



NORGES BANK

On transparency

A collection of articles based on four lectures given at a seminar arranged by Norges Bank and the Norwegian Academy of Science and Letters on 10 November 2009

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On transparency

A collection of articles based on four lectures given at a seminar arranged by Norges Bank and the Norwegian Academy of Science and Letters on 10 November 2009.

The articles were published in *Nytt Norsk Tidsskrift* 1–2/2010 (in Norwegian). Only minor revisions have been made in the English translation.

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Introduction

In 2008 Norges Bank and the Norwegian Academy of Science and Letters started a series of seminars on general topics of interest for a wide audience. The topic for the first seminar was “*On keeping promises*”. Deputy Governor Jan F. Qvigstad, Norges Bank, gave a talk about this subject from the perspective of a central bank and then there were two invited commentators who discussed the issue from the point of view of a legal expert, Endre Stavang, and a philosopher, Henrik Syse, respectively. The plenary debate after the presentations was summarized by a leading Norwegian academic, Francis Sejersted, and the proceedings from the seminar were published in *Nytt Norsk Tidsskrift* (in Norwegian) and translated to English and published in Norges Bank Occasional Paper No 39.

This booklet contains the proceedings from the second seminar in this series. The topic of the seminar was “*On transparency*” and the seminar was held on 10 November 2009. Deputy Governor Jan F. Qvigstad, Norges Bank, gave a talk “*On transparency*” from the central bank’s perspective and then there were three invited commentaries reflecting views from a professor of law, Inge Lorange Backer, a professor of political philosophy, Andreas Føllesdal, and a professor of political science, Bernt Aardal, respectively. The four articles were published in *Nytt Norsk Tidsskrift* 1–2/2010 together with a summary of the plenary debate at the seminar where Professor Aanund Hylland provides his reflections on the dilemma of transparency. The articles have been translated into English by Helle Snellingen.

Norges Bank is grateful to *Nytt Norsk Tidsskrift* for the permission to make an English translation of these articles and it is our hope that this booklet will provide food for thought for all readers and stimulate to discussions on a topic which attracts widespread interest in modern societies. Norges Bank is also happy to announce that we are in route in our preparations for the third seminar in this series. The topic for the 2010 seminar will be “*On making good decisions*”.

Oslo, October 2010

Øyvind Eitrheim
Bjarne Gulbrandsen

On transparency

Jan F. Qvigstad*

Introduction

Norges Bank's Executive Board has decided that the key policy rate now should be 1.5 per cent. If economic developments are broadly in line with projections, the appropriate key policy rate will be 2.75 per cent around the end of next year.

If I had made this statement ten years ago, it would have constituted a breach of confidentiality.¹ Norges Bank considered this to be highly sensitive information. Had I been deputy chairman of the US Federal Reserve Board twenty years ago, I would not even have been entitled to reveal the latest interest rate decision.² Today, this sounds rather odd. Transparency is now taken for granted among central banks and in other areas of society.

In London in 1780, the Bank of England was put to a test. In Parliament, Lord Gorden attempted to stop a bill to restore civil rights to Catholics.³ He drew support from large numbers. Rioting led to the destruction of several public buildings. When an attack was launched against the Bank of England, the building was secured like a fortress and withstood the onslaught, hence the phrase "as safe as the Bank of England". Through the years, the phrase has been simplified into "as safe as the bank". As banks and central banks store gold and money in their vaults, their edifices have always been solid, protected by thick walls. In a figurative sense, it might be said that a safe and credible national monetary value relied for a long time on thick central bank walls insulating its internal workings from the general public.

* Jan F. Qvigstad is Deputy Governor of Norges Bank. Ida Wolden Bache, Amund Holmsen, Marie Norum Lerbak and Øistein Røisland provided valuable assistance in preparing this speech. I would also like to thank Helle Snellingen for the excellent translation of the Norwegian text into English.

¹ The duty of confidentiality for Norges Bank employees is laid down in Section 12 of the Norges Bank Act. Violation of the duty of confidentiality is punishable under the General Civil Penal Code: "Any person who willfully or through gross negligence violates a duty of secrecy which in accordance with any statutory provision or valid directive is a consequence of his service or work for any state or municipal body shall be liable to fines or imprisonment for a term not exceeding six months" (Section 121, first paragraph of the General Civil Penal Code).

² In 1975, David R. Merrill, a law student, instigated legal proceedings against the Federal Open Market Committee (FOMC) in the US, charging that the FOMC violated the Freedom of Information Act by deferring public disclosure of its interest rate decision by 90 days. The case was eventually heard by the Supreme Court. The Supreme Court ruled that the Federal Reserve could continue its practice if it could provide an adequate explanation showing that immediate disclosure would significantly harm the Government's monetary functions or commercial interests. The Supreme Court left the assessment of this explanation to the district court. The district court concluded that it lacked the expertise necessary to substitute its judgment for that of the FOMC and the Federal Reserve did not begin to release its monetary policy decisions on the same day until 1994. See Marvin Goodfriend (1986): "Monetary mystique: secrecy and central banking", in *Journal of Monetary Economics*, 17, no. 1, pp. 63–92.

³ The bill also enabled Catholics to serve in the British army. British military forces were involved in conflicts in many countries at the time and needed more manpower. See A. Andréadès (1966): *History of the Bank of England 1640–1903*, 4th edition, Frank Cass & co. Ltd.

Until our time, central banks have been closed, both physically and figuratively. Central banks were shrouded in an aura of mystique, which they probably had a hand in perpetuating. Central bank governors worldwide refrained from saying too much, and what they did say often sounded cryptic.

In Norway, monetary policy was probably also perceived by many as something mysterious and remote. In the Festschrift for former Norges Bank Governor Hermod Skånland, Professor Preben Munthe writes the following: “*There is a tradition that expects central bank governors to be parsimonious with words. This built up the aura that should surround a man in that position. He possessed knowledge about the secret black box – monetary policy with a capital M – and how it functioned. Without asking others, he changed the discount rate and thereby intervened in the economy with authority and deep insight. On seldom occasions did he step down from his cloud of wisdom to impart life’s economic truths to a gaping public.*”⁴

A change in views and practices relating to transparency first occurred in recent years, both in Norway and other countries.⁵ It can safely be said that the change has been swift and radical. Today, most central banks are open about (i) the objective of monetary policy, (ii) its strategy for reaching the objective and (iii) the background for and the process behind interest rate decisions.

Norges Bank is no exception in this respect. In some areas, Norges Bank has gone further than others. For example, Norges Bank is one of the few central banks in the world that publishes forecasts of its own interest rate decisions.⁶

What then can explain this tendency towards greater transparency? I would highlight two main reasons. First, there has been a general trend in society towards greater transparency. Second, economic thinking has changed considerably. Simplifying somewhat, the former view was that monetary policy operated effectively by *surprising* economic agents. Today, economic theory posits that monetary policy works best if it is *predictable*.

I will come back to the economic theory, but allow me to start by some changes in society at large.

Transparency of economic policy

The economic crisis in the 1930s shattered confidence in free market forces. Markets had to be controlled. The British economist John Maynard Keynes was working on ways of regulating

⁴ Preben Munthe (1994): “Økonomen (The Economist)” in Jan. F Qvigstad, Sigbjørn Atle Berg and Kjell Storvik (eds.): *Stabilitet og langsiktighet: festschrift til Hermod Skånland* (Stability and a long-term perspective: Festschrift for Hermod Skånland), Aschehoug, p. 73.

⁵ See for example Alan S. Blinder, Michael Ehrmann, Marcel Fratzscher, Jakob De Haan and David-Jan Jansen (2008): “Central Bank Communication and Monetary Policy: A Survey of Theory and Evidence”, in *Journal of Economic Literature*, 46, no. 4, pp. 910–945 and Petra M. Geraats (2002): “Central Bank Transparency”, in *The Economic Journal*, 112 (November), pp. F532-F556.

⁶ See for example *Financial Times* (Ralph Atkins), 2 March 2007, p.11: “Central bankers eye Norway’s clarity on rates” and Michael Woodford (2007): “The Case for Forecast Targeting as a Monetary Policy Strategy”, in *Journal of Economic Perspectives*, 21, no. 4, pp. 3–24.

and improving markets. Prominent Norwegian economists, with Ragnar Frisch at the fore, went even further. They advocated that the market economy must be replaced by a planned economy. Ambitions were high. One could almost say that transparency, in carefully selected portions, was a tactical tool.⁷ It reached a head in 1973 when a commission led by Hermod Skånland proposed the establishment of an incomes-policy council that was to decide the limits for wage growth in Norway.⁸

But the proposal was not in tune with the new views which were already taking root in society. The council was never established. Domestic and international developments in the 1970s weakened the conviction that the economy could be fine-tuned. While market failure was the main concern earlier, focus now shifted to *regulatory failure*. The political pendulum swung away from government control and towards market liberalisation.⁹ When decision-making was to be decentralised, it was important that the decision-makers acted in line with the overriding policy objectives. New transparency and disclosure requirements were designed to this end. The requirements were largely set out in the Public Administration Act of 1967 and the Freedom of Information Act of 1970.

Today, transparency and disclosure requirements also apply to Norwegian enterprises, particularly to listed companies.¹⁰ The legislation is to ensure that all shareholders receive adequate, correct and timely information from the company. Companies must be open and assure equal treatment of all owners. Well-functioning equity markets rely on confidence that everyone has access to the same information about the company.

Transparency is natural in a democracy

Transparency is natural in a democracy and is important to ensure accountability among decision-makers. The Danish Nobel laureate in physics Niels Bohr supposedly once stated that “*The best weapon of a dictatorship is secrecy, but the best weapon of a democracy should be the weapon of openness*”.

Yesterday was the twentieth anniversary of the fall of the Berlin Wall. This event has become a symbol of the fall of the iron curtain. We recall from those times the Russian word *glasnost*, which means openness. Mikhail Gorbachev sought to modernise the Soviet Union and used *glasnost* as a means of reducing corruption and abuse of power. In western democracies, the

⁷ In 1959, Petter Jacob Bjerve, then director general of Statistics Norway, wrote that “Apparently, the question of whether national budgets should be published involved an optimum problem: considering both advantages and disadvantages of publishing, any cabinet will probably decide what to publish so as to achieve best possible results of its policy, according to the social preferences of the cabinet.” See Petter Jacob Bjerve (1959): *Planning in Norway 1947–1956*, North-Holland Publishing Company, p. 352.

⁸ See NOU (Official Norwegian Report) 1973:36 *Om prisproblemene (On price problems)*.

⁹ For an account of economic policy in Norway in the twentieth century, see Tore Jørgen Hanisch, Espen Søylen and Gunhild J. Ecklund (1999): *Norsk økonomisk politikk i det 20. århundre. Verdivalg i en åpen økonomi* (Economic policy in Norway in the 20th century. Ethics in an open economy), Høyskoleforlaget.

¹⁰ See e.g., chapter 5 in the Norwegian Act on Securities Trading.

term *glasnost* took on a broader meaning, and was associated with *détente* between East and West in the 1980s.¹¹

As mentioned, the shift towards a more decentralised economy both in Norway and abroad reflected the failure of centralised planning. Monetary policy is an important component of the economic policy framework.¹² In my lecture here last year¹³, I noted that it can be demanding for the political authorities to ensure price stability because *low* interest rates are often more popular than *high* interest rates. An *appropriate* interest rate may therefore be demanding to set in government corridors.¹⁴ Most government authorities in democratic countries have solved this problem by delegating interest rate setting to an independent central bank.

But how can the conduct of monetary policy, which has such far-reaching consequences for so many, be delegated in a democratic country? How is one to ensure that decisions are in line with the interests of society? These questions become more relevant, the more room there is for judgement in interest rate setting.

When the operational objective was a fixed exchange rate, the room for judgment was very limited. Norges Bank's task was to maintain a fixed krone exchange rate. Monetary policy was more or less on "autopilot". In a narrow sense, this was a very open policy. The public could at all times observe the krone exchange rate and monitor that the Bank was performing its duty. Many of you perhaps remember the era when a dollar cost 7 kroner and 14 øre.¹⁵ On the basis of purely democratic considerations, there was little need for transparency about the *assessments* underlying the use of instruments.

The exchange rate was fixed, but occasionally the target value was adjusted. At those times the cards were held close to the breast. On occasion it was even necessary to break the eighth commandment (that is to lie). Around the end of 1986, journalists in the newspaper *Nordlys* were asked to take a retrospective look at the past year. One of them recalled an interview with the state secretary of the Ministry of Finance, Bjørn Skogstad Aamo. In the interview Skogstad Aamo flatly denied rumours of a krone devaluation. But before the interview was printed, the news agency NTB reported that the krone had been devalued by 12 per cent.¹⁶ Perhaps the

¹¹ In Norway, the concept is also associated with Jahn Teigen's contribution "Glasnost" in the national final of the Eurovision Song Contest 1988.

¹² During the financial crisis last winter the Government wrote: "*Monetary policy is the first line of defence in countering a setback in the economy*". See Report No. 37 (2008–09) to the Storting (Norwegian parliament) "Om endringer i statsbudsjettet 2009 med tiltak for arbeid (On changes in the 2009 Budget and labour measures), Ministry of Finance, p. 6.

¹³ The lecture entitled "On keeping promises", remarks by Endre Stavang and Henrik Syse and Francis Sejersted's summary of the debate have been published in *Norges Bank Occasional Papers*, no. 39, 2009.

¹⁴ This is discussed by Finn Kydland who won the 2004 Nobel Prize in Economics with Edward Prescott for their analysis of the problems of economic planning. See Finn Kydland and Edward Prescott (1977): "Rules rather than discretion: The inconsistency of optimal plans", in *Journal of Political Economy*, 85, no. 3, pp. 473–491.

¹⁵ The central value of the Norwegian Krone against the US dollar was 7.14 from 18 September 1949 to 15 August 1971. See addendum, prepared by Ragna Alstadheim, to Jan F. Qvigstad and Arent Skjæveland (1994): "Valutakursregimer – historiske erfaringer og fremtidige utfordringer (Exchange rate regimes – historical experiences and future challenges)" in Jan. F. Qvigstad, Sigbjørn Atle Berg and Kjell Storvik (eds.): *Stabilitet og langsiktighet. Festskrift til Hermod Skånland* (Stability and a long-term perspective: Festschrift for Hermod Skånland), Aschehoug.

¹⁶ This story is reported in the article "Borten i fokus og bestillingsverk (Borten in focus and commissioned works)", *Aftenposten*, 3 January 1987.

journalist was disappointed but Skogstad Aamo was not criticised for breaking the eighth commandment.

Over the last decade, the objective of monetary policy has not been a fixed krone exchange rate, but price stability through low and stable inflation.¹⁷ According to the monetary policy regulation the objective is inflation of close to 2.5 per cent over time. But how long is *over time*? And what is *close to 2.5 per cent*? With these formulations, it is no longer that easy to evaluate monetary policy. There are several reasons for this. First, it takes up to one to two years for a change in the interest rate to feed through to inflation. Second, inflation is not only influenced by the interest rate. For example, precipitation levels can have a strong impact on electricity prices. Third, we set interest rates also with the aim of promoting stability in output and employment. If the economy is exposed to severe shocks, we may at times seek to bring inflation rapidly back to target, while under other conditions we deliberately choose a longer horizon.

An evaluation of monetary policy cannot therefore be based on the latest figures for inflation. Instead, one must check whether average inflation over a somewhat longer period has been close to 2.5 per cent. Measuring performance is possible, but can only be done with a time lag.¹⁸

The combination of (i) delegated authority to conduct policy, (ii) room for discretion and (iii) difficulties in the day-to-day monitoring of results imply a risk of a democratic deficit. Transparency and disclosure are the institutional solution to this problem. Even if a central bank is independent in the conduct of monetary policy, it must be accountable to government. We must be measured on our performance, but also on our assessments and decisions. This requires transparency. The need for transparency therefore depends on the monetary policy regime. Internationally, there is also a tendency for inflation-targeting central banks to be more transparent than countries with a fixed exchange rate regime.¹⁹

Transparency about Norges Bank's activity is required by law. When the Storting (Norwegian parliament) amended §100 on the freedom of expression in the Constitution, the freedom of information principle was enshrined in the Constitution.²⁰ This was the first time this article had been amended since 1814. The legislative amendments were partly based on the proposals of the Freedom of Expression Commission, which was headed by Professor Francis Sejersted.²¹ In

¹⁷ See for example Report No. 29 (2000–2001) to the Storting from the Ministry of Finance and the Regulation on Monetary Policy from 29 March 2001.

¹⁸ Lars E. O. Svensson, Deputy Governor at Sveriges Riksbank, has argued that it is possible to evaluate monetary policy actions *ex ante*. See Lars E. O. Svensson (2009): "Policy Expectations and Policy Evaluations: The Role of Transparency and Communication", address at the conference "Tio år med självständig Riksbank (Ten years with an independent Riksbank)" 11 September 2009.

¹⁹ See Nergiz Dincer and Barry Eichengreen (2009): "Central bank transparency: causes, consequences and updates", NBER Working Paper 14791 and Petra M. Geraats (2009): "Trends in Monetary Policy Transparency", in *International Finance*, 12, no. 2, pp. 235–268.

²⁰ The new legal text establishes the so-called principle of free access to public records which provides public access to central and local government documents and the right to be present at sittings of the courts and of administrative bodies elected by the people.

²¹ NOU (Official Norwegian Report) 1999: 27 "Ytringsfrihed bør finde Sted (There shall be freedom of expression)". Sejersted was awarded the Ossietzky Prize for his contribution to freedom of expression in 2008.

addition, Norges Bank is subject to a transparency requirement in the Freedom of Information Act and the Act on Norges Bank and the Monetary System.²²

In some areas, we are even more transparent than what is required by law. Norges Bank's *Monetary Policy Report* includes a thorough account of our assessments of economic developments and interest rate setting. As mentioned in the introduction, we even publish a forecast for our future interest rate decisions. After each monetary policy meeting, a press conference is held where we explain the interest rate decision and answer questions from journalists. The press conference is webcast live and usually broadcast on TV. People can subscribe to receive an SMS message about interest rate decisions, and Norges Bank was apparently the first central bank to publish its interest rate decisions on Twitter.

International developments have made it prestigious for central banks to be as open as possible. But transparency cannot be a goal in itself. Our responsibility is to conduct an effective monetary policy in line with the objectives laid down by the political authorities. Transparency beyond that necessary to ensure democratic accountability is a goal derived from the main goal of conducting an optimal monetary policy.

Modern economic theory argues in favour of transparency

I mentioned that the previous view was that monetary policy operated by surprising economic agents, while the prevailing view is that it works best by being predictable. According to modern economic theory, economic decisions are heavily influenced by *expectations*.²³ This has also become an important economic policy recognition. Today's key rate is important, but even more important is the expected key interest rate ahead. When the owner of a firm takes up a loan to build a new factory, the expected interest rate over the life of the loan is taken into account. When the key rate was reduced sharply in autumn last year, we sought to communicate that the interest rate would remain low for a period, and not be raised back to the former level already the following week or month.

According to theory monetary policy to a large extent seeks to affect expectations. We believe that by being transparent about our own interest rate forecasts, it is easier to influence expectations. This enhances the effectiveness of monetary policy.

But the interest rate forecast is a forecast, and not a promise. The future is uncertain. Actual interest rate developments may therefore deviate from our forecasts. We try to be open about how we will react if new information implies a different interest rate path.

²² In the Norges Bank Act of 1985, Norges Bank is required to "inform the public of the assessments on which monetary policy decisions are based". In October 2009, a new government communications policy was laid down by the Ministry of Government Administration and Reform, promoting transparency as an important principle of good communication. The government's communication is required to be open, clear and accessible. The government is also required to ensure that relevant information reaches the relevant parties and that the information is adapted to the relevant target groups.

²³ See for example Michael Woodford (2005): "Central-Bank Communication and Policy Effectiveness", in *The Greenspan Era: Lessons for the Future*, Federal Reserve Bank of Kansas City, pp. 399–474.

Transparency about Norges Bank's reaction pattern is a necessary element in the interaction with fiscal policy. It is important that the government and the Storting know the central bank's response pattern when the size of government budgets is decided. It is also an advantage for the social partners take this into account.

Our view on transparency and good communication is inspired by Wim Duisenberg, the first President of the European Central Bank. His definition of transparency was that "*the external communication should reflect the internal deliberations*".²⁴

We have all experienced that memory is imperfect. The easiest approach is therefore to employ the same narrative everywhere. What we say in the Executive Board is also what we say to the Minister of Finance, at press conferences and in speeches. Earlier we asked ourselves: Are there any particular reasons to release this information? Now we ask ourselves whether there are any particular reasons *not* to be open. The Duisenberg principle is a practice guideline for us.

Some studies show that transparency about the monetary policy target helps anchor inflation expectations.²⁵ The more credible monetary policy is, the more effective the interest rate will be in stabilising output and employment.²⁶

Transparency provides good incentives. When we publish our analyses, we tend to make an even greater effort to ensure the quality of the analysis. Open external communication also places demands on our communication skills. I am certain that many teachers and lecturers would agree that teaching is not only a means of conveying knowledge to students, but also provides the lecturer with a deeper understanding of the subject. The same applies to central bankers. External communication of our analyses has certainly not reduced our competence as economists.

How transparent should the central bank be?

How open should we be? Maximum transparency about Norges Bank's decisions would imply filming the Executive Board's meetings and webcasting them live. In addition, we could perhaps have installed cameras and microphones in some of the offices and meeting rooms in Norges Bank where the analyses are conducted that form the background for the Executive Board's decisions. Perhaps I am old-fashioned, but I think that a "reality series" about Norges Bank would not be particularly entertaining and would not foster particularly good decision-making.

²⁴ Willem F. Duisenberg (2001): "The ECB's monetary policy strategy and the quantitative definition of price stability", Letter of Dr. W. F. Duisenberg, President of the ECB to the Chairperson of the Committee on Economic and Monetary Affairs, 13 December 2001.

²⁵ See for example Georgios Chortareas, David Stasavage and Gabriel Sterne (2002): "Monetary Policy Transparency, Inflation and the Sacrifice Ratio" in *International Journal of Finance & Economics*, 7, pp.141–155, and Nergiz Dincer and Barry Eichengreen (2009): "Central bank transparency: causes, consequences and updates", NBER Working Paper 14791.

²⁶ Openness about how the interest rate is set also seems to generate less volatility in financial markets at the time of monetary policy meetings, resulting in more stable market rates. See for example Richild Moessner and William R. Nelson (2008): "Central bank policy rate guidance and financial market functioning", in *International Journal of Central Banking*, 4, no. 4, pp. 193–226, and Amund Holmsen, Jan F. Qvigstad, Øistein Røisland and Kristin Solberg-Johansen (2008): "Communicating monetary policy intentions: The case of Norges Bank", Norges Bank Working Paper, 2008/20.

Maximum transparency is probably not optimal, but how far should we go? There is no absolute answer to this. In the following, I will discuss several considerations that must be taken into account.

Should we publish voting records and the minutes of the Executive Board's deliberations? Central banks have chosen different solutions. In Sweden, the central bank publishes the voting records and provides an extensive report with the views of members by name. The Bank of England publishes a similar report of the minutes, but members remain anonymous. Norges Bank does not publish a report of the minutes of the Executive Board's deliberations, but instead publishes a detailed account explaining the Executive Board's background for the interest rate decision. The interest rate decision is based on a strategy that is described in the *Monetary Policy Report*. The *Report* also presents the analyses underlying the strategy. The basis for interest rate decisions is thus available to the general public.

The difference in practices partly reflects the different character of the monetary policy committees in the three countries.²⁷ Sveriges Riksbank and the Bank of England have committees that are referred to as "individualistic committees". Each member is individually responsible for his/her vote, and the decision is normally decided by majority voting. In Norway, the Executive Board is more of a "collegial committee", where the members are unanimous in their decision.²⁸ The ECB's system is of the same type. One cannot have both a collegial committee and minutes with individual views.

If all members publicly explain their own views, communication may become unclear. Alan Blinder, former vice chairman of the Federal Reserve and now professor at Princeton University, argues that "*a central bank that speaks with a cacophony of voices may, in effect, have no voice at all*".²⁹

There is also another argument in favour of unanimous decisions. Central banks are important social institutions, which should not be too closely linked to individuals but have a public identity. The institution and its mandate should take precedence over the individuals who occupy positions for limited periods.³⁰

There is no formula for deciding which system is best. Each system has its strengths and weaknesses. Detailed meeting minutes ensure accountability among committee members. This may give rise to good incentives. On the other hand, such transparency may inhibit the actual discussion. Members may come to meetings with pre-drafted statements, impairing a constructive exchange of views.

²⁷ See Alan S. Blinder (2007): "Monetary policy by committee: Why and how?", in *European Journal of Political Economy*, 23, no. 1, pp. 106–127 and Alan S. Blinder (2008): "On the design of monetary policy committees", Norges Bank Working Paper, 2008/6.

²⁸ The Executive Board at Norges Bank consists of seven members, appointed by the King in Council. The Governor and Deputy Governor serve as chairman and deputy chairman, respectively, of the Executive Board. They are appointed to full-time positions for a term of six years. The other five members are appointed for four-year terms and are not employees of Norges Bank.

²⁹ Alan S. Blinder (2007): "Monetary policy by committee: Why and how?", in *European Journal of Political Economy*, 23, no. 1, p. 114.

³⁰ See for example Otmar Issing (2005): "Communication, Transparency, Accountability: Monetary Policy in the Twenty-First Century", in *Federal Reserve Bank of St. Louis Review*, 87, no. 2, p.73.

Researchers have compared tapes of the Fed's FOMC meetings before and after it was decided that the minutes should be published.³¹ The tapes show that the form of discussion changed. During the period following the decision to publish the minutes, there was a greater tendency for members to read prepared statements.

Detailed minutes also entail a risk of moving the real discussion from the official meeting into closed rooms. In that case, a real increase in transparency has not been achieved. The US was aware of this risk and introduced legislation to prevent such informal meetings. They called this law the "Government in the Sunshine Act"³², where the name symbolises that important decisions should be taken in the public light. The law defines a meeting as a consultation between a quorum of committee members. Stretching it somewhat, this means that if some members are chatting in the corridor, they must stop talking about the interest rate and start talking about the weather if the group grows to a certain size.

The notion that increased transparency can hamper a free exchange of views is not new. The delegates to the Constitutional Convention in Philadelphia in 1787 decided to veil the deliberations in secrecy. According to the Virginia delegate James Madison, who later became the fourth US president, secrecy was crucial for succeeding in the work on the US Constitution. He argued that full disclosure would fuel reluctance among delegates to express their true opinions. Jon Elster has explored various aspects of transparency and constitutions in his research. He notes that even if secrecy can lead to a freer discussion, it can also lead to negotiations based on vested interests.³³ Threats and power struggles can be effective behind closed doors, but rarely tolerate public scrutiny.

The arguments that were used in Philadelphia can be found in the debate on public disclosure of government papers and cabinet deliberations. In a supreme court ruling from 1994, the first-voting judge Steinar Tjomsland writes: "*The possibility that governments should testify before the court (...) could inhibit free political exchange of information and debate (...)*".³⁴

If we today even know what Tjomsland wrote, it is because the Supreme Court's doors were opened in 1863. The law on transparent voting in the Supreme Court was adopted after a nearly fifty-year conflict between the Storting and the other two branches of government.³⁵ In 1821, Christian Magnus Falsen put forward a proposal for the public disclosure of voting records in the Supreme Court.³⁶ He argued that public disclosure was "*the most effective means of ensuring confidence and respect for any government authority is by awakening a noble pride among senior civil servants and hence instilling in them respect for the voice of the people*".³⁷ The

³¹ Ellen E. Meade and David Stasavage (2008): "Publicity of debate and the incentive to dissent: evidence from the US Federal Reserve", in *The Economic Journal*, 118, pp. 695–717.

³² Government in the Sunshine Act (5 U.S.C. 552b).

³³ See Jon Elster (1995): "Forces and Mechanisms in the Constitution-Making Process", in *Duke Law Journal*, 45, no. 2, pp. 364–396.

³⁴ Norsk Retstidende (Norwegian journal of law) 1994–1036, p. 1044.

³⁵ The Storting had adopted a Bill on transparency in the voting process four times since 1818, but assent to the Bill was refused each time.

³⁶ Guthorm Immanuel Hallager (1935): *Norges høiesteret: 1815–1915* (The Supreme Court of Norway: 1815–1915), 1 vol., H. Aschehoug & Co, p. 131.

³⁷ See parliamentary deliberations for August 1821, Part 5, Addendum, p. 119.

Supreme Court had a different view and argued that it could undermine confidence in the Court if the public discovered doubt or a lack of competence among judges.³⁸ Today, there seems to be little controversy surrounding the disclosure of voting records in the Supreme Court.^{39,40}

Norges Bank is not only responsible for securing price stability, but also has a duty to promote stability in the banking system and financial markets. In principle, the same transparency considerations apply here, but with certain exceptions.⁴¹

Many of us were surprised and experienced associations with the interwar years when we saw television footage of depositors queuing at the doors of the crisis-hit British bank Northern Rock in 2007. In a situation where a bank's solvency comes into doubt, depositors may rush to withdraw their cash. It is easy to conceive of a situation where a bank that is in fact solid, but has payment problems, might collapse if the authorities expose the problems to the general public. Moreover, banks may take excessive risks if they know the authorities will come to their rescue. It can be argued that in this case it may be appropriate for the central bank to engage in what is referred to in diplomatic parlance as "constructive ambiguity".^{42, 43}

³⁸ The Supreme Court argued that if the citizens discern "svagheden af den menneskelige kundskab og viden netop der, hvor han ventede at finde vished da er det meget at befrygte, at saadan erfaring heller vil nedstemme den agtelse, han forhen følte for den samme domstole, saalænge han blot kjendte de for ham forstaaelige resultater af stemmegivningen og deliberationerne. (weaknesses in human knowledge and expertise notably where they expect to find certitude, there is a risk that such an experience will diminish the high esteem in which the court was previously held before their insight was confined to the comprehensible outcome of the voting and deliberations.)". See parliamentary deliberations for August 1821, Part 5, Addendum, p. 128.

³⁹ Professor Peter Lødrup wrote in 1998: "Den offentlige voteringen er etter nåtidens rettsoppfatning en selvfølge, og det må konstateres at Høyesteretts motstand mot den var et feilsyn. (Under today's perception of the law, public access to voting records is a matter of course, and it must be recognised that the Supreme Court's opposition was misguided.)" See Peter Lødrup (1998): "Høyesterett 1814–1996, noen historiske glimt (Norway's Supreme Court 1814–1996 – some historical glimpses)", in Norges Høyesterett (Norway's Supreme Court), Stephan Tschudi-Madsen (ed.), Aschehoug, pp. 29–31.

⁴⁰ We find similar arguments in the debate between Deputy Governor at the Bank of England, Sir Ernest Harvey, and T. E. Gregory and J. M. Keynes, members of the so-called Macmillan-committee. The following excerpts from the committee's report in 1931 is reported in Otmar Issing (2005): "Communication, Transparency, Accountability: Monetary Policy in the Twenty-First Century", in *Federal Reserve Bank of St. Louis Review*, 87, no. 2, p. 73: "Committee member Gregory: 'I should like to ask you, Sir Ernest, whether you have ever considered the possibility of the Bank issuing an Annual Report on the lines of the Annual Report of the Federal Reserve Board, for instance?' Deputy Governor Harvey: 'I confess I am sometimes nervous at the thought of publication unless it is historical. The question is whether, when it is merely historical it is of any particular value, or whether from the fact that it is issued from the central bank undue importance may be attributed to certain things that are stated, more importance than perhaps they merit...' Committee member Keynes: 'Arising from Professor Gregory's questions, is it a practice of the Bank of England never to explain what its policy is?' Harvey: 'Well, I think it has been our practice to leave our actions to explain our policy.' Keynes: 'Or the reasons for its policy?' Harvey: 'It is a dangerous thing to start to give reasons.' Keynes: 'Or to defend itself against criticism?' Harvey: 'As regards criticism, I am afraid, though the Committee may not all agree, we do not admit there is need for defence, to defend ourselves is somewhat akin to a lady starting to defend her virtue.'"

⁴¹ For a discussion of central bank transparency and financial stability, see for example Jakob De Haan and Sander Oosterloo (2006): "Transparency and accountability of central banks in their role of financial stability supervisor in OECD countries", in *European Journal of Law and Economics*, 22, no. 3, pp. 255–271.

⁴² See E. Gerald Corrigan (1990): "Future Priorities in Banking and Finance", Remarks given before the 62nd Annual Mid-Winter Meeting of the New York State Bankers' Association, 25 January 1990. Published in *Federal Reserve Bank of New York Quarterly Review/Winter 1989–90*, p.7. See also p. 36 in "Norske finansmarkeder – pengepolitikk og finansiell stabilitet (Norwegian financial markets – monetary policy and financial stability)", Norges Bank's Occasional Papers, no. 34 (2004).

⁴³ The concept of "constructive ambiguity" refers to the deliberate use of ambiguous language in order to advance a political purpose. The concept has been particularly associated with Henry Kissinger, said to be the foremost exponent of constructive ambiguity as a negotiating tactic.

Striking a balance between transparency and financial stability can be difficult, as former Prime Minister Abraham Berge discovered. During the banking crisis in 1923, Berge provided in secrecy a deposit of NOK 25 million to support Norway's fifth largest bank, Handelsbanken. The following year, Berge convinced the Storting to inject more capital into Handelsbanken, but failed to inform the Storting of the previous support. The secret deposit came to light after the government stepped down in 1924. The criticism that followed culminated in 1926 in an impeachment case against Berge and six of his ministers. A majority of the judges were of the opinion that the support provided in 1923 was punishable by law, but they were nevertheless acquitted on the ground of the statute of limitations.^{44, 45}

The art of communication

Public disclosure of information is necessary, but not sufficient for transparency. Communication is also important, but is a difficult art.

Good communication should satisfy three criteria.⁴⁶ First, the communication should be *clear*. The information should not be subject to misinterpretation and should not be so imprecise that it is not given weight. Central banks have not always been associated with clear and good communication. Alan Greenspan expressed this in the following statement: “*Since becoming a central banker, I have learned to mumble with great incoherence. If I turn out to be particularly clear, you’ve probably misunderstood what I have said.*”⁴⁷

Second, communication should be *effective*. It should not be time-consuming and demanding for the recipient to find and interpret the relevant information. It must be adapted to the target group.^{48, 49}

The third criterion for good communication is that it must be *honest*. I referred earlier to the principle that the external communication should reflect the internal deliberations. It is an honest matter to communicate that decisions are difficult and often made on an uncertain basis.

⁴⁴ See Riksrettstidende 1926/1927.

⁴⁵ On 7 November 2008, Bloomberg LP (on behalf of Bloomberg News) filed a federal lawsuit against the Federal Reserve for violation of the Freedom of Information Act. The news agency had called on the central bank to identify the US banks funded by its emergency lending because the taxpayers should be aware of the risks involved in these investments. The Fed refused to name the borrowers, disclose the amounts of loans or the assets banks provided as collateral, arguing that doing so might “set off a run by depositors and unsettle shareholders”. See article “Fed makes taxpayers ‘involuntary investors’ in banks, suit says”, Bloomberg, 15 April 2009.

⁴⁶ See for example Bernhard Winkler (2000): “Which kind of transparency? On the need for clarity in monetary policy-making”, European Central Bank Working Paper No. 26.

⁴⁷ As cited in Petra M. Geraats (2007): “The Mystique of Central Bank Speak”, in *International Journal of Central Banking*, March 2007, p. 37.

⁴⁸ Effective communication to market participants is particularly important. As economists with a university background, we often feel the need to build up a series of arguments and weigh various considerations before arriving at a conclusion. But this can sometimes render communication less effective. Financial market participants prefer to be presented with the conclusion first so that they can respond to it quickly.

⁴⁹ As part of its project to disseminate information about the central bank to various target groups, the Reserve Bank of India has made several comic strips for the benefit of school children. See <http://www.rbi.org.in/financialeducation/Home.aspx>.

But it is just as important – and more challenging – to explain *why* it is difficult and which factors have been considered and given weight.

Before the rebuilding of Bislett Stadium in 2004, the organisation Bislett Alliansen was to decide where the Bislett Games should be moved. The choice stood between Drammen and Bergen. They chose Bergen. The head of the organisation said to the Norwegian news agency NTB: *“I have participated for almost 20 years, and this was the most difficult decision I have been involved in. At the end of the day, the decision was made on the basis of an overall assessment.”*⁵⁰ The way this was reported by the news agency did not make it easy to understand the actual background for the assessment.⁵¹

I remember listening to this report on the radio while driving. It made me think about the formulations in our own press releases. To be honest, they were not much clearer. I saw room for improvement, and we have subsequently made efforts to improve the communication of our assessments. We have nevertheless experienced that it can be demanding to communicate why we arrive at one conclusion and not another.

Can we become more transparent?

Views on transparency and communication are constantly changing. As mentioned, Norges Bank has become more transparent in recent years. But is there room for even more transparency?

I readily admit that we were uncertain before taking new steps. When we first start publishing information, it is difficult to retreat. But the experience so far has been positive.⁵² In some areas, therefore, I believe there is room for increased transparency. Some observers have argued that Norges Bank and other central banks should provide information to the public about the models we use and how we use them.⁵³ I agree with this. It is difficult from a pedagogical viewpoint to explain how the models are used as a basis for economic policy. Because models are rough simplifications of reality, we must exercise considerable judgment when we use them. This is not always easy to document and explain. But, even though it may be difficult, it is not impossible and our aim is to improve in this area.

⁵⁰ See article “Bergen fikk Bislett Games 2004 (The 2004 Bislett Games goes to Bergen)”, NTB, 6 October 2003.

⁵¹ A more detailed explanation was probably available but was not included in the media coverage.

⁵² My predecessor, Jarle Berge, delivered a speech a few years ago where he presented a mathematical equation that illustrated the assessments underlying our interest rate setting (see “Interest Rate Projections in Theory and Practice”, speech at Sanderstolen, 27 January 2007). I remember that we were uncertain about the reactions to this. My Swedish colleague Lars Svensson had recommended that such a target function be published in the interest of transparency, but no central bank had ever done this before. There was no first-page news of the type “this equation determines the interest rate”. Our “bold step” proved to be fairly undramatic. It would seem that this is really the rule rather than the exception every time we have moved towards greater transparency. Berge’s lecture was included in the curriculum of economics Professor Michael Woodford of Columbia University in New York.

⁵³ Norges Bank Watch 2008 writes: “Norges Bank should facilitate a more open discussion regarding the empirical performance of their (mechanical) forecasting models by communicating the role played by the “judgment component” more clearly. This may encourage exploitation of the cumulative learning process in the scientific community as a whole, by which existing empirical models are improved or (eventually) overtaken by new and better ones.” See Steinar Juel, Krisztina Molnar and Knut Røed (2008) “An Independent Review of Monetary Policymaking in Norway”, Centre for Monetary Economics BI, p. 44.

The management of the Government Pension Fund – Global is another activity of Norges Bank where transparency is important. Among the world's sovereign pension funds, Norway's is one of the most transparent. International organisations refer to it as an example of best practice. In Norway, the Fund has been both applauded and criticised for its communication. The Fund's annual report was one among six others nominated for the Farmand award for best annual report and website. However, the same report was also strongly criticised by the Norwegian journalist Per Egil Hegge for its impenetrable language.⁵⁴

We are working towards improving our communication of the Fund's activity. The Fund's ultimate owners are the Norwegian people and we must improve the communication of the main management principles to that target group. We are making continuous efforts to improve our quarterly reports and our annual report. We are also working to improve the Fund's website, which will include a continuous update of the Fund's value.

Conclusion

Transparency is important. Transparency contributes to strengthening confidence, and confidence is crucial for an effective monetary policy – in normal times, but perhaps particularly in times of crisis. According to Lars Weisæth and Ragnar Kjeserud, two authorities in the field of crisis psychiatry, to be successful in managing a crisis, the responsible authorities must be perceived as competent and at the same time have a reputation for openness and honesty.⁵⁵

I started this lecture by describing how the Bank of England managed the crisis during the 1780 Gordon riots. A military defence was necessary to safeguard society's values. The event gave rise to the expression “as safe as the Bank of England” and later “as safe as the bank”.

We have experienced a deep financial crisis. We are now hopeful that it is coming to an end. The reputation of private banks has not been left untarnished. Banks' own behaviour was one of the causes of the crisis. The very depth of the banking crisis is attributable to a collapse of trust among banks. They no longer considered their fellow banks as “safe”. Financial markets stopped functioning. The expression “as safe as the bank” became somewhat hollowed.

We have seen that the most unexpected places, such as small coastal towns and the northern region of Norway, have been hard-hit by the financial crisis. The crisis has also left its mark on our language. In a tribute published in the newspaper Troms Folkeblad on the occasion of the 50th birthday of the manager of Troms football league, he is described as “as safe as Norges Bank” in his handling of protests and violations.⁵⁶ With that, the expression was brought back

⁵⁴ Per Egil Hegge noted in particular the following sentence in the annual report: “The expected tracking error increased more than the absolute market volatility, primarily reflecting a closer correlation between returns from the different investment strategies.” See Hegge's column in *Aftenposten*, 16 April 2009.

⁵⁵ Lars Weisæth and Ragnar Kjeserud (2007): *Ledelse ved kriser: en praktisk veileder* (Management during crises: a practical guide), Gyldendal Akademisk, p. 71 (Norwegian only).

⁵⁶ See article “Mr. Fotballkretsen fyller 50! (Mr. Football League turns 50)”, *Troms Folkeblad*, 6 October 2009 (Norwegian only).

to its original source. And perhaps that means that Norges Bank's reputation has survived the financial crisis – at least in Troms!

When the Bank of England came under attack, many citizens had already volunteered as soldiers to defend the bank. They were outnumbered, but the very sight of them probably demoralised the mobs and led to their defeat.

Expectations and confidence were as important then as now. But there is a significant difference – that can summarise today's lecture. While central banks at that time upheld the value of money with walls and thundering muskets, today the value of money is safeguarded by confidence rooted in disclosure and transparency.

Transparency – reflections from a lawyer

*Inge Lorange Backer**

A lawyer's contribution to any discussion often revolves around the consequences of an infringement of norms, in this case the consequences of either too little or too much transparency. However, in this article I will restrict myself to the issue of transparency and its scope. My perspective primarily relates to the legal system and legal institutions, but I will also include a few comments on transparency in public administration, based on my lengthy experience from government ministries.

Transparency may mean different things, be implemented more or less consistently, and perform different functions. Transparency may confer a right to monitor what is happening, or grant access to documents that underpin information, assessments or events. Transparency may apply to everyone, or only to parties who are specifically affected. Transparency may serve as an instrument of an organisation's strategy for achieving its aims, or be a valuable right on its own.

In the case of decisions intended to cause many members of a society to adapt their behaviour, transparency about those decisions is a necessity. Transparency about reasons is not as inevitable. Nor is transparency about purely informational matters inevitable, particularly if the person possessing the information has incurred costs in obtaining it, or wishes to exploit it for his or her own purposes. Transparency about information can nevertheless be justified, for example on the grounds that sharing information will have a democratising effect and help to increase social welfare.

Even though transparency is a strong principle, many questions can be asked about its scope when it is to be implemented in practice. Such questions are often best answered after reflecting on what functions the principle may have. Transparency may conflict with duties of confidentiality based on interests such as data protection, business secrets and the security of the realm. The balancing of competing interests may in the end be determined by value choices and available technology.

Transparency in the courts

Today, transparency is a fundamental value of the legal system, both in the administration of justice and in public administration. The principle of public disclosure in the courts traces its roots to Norway's ancient regional courts, and is now firmly anchored in human rights conventions. When we consider transparency with respect to someone specifically affected in a

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particular case, we realise that it is essential for fair proceedings to inform the individual of the charges or claims against him or her, and of the evidential and legal basis for them. Similar rules apply in administrative cases.

A judgment generally concerns only the parties to the case, in contrast to the central bank's general decisions on monetary policy. Nevertheless, the decisions of the Supreme Court are very often intended to have a general effect by setting a legal precedent which serves as a future norm. This is reflected, for example, in the view of the Supreme Court's functions expressed in the government budget and preparatory works of legislation: the Supreme Court is to support the consistency, clarity and development of the law, the latter function being more qualified than the first two as it involves interaction with the legislature.¹ However, even if the Supreme Court had developed an internal strategy for the development of the law in different areas, something which is highly unlikely in any form other than the discussions taking place during the Court's deliberations in individual cases, this strategy would not be announced publicly. The Supreme Court's contribution to the development of the law can only be identified through retrospective analysis, not through the visible implementation of a programme. When the Supreme Court raises the penalty level for a particular crime, tradition dictates that this is done gradually, and without explicitly declaring that each individual judgment is merely one step towards the final goal (see, for example, Supreme Court Reports 1994, p. 1552, relating to an increase of the penalty level for rape.) The Director of Public Prosecutions, as Norway's highest prosecuting authority, may act differently. For example, he occasionally makes general statements to the effect that penalty levels should be changed, and follows up this in his submissions to the Supreme Court and his instructions to lower prosecuting authorities regarding the kinds of penalties they are to seek before the courts.

Transparency in the courts has traditionally served primarily to promote confidence in individual decisions, and thus in the work of the institution as a whole. With this objective in mind, the public has been granted the right to observe legal proceedings, including statements by parties and witnesses. However, let me continue where Deputy Governor Qvigstad left the discussion about public voting by the Supreme Court: about 150 years ago, the Supreme Court believed that transparency about reasons was unimportant. The ruling of the Court was to justify itself by appearing fair. Moreover, the opponents of public voting feared that judges might allow themselves to be affected by how their votes would be received externally, if voting were to be public. When the relevant legislation was introduced in 1863, some of these objections were addressed by permitting deliberations behind closed doors prior to public voting. (See Hallager 1915: 132–133, 350; Østlid 1955: 170–207; Michalsen 1997: 729–739; Langeland 2005: 369–373.) In practice, the real discussion takes place during the closed deliberations.

Today, a point of view is less likely than in the past to be accepted by virtue of authority or as something purely natural. The traditional jury system has come under pressure because juries do not provide open reasons for their decisions regarding the question of guilt in the most

¹ The more qualified formulation of the Supreme Court's role in the development of the law has been adopted gradually, and been worded differently at different times. (See, for example, Proposition to the Odelsting no. 51 (2004–2005), pp. 14 and 302–303, as well as Recommendation to the Odelsting no. 110 (2004–2005), p. 70, and Proposition no. 1 to the Storting (2009–2010), p. 55.)

serious criminal cases.² However, sometimes an unreasoned answer may be a better means of ensuring closure than a statement of reasons that reveals how much doubt there was about the conclusion.

If we acknowledge that the courts have a law-making function, we can see transparency about reasons as a means of compensating for the fact that the courts lack the democratic basis of legislators in the Storting (the Norwegian Parliament). Transparency about reasons invites debate and feedback, and may give the courts a better starting point for staking out or adjusting their course in future cases. It may seem obvious today that the courts should listen to society in this way, but there are strong indications that this was a foreign idea in the early 1800s, when judges were expected to follow nothing other than the law and their own conscience (Hallager 1915: 133; Langeland 2005: 371).

Knowledge of the outcome of a judgment and the facts of the case may be sufficient in itself to allow the judgment to be used as a guideline when deciding similar cases. However, today the effect of a precedent is largely linked to the reasons the court gives for its conclusion. The real effect depends on the comprehensiveness of the reasoning that is provided. Internationally, there are major differences between the supreme courts of different countries. When the Norwegian Supreme Court handed down its plenary judgment last summer on the relationship between the jury system and the European Convention on Human Rights, it provided comprehensive reasons for why various rule-of-law guarantees mean that the jury system survives despite the lack of reasons for jury decisions (see Supreme Court Reports 2009, p. 750 P, see also p. 773 P.) When the French supreme court – the Cour de Cassation – took the same view in relation to the French jury system last autumn, the decision was accompanied by a brief statement of reasons, consistent with French practice.³ I have been assured by French sources that the court’s reasoning had no substance to speak of. The true motivation of the Cour de Cassation remains “le secret du délibéré”.

The requirement for transparency in legal rules

Over the years, both the Supreme Court and legislators have strengthened transparency requirements. One example of this is the duty of loyalty in contractual relationships, which requires parties to act transparently. In the “lead-silver” judgment of 1925 (Supreme Court Reports 1925, p. 501), a man had provided security, at a debtor’s request, for a bank loan for which other security had allegedly also been provided. The bank had discovered that the deposited security was lead, rather than silver, but the Supreme Court found it acceptable that the bank had failed to inform the guarantor of this fact. This interpretation of the law had long

² Strict confidentiality about jury deliberations has been regarded as necessary to safeguard the anonymity of the jury, the duty of confidentiality pursuant to section 8 of the Contempt of Court Act 1981 has prevented research into jury consultations through interviews of jury members. Norway’s rules are not as strict, and some studies have been conducted that give insight into the inner workings of juries. (See, most recently, Nygard 2009.)

³ Arrêt no. 5345 (Mme D.X.), 14 October 2009 (08–86.480). The Cour de Cassation issues a joint statement of reasons which does not provide details of any dissenting opinions. The Supreme Court and the government supported this approach in 1857, see Langeland 2005: 369.

been abandoned when the Financial Contracts Act of 1999 gave creditors a statutory duty of disclosure in such cases.⁴ Overall, the opportunities to play with hidden cards during contractual negotiations were increasingly restricted during the 20th century, particularly as regards relations between parties with unequal bargaining power.

This development has been welcomed by most people. This is even more true of individuals' entitlement to transparency – a right of access – with regard to medical records, which the Supreme Court introduced in 1977 (Supreme Court Reports 1977, p. 1035). A 2008 majority decision of the Supreme Court was more controversial, as it stretched transparency so far as to permit the media to profit from the seaside wedding of the artists Andrine Sæther and Lars Lillo-Stenberg (Supreme Court Reports 2008, p. 1089, majority judgment 3–2). On the other hand, constitutional protection of the right to privacy is now a more prominent agenda item.⁵

In the field of environmental protection, transparency has long been used as a strategy for strengthening people's engagement with environmental issues and to provide a better basis for responsible environmental decision-making. Transparency in this area has been given special protection not only in the Constitution, but also in international conventions and the Environmental Information Act of 2003. Nevertheless, the day-to-day activities of the administrative authorities do sometimes reveal tensions between, on the one hand, transparency about specialist agencies' assessments of the state of the environment and environmental effects and, on the other hand, the withholding of information as part of the preparation of a political decision-making process.⁶

A question of this type arose in one of the most sensitive conflicts in modern Norwegian history, the Alta case. Here, assumed energy needs were an important premise for a hydropower development project. When the question of consent for state regulation was considered by the Storting (Norwegian Parliament), the minority faction of the relevant parliamentary committee requested access to the new national forecasts being prepared by the Norwegian Water Resources and Energy Directorate (NVE). The request was refused, on the grounds that much work allegedly remained to be done before the forecasts would be suitable for publication. In my view, the Storting should have been given these forecasts subject to provisos and information about sources of errors and missing assessments, and I have always been astonished that this lack of transparency was accepted by the Supreme Court in its plenary judgment in the Alta case (Supreme Court Reports 1982, p. 241 P (338–342)).⁷

⁴ The judgment was first, and most clearly, criticised by Arnholm (Arnholm 1964: 333–334). In terms of precedent, the judgment was abandoned in the case reported at Supreme Court Reports 1984, p. 28.

⁵ See Official Norwegian Report (NOU) 1999:27, pp. 88, 107–113 and 252, Proposition to the Storting no. 26 (2003–2004), pp. 44–48, and Official Norwegian Report (NOU) 2009:1, pp. 209–210, see also pp. 244–275 (an opinion by Alv Petter Høgberg and Njål Hostmælingen), and proposed constitutional amendment no. 18 included in Document no. 12 (2007–2008), pp. 74–75.

⁶ See, for example, pg. 72 of the 2005 Annual Report of the Parliamentary Ombudsman (which related to the technical authorities' assessments of the environmental consequences of opening new blocks for petroleum activity).

⁷ Eckhoff 1982: 337 (350) is also critical, likewise Smith 1997: 94 and 152–153. The fact that the government's disclosure duty is now, following a 2007 constitutional amendment, apparent from Article 82 of the Constitution supports the point of view I present, even though the provision is unclear as to the scope of the disclosure duty.

Transparency at ministry level

The general public, which sees individual ministers as the heads of their respective ministries, is unlikely to be aware of the role that discussions by the government as a whole can play in shaping the policy formulated by individual ministers. In practice, Norway has moved from ministerial government towards collegiate government, and this may support the view that ministries are now a joint secretariat for the government, rather than distinct administrative organs, as in the past. One consequence of this is that ministries can exchange views when they present draft propositions and reports, instead of during any general hearings at an earlier point in time (see section 5.1 of the instructions for official studies and reports). This means that the input of ministries in their capacity as specialist ministries is often exempted from public disclosure. This lack of transparency may well spare government members headlines of the type, “Internal government conflict”, and perhaps also make it easier to prepare necessary intra-governmental compromises. However, the price for this is that the general debate may be deprived of perspectives and analyses that are not put forward by anyone other than specialist ministries.⁸

The political leadership of a ministry, just like the leaders of other organisations, will need to consult with its administration – the civil service – to utilise the administration’s specialist expertise and experience in the area for which the ministry is responsible. This involves not only gathering and testing arguments, but also putting forward, discussing and perhaps rejecting different solutions to a problem. It is often desirable to record such internal advice in writing. However, if a written record means transparency, the risk increases that such advice will in practice be given in other forms. A free exchange of views in which the parties learn from one another continuously and correct their statements is difficult to reconcile with full transparency, which is highly likely to involve being held accountable, in public, for every single statement one makes.

It can, of course, be argued that an individual assessment may be made of whether there is a real need to exempt an internal organisational document from publication.⁹ However, there are inherent disadvantages to such a policy. The administrative costs of this kind of concrete assessment cannot be ignored in the long-term. If internal organisational documents are published in all cases in which they are not sensitive, it may become possible to draw conclusions about politically sensitive issues when there is no publication.

It is precisely in the interplay between the apparatus of government and the media that transparency has undergone a certain degree of transformation. This may be linked to the way in which editorial freedom is exercised. Press releases are neither read nor used unless financial

⁸ It may also hamper the preparation of a matter, including its progress, if other ministries’ objections only come to light once the specialist ministry has prepared a draft proposition or report.

⁹ Authority to exempt internal organisational documents from publication is granted by section 14, first paragraph, of the Freedom of Information Act, but this provision must also be regarded in the light of the duty to consider enhanced access pursuant to section 11 of the Freedom of Information Act. Ministry of Justice and the Police 2009: 63 states that instructions may be issued that prevent enhanced access in particular cases or in relation to specific documents, but prohibits purely general instructions that exclude enhanced access for all types of cases and documents.

pressure eventually forces editors to do so. Instead, the information and communication units of ministries are given the task of “selling the news”. Perhaps the media are satisfied with competing against each other in the hope of being first with an exclusive. It has become normal practice for a minister to give an exclusive interview to launch a reform, rather than hold a press conference. Moreover, it has probably happened that His Majesty the King has been able to read at breakfast on Friday morning about what His Majesty was then invited to approve at the meeting of the Council of State at 11 a.m. The government, out of respect for the Storting (Norwegian Parliament), imposes a press ban on publication of the government budget until it has been presented during the budget speech, but it is well known that the temptation to leak a few tidbits in advance is hard to resist. It is probably more serious in terms of informing the public that the media, on the grounds of “principle”, do not wish to be bound by the press ban, and are therefore not granted access to budget documents in advance. This necessarily results in lower-quality media coverage of the government budget.

Conclusion

I have concentrated on transparency in the public sector. Transparency questions from a democratic and rule-of-law perspective may be raised wherever power is exercised.¹⁰ A decision-making process may be affected if transparency by one party gives another party a strategic informational advantage. Transparency may also conflict with the desire for privacy, and with considerate administration. It is easy to support transparency as a fundamental value, but we should acknowledge that dilemmas can arise when transparency collides with other values.

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¹⁰ One example is the discussion about nominee registration of shares in Norwegian companies, see Official Norwegian Report (NOU) 2005:13 and Proposition to the Odelsting no. 11 (2006–2007), pp. 9–41. Nominee registration allows a shareholder to register his or her shares in the company’s shareholder register in the name of a nominee instead of in his or her own name. This is clearly significant as regards access to information about ownership arrangements, ownership structures and the balance of power in the business sector, which was described as a fundamental value in Proposition to the Odelsting no. 11 (2006–2007), pp. 25–26. Accordingly, Norwegian investors were not granted permission to make use of such nominee registrations. Shareholder registers were made public by the Limited Liability Companies Act of 1976. According to the preparatory works of the Act – Proposition to the Odelsting no. 19 (1974–1975), p. 48 – one reason for doing so was that the 1972 Programme on Power and Democracy had encountered difficulties in obtaining information about, for example, the capital structures of private enterprises.

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On transparency and independence

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Deputy Governor Qvigstad's lecture on transparency in Norges Bank invites us to reflect on the grounds for democracy – and its limitations.

In Norway, a number of bodies are kept independent of our elected politicians: the Supreme Court and international courts, a free media, researchers – and Norges Bank. In a democracy, all citizens are equal. Is there justification for some bodies to have such power yet be shielded from political control? When should essential public tasks be exempt from direct political control?

And even when some decisions are beyond political control, there is a difference between something occurring at arm's length from politicians and a situation where the left hand does not know what the right hand is doing. Which brings us to another question: How transparent should these bodies be?

Norges Bank combines «undemocratic» independence with some degree of transparency about decisions and the decision-making basis. Both can be justified in a democracy. Let us first look at four arguments for independence, and which of these apply to Norges Bank; then four reasons for transparency, and ask which of these apply to Norges Bank.

I will conclude by discussing one possible change in the current practice: Should we have greater access to the reasons given and the votes cast by the individual members of the Executive Board in connection with the interest rate decision?

Arguments for political independence

In a state governed by law, parliament and the Government should always act within their mandates. In order to prevent the abuse of power, independent bodies must serve as watchdogs and crack down on such abuse. To fulfil the role of watchdog, we need a free media and free research – and independent courts.

The role of watchdog cannot be given as a justification for central bank independence. On the contrary, central banks need to be supervised.

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A slightly different argument in favour of independent bodies is the confidence created by supervising the behaviour of others. It is not necessary for a supervisory body to have the authority to penalise abuse. Independent bodies can simply help us to see whether we are all behaving as we should. As a result, people can have more confidence in the authorities – and in each other. Access to such knowledge assures us as citizens that the powers that be actually do take decisions with our well-being in mind, and assures us that everyone *knows* this to be the case. The need for common *knowledge* as the foundation for confidence is an important reason for the existence of certain independent bodies with a supervisory responsibility. This is a task for the courts, a free media and research communities – and *perhaps* international human rights bodies. Is this a dubious attempt to gag democracy, as asserted in the Norwegian Study on Power and Democracy? (NOU (Official Report to the Government) 2003:19). Or are human rights conventions a justifiable form of binding – both in their function as watchdog to prevent the abuse of power and to justify our confidence in politicians?¹ But nor is the need for confidence-building an appropriate justification for central bank independence. On the contrary: in order to function effectively, the *central bank itself* needs confidence-building bodies – and it must be transparent.

A third argument for independence is that some tasks require *specialists* – expertise other citizens do not possess. The most effective solution is often to shield these experts from continuous political pressure (Majone, 1994; Tranøy, 2000). Once democratically elected bodies have defined the objective – an inflation target for example – the most effective strategy may be to assign the task to experts – such as economists. This has been a key argument in favour of central bank independence.

A fourth argument for political independence is that we as a society need bodies with a *longer-term perspective* than politically elected authorities. The authorities can delegate governance to prevent short-term objectives from standing in the way of more long-term, more important goals. This argument is thus *not* based on suspicions related to the abuse of power.

The objective of price stability may be a case in point here, as Qvigstad mentions in his article (p. 5). Finn Kydland, a member of the Norwegian Academy of Science and Letters and winner of the Nobel Prize for economics, has shown that an *independent* central bank is a solution to the Government's need to bind future fiscal policy in a credible manner (Kydland 1976; Kydland and Prescott 1977; Steigum 2005).

I have provided a brief outline of four different arguments for «undemocratic» independence and other constraints on the authority of democratically elected politicians: supervision, confidence-building, expertise and long-termism. Even though each of these limitations on democratic autonomy can perhaps be justified, we must also ask what the total effect on autonomy will be if tasks are increasingly removed from political control.

¹ A project being conducted by a research group at the Centre for Advanced Study (CAS) at the Norwegian Academy of Science and Letters this year, «Should states ratify human rights conventions?» – www.follesdal.net/ratify.htm.

These four arguments point to four different positive aspects of transparency.

When we examine the arguments in favour of transparency in Norges Bank, all the arguments above must be kept in mind, not just the third and fourth about expertise and short-term binding to achieve long-term goals.

The Bank must also be under *supervision*, and it must prove itself worthy of our *confidence*.

Why transparency?

Norges Bank has become considerably more transparent about its activities. There are several reasons for this change. Greater transparency is necessary both for Norges Bank to be more *effective* as an independent, long-term expert, and for our confidence as a society that this is the case.

One reason for transparency is the change in *objective*; secrecy is no longer necessary. When the objective was a *fixed exchange rate*, Norges Bank had to be more secretive to avoid self-fulfilling speculation (see for example Steigum, 2005).

Transparency is also a result of Norges Bank's new *strategy* for achieving its new objective of inflation targeting. Agents other than Norges Bank are important agenda-setters. Norges Bank's strategy is to shape their expectations by communicating clearly how the Bank will respond to the other agents' decisions.

Transparency about the Bank's «undemocratic» strategy can thus result in *increased* democratic governance, providing greater opportunities for citizens to hold politicians accountable for the consequences of the national budget.

A third argument in favour of transparency is that, due to both the inflation targeting regime and the need for flexible assessment, the Bank needs greater scope for the exercise of discretion. For other agents to be nonetheless able to predict Norges Bank's actions in the future, the Bank must be very clear about the premises and parameters that form the basis for its decisions and the considerations that will be given weight.

Only then can other agents understand how Norges Bank will exercise discretion in the future.

A final argument for transparency is also a consequence of the increased scope for discretion – to safeguard confidence. This implies greater transparency in order to eliminate any reasonable doubt that Norges Bank's Executive Board has sound professional reasons for its decisions. Recall that Kydland's defence of independence – with rational agents of good will – is not exhaustive. Norges Bank also has to take action in situations where politicians' – and the Bank's – good intentions and expertise may be called into question. The people must have confidence

in the Bank's judgement. Thus, the arguments about *expertise* and *long-termism* both require a high degree of transparency surrounding the Bank's decisions.

The appeal to authority-argument requires transparency so that we can be sure the experts agree on the Bank's strategy. As Winston Churchill is said to have remarked: "If you put two economists in a room, you get two opinions, unless one of them is Lord Keynes, in which case you get *three* opinions". And there has indeed been some professional disagreement about Norges Bank's strategy recently.

Member of the Norwegian Academy of Science and Letters, Professor Steinar Strøm opposed Governor Gjedrem's prescription for the prevention of Dutch disease: to cut government budgets (Strøm 2009). Strøm maintains that politicians could raise taxes instead – a disagreement about what Aardal refers to as a «valence issue» (see p. 29).

The choice of expertise has clear distributional consequences – which is the realm of democratic party politics. Should not these decisions, then, be taken by elected representatives who can be held accountable? If we are to have confidence in the *political independence* of the central bank, it is important that we at least receive help to see which advice has achieved broad consensus among the experts – and which is controversial.

Transparency is also necessary in order to have confidence that the Bank actually *is* more "far-sighted" than politicians. Deputy Governor Qvigstad maintains: «Low interest rates are often more popular than high interest rates. An appropriate interest rate may therefore be demanding to set in government corridors » (p. 4). The Bank should not be tempted by political or other secondary considerations to keep the interest rate low until the parliamentary elections have been held and then raise it shortly thereafter. When the Bank's Executive Board nonetheless changes the interest rate in this manner, critical media and researchers might naturally wonder whether some Board members may have had mixed motives. The Norwegian Financial Services Association's consultative statement about changes in the Norges Bank Act emphasised the following:

There should be no reason to raise doubts as to whether extraneous factors are taken into account in the operational conduct of monetary policy. The Executive Board's independence in relation to other authorities, political factions and various special interest groups should therefore also be reflected in the practical and formal framework for appointments. (Proposition to the Odelsting no. 81 (2002–2003))

This delicate balance is important but difficult. On the one hand, members of the Executive Board must represent a broad spectrum of social groups, without being political nominees. At the same time, the Executive Board's independence of various special interest groups should be beyond doubt (Proposition to the Odelsting no. 81 (2002–2003)). In order to eliminate any such doubt, it is important that the *decision-making process* is transparent.

Transparency about Executive Board members' views and voting?

I will conclude by exploring one of the consequences of the arguments about independence and public disclosure: should the voting record of each member of Norges Bank's Executive Board in connection with interest rate decisions be disclosed to the public?

Deputy Governor Qvigstad remarks that increased transparency may reduce the quality of the decisions. I may be less willing to change my mind when presented with sound arguments if it became publicly known that I had done so – that I – like Celius – «had allowed my convictions to take a step back».

Will members of the Executive Board feel «bound to the mast» by their first standpoints, in fear of appearing indecisive if their change of mind is made public? A problem with this line of argument against disclosure is that this mechanism is difficult to verify: some members might already be firmly bound to previous standpoints and will not be swayed by any argument. Without disclosure, we would not even know how receptive or attentive the various participants were.

Perhaps the discussion and any changes in standpoint should be shielded to some extent from public disclosure, while the individual members' final standpoints and their arguments should be published – along the lines of the Bank of England's Monetary Policy Committee (Proposition to the Odelsting no. 81 (2002–2003), 3.1.2.2), or as Professor Backer presents Supreme Court practice (on p. 16–17)?

Another argument for secrecy is that a central bank governor should not send diffuse signals by speaking with many voices. At the same time, the signals from the central bank *should* often be complicated and professional disagreement should be openly expressed. Only then can other agents anticipate with the right margins. A comparison with Supreme Court practice may be useful here.

Let us look at the arguments *in favour of* public disclosure of the voting records: First, it may increase goal attainment for the independent, long-term expert since it will enable other agents to better anticipate the outcome. Second: public access is important in order to maintain confidence in the central bank. As mentioned, critical researchers and media may raise the question of how independent the central bank really is. A team of researchers including Bjørn Høyland, postdoctoral fellow at the Institute of Political Science at the University of Oslo, have examined a similar committee at the Bank of England (Hix et al. 2010 *forthcoming*).

The UK authorities have appointed committee members in such a way that majority decisions concerning the interest rate level have changed systematically. Political independence is, then, not absolute – in the Bank of England's case.

The appeal to authority-argument in favour of independence is also dealt a blow by the research on the Bank of England. There is professional disagreement and members' standpoints follow a

pattern: When uncertainty surrounding the economic situation increases, the committee members who work in the Bank loyally gather to support the governor, while external members appear to be more in disagreement about the strategy. Knowledge of this professional disagreement is useful for economic and political agents, and it is important in a democratic society.

Norges Bank should therefore perhaps be transparent about disagreement and the voting record of the Executive Board. This is necessary to maintain confidence in the experts and in an independent central bank.

Some conclusions

Allow me to sum up these arguments.

- 1) There are sound reasons for our politically independent central bank to have a high degree of predictability and credibility – and to increase the possibility of holding politicians accountable. The Bank should therefore continue to be transparent not only in relation to the outcome – the interest rate level – but also the complicated reasoning behind and premises underlying the decision.
- 2) There seem to be sound reasons for disclosing the voting record of the individual Executive Board member and the reasoning behind their standpoint – but not for disclosing any change of standpoint.
- 3) Many participants in society play a necessary role in enabling Norway as a democratic state to maintain an independent central bank, not least researchers in economics, game theory and political science. The media, the courts and politicians also play an important role. The Norwegian Academy of Science and Letters and Norges Bank are to be commended for contributing to transparency through this series of papers. This has helped us to shed light on both those with political responsibility and the politically independent public institutions, enabling us to assess whether the authorities are worthy of our confidence.

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Reflections on transparency from a political scientist's perspective

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Transparency is such a fantastic word. A glance at the thesaurus and the associations flow: freedom, access, accountability, responsiveness, disclosure, candour, ethics, honesty. Deputy Governor Qvigstad has raised some important aspects of transparency from a monetary policy viewpoint. At the same time, he has touched on issues which also apply to other areas of society. My starting point is not that of the economist, the lawyer or the philosopher, but of the political scientist – more specifically a political scientist with a particular interest in political behaviour, public opinion/opinion formation and political systems.

In public opinion research, we differentiate between position issues and valence issues. On position issues, we find clear fronts between proponents and opponents, whether the issue is property taxes or road tolls. With valence issues, however, people tend to agree on the end but often not on the means. For example, nobody would disagree that we should look after the elderly and the sick, but there is disagreement about *how* this can best be done. Transparency has the nature of a valence issue. Who could be against transparency? Would you not then be in favour of dishonesty and unethical behaviour? If someone “has a quiet word” behind closed doors, there will be talk of secretiveness and the undermining of democracy. In the unlucky event that this is revealed in a TV documentary, the lighting and music will contribute to an impending sense of doom: the big conspiracy is nigh. If something is kept from the public, it is synonymous with there being something to hide. If it blows up into a media storm, the PR industry's (pricey) advice is to “hold your hands up”, which seems to mean admitting to everything (and then some), and preferably before anyone else knows about it. In other words, the confessional has undergone a renaissance, only now in the full glare of publicity.

One important reason why transparency as a political concept is positively loaded is that it is associated with the emergence of democracy. From the closed and secret world of tyranny, democratic reforms bring fresh air and transparency. Transparency is not just a matter of getting to know *what* is happening, but also of being able to *influence* what is happening. The second is very much conditional on the first. A search of the Norwegian media archives produces more than 30,000 hits on the combination of transparency/transparent and democracy/democratic. But even among systems calling themselves democratic, there are considerable variations in the degree of transparency. On the one hand, we have the people's republics and democratic republics of the communist era, which were not especially popular, democratic or transparent. But traditions of transparency in government also vary among established democracies.

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In Norway we like to see ourselves as particularly open (and honest), but there can be a significant element of wishful thinking in this kind of self-image.

To present transparency-secrecy as a dichotomy is a rhetorical approach which serves to delimit their meaning. More than a dichotomy, it is a continuum. But it is also important to differentiate between different spheres or arenas. Transparency in the private sphere is very different to transparency in the public sphere. Let us therefore imagine two intersecting dimensions: one where the extremes are open vs closed, and one where the extremes are the public vs the private sphere. The combination of private and closed defines our most private and personal zone, protected by what has traditionally been respect for the right to privacy.

But the border between the private and public spheres is constantly being eroded. This also applies to politicians and other elected representatives. Some choose to go public with their personal problems and crises, at the same time that the media serve both as a conduit and as an active driver when it comes to making the private public. The tyranny of intimacy means that more and more of the private sphere is being considered relevant to a person's public service. But this concern is nothing new. In his review in the jubilee edition of *Nytt Norsk Tidsskrift*, Rune Slagstad reminds us of the journal's declaration of intent a quarter of a century ago where he warned against "the narcissistic intimising of public life and its perversion of the liberal concept of the open society. Through the systematic commingling of acts and person, one is invited to treat public-political issues as though they were of a private nature."

It may, however, seem that we are now willing to go further than in the past. Biographers claim, for example, that in-depth airing of dirty laundry sheds light on a person's role as a public figure, without this always being quite as self-evident to the reader. But individuals also use their private lives to explain their public role. One commentator claimed recently that "media pressure leads to elected representatives tending to confuse the interests they represent, the issues they are fighting for, and their own person". In other words, the distinction between open and closed, private and public, is being blurred. Interpretations of public service are excessively influenced by personality.

This trend may have considerable consequences for the way in which our democracy works. An obliging openness about private matters is a sure-fire guarantee of heavy media coverage and increased circulation, but it can also lead to important aspects of a person's public service being suppressed. There is a widely held view that voters, both in Norway and elsewhere, vote first and foremost for the person and not the party. From this perspective, the focus on the person is to some extent justifiable. At the same time, though, this view is incorrect. Personality plays a much smaller role in voting than many people think. A lack of focus on the content and implications of policies can therefore serve to undermine democracy even if all cards are on the table in the interest of transparency – just on the wrong table!

Democratic ideals have evolved over time. While at one time most weight was attached to democracy as a means of replacing leaders through regular elections, the focus is now more on participation between elections and active debate. By exchanging opinions with one another, we

can reach united standpoints that serve us all best. Such an ideal presupposes a high degree of public disclosure. But what if the objectives cannot be united but are mutually exclusive? What do you do then? In practical politics, compromises are made – in other words, some issues are put aside to make way for other, more important issues. In such a situation, going public can result in binding commitments that make compromise difficult. Sometimes this is done actively to turn the decision-making process to one's own advantage. But a compromise can nevertheless be difficult to explain and sell to the public. It is often referred to as horse-trading, and this is not meant as a compliment! When the politician character Celius in Nils Kjær's satirical comedy *Det lykkelige valg* [The happy election] was accused of abandoning his principles, he responds: "I'm not abandoning my principles. Whoever said such nonsense? I'm merely putting them on the back-burner, as it were. I'm having them take a step back until I need them again."

In his lecture, Deputy Governor Qvigstad cites several good examples of the consequences of transparency in difficult decision-making processes. In the worst-case scenario, there is a risk of the real debate shifting to other, more exclusive fora. In such situations, we encounter a paradox, namely that transparency can be a hindrance to open opinion formation. But while a lack of transparency provide fertile ground for conspiracy theories, it is also important to maintain a critical distance to statements in the public sphere. "Openness" and "honesty" are no guarantee that players will not act instrumentally and look after their own interests.

Transparency is almost part of the very definition of democracy. But there is an important side of transparency that we have not looked at. Political elections are not just a matter of individual and collective decisions and preferences. Nor is it just the degree of transparency in political processes that is crucial. We must also look at the structures that play an important role in whether we, as citizens, support our democracy. One important aspect of these structures is the design of the electoral system. As we know, many different electoral systems exist, and there is a lively debate both in Norway and elsewhere on how these systems can be made better and more democratic. One consistent requirement, however, is openness and transparency. This means that elections need to be conducted in accordance with laws and rules and through an open and inclusive process. The counting of votes must be visible and verifiable, from the polling station through the intermediate levels right up to the national electoral authorities. A transparent process reduces the potential for election fraud. The purpose of a transparent process is not just for the election to be deemed valid by foreign observers – even more important is for the election to be deemed valid by the country's own population. In other words, transparency is an important precondition for trust and legitimacy. Simplicity and insight are key aspects of the transparency requirement. Each individual citizen must be able to satisfy himself that the election has been properly conducted. In an ever more complex and hi-tech society, this is becoming more difficult for the common man. Lay scrutiny is having to be replaced by expert scrutiny, which in turn requires citizens to trust the experts. This issue is very salient in connection with the planned pilot of electronic voting in Norway. Whereas one could previously physically follow the ballot paper from the voting booth via the ballot box to the counting station, it is harder to follow electronic signals through computers, cables and the mystical Internet. Transparency and simplicity stand in contradiction to security. In other words, a pencil, paper and carry the one no longer suffice in converting votes to mandates. At

the same time, it is important to be aware that this issue is equally relevant in other parts of society. Who, for example, is in a position to check that they are receiving, or will receive, their rightful pension entitlements?

So is there not scope for legitimate secrecy in the public sphere? In a paper at a conference on the limitations of freedom of expression in Oslo in 1982, the old Norwegian politician and lawyer Jens Christian Hauge made a convincing case for the need for discretion, defined as “not speaking out at inopportune times”. He asks rhetorically whether the Karlstad negotiations in 1905, which led to the peaceful dissolution of the union between Norway and Sweden, would have been possible today. Or what about sensitive negotiations on defence and security issues which, if they became public, could lead to military countermeasures by other countries? Hauge was also concerned that a lack of discretion jeopardises rescue operations for crisis-stricken businesses. This concern was probably prompted particularly by his own recent experience of the Tandberg bankruptcy and Volvo oil negotiations, which he mentioned specifically. His call for greater ethical awareness and social responsibility on the part of the media – *in defence of the discreet* – is nevertheless a timely reminder that the greatest possible transparency is not an end in itself.

One sector of society which is almost by definition exempt from a requirement of transparency is the bodies responsible for national security. It is not without reason that they are known as the secret service. These institutions would not be able to do their job properly if their methods, procedures and activities were known to potential enemies. In a *Rechtsstaat*, it is also important that democratic and legal principles are upheld. The danger is that these services begin to lead their own life, cut off from society at large. In an interesting study of the Swedish security services’ surveillance of Swedish citizens in the period 1945–60, researchers Ann-Marie Ekengren and Henrik Oscarsson from the University of Gothenburg showed that these services not only were staffed with people with very similar backgrounds but also had very little staff turnover over time. This stasis meant that the threat scenarios that originally shaped their operations were able to live on independently even after the outside world had changed. The Lund Commission made similar observations concerning surveillance of Norwegian citizens after the War, concluding that the scope and methods might have been understandable for a brief period in the early 1950s, but that the threat scenario could not justify these operations being stepped up and continuing right through to the late 1960s. The need for greater transparency led to the Storting (Norwegian parliament) setting up a separate oversight body in 1996 for the secret services, the EOS Committee, currently chaired by Helga Hernes.

This example shows that even within the confines of legitimately justified secrecy, an absence of transparency can serve to harm the interests intended to be protected. This leads to my closing point. From a democratic perspective, the choice is not between transparency and secrecy. In the public arena, transparency will generally be preferable to secrecy, not to satisfy our voyeuristic instincts or the media’s need for gossip and sensation, but because transparency is essential for confidence in key political players and institutions. Shake the legitimacy of the system and the very foundations of democracy will shake.

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Reflections on the dilemma of transparency

*Aanund Hylland**

There is a widespread belief in our society today that all those who have power have a general duty to exercise it transparently. At the very least, important decisions should be made publicly, and not take effect in secret. Moreover, the public should normally have access to background information and reasons.

This obviously also applies to bodies that exercise public power, including the central bank, the state administration and the courts. Many might argue that the principle should also apply to private parties that have power, be they companies, the press or, for that matter, the Catholic Church.

This has not always been the case. In his speech, Deputy Governor Jan F. Qvigstad explained that, 20 years ago, the US central bank did not even publicise its most recent interest rate decision, precisely because the intention was for the decision to take effect in secret. An older example is provided by the Norwegian Supreme Court, which for almost 50 years from 1814 onwards did not publish reasons for its decisions.

However, it is unlikely that anyone would argue that everything can or should be published in full. Mr Qvigstad described full transparency by the central bank as involving not only the recording of Executive Board meetings at which decisions are made, but also of all discussions in offices and meeting rooms during which such decisions are prepared. This, he said, would produce neither good entertainment nor good decisions. The latter consideration, of course, is crucial: if such recordings did ensure good decisions, we would have to live with the fact that they would not be particularly entertaining. As Supreme Court Justice Steinar Tjomsland stated during the debate, it is vitally important that key social institutions like the Supreme Court, the government and Norges Bank are able to negotiate behind closed doors.

The simple conclusion is that transparency is desirable, but that exceptions and limitations are necessary. On the other hand, it is difficult to identify precisely which exceptions can and should apply, and we cannot expect to reach agreement on the issue. Nor can the question be resolved in abstract, general terms. Rather, the answer depends on the power-holder or area of society in question.

This was emphasised during the debate by Endre Stavang (Faculty of Law, University of Oslo). He highlighted the difference between the Supreme Court and the Norges Bank Executive Board. The court is supposed to develop and interpret legislation. The bank's Executive Board,

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on the other hand, is supposed to apply the relevant rules, and not create them. Because the Supreme Court creates precedents, dissenting opinions can contribute important information and generate debate. Mr Stavang took the view that this is a good argument against transparency regarding dissenting views among Executive Board members, precisely because it could lead to the creation of precedents and rules. This would undermine the fundamental intention of delegating monetary policy to Norges Bank.

Ola Storeng (Finance Editor, *Aftenposten*), pointed out that transparency about any dissenting views among the members of the Norges Bank Executive Board would affect the separation of powers within the Board. The Board has an unusual composition, in that the Governor and Deputy Governor of the central bank are also the Chairman and Deputy Chairman of the Board. Mr Storeng asked what would happen if Board members were required to give reasons for their views. In the United Kingdom, where minutes and voting records are published, external members have been given their own secretariats. Where members are to report in the same manner as the chairman and deputy chairman, being a member of the monetary policy committee becomes a full-time job.

Several speakers illustrated transparency in other areas. Jan van der Burg (Nestlé) emphasised similarities between Norges Bank and the private business sector. The Board is a collegiate body that stands united behind important decisions. A commitment to transparent, consistent communication is crucial. In a completely different field, Else-Britt Nilsen, General Prioress of Katarinahjemmet (Dominican Sisters of Notre Dame de Grâce (Chatillon) Oslo), highlighted the dilemma of transparency within the Catholic Church. Even though the Church is hierarchical and collegiate, and features apparently closed processes, it is by no means deaf to the views of society. She explained that some cloister orders, including her own, had been early proponents of transparency. Several cloisters have had democratic, transparent systems of government since being established in the 1200s. Moreover, the rules and regulations of cloisters have inspired subsequent civil legislation.

In my view, it should be clear that it is the *exceptions* to transparency that require special justification. This applies generally, although the threshold for making an exception will vary. Transparency is a basic principle that can be justified generally, for example by reference to democracy and trust. Special reasons must be given for exceptions.

People may tend to accept exceptions to transparency more easily in fields in which they themselves are involved. The Deputy Governor may see good reasons for limiting transparency on the part of the central bank, but feel that the Supreme Court should be more transparent, while a Supreme Court Justice may think the opposite. To the extent that this hypothesis is correct, it indicates that no sector should be allowed to regulate its own degree of transparency independently. Moreover, the public sector should have a more effective mechanism for reviewing individual decisions to refuse access to documents and information than exists at present. This was pointed out during the debate by Professor Eivind Smith (Faculty of Law, University of Oslo).

Jan Fridthjof Bernt, Professor of Law at the University of Bergen and former president of the Norwegian Academy of Science and Letters, highlighted a related issue. The specific reasons for limiting transparency are almost always good reasons at the individual level. The problem, according to Professor Bernt, is that if these reasons are added up, the result will be a society that is much less open than today. He questioned the belief that objective common sense is best stimulated if it is allowed to take effect behind closed doors. This is a recurring argument in the debate about transparency in municipal bodies, the Supreme Court, the government and Norges Bank. It is argued that open doors undermine willingness to compromise, negotiations and discussion, and that the real debate will be moved into other forums. Professor Bernt acknowledged that the problem is not an imaginary one, but questioned whether decisions made behind closed doors really are better.

This raises the question of whether there is any utility at all in insisting on transparency. Perhaps the reality is that when one room is opened, the debate moves into another, which remains closed. If this room is also opened to public scrutiny, the debate simply moves to a room that is even more closed. There may be some substance to this argument, but it should not be overstated. Rules requiring open meetings at municipal-council level may have resulted in more of the substantive debate taking place in committees, group meetings and other closed forums, but there can be no doubt that there is greater overall transparency when formal meetings are open.

Some arguments against transparency are therefore based on the quality of debates and decisions. A further consideration that prevents the open publication of all information is data protection. This issue was raised by Helge Brunborg (Statistics Norway), who pointed out that statistics and analyses are important to transparency and democracy. Decisions based on facts are better and more transparent. As a general rule, Statistics Norway is required to publish all figures, but transparency has to be modified with regard to other considerations. First, data protection requires data relating to small samples and groups to be kept confidential. It should not be possible to identify individuals or companies. Second, sorted data can contribute to the stigmatisation of minority groups. Mr Brunborg concluded that pursuing the greatest possible transparency is important, but that there are also good reasons for limiting transparency in practice.

Professor Karen Helene Ulltveit-Moe (Department of Economics, University of Oslo), focused on a related issue, namely the importance of transparency as a precondition for policy evaluation. In her view, there is substantial scope for improvement in this area, as there is no general, unlimited right of access to all data, including in cases in which facts and figures illustrate political priorities. She had personally experienced that it can be difficult to obtain the numerical data needed to evaluate policy choices.

What else is required in order to be able to state that there is “transparency”? Open meetings are of little value if they are scheduled for times and places that make it impractical for interested

citizens to attend. A curious example is provided by the board of the University of Oslo, which after deciding partially to open its meetings, held its next meeting in Rosendal in Hardanger.¹

The press can often be relied upon to follow events and communicate the most important matters, but this is not quite the same thing as when citizens themselves have direct access to information.

Just as open meetings held far from people result in limited transparency, documents may be public in a formal sense without being easily accessible. During the debate, Morten Bergsmo from the Peace Research Institute Oslo (PRIO) raised a different aspect of this issue. He asked whether it is reasonable for Norwegian researchers to publish scientific texts in expensive books and periodicals. In his view, all knowledge should be openly accessible, not least in the interests of poorer countries with greater problems than those of Norway.

Immediately after the debate at the Academy, an event took place that illustrated and brought to a head one of the dilemmas associated with transparency. The Supreme Court handed down a judgment relating to sexual assaults on children. Accordingly, there were strong data protection grounds for limiting transparency.² However, the case also raised an important question of principle relating to the role of the jury in criminal cases. The Lovdata Foundation, which normally makes new decisions of the Supreme Court available to the public free of charge, initially decided not to publish the decision on its open website, thus in practice excluding most of the enlightened public from the discussion about the issue.³

The press plays an important role in making transparency real, by passing information from public and private bodies that exercise power to the public. Therefore, as Eivind Smith pointed out, it may seem paradoxical that the public is not told who has written a given newspaper editorial. This paradox may be a good conclusion to this summary of the debate.

¹ It is unlikely that any intention to manipulate was involved. The meeting had been planned far in advance, and the university board had made previous visits to Baroniet Rosendal.

² Judgment of 13 November 2009 in case HR-2009-2153-A.

³ The decision was later reversed, and the judgment was made available in anonymised form.

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