit, and if transparency gives more power to what you might call special interests, then maybe transparency wasn't such a good thing after all. Clay has claimed that transparency fueled the lobbying business. I don't know if that's true, it's a little before my time, but we can see today that government data, and probably open government data, is being used to support the lobbyist profession. I found LobbyData.com. From \$50 to \$500 per month you can get firm profiles to help you find your next client, mobile notifications, issue research, and competitor research. I'll finish Clay's words: "If transparency lets all interest groups make use of improved information, then we would expect that the better organized interests to make better use of any new transparency. This is not to say that transparency is never good; it is to say that it isn't always good, and that the negative effects result from imbalances in the will to collective action, not just access to information." The paradox here is that transparency is not necessarily the end game that you want.¹⁴

So was putting Senate committee meeting videos online the right thing to do after all? I mean, maybe it's just not obviously true until we think about it a bit.

Now, if I were in The Matrix, I'd take the red pill like Neo. I think transparency is sometimes an end to itself, for better or for worse. We just shouldn't take it for granted that it's always an end to itself.

These two paradoxes matter, a lot. If we don't understand the system, we don't have nearly as good a shot at improving it. For a very long time now, government reform activists have been trying to get Congress to give themselves some time to read bills before the bills are voted on. Sunlight Foundation's Paul Blumenthal found a 1965 congressional report calling for the same thing we are today.¹⁵ There is a House resolution that would "amend House rules to require that non-emergency bills and conference reports be posted online for at least 72 hours prior to consideration by the full chamber."¹⁶ Sounds great. How can we convince the House and Senate to pass these resolutions? The slip up here is that do we really think another rule is going to change anything? We can slow down the legislative process, but John Wonderlich would say, it just means the votes that matter are going to be on procedural motions that come up earlier in the process, rather than the final vote. A small rule isn't strong enough to fundamentally change the dynamics of the system. And Clay Shirky might say that the delay is only going to give more time for lobbyists to work their magic. And maybe we should be

12 See <http://blog.sunlightfoundation.com/2009/05/22/after-fec-eviscerates-bundling-disclosure-law-only-one-bundler-discloses/>, <http://reporting.sunlightfoundation.com/2010/texas-politico-rapidly-rises-no-1-overall-donor-now-no-1-bundler/>

13 <http://www.nytimes.com/2010/01/18/us/politics/18lobby.html?ref=politics>

14 <http://groups.google.com/group/openhouseproject/msg/53867cab80ed4be9>

15 <http://blog.sunlightfoundation.com/2009/07/09/read-the-bill-the-long-short-story/>

16 <http://www.ombwatch.org/node/10463>; see also <http://congresscantread.org> and <http://www.readthebill.org>

asking if we can actually get the same result by deleting some rules instead!¹⁷

So let me get back to the two types of transparency. [In response to audience feedback:] The division between the two types might not be so easy to make, and maybe even the labels I gave as empowering and disempowering or a resource versus policing government aren't quite right, but I think the point still stands: There are (at least) two goals when we talk about open data and transparency and the two goals deserve different treatments.

I think we're on the right track with open government data when it's used for the type of information resources that are directly empowering to people. My only new suggestion for design here is that we don't forget that each bit of data coming out of the government is about the real world, and the real world is damn complicated. If you want to build an app around open nutrition data which exists from the FDA, you really better have some knowledge about public health. Or be willing to take the time to learn. Each dataset is going to need a curator, and we should be thinking about ways to encourage citizens to take on those roles, and ways to help them get connected with the agency they are interested in.

The other side of transparency was about using data to police the government. And I just don't find it an interesting approach to supporting good government. It is subject to the two paradoxes in ways that give each new rule a diminishing effect, if it has any effect, and if on balance it even has a positive effect. For this side, I see our role as journalists or as serving journalists. Not to uncover scandals but helping to report more deeply and effectively on issues. And our role is to give citizens the tools they need to participate in and navigate government. And finally a role we have is to keep citizens keep healthy skepticism from becoming apathetic cynicism. In other words, I think the key to good government is simply more civic participation.

To that end I'm launching two new projects this year.... [as noted in the slides, but not included in the text here]

¹⁷ This idea is due to Andrew Clausen.