



Universiteit  
Leiden

The Netherlands

## Introduction: transparency and secrecy in European democracies

Mokrosinska, D.M.

### Citation

Mokrosinska, D. M. (2020). Introduction: transparency and secrecy in European democracies. In *Transparency and Secrecy in European Democracies: Contested Trade-offs* (pp. 1-13). London: Routledge.  
doi:10.4324/9780429026003-1

Version: Publisher's Version

License: [Licensed under Article 25fa Copyright Act/Law \(Amendment Taverne\)](#)

Downloaded from: <https://hdl.handle.net/1887/3220786>

**Note:** To cite this publication please use the final published version (if applicable).

# Introduction

## Transparency and secrecy in European democracies

*Dorota Mokrosinska*

Transparency in politics is the mantra of modern democratic governance. Yet while officials preach the value of open government, hardly a day goes by without the media reporting a scandal involving secrecy: the *Washington Post* exposing the CIA's secret detention facilities in Central and Eastern Europe; the *New York Times* revealing transatlantic collaboration over the Terrorist Finance Tracking Programme (TFTP); regular leaks in the media related to trade negotiations between the EU and its strategic partners, especially in the context of the Comprehensive Economic Trade Agreement (CETA) with Canada and the Transatlantic Trade and Investment Partnership (TTIP) with the US; WikiLeaks and Cablegate; *The Guardian* publishing Edward Snowden's revelations about PRISM. As such disclosures make clear, institutional opacity and the culture of secrecy are deeply entrenched in the political institutions of democratic states (Thompson 1999; Roberts 2006; Curtin 2011; Sagar 2013). Despite an increase over the last three decades in legislative instruments and initiatives aimed at enhancing legal and political transparency in governance, the realm of state secrecy persists in the form of classified intelligence programmes, espionage, secret military operations, diplomatic discretion, closed-door political bargaining, and bureaucratic opacity.

In the light of the democratic benefits believed to result from transparency, the persistence of secrecy appears troubling. Understood as the absence of constraints regarding citizens' access to information, transparency in politics has become a symbol of good governance. "Transparency", as Mark Fenster puts it, "appears to provide such a remarkable array of benefits that no right-thinking politician, administrator, policy wonk, or academic could be against it" (Fenster 2006, pp. 888–889). Described as a "Swiss army knife of policy tools" (Haufler 2010, p. 56), or as "society's multivitamin" (Scholtes 2012, p. 2), it has acquired a "quasi-religious significance" (Hood 2006, p. 3). Transparency is cherished as the condition of democratic legitimacy, a synonym for clarity, coherence, and sincerity in the handling of public affairs. It ensures that citizens have the information they need to participate as equals in collective decision-making and it guarantees citizens' control over office-holders and institutions. From this perspective, secrecy,

which is the intentional withholding of information by governments, seems to exclude citizens from political participation, inhibit mechanisms of democratic accountability, and facilitate corruption and abuses of power.

The presumption in favour of transparency and against secrecy has for a long time determined democratic scholarship. Recent scholarship, however, has qualified the unconditional character of this position by pointing to the drawbacks of transparency and the advantages of secrecy. A number of policy-oriented studies indicate the dangers of diminishing returns on transparency by demonstrating that transparency-overload discourages innovative behaviour, and triggers defensive information management, proceduralism, and rule-obsession. Scholars point out that rigorous transparency policies, by allowing for constant observation and surveillance, accounting, auditing, and oversight, lead to decision-making that is governed more by fear and avoidance of the appearance of wrongdoing than appropriate risk taking in response to social and political challenges. As administrators are being scrutinised more frequently and thoroughly, they get better at meeting the requirements posed by their accountability forums, while not necessarily performing better in terms of effective policy-making (Anechiarico and Jacobs 1996; Bovens 2010, p. 958). Other cited drawbacks of transparency include harm to a state's interests when sensitive, for example, military or intelligence, information is at stake, and international tensions over revelations of diplomatic confidences. Such arguments resonate in public debate. Even though the importance of transparency appears to be undisputed, many feel that complete transparency would undermine the efficiency of governance. Take public responses to the WikiLeaks disclosures: many of the disclosures were assessed favourably, but few people defended the idea of the total transparency which inspired them. Regardless of the desirability of full transparency, a concern has been voiced about its feasibility: the sheer organisational complexity of the state and the fact that its administrative apparatus is dispersed over a large number of agencies with a significant decision-making autonomy and spread over large geographical territories makes it impossible to develop and implement the technocratic tools that would make the state fully open (Fenster 2010).

Given the emerging consensus that complete transparency should not be strived for or, indeed, that it is impossible, and that some degree of secrecy is needed, the question arises as to how much transparency and how much secrecy does democratic politics need? Normative political theory leaves this question unanswered. This neglect is due to the fact that the normative status of secrecy in democratic governance has received little systematic reflection to date. And, significantly, empirical research on the actual trade-offs that political actors make between transparency and secrecy is absent. Transparency has been at the centre stage of research in public law, public administration, and political theory, ignoring secrecy as a separate object of study. It is only recently that scholars set out to expand the research field by examining the uses of secrecy in governance. Insofar as contemporary

scholarship engages with the topic, the focus is still relatively narrow, addressing mainly abuses of secrecy in political practice, and measures to combat these abuses (Sagar 2007, 2013, Colaresi 2014). This volume contributes to this research field by expanding it into two dimensions that have not received systematic attention so far.

First, the chapters collected in this volume reconstruct the considerations to which policymakers appeal in the day-to-day practice of balancing transparency and secrecy in governance. The historians, sociologists, political scientists, and legal scholars contributing to this volume reflect on the social mechanisms inherent in the organisational practice of administrative bodies that are conducive to developing a culture of secrecy, and, by focusing on topical cases and controversies in their specific research areas, analyse the justification and limits of the use of secrecy in democratic governance. To what considerations do decision-makers, legislators, overseers, and courts appeal when they are setting the ratio between transparency and secrecy? Where, according to them, lie the limits to the legitimate use of secrecy? The choice of topics has been made with this focus in mind. Starting with the analysis of existing transparency measures, the volume examines the trade-offs that determine their scope. Here not only exemptions written into transparency legislation are relevant but also the arguments actually used by decision-makers when handling FOIA requests.

With regard to the exercise of executive power, the contributions reconstruct the trade-offs between transparency and secrecy in those policy areas in which secrecy is pivotal, such as diplomatic and foreign relations as well as in intelligence. In the context of supranational structures of governance, we focus on the dynamics of secrecy and transparency in the decision-making of the European Commission and the Council. The analysis of the tension between transparency imperatives and secrecy in the exercise of executive power is complemented by a study of the practices of oversight. Here the considerations appealed to by parliaments and courts when deciding on the use of state secrecy are examined. Besides the executive practices of secrecy and their oversight, the volume focuses on court cases in which the trade-offs between transparency and secrecy play a role, such as the use of classified material as evidence in court proceedings and the way that national and supranational courts address the unauthorised disclosures of classified information involved in political whistleblowing.

The second distinctive feature of the collection is its focus on modern European democracies. Many recent publications in the emerging field of secrecy studies have been studies in Anglo-Saxon politics. With their focus firmly on the US and the UK as the main objects of analysis, they rarely systematically address the political practice of secrecy in continental Europe even if some of them occasionally draw on experience from other countries and international organisations. European political culture differs from the American and, arguably, from the Anglo-Saxon more generally (Crepaz 2017). Europe is a single but diverse entity. Next to transparency legislation,

historical, cultural, social, and political factors also bear on political choices with regard to the ratio of secrecy and transparency in governance. Hence, even if state secrecy were a “real English disease” (Moran 2013, p. 13 citing Richard Crossman), the examination of the ratio between transparency and secrecy in modern democracies would be incomplete without bringing these different political, historical, and cultural factors to light and broadening the area of inquiry beyond the Anglo-Saxon political world.

Unlike the Anglo-Saxon countries, continental Europe has rarely been the subject of study. In 1979 Donald Rowat set out to compare access to government information regimes in a number of European states (Rowat 1979), but over the next 40 years, there was no follow-up systematic study (though see Rittberger and Goetz 2018). Since 1979, the political situation in Europe has changed. In the global transparency wave in 1990 and 2000, many European countries adopted FOIA legislation. The collapse of communism, which for many reflected a moral condemnation of the “culture of secrecy” brought about a corresponding second wave of adopters of FOIA laws. The new post-9/11 security situation, however, triggered the weakening of transparency regimes, a development strengthened by other factors such as WikiLeaks’ massive document leaks (Roberts 2012), and the rise of populism and illiberal democracies. In the aftermath of 9/11, European governments have frequently appealed for state secrecy in introducing counter-terrorism measures. Due to the securitisation of many public policy areas, secret politics has moved well beyond the traditional confines of foreign and domestic security and intelligence to areas such as migration, energy, critical infrastructures, public health, agriculture, economics, and finance (Rittberger and Goetz 2018, p. 827). Secrecy in governance has also been resurgent in new European democracies: the right to information legislation introduced with accession to the EU has often been followed by the adoption of laws restricting access to information classified as sensitive (Roberts 2002/2003). Finally, international cooperation in the context of the war on terror, in particular between national intelligence agencies has created a new layer of state secrecy.

The increase of secrecy in governance is not only a matter of national politics, but also of the European supranational governance structures. Even though Article 15, Treaty on the Functioning of the European Union (TFEU), established transparency as a constitutional principle in the EU, the number of documents classified by the European Council rises. The lack of openness and sufficient oversight has been one of the longstanding concerns about how the EU functions and develops. This concern has been most often voiced with regard to foreign and security policy. Examples are the emergency measures against terror devised by European Council and Commission in the wake of the 2001 terrorist attacks in the US such as the EU “blacklists” of suspected terrorists and terrorist groups, which were designed to freeze the assets of the targets, and to criminalise financial support for them. The procedures for placing individuals on the list were concealed, lacked proper oversight,

and individuals placed on the list would not be informed about the reasons for being listed, and the evidence for listing was classified (Kreuder-Sonnen 2018).

The European economic policy area has also seen a decline in transparency and an increase in secrecy. An example is the high level of secrecy covering deliberations of European authority-holders in response to the Euro crisis. For example, the first Greek bailout in April 2009 had been preceded by months of negotiations behind the scenes concealed from the European public (Kreuder-Sonnen 2018). An additional layer of secrecy in European governance was introduced by the EU–US cooperation in the security and economic policy areas where, among others, US classification imperatives entered into EU institutional environments. The increase of secrecy in the EU governance structures has triggered concerns and protests. Even the European Parliament, however, otherwise committed to demanding access to information, has not brought about a significant change in this. Whereas in the area of trade policy the European Parliament has pushed for more transparency in decision-making in the Council, it has only rarely contested the governance of secrecy in the field of EU foreign and security policy. As some argue, it has even been co-opted by the secrecy culture of EU security officials (Rosén 2018).

The expansion of secrecy has posed new challenges for European democracies. The need to establish new mechanisms of oversight in response to the increasing powers of intelligence agencies is one example among many. International intelligence cooperation that involves sharing classified information between national intelligence agencies makes this additionally challenging. Given that neither national executive nor national oversight bodies have powers of control beyond their own national systems, they lose control over classified information, so new mechanisms of oversight are called for. Design of new oversight mechanisms reinstates the “paradox of intelligence oversight” (Rindskopf Parker and Pate 2007): too much transparency about the activities of intelligence services may hinder their functions and operational efficiency; too much secrecy carries the danger of power abuses and makes it impossible to hold officials to account. Resolving the dilemma requires reconsidering the desired ratio between transparency and secrecy in governance. Litigation is another realm in which trade-offs between transparency and secrecy need rethinking. To the extent that classified information is excluded as court evidence, the state secrets privilege comes to stand in the way of the right to a fair trial. As a matter of principle, the right to a fair trial requires that individuals are informed about the reasons for the accusations made and the evidence adduced against them. In the case of the EU secret “blacklists” of suspected terrorists mentioned earlier, these principles were compromised. With particular sharpness, the problem also emerged in court cases addressing alleged gross human rights violations committed in the struggle against terrorism in the context of secret CIA-run detention centres.

How do the European democracies set the ratio between transparency and secrecy when addressing such challenges? The main trade-off is often

presented as one between preservation of democratic process and effective governance (Rittberger and Goetz 2018, p. 827). However, exactly how the balance is drawn in political and legal practice depends on how these general interests are further specified. As Owen Thomas argues in this volume, both effective governance and democratic process are articulated in terms of public interests, yet their further specification differs importantly. Thus, the public interests in secrecy are formulated in negative terms as prevention of *harms* that disclosure would cause to the effectiveness of governance, diplomatic exchanges, international relations, law enforcement, and policy formation. On the other hand, the democratic interests in favour of disclosure are formulated in positive terms as providing *benefits* advanced by the presence of disclosure such as promoting debate on a political issue, upholding justice to the individual or resolving suspected wrongdoing. Formulating interests in favour of transparency and in favour of secrecy in this way tips the balance in favour of secrecy because decision-makers, when presented with a choice between protecting the state from harm and obtaining abstract democratic benefits, perceive the former as more important than the latter.

The balance between transparency and secrecy is often tipped in favour of the latter also because secrecy is presented as a *necessary* measure to ensure the political survival of the state. Arguments of this nature are repeatedly used by political actors in the area of security policy, international relations, and diplomacy. In these contexts, protection of national security is one of the main tasks of the state and secrecy is often taken as a prerequisite of security. Political actors acknowledge that security-based secrecy is in conflict with democratic commitments to transparency, but argue that it has to be tolerated as a concession to practical necessity. Arguments presenting secrecy as necessary for security, as Dorothee Riese observes in her contribution to this volume, follow the logic of reason of state politics, according to which political survival and efficiency of political action require extraordinary measures suspending the legal and ethical restraints on governmental action that normally apply. The scope of necessary secrecy, however, is a matter of debate and reflects the ideological differences between political actors: parties to the left of the political spectrum are less willing to have expansive security measures or have them override transparency and the values it stands to protect such as individual liberties; parties to the right of the political spectrum are more so inclined.

Ideological commitments aside, the process of balancing transparency against secrecy in governance is also a matter of strategic interests, political competition, and political expediency. As Riese observes, political parties often modify their position regarding the scope of state secrecy depending on whether they are in government or in opposition. Ben Worthy's contribution to this volume lays bare such reasons in the political process leading to the implementation of transparency measures across European nation-states.

Finally, the balance between transparency and secrecy at the national level or supranational level in European democracies reflects geopolitical

power relations and networks. For example, as Marieke de Goede and Mara Wesseling argue, international cooperation in the area of security and economic policy affects the ratio between transparency and secrecy in national governance by introducing the secrecy imperatives of international partners into it.

The challenges brought about by the increase of secrecy in governance in European democracies have triggered a specifically European discussion. This volume responds to a growing interest in the study of the politics of secrecy in this political and geographical context. In exploring the trade-offs between transparency and secrecy, the volume draws on different theoretical approaches to transparency and secrecy and brings together a variety of scientific disciplines. Much of existing research tends to dichotomise the concepts of transparency and secrecy. The assumption that secrecy and transparency are always opposite, however, can be questioned (Dean 2004, Birchall 2011, de Goede et al. 2020). It has been argued that secrecy and transparency cannot be understood as mutually exclusive categories, but are, instead, two sides of a continuum. For example, as Vigjilence Abazi and Ronny Patz's analysis of leaks from the EU Council in this volume makes clear, information disclosed by the leaks is neither secret nor public, rather it is secret with regard to some and public with regard to some: all depends on by whom, to whom and how information is revealed.

The contemporary discussion of state secrecy engages multiple disciplines including law, sociology, political science, political philosophy, public administration, intelligence studies, and history. Correspondingly, the contributing authors to this volume, *Transparency and Secrecy in European Democracies: Contested Trade-Offs*, represent a variety of disciplines. Though multidisciplinary in format, the emphasis on the reasoning behind trade-offs between secrecy and transparency in European democracies and supranational European institutions serves as the common denominator.

## Organisation of content

The contributing chapters are clustered into three parts. We open the volume with essays which explore the value of transparency in democratic governance, reconstruct the history, and provide an overview of transparency measures in the European democracies.

Jenny de Fine Licht critically discusses the common view that transparency reforms will automatically generate good governance, *viz.* ensure better quality political decisions, procedural fairness, and accountability of office-holders as well as increase public trust in the political system and boost political participation. The view is widely shared by researchers and policymakers, yet, as de Fine Licht argues, empirical research on the correlation between transparency and the quality of democratic decision-making is inconclusive: transparency *can* have a positive impact on governance, but this is not necessarily always the case (also Erkkilä 2012, de Fine Licht and

Naurin 2016, p. 22). Given that transparency is a double-edged instrument, she concludes, it should not be endorsed unconditionally, and secret or closed-door political decision-making settings should not be renounced too quickly. Conclusions of empirical research imply rather that transparency and secrecy in governance should be balanced. By exploring the democratic underpinnings of transparency, but also indicating its drawbacks, de Fine Licht's chapter lays out the conceptual terrain for the subsequent chapters which discuss the actual trade-offs between transparency and secrecy in the political practice of European democracies.

The next chapter, by Ben Worthy, takes the reader on a tour through transparency measures in European states reconstructing the way in which the democratic commitment to transparency is translated into legislation in this geographic region. His discussion demonstrates that the degree to which the principle of openness regulates public administration in European democracies differs across states, with the Nordic countries at the forefront and most of continental Europe at the back end of legislative developments in this regard. In explaining these differences, Worthy's discussion emphasises that history, the type of political system, legacy of open or secret political and legal culture are all important factors shaping the evolution of the regulatory frameworks that govern the access to government information legislation in European democracies.

Analysing the implementation process and actual effects of transparency legislation in Europe, Worthy's chapter repudiates two myths about transparency in governance. First, transparency legislation does not automatically create transparency – it does create openness, but, in delineating its limits, it also maintains secrecy. Not only does FOIA legislation contain a number of exemptions meant to protect executive secrecy, but it is usually accompanied by legislation regarding state secrecy, such as official secrets law. Moreover, once introduced, the support for transparency legislation decreases. This aligns with other research findings, which show that despite the increase in transparency measures, governmental institutions make compensatory adjustments that render transparency-enhancing measures ineffective, such as thwarting disclosure requests, media-spin politics, and the destruction of information records (Murray 2005, p. 201; Roberts 2006, pp. 110–112). Second, in spite of being presented as a measure empowering citizens, public support for transparency measures is largely illusory: it is not citizens but mainly journalists, NGOs and businesses that make use of transparency legislation.

Indicating these developments with regard to transparency legislation in Europe, Worthy's chapter introduces themes that receive more detailed discussion in Part II. The chapters clustered in Part II examine how democratic commitments to transparency in public administration actually function in the political practice of European democracies. They reveal that next to the legislative regime of transparency there exists a parallel regime of secrecy in European democracies, and they reconstruct the trade-offs between the

two. This cluster begins with chapters focusing on EU supranational institutions. The next chapters move from European supranational institutions to examine the political practice of secrecy in European nation-states.

In Chapter 3, Vigjilence Abazi and Ronny Patz take the phenomenon of leaking as a tool to analyse the dynamics of official secrets and access to information in the European Commission and the Council of Europe. Trade-offs between transparency and secrecy in European policy-making are a matter of power struggles. Leaks, they argue, are a weapon in this struggle trying to change the balance between them in favour of the formula preferred by the leaker. Reflecting on the impact of leaks on the balance between transparency and secrecy in European governance, Abazi and Patz conclude that leaks do not necessarily erase secrets and increase public access to the relevant information. Strategically planted as part of a political game, they often merely enlarge the circle of secret-keepers.

Chapter 4, by Marieke de Goede and Mara Wesseling reconstructs the dynamics of transparency and secrecy with regard to the TFTP. Created shortly after 9/11 as a tool in the “Global War on Terrorism”, this secret CIA programme involved gathering and analysing financial transaction data from the Society for Worldwide Interbank Financial Telecommunication (SWIFT), based in Belgium, and sent to the US Department of the Treasury (USDT) in order to trace potential terrorists and terrorism financiers. The programme was disclosed by the *New York Times* in 2006 and triggered discussions about secrecy in governance in the European Union. De Goede and Wesseling discuss the dynamics of concealment and disclosure of the information about the programme, its methods and effects. Their analysis of how the knowledge about the programme was partitioned and regulated calls into question the idea that trade-offs between transparency and secrecy should be understood as a zero-sum game. Rather, both transparency and secrecy are relational: some information about the programme was secret with regard to some and public with regard to others reflecting power distribution and transatlantic connections between insiders.

The next chapters move from the European supranational institutions to examine the political practice of secrecy in European nation-states. Diplomatic relations and foreign policy, as well as intelligence, are particularly apt as a starting point for exploring these questions, because the dilemma of balancing openness and secrecy is most tangible in these fields. Chapter 5, by Sanderijn Duquet and Jan Wouters, analyses diplomatic secrecy. In this realm, national governments have a broad discretion to refuse access to documents. A “diplomatic exception” covers negotiation guidelines, national security documents, and preparatory international agreements. Diplomats operate largely outside the scrutiny of the public, with little oversight by parliaments. In response to the democratic deficit thus caused, recent years have seen a rise in public demands for openness and transparency in diplomacy. The diplomatic exception has been tested in the courts. Duquet and Wouters’s essay scrutinises court cases that balance individual rights

against it. The essay concludes by proposing the limits of the law protecting secrecy and confidentiality in diplomatic relations over against the needs of foreign policy.

Just as diplomacy and foreign policy, the operation of intelligence agencies is also a traditional bastion of executive secrecy. In Chapter 6, Eleni Braat, a former official in-house historian of the Dutch General Intelligence and Security Service (AIVD), provides an insider's look into the practices of secrecy in intelligence services. Framing her discussion in terms of Robert Merton's analysis of bureaucratic organisations, she argues that intelligence secrecy is subject to the phenomenon of "goal displacement" (Merton 1940). As examined by Merton, the phenomenon occurs when members of organisations come to value rules and the behaviour required by those rules over the objectives that the rules were intended to achieve or, in other words, when the means to achieve the goals of an organisation transform into a goal in itself. Drawing on empirical material covering almost 30 years of the Dutch Security Service, Braat argues that national security secrecy was transformed from a means to protect sources and methods into an end in itself. Thereby, the scope of secrecy became broader, reaching into areas where it was not functionally needed. Braat argues that goal displacement with regard to intelligence secrecy leads to organisational fragmentation and operational inefficiency of the agencies. The chapter concludes by linking this phenomenon to the resistance within these traditionally secretive institutions to transparency reforms.

The next chapter, by Owen Thomas, examines the trade-offs between secrecy and transparency in the context of decisions granting or declining FOIA requests. The focus of Thomas's contribution is the way the UK government handled the demands from the Iraq Inquiry Committee and FOIA requests from citizens regarding UK involvement in the Iraq War. Thomas shows that balancing transparency and secrecy in these cases was biased in favour of executive secrecy, a problem that he traces to flaws in the British Freedom of Information Act. The law requires that the decision on whether to disclose official material be reached by balancing the public interests in disclosure against the public interests in refusal. In political and legal practice, however, public interest in transparency is articulated in a positive way and spelt out in terms of benefits that transparency advances such as promoting public debate on a political issue. Public interest in secrecy is articulated in a negative way and spelt out in terms of the harm that ensues from eliminating secrecy such as mutual distrust between partners in diplomatic relations. This differential approach to public interests, he argues, tips the balance in favour of secrecy because considerations of harm feature on one side of the balance and decision-makers prioritise the prevention of harm over other considerations. This biased balancing leads to the permanent withholding of information that, in principle, should be made accessible under FOIA: diplomatic messages, cabinet records, and legal advice to the cabinet, which are not protected by absolute exemption.

On the whole, Part II presents secrecy as firmly embedded in the political practice of European democracies. Are the practices of secrecy subject to democratic control and oversight? How do the overseers envisage the proper ratio between transparency and secrecy in governance? Part III entitled “Oversight and accountability” is devoted to answering these questions.

In Chapter 8, Dorothee Riese examines parliamentary oversight of executive secrecy. Focusing on the parliamentary debate about the legitimate scope and oversight of executive secrecy in the German Bundestag, her contribution makes clear that the threat of terrorism not only has given rise to a politics of emergency whereby executive actors more often resort to secrecy, but it also has made the parliamentary overseers more receptive to perceiving secrecy as a legitimate response to national security threats. In effect, the balance between transparency and secrecy has shifted toward privileging security over transparency. Drawing on interviews with executive actors and MPs as well as parliamentary debates, she argues that the negotiation of the trade-offs between transparency and secrecy in the Bundestag follows the logic of *raison d'état* politics. The contemporary version of the reason of state argument used by political actors in balancing secrecy against transparency has two forms. One is anchored in the imperative of political survival and, as in the classic version of the reason of state doctrine, presents secrecy as an extraordinary measure necessary for the preservation of the state, which trumps other interests and political goals. The other refers to the protection of executive deliberation not subject to parliamentary control. In this form, it is associated with the preservation of the separation of powers, a condition of the institutional integrity of the democratic state. While the necessity of extraordinary measures including secrecy is accepted across the political spectrum, Riese indicates that the views regarding the exact ratio between secrecy and transparency reflect both the ideological differences between political actors and more strategic considerations, such as those related to their institutional position along, for example, the government–opposition divide in parliament.

Next to parliamentary oversight, the courts also have powers to oversee and challenge executive secrecy. Chapter 9, by Arianna Vidaschi, addresses the legal oversight of secret uses of executive power. Vidaschi's discussion focuses on the practice of judicial review of the state secret privilege in the context of the secret extraordinary rendition programme run by the CIA with the crucial cooperation of several European countries. Focusing on the *Abu Omar* and the *El-Masri* cases in, respectively, the Italian and Macedonian jurisdictions, she discusses the challenge that the classified material poses as court evidence in court proceedings brought by the victims of the programme against intelligence agents and other state officials involved. Vidaschi draws attention to the deferential attitude taken by domestic courts toward the executive prioritising national security over respect for human rights and accountability for human rights violations. She observes that, unlike national courts, the European Court of Human Rights (ECtHR) can

enforce transparency for executive and intelligence actions, though its powers are insufficient to enforce sanctions for abuse of state secrecy.

In the concluding chapter, Vigjilenca Abazi addresses the issue of the unauthorised disclosures of classified or sensitive information by civil servants and the media. While not a part of formal oversight mechanisms, political whistleblowing is slowly becoming an established method of addressing government wrongdoing. Abazi, a former adviser to the Council of Europe on whistleblowing regulation, undertakes a comparative study of whistleblowing regulations across European democracies. Her discussion makes clear that despite the rise of protection for whistleblowing in general, political whistleblowing is still significantly under-protected, if not excluded from legislation. The current weakening of the rule of law in European democracies makes the practice of political whistleblowing additionally vulnerable. While political whistleblowers in Europe may find vindication at the ECtHR when national remedies fall short, the court's lack of enforcement powers cannot fully counteract the inimical environment in which whistleblowers operate in national jurisdictions and political practice.

We trust that the contributions to this volume have achieved two things. First, that they have demonstrated that secrecy is entrenched across a range of EU and national settings and have shown how decision-makers go about addressing the tension it creates with the democratic commitment to transparency. Given the contested character of such trade-offs and their critical role for the character of democratic governance, we hope to initiate a critical discussion about the criteria used in balancing transparency and secrecy in the actual political practice of democratic states. Second, that the authors have taken transparency and secrecy research an important step further and contributed to setting an agenda for future research on the role of secrecy in democratic governance.

## References

- Anechiarico, F and Jacobs, JB, 1996. *The Pursuit of Absolute Integrity: How Corruption Control Makes Government Ineffective*. Chicago, IL: University of Chicago Press.
- Birchall, C, 2011. Introduction to "Secrecy and Transparency": The Politics of Opacity and Openness. *Theory, Culture and Society* 28, 7–25.
- Bovens, M, 2010. Two Concepts of Accountability: Accountability as a Virtue and as a Mechanism. *West European Politics* 33, 956–958.
- Colaresi, M, 2014. *Democracy Declassified: The Secrecy Dilemma in National Security*. Oxford: Oxford University Press.
- Crepaz, M, 2017. *European Democracies*. Milton Park, Abingdon, Oxon; New York, NY: Routledge.
- Curtin, D, 2011. *Top Secret Europe*. Inaugural Lecture, University of Amsterdam.
- de Fine Licht, J and Naurin, D, 2016. Transparency. In: Ansell, C and Torfing, J, eds. *Handbook of Theories of Governance*. Cheltenham: Edward Elgar Publishing, 217–224.

- de Goede, M, Bosma, E and Pallister-Wilkins, P, 2020. *Secrecy and Methods in Security Research*. Milton Park, Abingdon, Oxon; New York, NY: Routledge.
- Dean, J, 2004. *Publicity's Secret*. Ithaca, NY: Cornell University Press.
- Erkkilä, T, 2012. *Government Transparency: Impacts and Unintended Consequences*. Basingstoke: Palgrave Macmillan.
- Fenster, M, 2006. The Opacity of Transparency. *Iowa Law Review* 91, 888–889.
- Fenster, M, 2010. Seeing the State: Transparency as Metaphor. *Administrative Law Review* 62, 617–672.
- Haufler, V, 2010. Disclosure as Governance: The Extractive Industries Transparency Initiative and Resource Management in the Developing World. *Global Environmental Politics* 10, 53–73.
- Hood, C, 2006. Transparency in Historical Perspective. In: Heald, D and Hood, C, eds. *Transparency, the Key to Better Governance?* Oxford and New York, NY: Oxford University Press, 3–23.
- Kreuder-Sonnen, C, 2018. Political Secrecy in Europe: Crisis Management and Crisis Exploitation. *West European Politics* 41(4), 958–980.
- Merton, R, 1940. Bureaucratic Structure and Personality. *Social Forces* 18, 560–568.
- Moran, C, 2013. *Classified. Secrecy and the State in Modern Britain*. Cambridge: Cambridge University Press.
- Murray, A, 2005. Should States Have a Right to Informational Privacy? In: Klang, M and Murray, AD, eds. *Human Rights in the Digital Age*. London: Glasshouse, 191–202.
- Rindskopf Parker, E and Pate, B, 2007. Rethinking Judicial Oversight of Intelligence. In: Bruneau, TC and Boraz, SC, eds. *Reforming Intelligence. Obstacles to Democratic Control and Effectiveness*. Austin, TX: University of Texas Press, 51–72.
- Rittberger, B and Goetz, KH, 2018. Secrecy in Europe. *West European Politics* 41(4), 825–845.
- Roberts, A, 2002/2003. NATO, Secrecy, and the Right to Information. *East European Constitutional Review* 11.4/12.1, 86–94.
- Roberts, A, 2006. Dashed Expectations: Governmental Adaptation to Transparency Rules. In: Heald, D and Hood, C, eds. *Transparency, the Key to Better Governance?* Oxford: Oxford University Press, 107–125.
- Roberts, A, 2012. WikiLeaks: The Illusion of Transparency. *International Review of Administrative Sciences* 78, 116–133.
- Rosén, G, 2018. Contestation and Co-optation: Why Secrecy in EU External Relations Varies. *West European Politics* 41(4), 933–957.
- Rowat, D, ed. 1979. *Administrative Secrecy in Developed Countries*. New York, NY: Columbia University Press.
- Sagar, R, 2007. On Combating the Abuse of State Secrecy. *Journal of Political Philosophy* 15, 404–427.
- Sagar, R, 2013. *Secrets and Leaks: The Dilemma of State Secrecy*. Princeton, NJ: Princeton University Press.
- Scholtes, E, 2012. Transparency, symbol of a drifting government. Paper presented at the Transatlantic Conference on Transparency Research, Utrecht, The Netherlands, June 8–9, 2012.
- Thompson, D, 1999. Democratic Secrecy. *Political Science Quarterly* 114, 181–193.