

Is There a Case For Limiting Democratic Openness?

First Runner-Up

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"One will perhaps be astonished that, while I am firmly of the opinion that the democratic revolution to which we are witness is an irresistible fact against which it would be neither desirable nor wise to struggle...I often come to address such severe words to the democratic societies this revolution has created. I shall respond simply that it is because I was not an adversary of democracy that I wanted to be sincere with it. Men do not receive the truth from their enemies, and their friends scarcely offer it to them; that is why I have spoken it. "

- Alexis de Tocqueville, *Democracy in America*

Even a superficial observer of the political culture of contemporary North America must be struck by the contradictory opinions with which we view the idea of transparent governance. On the one hand, the liberal assumption that greater openness improves governance continues to be widely upheld, at least as an abstract norm that ought to be followed wherever possible (Elster 1998, 111; cf. Mill 2008 [1859], 21, 75; [1861], 353-69). Indeed, the deeply felt alienation of citizens from political and economic institutions so characteristic of our times has led many to call for deepening and broadening democracy beyond the ballot box and legislatures (e.g. Archer 1998; Breton et. al. 2004; Fung et. al., 2003; Lenihan et. al. 2007; UNIFEM 2008). For those who hold that good governance is legitimate governance, civic alienation poses a serious challenge not only to the stability of liberal democracy, but also to its effectiveness. The myriad proposals now being canvassed to rectify civic alienation by increasing openness can thus be seen as attempts to improve the capacity of democratic institutions to 'deliver the goods.' This is because political legitimacy, in the sense of securing the consent of the people, is thought to be amongst the most important goals of liberal democracy (e.g. Mill 2008 [1861], 207-08). Since increasing openness is supposed to improve legitimacy, it is also

thought to improve the effectiveness of liberal democratic governance. Suggestions for institutional reform along these lines include involving citizens more formally in the policy process through institutions such as citizen assemblies (Abelson & Gauvin 2004; Dowlen 1998), facilitating popular oversight of democratic governance through internet resources as proposed by the open data movement (guardian.co.uk/world-government-data; open-parliament.ca; cf. opendatafoundation.org), and subjecting traditionally more hierarchical institutions such as the workplace to standards of democratic governance as exemplified in economic co-operatives (e.g. Albert 2004; Hahnel 2005).

On the other hand, the assumption that greater openness improves governance (henceforth the liberal openness principle or LOP) is frequently violated in the practice of liberal democratic governance. Its circumvention, which has always required a degree of care where liberal norms have been predominant, is now openly justified from many quarters (e.g. National Post Editorial April 26, 2005; Mattozzi & Merlo 2007; Feldman 2009; Lessig 2009; Messner 2009; Singer 2010). Today, it is commonplace for the participation of citizens in the procedures and oversight of democratic governance to be dismissed as impractical rather than simply avoided. These 'arguments' typically appeal to the problem of second order consequences. Although the LOP is sometimes true, it is admitted, openness often creates consequences so pernicious as to outweigh whatever value it creates. We're better off, these arguments conclude, limiting citizen participation and oversight where these sorts of consequences can be clearly identified. The Harper Government's frequent justifications of secrecy in the name of 'national security' are a good example of this sort of argument.

Notice that to be persuasive, such arguments must either distinguish political legitimacy from good governance or redefine political legitimacy altogether. If the primary good political institutions ought to 'deliver' is legitimacy, and legitimacy depends upon the consent of the governed, then concerns such as national security should not trump the necessity of securing popular consent, even if this demands troublesome disclosure of information or public consultations. Either legitimacy does not have this kind of priority, in which case national security could sometimes trump popular consent, or legitimacy simply constitutes

something besides public approval.

In any case, it is striking that even as the undeniable decline in civic participation continues apace, one hears a chorus defending the necessity of secrecy in democratic governance. Might we find ourselves in a sort of policy dilemma where an important solution to the decline of political legitimacy threatens to cause even greater evils if implemented? The possibility presents itself only because the arguments made by proponents of deepening democracy are typically at cross-purposes with the claims advanced by the opponents of greater democratic openness. Discussion of transparent governance does not constitute a genuine debate since neither side treats the arguments of the other in its own deliberations, let alone the strongest conceivable case of its opponent. The arguments of both sides can be plausible because the viability of one does not threaten or even directly speak to that of the other.

This is especially the case with the arguments of opponents to greater openness. Despite professing some version of the LOP, the appeals to second order consequences characteristic of these arguments fail to show the relative priority of the good in whose name they defend limitations to openness. Prime Minister Harper's recalcitrance in disclosing unredacted documents and data to Parliament is publicly justified by appeals to national security, but supporters of the government's position rarely if ever show why the consequences to national security merit this kind of priority. Since only these sorts of reasons are sufficient to justify overriding the LOP, they must figure centrally in plausible arguments for limitations to transparency if such arguments are to speak to proponents of openness.

In the interests of moving this debate forward, and because the arguments from proponents of openness are generally more cogent, this essay attempts to sketch a strong case for limiting transparent governance. I do so with a view to clarifying the kinds of claims opponents of greater openness must make if they are to offer persuasive reasons to interlocutors. Those of us interested in deepening democracy are behooved to consider the most robust arguments for limiting transparent governance if we are to convincingly establish the worthiness of our cause in the face of vociferous opposition. My modest

hope is to provide the beginnings of such considerations here.

For the purposes of my argument, I assume by democratic openness and transparent governance the degree to which citizens of a democracy can oversee and direct the activities of public officials supposed to represent their will. If there is a strong case to be made for limiting democratic openness, it depends upon showing a need for curbing the authority of this majority will or mass opinion. In societies whose political aspirations are democratic, this is by no means a straightforward task. In such societies, to say that it is difficult to challenge the notion that good public policy just is the will of the majority of citizens is certainly an understatement. To suggest that it is legitimate for a public policy to be supported by only a minority of citizens is often altogether intolerable. Yet it is undeniable to any reflecting person that the rightness of an opinion is not determined by whether or not it is held by the majority. As Alexis de Tocqueville maintains in *Democracy in America*:

I regard as impious and detestable the maxim that in matters of government the majority of the people has the right to do everything...A general law exists that has been made or at least adopted not only by the majority of this or that people, but by the majority of all men. This law is Justice. Justice therefore forms the boundary of each people's right (Tocqueville 2000 [1835/40], 240).

What is just, or good, or true is not determined by what any group of people happens to think. The case for limiting democratic openness depends upon showing limitations to popular sovereignty as necessary conditions for the realization of this truth. It is here that the advocate of limiting openness must confront liberal democratic conceptions of political legitimacy which emphasize procedural standards in good governance. Although what is just may be independent of what the majority believes, liberal democratic justice demands that the majority be *persuaded* to obey political authority. Either the majority obeys willingly, or authority must be restructured to secure its consent. Can the argument for limiting openness be consonant with this requirement?

The anti-openness argument must also address another deeply-held dimension of liberal democratic conceptions of legitimacy. The characteristically liberal skepticism of political power is often expressed as a necessary condition of legitimate authority when start-

ing from some version of Lord Acton's oft-quoted phrase: "power tends to corrupt and absolute power corrupts absolutely" (Letter to Bishop Creighton, April 5, 1887; cf. *The Federalist* no. 51 [Madison]; Mill 2008 [1859], 122-28). Since we have every reason to believe that those in public office will sometimes misuse their power, it is incumbent upon the ruler to prove her government legitimate to those over whom she rules and not *vice-versa*. It seems to follow that democratic openness is necessary for legitimate governance since authority will be acceptable to the degree to which the people can be satisfied that public officials are not abusing their offices. Governments which can be secretive will be able to shirk this responsibility. Besides increasing visibility, however, openness also limits the power and hence corruptibility of public officials. Rulers allowed a degree of secrecy will tend to be, *ceteris paribus*, more powerful and hence more corrupt.

Despite these obstacles, the case against deepening democratic openness can and should be made on common ground with liberal democrats if it is to speak to our concerns. Intriguingly, overlap can be found in elements of both dimensions of liberal democratic conceptions of legitimacy discussed above. If the proponent of greater openness will grant that (a) legitimate governance depends not only on the consent of the governed but also on the approximation of justice in social institutions; that (b) what is just is not determined by the will of majority, notwithstanding the need to secure its consent; and that (c) Lord Acton's Dictum is true; then the opponent of greater openness should be able to make her case plausible. If Lord Acton's Dictum is true, then, everything being equal, the power of the sovereign authority should be limited wherever possible. Since in a functioning democracy, even if a representative democracy, it is the majority itself that is the sovereign authority, there is reason to think that it too will be corrupted by unlimited authority or even the simple exercise of power (Tocqueville 2000 [1835/40], 165, 235-48). So, if (i) political legitimacy depends upon the approximation of justice by social institutions, (ii) just institutions are undermined by corruption of the sovereign authority, (iii) the majority is the sovereign authority under functioning democracy, and (iv) Lord Acton's Dictum is true, then it follows that political legitimacy requires somehow curbing the power of the majority will. If deepening democratic openness constitutes empowering the will of the majority by increasing the oversight and directives it gives to its representa-

tives, then we have provided an argument against greater democratic openness that speaks to liberal democratic conceptions of political legitimacy.

No doubt this brief argument leaves the proponent of greater openness unconvinced. Although it may seem plausible to suggest that the majority can be corrupted by wielding political power, one might still counter that either it is not corrupted to a sufficient degree to justify limiting democratic openness, or the harms which come from its corruption are outweighed by those which would issue from such limitations in transparency. The argument against deepening openness should be capable of meeting these objections.

To do so, we need firstly a thicker account of Lord Acton's Dictum. What is the mechanism by which those with political power are supposed to be corrupted? Political theorists have tended to provide two related answers to this question: political power corrupts those who wield it by increasing their propensity for self-deception and does so not only by removing the tendency of those in power to be told the truth by those who seek their favour, but also by institutionalizing a corrupting, two-directional dependency (e.g. Hegel, *Phenomenology of Spirit*, §178-96; Plato, *Gorgias*, esp. 521d-22a; Rousseau 1987 [1754], 64, 67; cf. Balot 2005; Tarnopolsky 2010). The powerful are dependent for their power on supporters, indeed the support of others they enjoy ultimately is their power. The powerless are dependent on the powerful to the extent that the means of their subsistence is not autonomously produced. The crucial assumption here is that dependency motivates flattery. I am much more willing to exaggerate my praise and admiration of those on whose good will I depend. Assuming they will react more favourably to praise and admiration, even if exaggerated or false, then to criticism and censure, even if merited and ultimately in their interest; and presuming that I am more concerned with securing the favour of those on whom I depend than in advancing their own best interests; it makes sense to resort to flattery. Furthermore, these motivations are compounded where I have trouble associating the advancement of the best interests of those I am tempted to flatter with my own, as one might think is especially the case in large, complex societies such as our own.

Finally, the two-directional flattery emerging from disparities in power exhibits positive

feedback effects: the more the powerful remain in power, the more they are given a false vision of themselves. The more the powerful are presented with such visions, the more likely they are to believe them. As the motivations for flatterers are increased in proportion to the expected positive reaction from those being flattered; and since being flattered increases the likelihood that one will expect flattery, perhaps failing to notice it as such altogether; flattery reproduces itself.

The resulting self-deception throughout the society, but especially amongst the powerful, could be characterized as self-evidently corrupting. Yet it is worth briefly tracing the course of the poison. Good governance depends to no small degree on the knowledge of probable outcomes to potential policies. Since political power must be wielded by fallible human beings with imperfect information, it will be employed well only insofar as rulers are knowledgeable about their own epistemic limitations. If rulers assume they have knowledge about the probable outcomes of policy choices which they do not in fact have, they will be likely to implement policies whose outcomes are pernicious to their purpose. An oft-cited example of this phenomenon is the command economy of the Soviet Union where unintended consequences of coordinated economic management created outcomes highly antithetical to the goals at which such policies aimed (e.g. Hayek 1991; Olin Wright 2010, 7-8). As the flattery experienced by the powerful reduces their propensity to be self-knowledgeable, especially concerning unwelcome criticism and the pointing-out of limitations, possessing political power will tend to inflame a dangerous overconfidence if unchecked or unlimited.

Yet even if this is a true depiction of the mechanism through which the powerful tend to be corrupted, what reasons do we have to conclude that the majority are prey to its effects? Indeed, one might think that since the rulers of functioning democracies are ultimately beholden to the will of the majority, especially where democratic openness is significant, that they are therefore less prey to the corrupting effects of flattery. The crucial point the opponent of greater openness must make on this score is to underline the degree to which it is the people themselves, or the majority amongst them, who are the sovereign authority in functioning democracies. It is the opinion of the majority that

the ambitious seek to flatter, to whom the people's representatives pander, for whose good graces the titular rulers compete, as it is at the pleasure of the majority that they hold what power they wield. Of course, this may no longer be true in the politics of North America where the organizational power of a paper-thin elite has culminated in decades of policy largely contrary to the material interests of the great majority of citizens (Hacker & Pierson 2010). Yet in *functioning* democracies where it truly is the greatest number of citizens who are the ultimate arbiters of power, it does seem plausible to suggest the majority is subject to the corrupting trappings of sovereign authority.

Indeed, there is reason to think that the majority is especially vulnerable to the self-deception issuant from flattery. As Tocqueville astutely observes, democratic peoples establish a "moral empire of the majority" that "acts on the will as much as on actions" (Tocqueville 2000 [1835/40], 236-37, 44). Although I do not have sufficient space to give anything like a satisfactory defense of this proposition, its supposed effect is a remarkable conformity of thought. Tocqueville's argument is essentially that the greater the authority possessed by the majority, including that produced by democratic openness, the more necessary it becomes to secure the favour of majority opinion in one's undertakings. This trend feeds back upon itself as deviant opinions are indirectly eliminated and the citizenry is socialized into a homogenous ethos consonant with majority opinion. If sufficient self-knowledge can only be acquired by having truth spoken to power, and if the majority happens to hold opinions at variance with the truth, then the tendency towards intellectual conformity Tocqueville identifies will only deepen the corruption instigated by the power possessed by the majority in functional democracies.

Even if the proponent of greater democratic openness is persuaded by such an argument, it remains to be seen whether the dangers posed by removing impediments to the authority of the majority are outweighed by those which arise from keeping them in place. The strongest retort on this score would seem to involve revisiting the options for limiting openness. Although the most straightforward limitation of transparency is the capacity for public officials to act without the public's knowledge (secrecy), other options do not carry nearly the same degree of likely harms. If we assume by democratic openness the

degree to which citizens of a democracy can oversee and direct the activities of public officials supposed to represent their will, then Bicameral legislatures and unelected judiciaries are examples of curbs to openness many already accept as salutary institutions. Moreover, civic education of various types can also play a critical role in helping citizens be *self-limiting* in the demands they make as a majority. This is especially true insofar as civic education helps citizens both to distinguish the good from the will of the majority and to develop a healthy antipathy towards flattery. Furthermore, limitations to democratic openness which are self-imposed by citizens voluntarily can hardly be said to violate the liberal democratic conceptions of legitimacy we have examined here.

If there is a case to be made for limiting democratic openness and transparency which can speak to the arguments of openness proponents, I hope to have offered some of its critical features. Even if proponents remain unpersuaded of the overall argument, however, it is imprudent to deny the fundamental insight upon which I have built these remarks, notwithstanding the fact that neither side in the transparency debate is willing to countenance its contemplation: political liberty, as with all goods of the polity, depends to no small degree on the arduous recognition of human fallibility.

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