



The paradox of openness, accountability and trust in legislatures

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Overview

- Openness: a foundational principle for legislatures
- The 'three ages of openness'
- Some (fairly limited) data
- The consequences of openness for the functions of legislatures
 - Accountability and representation
 - Deliberation
 - Policy-making
 - Legitimation
- What balance would be correct?
- Conclusions

Openness: a foundational principle for legislatures

- Bentham (*Essay on Political Tactics*, 1791): 'publicity' is, for assemblies 'the fittest law for securing the public confidence, and causing it constantly to advance towards the end of its institution'. In order:
 - 'To constrain the members of the assembly to perform their duty'
 - 'To secure the confidence of the people, & their assent to the measures of the legislature'
 - 'To enable the governors to know the wishes of the governed'.
- But, potential disadvantages recognised, including: poor public judgement; risk of 'public hatred' of representatives; 'demagoguery'
- Consistent with 'Kantian publicity principle', to encourage arguments based on 'public reasons' (Chambers 2004; Parkinson 2013)
- J. S. Mill (*Considerations on Representative Government*, 1862): 'the proper office of a representative assembly is to watch and control the government: to throw the light of publicity on its acts'
- '[T]oday one takes it for granted that parliamentary debate should occur in public' (Stasavage 2004: 683)

The 'three ages of openness'

The First Age: The Ideal of Openness and Legitimation

- Origins of legislatures: forums for elite accountability/legitimation
- From relatively early days, openness of the plenary is central

The Second Age: The Quest for Efficiency in Open Institutions

- The realisation of inefficiency: 'arena' versus 'transformative', 'talking' versus 'working' legislatures
- 'Institutionalisation' and the growth of committees
- Public plenaries, secluded committees

The Third Age: The Triumph of Openness & Threat of Delegitimation

- Increasing openness of plenaries: television, social media
- Openness increasingly extends into the committee room

Openness: modes and reasons for growth

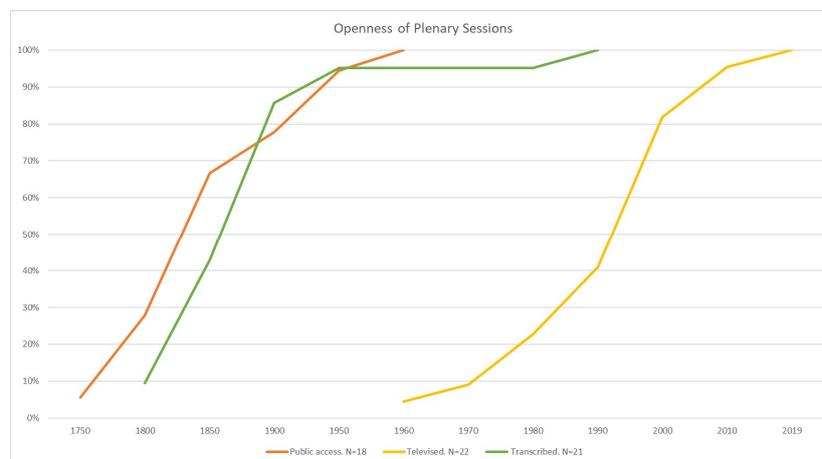
- Modes of openness:
 - Public galleries/design of buildings
 - Media reporting
 - Transcription/minutes/recorded votes
 - Television
 - Social media
- Reasons for (particularly recent) growth:
 - Public expectations of accountability
 - Technological change
 - Contagion (from one legislature to another, and one forum to the other within the legislature)

Data and examples

Sources

- Lijphart's 36 countries that were democratic in 1996 and had been so since at least 1977
- A mix of parliamentary and presidential systems
- Lower chambers in bicameral systems
- Initial sources: constitutions, standing orders, handbooks on procedure, secondary literature
- Follow-up sources: emails to legislative information offices
- Data incomplete: some gaps in written sources, questionnaire responses, details within those responses
- Countries need expanding: post-1996 democracies (e.g. Central and Eastern Europe underrepresented)

Plenary openness



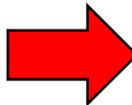
Committee openness

- Data on this is more difficult to trace
- Also categorisation is more difficult
- Some committee business (e.g. hearings) may be public, while other business (deliberation) is private
- Different kinds of committees may operate in different ways (e.g. UK)
- Some meetings may be opened (or closed) at committee discretion
- Minutes may be published, rather than full transcripts
- Television may be more occasional than for plenary

Openness (public/media) of committee meetings: crude preliminary analysis

Closed Committees

- Austria
- Botswana
- Denmark
- Finland
- France
- Germany
- Iceland
- India
- Italy
- Japan
- Luxembourg
- Mauritius
- New Zealand
- Norway
- Spain
- Sweden
- Switzerland
- Trinidad and Tobago
- Uruguay



Open Committees

- Argentina
- Australia
- Belgium
- Canada
- Costa Rica
- Greece
- Ireland
- Israel
- Jamaica
- Malta
- Netherlands
- Portugal
- South Korea
- UK (legislation committees)
- US

Committees versus plenaries: classic views

- Shaw (1979): "At the plenary level proceedings tend to be partisan, open, adversary, amateur and directed at the public. At the committee level proceedings tend to be nonpartisan, private, conversational, professional, and directed at committee members".
- Hence "private and unobtrusive consensus may be achieved between party groups" in committees that are arguing in public.
- Mezey (1979) "because the plenary session is public, debate will be aimed as much as scoring political points outside the legislature as at elucidating the merits and demerits of policy proposals"
- On the other hand "... committees are relatively small bodies means that they have a capacity for privacy which should, in turn, facilitate bargaining and increase their deliberative capabilities" (1979).

The consequences of openness for the functions of legislatures

Representation and Accountability

- Clearly a core argument for openness is accountability: both of individual members, and (recalling Mill) through them 'throwing the light of publicity' on government action.
- One effect of openness is that members are likely to stick more rigidly to mandates (local and party political).
- As Binder and Lee (2016:106) put it, transparency 'interferes with the search for solutions'.
- Openness therefore encourages a 'delegate' rather than 'trustee' approach.
- Elster (2008: 26) uses the US Federal Convention as a case study citing James Madison that 'no constitution would have ever been adopted by the convention had the debate in public'.

Deliberation

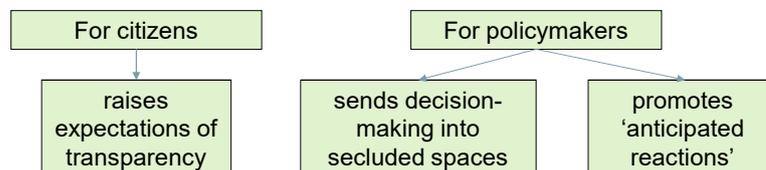
- In international relations, Stasavage (2004) notes that secrecy 'encourages participants to engage in deliberation about the advantages and disadvantages of different policies'.
- He quotes Jacobsen and Vifell: 'the more closed the forum, the more openness in discussion' (694).
- Chambers (2004: 408) suggests that 'there is something about going public, opening up deliberation to a broad audience in mass media, that has a deleterious effect on deliberation'.
- Stasavage (2004): openness encourages 'pandering' & 'posturing'.
- Measuring parliamentary debates using the 'discourse quality index' finds that 'non-publicity' improves deliberation and enhances reasoned argument (Bachtiger and Steenbergen 2004).
- Study of the Federal Reserve found that starting to publish minutes caused a 'chilling effect': there was less dissent, more reading of prepared statements (Meade and Stasavage 2008).

Policy-making

- US Supreme Court in Watergate case: 'Human experience teaches us that those who expect public dissemination of their remarks may well temper candor with a concern for appearances and for their own interest to the detriment of the decision-making process' (quoted in Prat 2005: 869).
- In the US, Binder and Lee (2016) describe openness as a 'double-edged sword'. 'Most people prefer to be "out of the kitchen" when legislators 'grind sausage'. Transparency does not necessarily lead to greater institutional legitimacy; in some cases, it may undermine it'.
- As Greenspan suggested, real decision-making is likely to be pushed into secluded spaces.
- Detailed legislative research (e.g. Griffith 1974; Russell and Gover 2017) shows private meetings may be key, public record may not reflect real dynamics, 'anticipated reactions' are important.

Legitimation

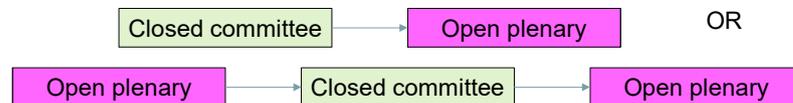
- The "sunshine" has real transparency and accountability effects, guarding against bad decision making
- BUT it also has other effects:



- Hage and Kaeding (2007: 358), noting the European Parliament has more impact through informal than public procedures suggest that this is 'counterproductive in terms of input legitimacy'
- Sartori (1975) 'low visibility is very important to the operational code of committees. On the other hand, democracy seemingly demands transparency, that the house of power be a house of glass'.

What balance would be correct?

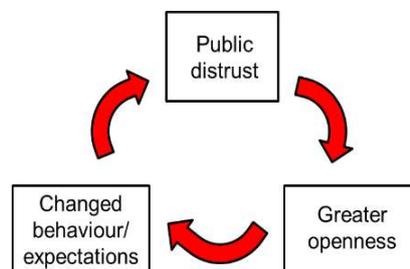
- Loewenberg (2011: 96) calls achieving the right amount of transparency a 'Goldilocks problem: not too little but also not too much'.
- Chambers (2004: 409) suggests that 'the political process should ... [comprise] a back and forth between closed bargaining and open public debate. Bargaining is kept in check by frequently exposing the process to the light of publicity'.
- So perhaps a multistage process. E.g....



- In other words, exactly what legislatures used to do!

Conclusions

- Coleman (2004: 2): 'A paradox of contemporary politics is that public access to Parliament has never been greater, but the mood of public remoteness and alienation from the formal democratic process has never been more acute'.



- Hence, if unchecked, the foundational principle risks driving the culture of democratic disengagement and dissatisfaction.

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