At this conference, and not least in Emmanuel Alloas’ keynote lecture, we heard more than a sprinkling of transparency-bashing. While claiming to be neutral, transparency is necessarily framed in a biased way. It is meant to increase trust but actually reduces it. It is closely linked to surveillance and to Michel Foucault’s internalized self-control. It serves as an excuse for deregulation. Perhaps. Before attempting to assess such statements, let me propose a definition of transparency and spell out my prejudice on this subject.¹

A definition, a prejudice

Taken literally, transparency is a dispositional property of an object, more specifically of a medium, such a wall, a window, a door, a house, a box, a screen, an envelope. In contrast to structural properties — such as volume, length, density, chemical composition —, dispositional properties refer to the way an object reacts to a certain action. If you drop it and it breaks, it is fragile. If you move it close to a fire and it burns, it is inflammable. If light reaches it and gets through it so that you can see through it or inside it, it is transparent. The antonym of transparency is opacity.

Now, this dispositional property can also be attributed metaphorically to organizations, institutions, practices, processes. The more can be seen inside them — the less opacity, secrecy, privacy surrounds them —, the more transparent they are. Transparency, like other dispositional properties, is a matter of degree. It can be increased, and opacity correspondingly reduced, not only by making more things visible, i.e. by allowing access to more information, but also by making them better visible, more accurately, more intelligibly, more cheaply money-wise and time-wise. This definition could be further refined, but this will do for my purposes.

Let me then start by confessing that I have a strong prejudice in favour of transparency. This is bound to be in part because I am a nosy guy. For example, with my inquisitive ethnographic temperament, I find it far more interesting to walk at night in

¹ This text is a written version of a largely improvised intervention at the conference “The limits of transparency” (Brussels, Koninklijke Vlaamse Akademie voor Wetenschappen en Kunsten, 11-12 December 2017). It has been generously fed by interventions and discussions during the first day of the conference, in particular the comprehensive and stimulating keynote lecture by Emmanuel Alloa to which I was invited to respond, and the presentation by David Heald, which I found very congenial.
Dutch streets than in Belgian streets. People, in Holland, do not seem to mind a transparency that Belgians use shutters, blinds and curtains to reduce to a tiny minimum. But there is no doubt more to this prejudice.

For example, I remember a discussion with Yves Poullet, former rector of the University of Namur and former director of its centre “Droit et informatique”. In support of his defence of a strong protection of privacy, he asked, as a rhetorical question, whether we would like the walls of our houses to be transparent. I agreed that this would certainly impose constraints on our behaviour that we would not unanimously welcome. But should we really regret them if they turn out to reduce dramatically the occurrence of domestic violence? I subsequently discovered that offices in the new building of Stanford’s Law Faculty have glass walls. Rather distracting, I thought, but apparently motivated by the dean’s concern about inappropriate behaviour by his personnel. If this is a serious risk, I thought, why not? Unsurprisingly, I was therefore rather pleased to discover, thanks to this conference, some neatly formulated rationalizations of my prejudice, such as Justice Brandeis’s “Sunlight is the best disinfectant” or Julian Assange’s “Lights on, rats out!”.

Prejudices, however, are there to be shaken, or at least qualified. This conference offered me a wonderful opportunity to reconsider this one. I shall do so by quickly running through the various dimensions of transparency — or visibility —, or rather its directions, each usefully illustrated in some of the contributions to this conference or in the discussions they gave rise to.

Citizens, Corporations, public authorities

Take first the question of how transparent the citizens should be allowed to be for the public authorities. Should these be allowed to monitor closely their wealth, income and housing situation in order to determine both tax liabilities and benefit entitlements and thereby to ensure as much as possible that they pay and receive no more and no less than they ought to? Should they be allowed to place hidden CCTV cameras, trace payments, record phone calls, intercept e-mails in order to identify criminals and collect evidence against them? Should they have access to medical dossiers in order to ensure a cost-efficient delivery of collectively funded health care? To all these questions, my inclination is to answer “yes”, providing in each case there is adequate transparency in the other direction about the rules that must govern access to the information and its treatment.

Secondly, take the question of how transparent the citizens should be allowed to be for private corporations. Here, greater caution is in order. The objective pursued by corporations seeking greater transparency is no longer some public purpose (fair distribution, public security, affordable health care), but private profit. Insurance companies want to know more about you in order to determine at what level of premium it is in their interest to insure you. Google and social media companies want to know more about you in order to offer advertisers better targeted and hence more
lucrative services. Without you noticing, they end up knowing more about you than yourselves. Of course, it is part of the deal. You would not get free access to all they offer if you did not give something other than money in exchange. But here again, adequate transparency in the other direction is required. What is exactly the information they gather about us, and what use do they make of it?

Thirdly, there is the question of how transparent corporations should be for public authorities. My answer here is: a lot. In connection with privacy protection, Google's Eric Schmidt is often quoted as having declared in 2009: “If you have something that you don’t want anyone to know, maybe you shouldn’t be doing it in the first place.” This should apply in particular to corporations such as his own. Governments must be able to look inside them, not only to make sure that they pay corporate taxes in the place and at the rate they are supposed to, but also in order to give governments the tools they need to regulate economic activity so as to internalize externalities, fight collusion and corruption, check working conditions or control product quality. When corporations are not very collaborative and/or governments not very energetic, the investigative work of journalists is more than welcome, as in the LuxLeaks or Panama Papers operations. And an adequate protection of whistle blowers is an important instrument for the sustainable achievement of the right level of transparency in this domain.

Fourthly, there is the question of how transparent corporations should be for citizens as consumers or investors. This concerns, for example, the content and the origin of the food they sell, the impact of their products on the environment, local and global, how workers are treated by themselves and their providers, etc. As was neatly documented long ago by Charles Sabel, just the obligation to make some reliable information public can have a major impact on firms’ behaviour, even in the absence of coercive norms. Indeed, even in the absence of an obligation to disclose information, firms now volunteer to provide information and try to improve their performance as measured by indicators of public concern. The power of this mechanism should not be underestimated but depends on there being a sufficiently large subset of caring consumers and investors, and one, moreover, that is able to decrypt labels and to understand the meaning and assess the credibility of the information displayed by corporations. Corporate social responsibility is just window-dressing without adequate transparency — meaning both accessibility and intelligibility — but it will never provide a full substitute coercion or nudging by properly informed public authorities.

Fifthly, there is transparency of citizens for each other. It is this horizontal transparency, made possible by internet, that has triggered the development of those aspects of the share economy illustrated by AirB&B and Uber. The mutual trust between individual consumers and individual providers is secured by publicly available assessments. No need for a firm as an intermediary. Far more generally, the mass of stuff that is now deposited without firewall on the internet, joined with the power of search engines, means that, in internet-penetrated societies, there are very few people on whom only very little information could be gleaned with no more than a few clicks. For privacy fans, this is a tragedy. For truth fans, it is a major challenge, as much false
information will stick, however hard one tries to correct it. But greater visibility to others is also bound to have beneficial effects on people’s behaviour.

This takes us back to Poullet’s transparent house and to Schmidt’s “things you don’t want anyone to know”. The basic mechanism is neatly illustrated by a famous quasi-experiment that showed that men washed their hands more often in New York subway toilets in the presence of other people than when alone. Against this background, the following two radical proposals seem to me worth pondering about. In Sweden and Norway, individual citizens are entitled to know the gross income of any fellow taxpayer — a right whose implementation is greatly facilitated by the internet. As a result, despite the high tax rates, tax compliance is higher than elsewhere and taxation less resented. Why? First, you comply more because you know that your neighbour is (or at least could be) watching you. Second, you resent it less because you know that others are likely to have yielded to the same pressure to comply. Good idea, it seems to me. More radical still is John Stuart Mill’s idea that the vote should be public, so as to help citizens being guided, when casting their vote, not by their private interests, but by a conception of the common good that they should be prepared to defend publicly. An attractive idea too, but admittedly one whose implementation could be too easily sabotaged by the possibility it offers to buy votes.

Public decision-making

Finally — and here and now most prominently — there is the transparency of public authorities for the citizens, i.e. the public access to information about what public officials do and earn, about the decisions they take and the impact of these decisions. In the week in which the conference was held, the editorial of Brussels’s Dutch-language weekly Bruzz was titled “Transparantie”, and concluded with a quote from Cumuleo, a non-profit that tracks the number of mandates, paid or unpaid, that public officers combine: “It is only if politicians feel watched that they will behave in an ethical and responsible way.” Two centuries earlier, Jeremy Bentham (as quoted by Emmanuel Alloa) said essentially the same: “The eye of the public makes the statesman virtuous.”

Transparency in this sense refers in part to what politicians earn. In Brussels, this aspect was particularly salient. The revelation of a substantial income derived from being on the board of a non-profit in charge of the homeless led to the resignation of Brussels’s mayor Yvan Mayeur in June 2017. Whatever one may think about the wisdom of imposing narrow limits on the number of functions that can be held simultaneously by public officials, such transparency is certainly healthy. But there is arguably something unfair about imposing it only on politicians (whether in power or not), and also therefore something counterproductive as regards the quality of the political personnel, in so far as it shrinks the pool of potential recruits. The Scandinavian

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2 “Pas wanneer politici zich gesurveilleerd voelen, zullen ze zich ethisch en verantwoordelijk gedragen” (Steven Van Garsse, “Transparantie”, Bruzz, 6/12/2017, p.5).
transparency rule mentioned above would go some way towards correcting this asymmetry.

More important than the transparency of what politicians earn is the transparency of what they decide, how they decide it, why they decide it and what the consequences are. In a democracy that functions properly, those who take decisions on behalf of the citizens are accountable to the citizens. They must justify what they decide and do by reference to the general interest, including fairness among all concerned. But the pressure to justify applies only to decisions that are visible in a sufficiently precise, accurate, cheap and intelligible way. No accountability without public decisions — whether standard legislation or governmental decrees — being given adequate publicity.

It is not only the content of the decisions, but also the decision process that must be sufficiently transparent. This means, for example, that the legislative assemblies’ debates and votes must be public, and that the list of lobbies gaining access to the legislators must be publicized. But it does not mean that the meetings of executives or the negotiations for their formation should be recorded, let alone broadcast life, as Beppe Grillo once claimed they should. Once the spotlight is switched on, the real site of decision-making moves elsewhere. And there are also certain domains — say, the preparation of a currency devaluation or anti-terrorism — in which publicity would be badly counterproductive if immediate, while remaining imperative ex post.

More important still, but trickier, is transparency about the consequences of the decisions and policies. This is important, because decisions are generally justified by the consequences they are alleged to produce. This is tricky in part because establishing a causal link between a policy and an alleged outcome is seldom easy, and in part because the assessment of consequences must rely on the choice of some index of success, such as GDP, the Gini coefficient of inequality, a poverty rate, an employment rate, the PISA educational achievement scores, a gender equality index, Amnesty International’s corruption index, etc. Such indices are needed to measure the impact and to make this measure meaningful by allowing comparisons across polities. But they unavoidably leave out many possible effects, good and bad, of the policies concerned. Without the measurements that such indices permit, nothing is really visible, but the transparency they create is narrowly restricted to the aspects they select.

An indispensable means for many legitimate aims

In this light, let us go back to the transparency-bashing evoked at the start. Is transparency neutral or biased? It is certainly multi-faceted and above all multi-directional. And as making everything visible would amount to making nothing visible, every instance of it is unavoidably selective. The choice of what is being made visible and intelligible is never neutral and should not be. In most case, it is explicitly motivated by the hope to affect behaviour. In some cases, this is perfectly fine. In others, far less so.
Is transparency reducing trust rather than increasing it? It is certainly destroying unwarranted trust and is meant to do so. Is warranted trust a collateral damage. Sometimes, no doubt. Exposing one case of political corruption may convince many that all politicians are corrupt even if only a few are. But the remedy will always be more, not less transparency.

Is transparency linked to surveillance and internalized self-control? Yes. So what? A certain dose of well targeted surveillance, both official and informal, can greatly help keep potentially bad boys on a straight path. And internalized self-control seems to me an essential part of “civilization” — at least following Elias and Pinker rather than Foucault.

Finally, is transparency an excuse for deregulation? I am sure it has been used as such. And sometimes as a good reason for loosening the role of regulation. If citizens, corporations and politicians can be made to behave properly simply because they are being watched, all the better. Dispensing with a costly and painful repressive apparatus is something to be cheered, not deplored. But transparency, in most cases, is by no means an alternative to regulation, but rather a contribution to efficient regulation. The disinfectant does not make other tools pointless, but enables them to work more smoothly.

From this meandering set of remarks, what can one conclude? Perhaps simply that transparency is not good in itself, and that it should not be maximized. Just as optimal democracy is not maximal democracy, optimal transparency is not maximal transparency. But transparency of the right sort and the right degree is an indispensable means for many legitimate aims.