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ABOUT US

The **International Journal of Open Governments / Revue Internationale des Gouvernements ouverts (RIGO)** is an academic journal created and edited by Irène Bouhadana and William Gilles at IMODEV, the Institut du monde et du développement pour la bonne gouvernance publique.

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TEACHING TRANSPARENCY IN THE DIGITAL AGE: THICK OR THIN PARADIGM

by **Richard CALLAND**, Associate Professor of Public Law at the University of Cape Town, Barrister-at-Law, Member of the English & Welsh Bar & Lincoln's Inn

Over the past 25 years there has been a 'surge' in freedom of information legislation, alongside companion rights to administrative justice and other forms of constitutional accountability. The principle of 'transparency' has found expression in innumerable institutions and processes cutting across several dimensions - international and domestic, state and non-state, formal/mandatory and informal/voluntary. During the same period, the world has gone through a 'digital revolution'; the internet and other forms of ICT have transformed the way people live and work. Digital rights, including data protection and privacy rights, now jostle with rights to information disclosure for attention and supremacy. New fronts constantly open up, as technology advances; the governance of artificial intelligence is likely to be the next one. Thus, the field of transparency law and governance has expanded greatly. It is a rich arena for research and study. The academy struggles to keep pace with these far-reaching changes in policy, practice and technology, raising significant questions for those teaching courses related to transparency, including whether to adopt a narrow or broad approach to the topic in terms of both syllabus and pedagogy. One framing of the dilemma is to think in terms of a 'thin' versus a 'thick' paradigm. In the former, the study of transparency would focus primarily, and relatively narrowly, on the right to access to information/freedom of information from a human rights law perspective. In the latter, one would instead embrace the full panoply of inter-related subjects – from whistleblowing to administrative justice; from digital rights to data protection, and so on. Which approach will provide the most fulfilling experience for the student? Is there a tipping point at which a subject field becomes so congested and wide-ranging that it no longer makes sense to 'house' it under one academic roof? Or, does the inter-related and inter-depended nature of the various sub-fields require a transparency 'eco-system' outlook, and one that would provide a suitably multi-dimensional and trans-disciplinary course design, however challenging? This paper raises these questions in a spirit of professional solidarity and inquiry in the hope that engaging with them will assist other 'transparency teachers' as they design, convene and lecture post-

graduate courses. Accordingly, the paper presents the author's own new LLM course on Transparency Law & Governance not as a model but more of a prototype that aims, albeit tentatively and hesitatingly, to strike an appropriate balance between the thick and thin paradigmatic approach to teaching a complex and fast-growing subject, recognizing the contextual challenges and opportunities presented by the digital revolution.

INTRODUCTION

This paper raises questions about how academics should "teach" a subject named "transparency". As far as can be established, there is no academic literature on this specific issue to engage with. There is literature on university teaching – pedagogy, syllabus, and curricula, as one would expect, including in relation to human rights law[1]; and interesting literature on transparency *in* teaching[2]. But nothing specifically directed to different approaches to teaching a dynamic field of study. Why might this be an interesting topic to pursue and why would it be worthwhile to try and fill this gap in the literature? As the conference panel that I convened for the sixth edition of the annual IMODEV Academic Days on Open Government and Digital Issues revealed[3], there are distinctive differences in the way that various academics, from different disciplines, have approached the subject around the world, and interesting and important lessons to be learned from one another. As a subject area transparency has grown enormously in the past two decades or more, fueled by among other things: the rapid increase in freedom of information laws, constitutional 'globalisation'[4] that has encouraged the enshrinement of rights of access to information and other accountability mechanisms, and profound shifts in information communication technology (ICT) that impact on access to, and publication of, information.

The academy has faced a challenge to match the pace in changing praxis. For those of us who convene post-graduate courses on transparency-related subjects one of the main challenges is deciding not so much what to include, but what to leave out. One such course is that convened by my colleague at the University of Cape Town, Lauren Kohn, who convenes a course entitled "Administrative Law & Open Government". As the title implies, and as her case-study presentation to the IMODEV panel (now

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[1] Such as S. BANKI, E. VALIENTE-RIEDL, and P. DUFFILL, "Teaching Human Rights at the Tertiary Level: Addressing the 'Knowing–Doing Gap' through a Role-Based Simulation Approach", *Journal of Human Rights Practice*, Volume 6, Issue 2, July 2014, p. 387.

[2] Such as: A. ANDERSON, A. HUNT, R. POWELL, and C. DOLLAR, "Student Perceptions of Teaching Transparency", *The Journal of Effective Teaching*, Vol. 13, No. 2, 2013, pp. 38-47.

[3] [https://site.imodev.org/fileadmin/acadays2021/Acadays_2021_Programme-v1.pdf](last accessed 16 December 2021).

[4] See for example: N. TUSHNET, 2019, *The globalisation of constitutional law as a weakly neo-liberal project, in Global Constitutionalism,* 2019, 8:1, pp. 29–39, Cambridge University Press, 2019.

converted into a full paper[5]) confirms, there is a strong link between administrative justice and 'transparency':

> "Transparency is a fundamental ingredient of this system; indeed, of most such systems worth their salt. In the Romanian context, for example, Constantin has put it plainly: '[t]ransparency is a general principle in administrative law'.[6] In South Africa, we might simply use the terminology employed by our constitutional drafters such that 'openness' plus 'responsiveness' are necessary (if perhaps not sufficient[7]) ingredients of transparency."[8]

Courses on transparency are offered in faculties other than law, reflecting the multi-disciplinary character of the subject, including public administration and political science, journalism, as well as technology-orientated courses and modules. For the convenor of each course, again the question arises as to whether to stay 'in the lane' or move beyond it. For each, there is a wide range of options available. Should the subject be seen through a wide or narrow lens, and what are the implications of the choice that is made?

My contribution to this discussion is to pose the questions rather than answer them. I hope to not only begin to fill the gap in the academic literature but spark a considered discussion amongst academic teachers about how to do justice to this fast-expanding subject, for the benefit of our students and our scholarship. Accordingly, this paper is more discursive in character, inviting further contributions that will add deeper gravity to the intellectual inquiry.

§1 – CONTEXT

The transparency landscape has changed dramatically and fundamentally over the past quarter of a century. Firstly, there has been a surge in access to information laws in the past twenty-five years, as a result of several drivers including the 1990s Washington Consensus' insistence on 'transparency' but also popular movements pressing for open government and greater accountability. Riegner's comprehensive "stock-take" states that[9] "…there has been a veritable "global explosion of freedom of

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[5] L. KOHN, "Teaching Transparency through the lens of administrative justice in South Africa", *International Journal of Open Governments*, Vol. 11, 2022.

[6] E. CONSTANTIN, *The principle of transparency in Administrative Law,* No. 6, 2014, p.422.

[7] R. ADAMS, *Transparency: New Trajectories in law*, 1st ed, London, Routledge, where the author speaks of transparency's promise as one "far greater than simply liberalised information…it offers a society that can be seen, understood, and even changed, by those who are not central to its construction, by the not-so-powerful. Transparency offers the promise of a simpler world in which all can participate, equally, through the shared possession of readily available information and knowledge."

[8] L. KOHN, ibidem, at p. 1.

[9] M. RIEGNER, "Access to Information as a Human Right and Constitutional Guarantee. A comparative perspective*",* in *Special Edition: The Right to Information in VRÜ Verfassung und Recht in Übersee (Law and Politics in Africa, Asia and Latin America)*, 2017, pp. 367 – 389.

information"[10] as new constitutions have enshrined the right to information, legislators have enacted access to information acts, and courts have enforced and expanded individual guarantees to seek information from public authorities." In the mid-1990s there were fewer than ten countries with access to information laws in place; now there are over one hundred. According to Article 19, the access to information advocacy group, there are 121 countries with access to information laws in place, meaning that 90% of the world's population now lives with such laws available to them[11], at least in theory (since the literature reveals that implementation and enforcement present enormous challenges to the effective realization of the right of access to information). Further momentum was added to this trend with the establishment of the Open Government Partnership following a transparency initiative led by President Barak Obama[12].

While some scholars have questioned[13] whether there is a human right to access information or debated the issue[14], the ground-breaking case of Reyes[15] created international law jurisprudence giving meaning to the right:

> "…by expressly stipulating the right to 'seek' and 'receive' 'information,' Article 13 of the Convention protects the right of all individuals to request access to State-held information, with the exceptions permitted by the restrictions established in the Convention. Consequently, this article protects the right of the individual to receive such information and the positive obligation of the State to provide it."[16]

The reference to "seek" derives, in turn, from the Article 19 of the International Covenant on Civil & Political Rights:

> "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart

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10 J. ACKERMAN, and I. SANDOVAL-BALLESTEROS, "The Global Explosion of Freedom of Information Laws", *Administrative Law Review*, n° 58, 2006, p. 85.

11 See [https://www.article19.org/resources/infographic-progress-on-the-right-to-information-around-the-world/] (last accessed 17 December 2021).

12 "An important push to assert its relevance came, undoubtedly, of the Memorandum on Transparency and Open Government, issued by the President Barack Obama in 2009…and then consolidated by the Open Government Directive…which, in broad terms, aims to promote a more transparent, participative and collaborative government. This first impulse set the tone to other several initiatives, such as the Open Government Partnership that, at the moment, involves 65 countries committed to 'promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance'.": R. LOURENÇO, R. JORGE, and H. ROLAS, 2016, "Towards a transparency ontology in the context of open government", *Electronic Government, An International Journal*, Vol. 12, No. 4, pp. 375–394, at p. 376.

13 C. DARCH, P. UNDERWOOD, *Freedom of information and the developing world*, Oxford England 2010.

14 M. MCDONAGH, 2013, "The Right to Information in International Human Rights Law", *Human Rights Law Review*, 13(1), pp. 25-55.

15 Sep-19/2006, IACtHR, Series C 151 (2006). The Court also found a violation of Article 8 ACHR: see the text at No. 88 infra.

[https://www.corteidh.or.cr/docs/casos/articulos/seriec_151_ing.pdf] (last accessed 17 December 2021).

16 Ibidem. at paragraph 77.

> information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

This foundational reference point is important for the current inquiry, for while a focus – in the context of the narrow right of access to information – has been on the word "seek", inevitably – an inherently "thin" focus – the rest of the provision immediately invites a far 'thicker' approach to the subject-matter: most significantly, it links access to information to freedom of expression, the right to "receive and impart" information, *regardless of form* – a prescient notion, given that Article 19 was formulated in 1948, long before the digital age. This, in turn, enables one to begin to chart a more complex transparency 'eco-system' – an idea that I return to later.

Secondly, this period of legal and constitutional reform and advancement of the idea of a legally protected right of access to information has happened concurrently with a socio-economic revolution in the supply, form and usage of information – *the digital revolution* – which has opened up new fronts in the world of information governance, such as administrative justice, protection of whistleblowers, data protection, the digital 'right' of access to the internet and, now, the governance of artificial intelligence. This is a complex, dynamic, and fast-moving terrain; with a vast reservoir of rapidly emerging new praxis, challenging the academy to keep pace and implying a need for a multi-disciplinary approach to the subject. The relationship between information and rights pivots on the principle of transparency. As early as 2002, relatively early in the digital revolution, some scholars were positing that "…the arrival of the information society is to be accompanied by consequences for the manner in which the citizenship ideal is given shape and substance…" and "…arguing in favor of the recognition of a fourth group of citizens' rights: information rights."[17]

The third dimension to the context is rather different, as it relates to the character of the subject and implications for its study and teaching, rather than the external environment. Some of my previous scholarship on the right of access to information has explored a theoretical perspective to the modern understanding of ATI[18]. In one paper[19], I mined the multi-dimensional character of the right and, in particular, excavated its multi-rationality. Various motive forces in favour of ATI were identified, including: good public administration; political accountability, as a companion to

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[17] M. BOVENS, "Information Rights: Citizenship in the Information Society", *Journal of Political Philosophy*, No.10, 2002, p. 317

[18] R. CALLAND, P. JONASON, "Global Climate Finance, Accountable Public Policy, Addressing The Multi-Dimensional Transparency Challenge", *The Georgetown Public Policy Review*, No. 18, 2013.

[19] R. CALLAND, "Exploring the Liberal Genealogy and the Changing Praxis of the Right of Access to Information, Towards an Egalitarian Realisation", *Theoria A Journal of Social and Political Theory*, No. 61, 2014, note 6.

freedom of expression and media freedom; and, lastly, as a 'leverage' right in support of socio-economic rights and justice. This multi-rationale basis for the right to access to information – often debated in binary terms of "instrumental" versus "intrinsic"[20] – posits the right as a critical (instrumental) lever to:

– To help the media access government information to hold those in power to account (*media rights or free expression nexus*).

– To enable citizens or NGOs to claim other rights, such as the right to health care or housing (*'leverage right'[21]*).

– To combat corruption[22].

– To support the management of records, both paper and digital.

– To require non-state actors, such as corporations, to disclose certain information relevant to consumer and other citizen rights.

– To enable more effective education (*for example, equal access to information, with reference to educational inequality during COVID19*).

In another paper[23] I explored the liberal genealogy of ATI in the context of the changing praxis – namely, that in the developing world especially, it is ATI's relationship with socio-economic rights such as the right to access to adequate housing or health care or education that is of greatest interest and concern, because as a "power right" (to employ the terminology of Hohfeld's classic typology[24]) ATI has the capacity to give marginalized communities greater power to claim rights from duty holders and service providers in government and the private sector (drawing on the iconic, ground-breaking approach of the Mazdoor Kisan Shakti Sangathan [MKSS], an Indian social movement in Rajasthan)[25].

Taken together, these three main dimensions to the transparency landscape suggest that the subject is not only large in volume, but wide in scope, and deep in complexity. Moreover, it cuts across

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[20] See R. MOON, *The Constitutional Protection of Freedom of Expression*, Toronto: University of Toronto Press, 2000 at p. 24. This topic that is explored further in M. MCDONAGH, "The Right to Information in International Human Rights Law", *Human Rights Law Review*, No. 13(1), 2013, pp. 25-55.

[21] J. KLAAREN, "A Second Look at the South African Human Rights Commission, Access to Information, and the Promotion of Socio-economic Rights", *Human Rights Quarterly*, No. 27, 2005, pp. 539-561, considers the use of access to information for the purpose of promoting socio-economic rights. In particular, it envisages South Africa's Human Rights Commission utilizing PAIA as a means to perform its monitoring duties. *Jagwanth* speaks of the right of access to information as a "leverage right" and a "component part" of the realisation of other rights in the Bill of Rights – in particular socio-economic rights. See *Saras Jagwanth*, The Right to Information as a Leverage Right, in: R. CALLAND and A. TILLEY (eds), *The Right to Know, the Right to Live: Access to Information and socio-economic justice*, Cape Town 2002, pp. 3-16 ; J. BRITZ, P. LOR, "The right to be information literate: the core foundation of the knowledge society", *Innovation*, No. 41, 2010, pp. 8-24, discuss the role of ATI and participation and freedom of expression.

[22] R. CALLAND, "Access to Information and Constitutional Accountability: Ruffling Feathers", in South Africa in: *Special Edition: The Right to Information in VRÜ Verfassung und Recht in Übersee (Law and Politics in Africa, Asia and Latin America)*, 2017, pp. 367-389.

[23] CALLAND and JONASON, *op. cit.* note 18.

[24] W. HOHFELD, *Fundamental Legal Conceptions: as applied in judicial reasoning*, ed W.W. Cook, New Haven, 1923.

[25] K. BENTLEY, R. CALLAND, "Access to Information, A Theory of Change in Practice", in: M. LANGFORD, B. COUSINS, J. DUGARD and T. MADLINGOZI (eds.), "Strategies for Socio-Economic Rights in South Africa: Symbols or Substances", Cambridge 2014.

many different disciplines. And, it is dynamic and fast-moving, because it is closely connected with the fast-running currents of a profound, global industrial revolution that touches upon almost everyone and everything. For these reasons, it represents a challenging subject to teach as well as study. But before turning to the implications for teaching transparency, I turn now to what one might call the 'ontology of transparency', in order to try and decipher a more precise or even manageable conceptual definition of the subject. In other words, before deciding whether the teaching of transparency should adopt a thick or thin paradigmatic approach, it is necessary to consider whether transparency itself is a thick or thin concept (while recognizing that the sketch of the landscape presented above might appear to already have offered a strong if not irrefutable case for the former).

§ 2 – TRANSPARENCY: ONTOLOGICALLY THICK OR THIN?

This drastic shift in the contours of the landscape of transparency implies that the terrain is unquestionably 'thick' and certainly 'thicker' than it once was. Yet, ontologically there is a preliminary question that arguably deserves to be asked before making any further assumptions, let alone reaching any firm conclusions, and which is certainly relevant to the main questions concerning the pedagogy, curriculum and syllabi of teaching transparency, which is: what do we actually mean by "transparency"? This is a definitional question; taking an ontological approach to the definitional issue is to seek to classify and explain the concept of transparency.

Lourenço et al. grapple with the idea of a transparency ontology, for the purpose of helping to answer the question where to direct public resources in making more public data available to the public[26], which leads them to a proposed ontology that "…may be described as a lightweight, semi-formal domain ontology, aiming at defining a common vocabulary to represent the discursive domain associated with the accountability of public officials in the public sphere. Again, it is the underlying multi-rationality and multiple instrumentality of transparency that presents the challenge: for what purpose do people want or need access to information?"[27].

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[26] "Within the community of the knowledge engineering, the word 'ontology' has different meanings and interpretations (GUARINO and GIARETTA, 1995). Regardless of these possible variations, USCHOLD and GRUNINGER (2004) identify two essential characteristics of any ontology: a vocabulary (list) of terms referring to relevant things in a particular domain or towards a transparency ontology in the context of open government scope, and a specification of the meaning associated with those terms. Ideally, the latter should conform to a particular logic or rationale. This characterisation corresponds to a simple ontology definition: "An ontology defines the basic terms and relations comprising the vocabulary of a topic area as well as the rules for combining terms and relations to define extensions to the vocabulary." (Neches et al., 1991, p.40) In other words, an ontology may be considered as 'a specification of a representational vocabulary for a shared domain of discourse' (GRUBER, 1993)." LOURENÇO, JORGE, and ROLAS *op. cit.* at note 12.
[27] Ibid. at p. 379.

Lourenço et al. brief review of some of the leading scholars on transparency leads them to an inevitable conclusion: that the concepts of transparency and accountability are interwoven. Transparency implies access to reliable information about the management of public goods, services and funds[28], as well as sufficient information about government decisions and activities[29] – which, in contemporary constitutional rights' language would be described in terms of a right to just administrative action, a central topic of Kohn's contribution to this volume, where she writes that "The right to administrative justice fosters openness and responsiveness (as minimal ingredients of transparency), and in turn makes those that wield public powers accountable to the people on whose behalf they are meant to act."[30] In turn, this openness can lead to greater public confidence in government[31].

These, however, are in many respects trite analytical observations, theoretically and conceptually sound but contradicted by praxis, and inviting the critiques such as that of Rachel Adams in her new book (2020), *Transparency: New Trajectories in Law*. As one review of the book puts it[32]:

> "Adams' hypothesis is that because transparency has become a ubiquitous object and its central claim to 'openness and the greater liberalisation of information in all areas of social and political life today'[3] is opaque, this concept is beginning to unravel. For Adams, the irony of transparency is that it does not appear to be what it claims to be, and certain actors deliberately manipulate it to advance other hidden interests, which results in unsuspecting victims of transparency's deceit, especially in the Global South."

This is an important critique, for researchers, for practitioners and pressure groups, and for teaching. All must get fully 'under the skin' of the discipline, which implies rejecting an unquestioning acceptance of the virtue of transparency and instead replacing it with a more skeptical analytical testing of the underlying assumptions, especially in the terms of the casual relationship between transparency and accountability. One example of where this casual relationship was unpicked was the independent review

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28 S. KIERKEGAARD, "Open access to public documents–more secrecy, less transparency!", *Computer Law and Security Review*, Vol. 25, 2009, pp. 3−27.

29 E. ARMSTRONG, *Integrity, Transparency and Accountability in Public Administration: Recent Trends, Regional and International Developments and Emerging Issues*, 2005, United Nations, New York.

30 KOHN *op cit.*, at note 5.

31 A. MEIJER, "Understanding modern transparency", *International Review of Administrative Sciences*, Vol. 75, No. 2, 2009, pp. 255–269.

32 F. ADELEKE, *South African Journal on Human Rights*, Volume 36, 2020, at pp. 410-414. In addition to Adams (op.cit. note 7), the work of Claire Birchell is essential, to gain a leftist critique of mainstream transparency thinking and scholarship; see, for example: C. BIRCHALL, "Radical Transparency?", *Cultural Studies ↔ Critical Methodologies*, No. 14, 2014.

of the Extractive Industries Transparency Initiative (EITI)[33], which found that while the performance of the multi-stakeholder initiative had been impressive in terms of information disclosure (transparency) the impact on development outcomes (accountability) had been limited, leading others to call for a different or stronger theory of change[34].

Lastly, the digital revolution has changed the world in profound ways. It also presents a confounding conundrum: on the one hand, it creates vast new opportunities for enhancing access to information; on the other, it presents numerous risks in relation to the misuse of information, especially personal information. Thus, the relationship between the right of access to information and the right to privacy becomes more tightly coiled, presenting, in turn, significant new challenges for law and governance. The backdrop is one of huge new vested interests – "big tech" – posing wicked problems for both citizens and regulators, as well as for traditional and new forms of (social) media, brought to greater prominence by Zuboff's trail-blazing book *The Age of Surveillance Capitalism*[35].

Figure 1: The Transparency Eco-system

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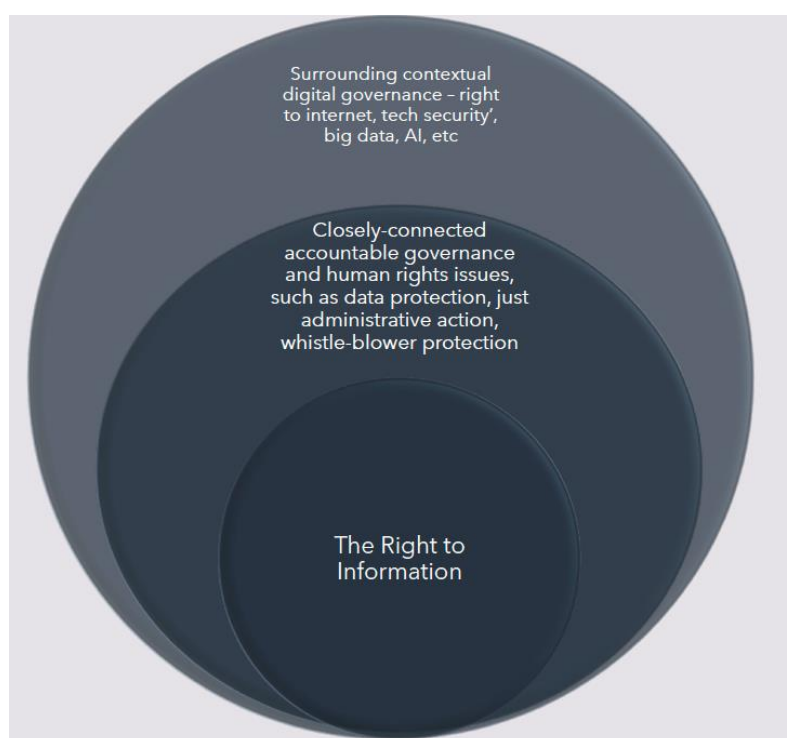
[33] S. DARBY, E. BICKHAM, F. SIMANJUNTAK, and N. WARNER, 'Review of International Governance and Oversight of the EITI' [https://eiti.org/document/review-of-international-governance-oversight-of-eiti] (last accessed 18 December 2021).

[34] P. LUJALA, S. RUSTAD, and P. LE BILLON, '*Has the EITI been successful? Reviewing evaluations of the Extractive Industries Transparency Initiative',* Christian Michelson Institute, 2017.[https://www.u4.no/publications/has-the-eiti-been-successful-reviewing-evaluations-of-the-extractive-industries-transparency-initiative.pdf] (last accessed 18 December 2021).

[35] S. ZUBOFF, 2019, '*The Age of Surveillance Capitalism: The Fight for a human future at the new frontier of power',* Public Affairs.

This leads me to offer tentatively an ontological framework, which I prefer to describe as a transparency eco-system. It places the legal right of access to information at the core. Then it places the related 'cousins' to the right, the other pieces of the legal jigsaw puzzle that all, in different ways, serve or connect to the transparency-accountability pivot – such as just administrative action, the protection of whistleblowers, and data protection rights. Last, in the outer ring, lies the surrounding context, that traverses the Huxley's Brave New World of big technology, surveillance capitalism, and artificial technology. This is systems' approach to transparency, in which all of the different layers have to be taken into account if a holistic and comprehensive understanding of the world of transparency is to be achieved, but which, nonetheless, arguably do not denude the 'thinner' version of transparency – the inner core of the right, for example – of value or meaning.

§ 3 – IMPLICATIONS FOR TEACHING; QUESTIONS & DILEMMAS

The context (a dynamic landscape) and the ontological character of the subject, projects the very forceful idea that transparency is a big and complex subject that will provide a stimulating and challenging opportunity for both teachers and students alike. But this does not answer the primary question: thick or thin paradigm? And to arrive at a reasonable and reasoned answer to this primary question requires, in turn, I submit, the posing of several other, sub-ordinate questions, including:
– Which approach will provide the most fulfilling experience for the student?
– Is there a tipping point at which a subject field becomes so congested and wide-ranging that it no longer makes sense to 'house' it under one academic roof?
– Or does the inter-related and inter-depended nature of the various sub-fields require a transparency 'eco-system' outlook, and one that would provide a suitably multi-dimensional and trans-disciplinary course design, however challenging?

These are some of the questions with which I would like to prompt a global debate amongst scholars and students of transparency law and governance, and amongst the various disciplines across which transparency cuts. There is a lot for each of us to learn from each other's approach, not least because it is a relatively new and emergent field of research and teaching.

My own (new) LLM course in Transparency Law & Governance:

As the ontological proposal above implies, there is a good case to be made for both a thick(er) or a thin(ner) paradigmatic approach to teaching transparency. On what basis should an academic course convenor decide which route to take or which balance to strike? In this final section of this paper, I offer my own response to this question by setting out the basic structure of the transparency

course (a postgraduate LLM course at the University of Cape Town) that I conceptualized and designed, and convened for the first time during the second semester of 2021 (twelve classes divided into four three-class modules). I do so not because I believe I have found the holy grail. Far from it. In fact, the inspiration for this paper was my own querulousness about whether I had struck the right balance between thin and thick in the course. Rather, by setting it out, I hope to illustrate what a combination of a thick and thin approach – at least under the broad legal umbrella – might look like (see Table 1, below).

Module A begins with the 'core' of the transparency eco-system as I see it: the right of access to information, encompassing both theoretical as well as issues of praxis, such as implementation and enforcement. Module B merely stretches the thin paradigm a little, by extending the scope of inquiry beyond the nation-state locus both vertically – from nation-state to the international public governance sphere – and horizontally, examining how the scope of the right can extend to non-state actors in the private (corporate) sphere.

Module C arguably takes a much wider lens, by explicitly linking transparency and the right of access to information to the far-reaching field of 'sustainable development'. This may flatter to deceive in the sense that because sustainable development can – as the Sustainable Development Goals (SDGs) show – cover almost everything, and, therefore, from a curriculum perspective 'nothing'. This is where, in trying to 'thicken' the transparency teaching paradigm the risk may be that it begins to lose conceptual and pedagogical sense. More becomes less. Inevitably, as a result, the module has to pick and choose in order to retain sense and shape, and does so by opting, in effect, for three case studies of transparency and sustainable development: gender, participatory budgeting, and climate justice.

Module D, however, seeks to narrow but at the same time deepen by delving into the dynamic sphere of digital rights. On the one hand, given the cutting edge and self-evidently far-reaching impact of modern technological advances, including ICT, on human life and the economy, how can a course on transparency not at least touch on the surrounding context of misinformation[36], social media and internet access/digital rights? On the other, the challenge is that to apply an old aphorism, "a little knowledge is a dangerous thing". The subject is very complex and rapidly evolving, spanning technological, media, legal and governance terrain (at a minimum), and thereby stretching even further than usual the outdated idea of the 'teacher' as oracle of truth and all wisdom. To include such a dimension in a law and governance LLM class seems, therefore, to place the convenor between a rock

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[36] Concern is growing over the impact of modern forms of communication, especially in terms of social media, on democratic processes. See, for example: A. PUDDEPHATT, 'Social Media and Elections', [https://unesdoc.unesco.org/ark:/48223/pf0000370634] (last accessed 20 December 2021).

and hard place: it has to be there, but it's impossible to do justice to the subject. My answer was to turn to outside experts. By chance, I was doing some work for a major telecommunications company on their strategic and policy response to a 'wicked problem' (as I termed it, for them), namely, being required by governments that had granted their operating licences to shutdown access to the internet, often for highly dubious and undemocratic purposes. In terms of law and human rights, this is a fascinating subject on which very little academic literature is available[37]. I invited the corporate affairs team, and their legal advisors, to join the class, which provided a rich source of exchange and learning.

This leads me to a final point: teaching transparency not only requires critical thinking, as of course any post-graduate course should, but also exercises that test the way in which transparency works in practice. Accordingly, assessment for my LLM course was a mixture of traditional end-of-course exam (albeit 'take-home', over 48 hours), and a research project that required the students to make access to information requests in two separate jurisdictions and to draw analytical conclusions from their research, as to the efficacy or otherwise of the transparency systems. There are, of course, myriad other ways in which the 'real world' of transparency can be brought directly into the classroom to accompany the important theoretical discussions that can frame such an academic field of study.

Relatedly, the technological advances of recent years not only present great challenges in terms of the substantive contours of the current legal and governance landscape, but also opportunities for pedagogy and curricula, as well as for those teaching and studying transparency. The 'Zoom-life' to which most professionals have been compelled to become comfortable during the COVID-19 pandemic has opened up a vista of new ways of connecting and communicating. My new LLM course took advantage by 'Zooming-in' experts from around the world, as well as using other increasingly-accessible devices such as podcasts, to provide a greater variety of material. One of the way of addressing the challenges identified in this paper is through digital collaboration by academics, in which scholars from different universities and countries collaborate rather than compete, and share resources and students. The vision of a global faculty serving a global community of students and researchers emerges ironically from the swirling mists of the subject.

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[37] See, however: D. MBURU NYOKABI, N. DIALLO, N. NTESANG, T. WHITE and T. ILORI, "The right to development and internet shutdowns: Assessing the role of information and communications technology in democratic development in Africa", *Global Campus Human Rights Journal*, No. 3, 2019, pp. 147-172.

Table 1: Basic Structure of new LLM Course in Transparency Law & Governance at the University of Cape Town

MODULE #	MODULE TOPIC	MODULE SUMMARY & KEY ISSUES
A	**THE RIGHT OF ACCESS TO INFORMATION**	The scope of the legal regime; the relationship between the private, public and personal spheres; the alternative of voluntary information disclosure regimes versus legal regimes.
A1	**Theory and Scope of the Right:** the public-private issue and theoretical moorings.	– What sort of a right is the right to ATI? Where does it sit in Hohfeld's classic typology of rights? – The concept of a multi-dimensional, and multi-rationale, right: legal and policy implications. – Global and African continental trends: the State of the Art.
A2	**Implementing Open Government:** systems and procedures	– What is the 'plumbing' that is needed to create an effective and accessible system for implementing ATI? – Obstacles to the effective usage of an ATI legal right, and the political economy obstacles to effective implementation. – *Case study: the work of the Open Democracy Advice Centre in South Africa*
A3	**Comparative Enforcement Modalities:** Claiming the Right to Access to Information	– What is most effective, and why? – The Role of Information Commissioners – how do they reach their decisions? – What lessons can be drawn from the experience of regulatory/enforcement bodies in the US, Germany, Japan and Ireland for new bodies such as the Information Regulator in South Africa?
B	**TRANSPARENCY & INTERNATIONAL GOVERNANCE**	**What are the trends and state of the art of transparency law and policy at the international/multilateral level?**
B1	Transparency and International Financial Institutions (IFIs)	– How have IFIs responded to the explosion in ATI legislation at national level? – The relationship between ATI at IFI level and Environmental & Social standards and engagement and participation. – *Case studies: the World Bank and the Green Climate Fund.*
B2	Transparency and Corporations	– The current trends in the for-profit corporate sector – shifting positions of investors, global voluntary initiatives, shareholder-activists and other stakeholders. – *Case study: section 32(1)(b) in the South African constitution and the 'horizontal' reach of the right; jurisprudence, with specific attention on litigation and party political funding transparency.*
B3	Transparency and multi-stakeholder governance	– What lessons can be drawn from the experience of the voluntary, multi-stakeholder transparency initiative such as the Extractive Industries Transparency Initiative (EITI) and the Construction Industry Transparency Initiative

		(CoST), as well as the Open Governance Partnership?
C	**TRANSPARENCY & SUSTAINABLE DEVELOPMENT**	**What is the relationship between transparency and accountable environmental governance and sustainable development? How does open governance fit into the SDG framework?**
C1	Introduction to the Module: Access to Information as a 'leverage right' for socio-economic justice and sustainable development Women and Access to Information: Assuring an equitable right to information	– The relationship between transparency governance and accountability, specifically in the arena of socio-economic rights and justice. – ATI and Environmental justice & information disclosure; and climate justice. ***ATI & Gender Equality*** – Are women able to exercise the right to information with the same facility as men? And if not, what are the main obstacles? – How can access to information laws and implementation be more gender-sensitive? – What is the role of international policy? – Case study: municipal government efforts to assure women receive services through increased information.
C2	Fiscal Transparency: Open Budget Governance	– The role of information disclosure, open data, in the monitoring and evaluation of government performance. – *Case study of the Open Budget Index of the International Budget Partnership and its impact in setting new standards for transparency in the making of national budgets and the process by which government allocates fiscal resources.*
C3	Transparency and climate justice: information disclosure and climate action & climate finance Climate justice litigation	– On climate change and action, and climate finance: how can transparency governance help deliver climate justice? – How are activists now using litigation as a powerful tool to compel climate action from states, and extract transparency and accountability from corporates?
D	**TRANSPARENCY & MEDIA FREEDOM IN THE DIGITAL AGE**	**Digital Rights: Is there an inalienable right of access to the internet? When, and on what basis, should such a 'right' be limited?** **An Exploration of Shoshana Zuboff's thesis on the new frontier of digital power.**
D1	Surveillance Capitalism & digital 'democracy'	*Case Study: MTN and licence-granting government demands to shut down the internet – the 'wicked problem' facing internet service providers and telecoms companies.*
D2	Access to information and the protecting the 'truth' Whistleblower law, culture and practice: an Introduction to the value and limits of legal protection	Exploration of the nexus between access to information and investigative journalism: – The media and police investigations – The media and intelligence services/military: the D Notice process – Resisting encroachments on media rights through changes in the criminal law.
D3	Data protection & the right to privacy	– Examination of the relationship between transparency and data protection law and policy.

CONCLUSION

Each of the four models in my prototype course could be full courses on their own, such is the potential depth and breadth of the subjects. This suggests that the choice may not be a mutually exclusive one *between* thick and thin, but in designing course options that offer students *both* thick and thin transparency options. This implies a further, possibly more radical and far-reaching conclusion: that the only fully satisfactory answer to the conundrum may be to create full post-graduate courses that encompass both thinner and thicker courses and modules; and which, therefore, have the space to breathe and thereby the room to draw in different specialisms. The even more radical and far-reaching, and for most universities, challenging option would be to establish cross-faculty offerings that enable students to draw on different academic disciplines that reflect the multi-disciplinary character of the subject, and which seize the opportunities presented by modern technology to collaborate and connect so that transparency is taught transparently and studied transnationally.