

The London School of Economics and Political Science

**Unveiled to Regulate:
The Logics and The Trajectories of
Regulatory Transparency Policies**

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ABSTRACT

This thesis traces the creation and trajectories of regulatory transparency policies (RTPs) within what I define as the three 'logics of regulatory transparency': control, performance and transaction. Through in-depth case study analyses of the birth and long-term evolution of selected RTPs in Brazil and the United Kingdom, this study shows that the logics can impact the trajectory of an RTP by shaping the power and priorities of actors in particular ways or by disclosing specific types of information. What I refer to as RTPs in this thesis are a specific class of transparency policies that carry an inherent regulatory goal pursued through the disclosure of information and published directly by governments and regulators. These are not a new class of policies; rather they are studied from the perspective of government transparency or from the perspective of governance. The goal of the thesis is to understand the creation and evolution of RTPs, identify eventual patterns of progress, and learn about the stability of these policies and of the multi-actor interactions that take place during or as a result of their creation and progress.

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LIST OF ACRONYMS

RTP – Regulatory Transparency Policy

CHAPTER 2

Abraji - Brazilian Association for Investigative Journalism (Associação Brasileira de Jornalismo Investigativo)

BNDES - Brazilian National Economic and Social Development Bank (Banco Nacional de Desenvolvimento Econômico e Social)

CEIS - Registry of Non-Reputable or Suspended Companies (Cadastro Nacional de Empresas Inidôneas e Suspensas)

CGU - Brazilian Office of the Comptroller General (Controladoria Geral da União)

CPI - Corruption Perception Index

EBC – Brazilian Enterprise of Communication (Empresa Brasileira de Comunicações)

FoIA - Freedom of Information Act

GIFT - Global Initiative for Fiscal Transparency

IMF - International Monetary Fund

LRF - Law on Fiscal Responsibility (Lei de Responsabilidade Fiscal)

MPOG - Ministry of Planning, Budget and Management (Ministério do Planejamento, Orçamento e Gestão)

OECD - Organisation for Economic Cooperation and Development

SIAFI - System of Financial Administration of the Federal Government (Sistema Integrado de Administração Financeira do Governo Federal)

SPCI - Secretariat for Corruption Prevention and Strategic Information (Secretaria de Prevenção da Corrupção e Informações Estratégicas)

TCU - Federal Court of Accounts (Tribunal de Contas da União)

CHAPTER 3

ACA - Additional Cost Allowances

APMA - Advisory Panel on Members' Allowances

IPSA - Independent Parliamentary Standards Authority

MEC - Members' Estimate Committee

TI - Transparency International

CHAPTER 4

Ideb - Index of Basic Education Development (Índice de Desenvolvimento da Educação Básica)

INEP - National Institute of Education Studies and Research Anísio Teixeira (Instituto Nacional de Estudos e Pesquisas Educacionais Anísio Teixeira)

MEC - Ministry of Education (Ministério da Educação) (Chapter 4)

SAEB - System for Assessment of Basic Education (Sistema de Avaliação da Educação Básica)

SAEP - National System for Assessment of Basic Public Schools (Sistema Nacional de Avaliação do Ensino Público)

CHAPTER 5

CVA - Contextual Value Added

DfE - Department for Education

DfEE - Department for Education and Employment

EBacc - English Baccalaureate

GCE A - General Certificate of Education Advanced

GCSE - General Certificate of Secondary Education

LEA - Local Education Authority

NAHT - National Association of Head Teachers

NASUWT - National Association of Schoolmasters Union of Women Teachers

NUT - National Union of Teachers

Ofqual - Office of Qualifications and Examinations Regulation

Ofsted - Office for Standards in Education

SATs - Standard Assessment Tests

SEN - Special educational needs

CHAPTER 6

ADI - Request for Declaration of Unconstitutionality (Ação Direta de Inconstitucionalidade)

BCB - Brazilian Central Bank (Banco Central do Brasil)

CDC - Consumer Protection Code (Código de Defesa do Consumidor)

CET - Total Effective Cost (Custo Efetivo Total)

Consif - National Confederation of the Financial System (Confederação Nacional do Sistema Financeiro)

DPDC - Department of Consumer Rights and Protection (Departamento de Proteção e Defesa do Consumidor)

Febraban - Federation of Brazilian Banks (Federação Brasileira de Bancos)

IDEC - Brazilian Institute for Consumer Protection (Instituto Brasileiro de Defesa do Consumidor)

CMN - National Monetary Commission (Conselho Monetário Nacional)

Procon - Foundations Program for Protection and Defence of Consumers (Programa para Proteção e Defesa do Consumidor)

Senacon - National Secretariat of Consumer Relations (Secretaria Nacional do Consumidor)

Sindec - National Informational System of Consumer Protection (Sistema Nacional de Informação de Defesa do Consumidor)

SNDC - National System of Consumer Rights (Sistema Nacional de Defesa do Consumidor)

STAR - System for Disclosure of Bank Fares (Sistema de Divulgação de Tarifas)

VET - Effective Total Value (Valor Efetivo Total)

CHAPTER 7

BRTF - Better Regulation Task Force

CFEB - Consumer Financial Education Body

FCA - Financial Conduct Authority

FOS - Financial Ombudsman Service

FSA - Financial Services Authority

FSMA 2000 - Financial Services and Markets Act 2000

ISA - Unit-trust Individual Savings Accounts

MAS - Money Advice Services

OFT - Office of Fair Trading

PCA - Personal Current Accounts

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INTRODUCTION

1. Research Goals

The objective of this thesis is to trace the origins and trajectories of regulatory transparency policies (RTPs) within what I define as the three ‘logics of regulatory transparency’: control, performance and transaction. The thesis’ central research question is:

- *How do regulatory transparency policies emerge and evolve throughout time?*

As secondary questions, I ask:

- *What shapes the origins and trajectories of RTPS?*
- *How do the logics of RTPs shape their trajectories?*

Through in-depth case study analyses of the long-term evolution of RTPs in Brazil and the United Kingdom, this thesis shows that the presented ‘logics of regulatory transparency’ can impact the trajectory of an RTP by shaping the power and priorities of actors in particular ways and by disclosing specific types of information.

What I refer to as RTPs in this thesis are a specific class of transparency policies that carry an inherent regulatory goal pursued through the disclosure of information and published primarily by governments and regulators. These are not a new class of policies; rather they are studied from the perspective of government transparency or from the perspective of governance. The general aim of the thesis is to further the understanding of the origins and trajectories of the evolution of RTPs, identify eventual patterns of progress, and learn about the stability of these policies and of the multi-actor interactions that take place during or as a result of their creation and progress.

Regulatory transparency policies, as briefly mentioned above, comprise the publication of **structured information** to the **general public** in response to a **direct regulatory intervention**, therefore furthering a regulatory goal. ‘Structured information’ refers to standardised and relative information, i.e. comparable within a particular class, such as expenditures, performance, prices, risks and alike. Publication to the ‘general public’ refers to the proactive disclosure of information. In this sense, RTPs differ from Freedom of Information Act (FoIA) requests, in which information is made available to the public upon request and not proactively, as with RTPs. ‘Direct regulatory intervention’ refers to the role of governments and regulators in promoting disclosure of structured

information as a mechanism of regulation, i.e. “intentional intervention in the activities of a target population” (Koop and Lodge, 2015, p. 10).

By conducting an in-depth analysis of the evolution of RTPs, this research aims at addressing identified gaps in the literature concerning the underlying factors and actor roles that shape the creation and the evolution of regulatory transparency policies in specific trajectories. In particular, I look for causal relationships between the three logics of RTPs examined in this work – control, performance and transaction – and RTP trajectories. By ‘logic’ I refer to the underlying rationale (or purpose) of a regulatory transparency policy. I propose that each logic determines who the key actors involved in an RTP are and shapes their power relative to each other, which, in turn, can impact the RTP’s trajectory in particular ways.

In recent years, a number of scholars have addressed the wider topic of this research, i.e. the birth and gradual change of transparency policies. Meijer (2013), for instance, suggests that the social construction and evolution of government transparency are products of the interaction of strategic, cognitive and institutional complexities. He identifies three levels of complexities that inform the debate of the creation of governmental transparency taking into account wider changes in public administration.¹ While Meijer’s model provides an insightful framework about the construction of government transparency, it does not directly address how actor interactions influence and are influenced by government transparency and help shape trajectories of transparency policies; a puzzle that this thesis attempts to tackle within the framework of RTPs. “The role of expected outcomes of changes in transparency”, the author suggests, “needs to be investigated further in order to understand the positions of various actors” (Meijer, 2013, p. 437).

In *Full Disclosure*, Fung et al. (2007, pp. 110-111) study the creation and trajectories of targeted transparency policies. Targeted transparency represents a category of public policies in which corporations or other actors are required to disclose standardised, comparable and disaggregated information regarding specific products or practices to a broad audience in order to achieve a specific public policy purpose (2007, pp. 37-38). “Targeted transparency”, suggest Fung et al. (2007, pp. 40-41), is enacted when information asymmetries “substantially increase the risks borne by the public”, “seriously impairs the quality of critical services provided by public or private organisations”, “perpetuates unacceptable patterns of discrimination or other social inequalities”, or

¹ The first complexity is related to the political game and behaviour of actors, such as responses and reactions, to the introduction of transparency policies. Cognitive complexities relate to the content, format and frames by which information is disclosed. Finally, institutional complexities are the operating rules of the political and administrative game.

“allow corruption to persist in important institutions that serve the public”. The authors argue that targeted transparency policies are difficult to sustain, due to the fact that they are usually enacted following crises and scandals, after which public support and attention to such policies tend to wane.² They conclude that targeted transparency policies fall within the scope of Wilson’s entrepreneurial politics (1980, p. 370), according to which they would tend to degrade overtime. In the authors’ perspective, policies most prone to sustainability are those in which many disclosers benefit from disclosure and those which feature stronger user groups.

In contrast to Fung et al., the narratives offered in this thesis suggest that certain classes of transparency policies are self-reinforcing, and that they are not the outcomes of critical junctures but of incremental changes, as discussed in detail in the theoretical debate developed on Chapter 1. In part, this divergence reflects the differences between the concepts of ‘targeted transparency’ and ‘regulatory transparency policies’, which inform the case selection of the two studies. Whereas Fung et al. focus on the mandatory publication of information by private parties, I look into disclosures by governments and regulators to fulfil similar regulatory goals, e.g. combating corruption, attempting to increase public service qualities, and reducing risks of lemon choices, to name a few.

1.1. Relevance and Contributions of the Research

As a regulatory solution, transparency policies are widely assumed to have the power to change the behaviour and practices of targeted groups (Brandeis, 1913; Behn, 2003; Fung et al., 2007; Hood, 2006; Meijer, 2007; Baldwin et al., 2012; among others). In this vein, disclosure is expected to be effective in two ways. First, the users of disclosed information can engage in voice or exit acts (Hirschman, 1970) – i.e. they can voice their concerns and demand improvements, or choose a different provider for the same service. In response, individuals or organisations that are the targets of transparency can look for ways to improve levels of quality or integrity. Secondly, organisations or individuals regulated through transparency adapt their behaviour as an immediate response to transparency, not in response to users of the disclosed information, but by anticipating their reactions (Meijer, 2007).

Transparency, however, is not a solution for all public problems. Mismatches between information disclosed, the objectives of transparency and public disinterest for

² The authors define sustainability as a system that improves over time, in one or more of the following dimensions: “[E]xpanding scope of information relative to the scope of the problem addressed; increasing accuracy and quality of information; and, increasing use of information to consumers, investors, employees, political activists, voters, residents, and / or government officials. (Fung et al., 2007, p. 109)”

information can lead to failures of regulatory transparency initiatives. Since Herbert Simon's (1972) acclaimed 'Theories of Bounded Rationality', a considerable number of studies has been published demonstrating individuals' biases of rationality, casting doubt on transparency's ability to fulfil many of its ambitious promises. Yet in spite of these limitations and criticisms, disclosure is still widely used to regulate a series of behaviours and policies. This suggests that transparency as a regulatory mechanism is here to stay; at least for the foreseeable future and in some policy realms. Therefore it is necessary to study the trajectories of RTPs, understand how they evolve over time, how actors interact to push for greater or lower levels of disclosure, and what future trajectory one can expect for an RTP.

In this vein, the first intended contribution of this thesis to the literature is the **original empirical evidence it presents**, demonstrating that the origins and trajectories of regulatory transparency are neither uniform, nor exclusively or primarily the result of external shocks. To analyse the trajectories, I employ a pluralist approach to institutional change that draws insights from both the path dependency arguments of historical institutionalism and the actor-focused analyses of rational-choice institutionalism. I take into account the wider socio-political environment when making the case that RTPs are self-reinforcing processes, while simultaneously acknowledging that continuous actor interactions at the micro-level of policymaking lead to incremental changes in the trajectories of these policies. In pursuing this path of scholarly pluralism, I take inspiration from Peter Hall's words that the study of institutions will be advanced by "those willing to borrow concepts and formulations from multiple schools of thought" (Hall 2010, p. 220).

My second intended contribution is the **introduction of the 'logics of regulatory transparency policies'** to the literature as an analytical concept and the discussion on the relationship between the different underlying logics of RTPs and their trajectories. Analysing the lives of transparency policies with a regulatory intent from the perspective of the logics, which, as noted above, points to the underlying rationale of an RTP, helps to identify the actors and the institutional dynamics that shape the evolution of these policies. In doing so, it also helps us to understand the politics behind these policies. Transparency is highly political whenever it stands to expose or constrain the behaviour of governmental or corporate actors.

Finally, the literature on regulatory transparency is still underdeveloped, with notable gaps in explaining change across time, as well as within and across countries. As suggested by Grimmelikhuijsen et al. (2013), most works about transparency are geographically concentrated in North America and Europe. This makes an intensive and detailed study across countries and sectors particularly relevant, not least because some

of the premises assumed in the literature for the origins of regulatory transparency policies in the US reality do not necessarily apply to other contexts where RTPs have also become mainstream policies. Alongside providing original empirical findings for cases in the UK context previously covered in the literature, this thesis aims to contribute to filling this geographical gap by presenting political and institutional analyses of regulatory transparency policies in the understudied Brazilian context.

2. Research Design

The research is based on a qualitative comparison of case studies. This methodological choice is justified for two main reasons. First, the research envisages to understand a phenomenon applicable to a larger class of (similar) cases. As George and Bennett (2005, p. 5) argue in *Case Studies and Theory Development in Social Sciences*, case studies allow for “the detailed examination of an aspect of a historical episode to develop or test historical explanations that may be generalizable to other events”. Case studies, in other words, offer a way to explore causality by enabling scholars to identify and analyse all the developments and dynamics within a particular case. Secondly, understanding the origins and trajectories of regulatory transparency requirements still demands an intensive and detailed study of cases, which can highlight the actors and dynamics that may shape the evolution of regulatory transparency policies in certain directions. Case studies are also ideal in this regard, as they help to uncover “variables that were otherwise left out in the initial model” and to develop hypotheses “through the study of deviant or outlier cases in the course of field work” (George and Bennet, 2005, pp. 20-21).

Considering the research question, its hypotheses and the strength of case study analysis, the research design adopts a comparative method based on the notion of consilience, as proposed by Levi-Faur (2006). This method (1) aggregates the advantages of the techniques of the National Patterns Approach (NPA) and of the Policy Sector Approach (PSA), and (2) reduces the tensions between internal and external validities. The aggregation of NPA and PSA is highly relevant for the study of regulatory transparency policies. First, the level of openness and government transparency vary widely across nations. A number of international NGOs (*Access Info Europe* and *Global Right to Information Rating*, for example) and scholars (Banisar, 2006; Hazell and Worthy, 2010; Michener, 2011, 2015; Wehner and Renzio, 2013; for example) have provided evidence for this claim concerning government transparency, with Freedom of Information Acts (FoIA) being central in most comparisons. Still, regulatory transparency policies, and for that matter transparency policies in general, vary across sectors, i.e. variations of governance models and practices take place within the same country, in the

same historical and contextual environments. As regulatory transparency policies are present in many different policy areas and nations, a comparative analysis research approach is more appropriate than a single case study, which would tend to particularise the results and not contribute to understanding the phenomena more broadly.

Finally, the consilient theory of comparative methods improves the quality of the comparative research design by providing a “(...) ‘holistic picture’ and a panoramic snapshot of important aspects of the cases” (Levi-Faur, 2006, p. 375). Applying elements of NPA and PSA methods simultaneously allows the researcher to assess cross-national variations, cross-sectoral variations, similarities across both sectors and nations, and variations across both sectors and nations. Hence, commonalities and variations identified across countries and across sectors shed light on the relevance of institutions, of structure and agency characteristics to understand and explain the trajectories of regulatory transparency, providing evidence to corroborate or falsify hypotheses.

In terms of the tensions between internal and external validities, Levi-Faur (2006, p. 375) defends that the comparative method based on the notion of consilience reduces such tension by increasing the “(...) number of comparisons and the number of cases simultaneously (rather than emphasizing one of these goals)”. The author also suggests that “The internal validity of the research [one that applies a consilient comparative method] might also be increased by a process-tracing technique” (Levi-Faur, 2006, p. 376). Process tracing is an especially useful technique to assess the trajectories of change and causation in each case and to clarify the mechanisms that operate to promote positive or negative feedbacks. “It is the quality of the observations and how they are analysed, not the quantity of observations,” suggest Gerring (2007, p. 180), “that is relevant in evaluating the truth claims of a process tracing study”. However, due to the emphasis of this research on empirical details as well as on deductive reasoning, it is more suitable to harmonise the consilient comparative method with analytic narratives method, which presents similar features to process tracing. Bates et al. (1998, p. 16) explain the similarities and difference between the two methods:

We can see that the construction of analytic narratives is an iterative process, resembling George’s method of process tracing (George, 1979; George and Bennet, 1998). Like George, we seek to convert “descriptive historical “accounts into “analytic ones” that are couched in “theoretically relevant” language (George and Bennett, 1998: 14). Like George, we move back and forth between interpretation and case materials, modifying the explanation in light of the data, which itself is viewed in new ways, given our evolving understanding. What differentiates our approach from the method of process tracing is a greater emphasis on theory.

The narratives of each one of the case studies (selected using the consilient comparative methods) consist of an in-depth investigation of actors, events and context, in search of extracts of explicit and formal lines of reasoning in particular periods and settings, which facilitate the clarification of trajectories and their explanation. In summary, the operationalisation of the research intends to move from the rich context of events and cases to explanations that are rigorously backed by theory and subject to empirical analyses (Bates et al., 1998, p. 236).

Section 2.1, below, presents and justifies the selection of cases. The subsequent sections provide detailed information about the data collected, the period of analysis and the operationalization of the research.

2.1. Case selection

The notion of consilience of the comparative model “(...) emphasizes the importance of concurrence of observations from different classes of facts” (Levi-Faur, 2006, p. 373), in which nations and sectors supply two dimensions for the examination of observations concerning agency and causality. By doing so, it helps to define the case selection in a way that minimises selection bias problems by capturing similarities and variations in the cases.

For the country selection, I considered two national features of their political systems (Layer 2, as further explained in Chapter 1) that I identified in the literature to signal as having the potential to impact the trajectories of regulatory transparency policies, i.e. (i) the institutional ‘climate’ towards openness, and, (ii) the level of liberalisation of public sector reforms. The cases are drawn from two countries, both liberal democracies (Layer 1), which exhibit important similarities in relation to openness and differences in relation to economic liberalisation. Institutional ‘climate’ towards openness tries to capture the tradition of the country in the publication of information to citizens. Fung et al. (2007, p. 19), for example, claim that one of the three factors that propelled a new generation of targeted transparency into mainstream policy in the United States was a generation of right-to-know transparency policies, the most far reaching of them being the federal Freedom of Information Act. It is assumed that countries with a tradition of disclosing information to its citizens are more prone to adopt regulatory transparency policies than countries whose citizens are not used to having access to governmental information.

There is a long list of indicators that could capture countries’ institutional ‘climate’ towards openness and transparency of the public sector. Many of these indicators try to signal the level of openness of FoI legislation. Given the comparability and measurability

of FoI laws, it is a good *de jure* indicator of countries' government openness. There is also a set of indicators that aggregate data about the openness of FoI legislation with other indicators, such as fiscal transparency, disclosures related to elected or senior public officials and citizen engagement. A whole different list of indicators tries to measure transparency as a component of governance indicators. Given the aims of this research to reflect the countries' tradition of disclosing information to its citizens, it highlights the adoption of FoI as well as other measures to promote governmental transparency, such as the engagement in the Open Government Partnership.

The cases are drawn from two countries: Brazil and the United Kingdom. The selection was based on the notion of consilience in the comparative model, and on the literature on transparency, institutional change and regulatory reform in the two countries. As noted above, Brazil and the UK exhibit important similarities and differences that could help inform us about the determinants of the trajectories of regulatory transparency. In relation to the institutional climate towards openness, notably in relation to freedom of information legislation, Brazil and the United Kingdom share important similarities, including recently taking notable steps towards openness. The similarity in their levels of commitment to openness allowed me to rule out wider socio-political and institutional discrepancies, which are harder to observe and would have rendered the countries simply too different for the case studies to serve a collective purpose. Both countries brought into force Freedom of Information Acts in the 2010s, institutionalising access to information requirements of comparable strength. In 2011, both countries became founding members of the Open Government Partnership, a multilateral initiative to promote transparency globally, which they jointly co-chaired for six months in the following year.

Unlike their similar institutional commitment to openness, Brazil and the United Kingdom display divergent levels of economic liberalisation and public service reforms. These differences are relevant because they shed light on observable characteristics of the economic and institutional-regulatory environment that influence actors' interests and behaviours in relation to RTPs. The level of liberalisation of a specific country is expected to influence the creation and evolution of regulatory transparency policies, because in liberalised economies it is more likely that certain choices will be left to be made by consumers, instead of by government. If, in a liberalised economy, citizens get to choose from various products and services they are offered, but are not provided with adequate information on these products and services, they will be bound to make misinformed, or 'lemon', choices (Akerlof 1970). Consequently, the notion of 'sovereign consumer' gains more emphasis as a way to tackle information asymmetry in countries

that undertake public sector liberalisation reforms, where RTPs are more likely to be created compared to less liberalised contexts.

In New Zealand, for example, where public sector reforms are considered to have been one of the most liberal and comprehensive, regulatory transparency was enacted to require information disclosure to support consumers' decision making processes (Stirton and Lodge: 2000: 10). According to Stirton and Lodge (2000: 11), "Disclosure rules increased over time in their robustness and detail, although not in terms of increased areas of information". The same authors also argue that in Jamaica, where the level of liberalisation was limited in the early days of reforms, the level of information disclosure was restricted; but as reforms developed, it was expected that the importance of information disclosure increased to foster the sovereignty of consumers.

According to the 2013 Index of Economic Freedom, for example, the United Kingdom is considered mostly free (i.e. liberal) whereas Brazil is mostly unfree, placed seventh and 122nd on the Country Ranking, respectively.³ In terms of the institutional and regulatory environment, market-oriented reforms in the United Kingdom were comprehensive, whereas in Brazil they remain limited.

The variation in the level of economic liberalisation of the two countries is also reflected in their approach to regulatory policy and governance. In 1997, the United Kingdom's Better Regulation Task Force (BRTF) was created as an independent advisory body which would identify and raise awareness of benchmarks for good regulation within government. Within a year of its creation, the BRTF published, and the British government endorsed, its principles of better regulation (Baldwin, 2010, p. 260). Among such principles was that of proportionality, which often informs the adoption of transparency as a regulatory measure. While the UK has created and re-created regulatory impact analysis units with mandates to guide the regulation making processes, including raising awareness of transparency as a regulatory tool, Brazil has strongly focussed its regulatory policy agenda on regulatory agencies (OECD, 2016) and continues to lack a regulatory quality assurance unit (OECD, 2008, p. 36). This is in spite of the establishment of the *Programme for the Strengthening of Institutional Capacity for Regulatory Management* in 2007, which is still timid and has also focused on regulatory agencies.

In light of these differences and similarities at the national level, I chose the sectors based on the three logics that I address in the thesis, i.e. the control, the performance and the transaction logics. The policy justification to adopt transparency as a regulatory

³ It is worth noting that the equation of market liberalisation with 'freedom' carries certain ideological assumptions, which can be viewed as problematic or at the very least debatable. As Chapter 1 will discuss in more detail, this neo-liberal paradigm has been a driving and justifying force behind transparency in general and RTPs in particular for the past several decades.

mechanism is to constrain the behaviour of politicians, shape the actions of bureaucrats, limit the strategies of enterprises, stimulate certain consumer behaviour, among others. However, being designed by one set of actors to regulate the behaviour of another set actors, the creation and evolutionary processes of regulatory transparency policies will likely differ based on who drives each policy, who is targeted, who benefits (or is expected to benefit) from it and who the intermediaries are, as well as the institutional power and the willingness of each of them to mobilise resources in favour or against regulatory transparency. While all transparency policies in this thesis are selected for fostering a regulatory perspective (as opposed to an accountability one, for example), the specificities of each logic provide insights into their creation and evolutionary trajectories.

Put briefly for now, and explained in depth on Chapter 1, what differentiates one logic from the other is the position of the discloser (i.e. government or regulator) in relation to the target of disclosure (i.e. those regulated through transparency), which influences the potential regulatory purposes of disclosure. In this light, I chose three policy areas for the research sample, each corresponding to one of the regulatory transparency logics proposed: ethics and anti-corruption in the control logic; education in the performance logic; and financial services in the transaction logic (see Table I.1. below). For the sake of feasibility and quality of the research, I chose one specific sector within each of the policy areas I worked with, i.e. the Brazilian federal government and the British House of Commons (in the ethics area), secondary schools (in the education sector), and banks (in the financial market).

Country / Sector / Dominant logic	Public Officials & Congressmen and Congresswoman	Secondary Schools	Financial institutions
Brazil	Control Logic (Activities taking place within government)	Performance Logic (Activities carried out by decentralised policy delivery units)	Transaction Logic (Activities carried out by private units, mostly in commercial transactions)
UK / England			

Table i.1. Case Selection and Dominant RTP

In relation to ethics and anti-corruption, I chose one initiative that focuses on a broader range of targets with less institutional power (such as public officials, beneficiaries of public policies, and subnational units) and one initiative in which the target of regulation are politicians. This distinct selection of institutions in the two countries had two reasons. First, whereas in Brazil the federal government's financial transparency policy, the Transparency Portal, was designed in the logic of control, its corresponding policy in the United Kingdom, the Combined On-line Information System (Coins), was designed as a fiscal transparency instrument not associated with ethics but with fiscal control. Second, the selection allowed me to question how targets with different institutional powers in the same RTP logic influenced the trajectories of regulatory transparency.

The choice of education to analyse the trajectories of RTPs in the performance logic was influenced by the Brazilian case, due to the short lives of transparency policies in other policy areas in this logic (e.g. health). Institutionally, the secondary education system in both countries allow for the comparison in the logic of performance because they are regulated by central governments and are provided by private, semi-public and public actors. In the case of Brazil, secondary public schools are the responsibility of states, which may add new layers of regulation, as long as these do not contradict with the applicable federal legislation. Similarly, in the case of England, local education authorities are responsible for the provision of secondary education within their jurisdiction. The choice of primary schools as case studies for the trajectory of RTPs in the performance logic would not be adequate due to the limitation of RTPs therein, as briefly mentioned in Chapters 4 and 5. Similarly, the choice of higher education to analyse the trajectories of RTPs in the performance logic would be less adequate than that of secondary education, due to the provision of education model in England, which could approximate the analysis to one in the transaction logic.

Finally, it is important to state that the choice of financial institutions for analysing the trajectories of RTPs was primarily influenced by the fact that I am a public official for the Brazilian Central Bank. However, the choice is justifiable methodologically as well, both because of the actors that shape the dynamics of the RTPs analysed, and because of the possibilities for comparison between such policies.

2.2. Data collection

The initial step of data collection for the thesis was to extract information available in the secondary sources literature. Out of the six case studies conducted in this research, there are previous studies looking into three from a public policy perspective (Thomas, 1998; West and Pennel, 2000, 2012; Bonamino, 2002; Goldstein, 2003; West, 2010; Worthy, 2014; Hine and Peele, 2016; among others).⁴ Although these studies do not address the questions at the heart of this research, they nonetheless provide an informative background for the institutional environment in which RTPs were adopted and for actors' reaction to them. Most importantly, these studies provide data over the past twenty or thirty years about the trajectory of the RTPs being studied. As such, the first step of data collection consisted of a review of the existing literature regarding the policies in each sector and country covered in the research.

Secondly, I went on to document the normative changes that defined or supported the creation and changes in the trajectories of RTPs for each case study. Due to the normative nature of changes to RTPs analysed in the thesis, i.e. mostly institutionalised in secondary legislation, I placed particular attention to the enactment and changes to executive decrees and other secondary norms, such as regulators' guides and recommendations, as well as to the context in which they were adopted.

Due to the fact that previous studies did not look in depth into the evolution and the politics of regulatory transparency policies as suggested in this thesis, the third step of data collection still aimed to compile information that informed about the creation and evolution of RTPs and pointed to actors' reaction, engagement and mobilisation to influence their trajectories. This was first done through desk research, when I collected material available in newspapers, opinion pieces published in important media channels, websites of international and national NGOs, and alike. When I could not trace detailed information about the evolution of the regulatory transparency policies of the research, I contacted the public offices in charge of the policies both through open channels of communication (such as 'Contact Us') and, when non-existent or unresponsive, by submitting freedom of information requests with specific questions and demands for information. None of the data gathered on the first, second or third steps of data collection were considered more relevant than another, rather they aimed at supplementing each other in order to give me a comprehensive view of important elements of the birth and trajectories of each RTP.

⁴ The three cases are part of Chapter 3, on *Members' Register of Expenses and Allowances*, and Chapters 4 and 5, on the trajectories of secondary school performance tables.

The final stage of data collection, following a comprehensive assessment of each case study, involved in-depth interviews with regulators, public officials and representatives of interest groups, such as NGOs and other identified third parties. The interviews served two important purposes: First, they were necessary and used to fill crucial gaps of knowledge in the lives of the specific RTPs assessed in the thesis, to be able to retrace each step of their evolution. Secondly, they were aimed at better understanding the perspectives of various actors involved in the RTPs in question. Elite interviews help to uncover the perspective of relevant actors, who play key roles in political, administrative or regulatory organisations, and to clarify the links between the narratives and the theoretical framework (Marshall and Rossman, 2011).

Obtaining interviews was arguably the most challenging part of the data collection process. For every case study in the thesis I aimed at talking to representatives of the actors that pushed for further regulatory transparency (i.e. the drivers), the actors that were regulated by RTPs (the targets), and actors that played the role of intermediaries. In spite of the significant effort I put into identifying and contacting interviewees, I was not able to maintain a balance in the number of drivers, targets and intermediaries for each case study, as I initially intended to. Due to my previous work in the Brazilian government, it was easier to connect with potential interviewees in Brazil than it was in the British case, especially in relation to public regulators and authorities. Though this was quite challenging from the perspective of research design, it is important to state that, except for the case study in the financial sector, the amount of data available on secondary sources about the English RTPs was significantly more extensive than that in Brazil. Therefore, I tried to address potential biases generated by this imbalance by intensifying the research on secondary sources, in particular looking for previously published interviews and op-eds by the actors underrepresented in the interviews. In total, I conducted 26 interviews.⁵ Although for all case studies I put considerable effort to obtaining interviews from key actors, I had to focus particularly intensely on actor interviews conducted for the Brazilian school performance tables (Chapter 4) and for regulatory transparency policies on the financial sector in both countries (Chapters 6 and 7), as there is little material available about these subjects in relation to the topic of this research.

Finally, it should be noted that from 2007 to 2012 I was the manager of the Brazilian Transparency Portal (at the Brazilian Office of the Comptroller General), which is the RTP assessed in Chapter 2, and of other transparency initiatives, including the implementation of the Brazilian Freedom of Information Act. As a researcher, I actively and consistently

⁵ A list of the interviews conducted, with additional information about the interviewees' positions and the date of the interviews, is available per chapter in the annexes to this research.

aimed at addressing the potential bias of being an internal observer by following strictly the same research methods adopted for the other cases. I am aware, however, that some of my own observations and analyses from my experience as a practitioner are reflected in the chapter.

As a practitioner, I share the view that transparency can foster the important democratic value of public accountability and that full disclosure should be pursued in a number of policy areas, such as public finance, and in several administrative acts in public administration, such as the results and impacts of public policies. On the other hand, given its various limitations, I do not claim to be an unconditional supporter of regulatory transparency policies. As with many other regulatory mechanisms, transparency is a technical tool, with potentials and pitfalls, and should be addressed as such, rather than a solution for all policy problems.

All too often, the hope attached to a transparency policy turns out far more ambitious than what the policy can and ultimately does deliver, due to inherent problems related to the motivation or capacity of the disclosers of information or its potential beneficiaries (Roberts 2015). Perhaps most importantly, as studies on the politics of transparency have shown (Fung et al, 2007; Berliner, 2014; Birchall, 2014; Vargovčíková, 2015) and as I discuss further in Chapter 1, transparency is a highly political tool that is frequently used for purposes other than strengthening democracy. “Far too often”, argues Birchall (2014), “disclosures are used to renew rather than disrupt the political system.”

2.3. Period of analysis

Each case study in this thesis covers approximately a period of twenty years, from the early 1990s to 2015. There is some variance of the period of analysis between the case studies, due to the specific time of creation of RTPs. I adopted the initial period due to the fact that the two countries went through public sector and regulatory reforms until or during the 90s, when transparency could have been emphasised as a regulatory mechanism or as a mechanism to increase the accountability of privatised services. The end period of analysis is 2015, a year before the submission of this thesis, in order to cover as much as possible the variations in RTPs’ across time, including periods of reforms towards greater transparency.

2.4. Limitations of the research

It is worth noting that this thesis has a number of limitations. A potential criticism this research might draw is related to the generalisability of its conclusions, given the limited number of case studies analysed within each of the three dominant logics. A larger number of case studies in more policy areas and more countries could perhaps help reaching more decisive conclusions regarding patterns and determinants of RTP trajectories. However, as suggested by Baumgartner and Jones (2009) in their seminal study of policy evolutions, no group of public policies, nine or twenty-nine, could be thought of as a sufficient basis for generalisation. In any case, the number of cases in this research does not render its findings any less significant. These findings can be tested and questions that arise regarding generalisability can be explored in further investigations and supplementary case study analyses. As is often the case with research projects involving limited time and resources, a choice between going in-depth into a few cases versus increasing the number of cases at the risk of keeping the analysis more superficial is an inevitable one, and for the purposes of this thesis I decided the former was the more appropriate path.

Another pitfall of the research stems from the limited availability of reliable data regarding the effective use of disclosed information by beneficiaries of disclosure (such as parents, citizens or consumers) as a result of the initiatives analysed in the case studies. This has reduced my ability to make stronger assertions about the impact of information use by beneficiaries in the trajectories of RTPs. As Chapter 1 will discuss, the use of disclosed information by beneficiaries may increase the bargaining power of the drivers or targets of regulation. On the other hand, in several cases, lack of information use may empower the targets of disclosure to demand retrenchment of regulatory transparency. In order to overcome this limitation, I submitted a number of freedom of information requests to regulators as well as a series of requests to private disclosers to find out about the volume and nature of access to their main discloser channels.

3. Thesis Outline

The thesis is divided in eight chapters, excluding this Introduction. Chapter 1 reviews the literature on institutional change, debates the rise of the cultural and institutional factors that strengthen transparency as a social norm and a policy solution. The chapter also proposes an analytical framework for the research and suggests that regulatory transparency initiatives are self-enforcing and proposes an analytical framework to analyse RTPs based on their 'logics', actors involved in their design and the type of information disclosed.

Chapters 2 to 7 make up the case studies of the thesis. These are grouped into three parts. Each part includes two chapters, one on Brazil and the other on the UK, focusing on one of the three logics of regulatory transparency. Part I examines the logic of control. In it, Chapter 2 provides an in-depth analysis of the Brazilian Transparency Portal, enacted as a tool to provide citizens with information about the federal government's expenses and to enforce the country's fiscal responsibility law and advanced as one of the federal government's main transparency initiatives against corruption. Chapter 3 narrates the story of the enactment of transparency requirements to regulate conflict of interest in the House of Commons as well as MPs' parliamentary expenses.

Part II is about the logic of performance. It includes Chapters 4 and 5, which analyse the introduction of regulatory transparency to Brazil and England's education systems, specifically to secondary schools. The chapters demonstrate how, in spite of different policy designs, some of the struggles between the drivers and the targets of regulatory transparency in the performance logic can lead to similar trajectories. Part III focuses on the logic of transaction. Chapters 6 and 7 explore the evolution of regulatory transparency in the transaction logic by analysing initiatives in the area of personal current accounts in the banking sector of both countries. Each part concludes with a comparative analysis of the cases examined within the logics.

Finally, the Conclusion reviews the evidence from the case studies to evaluate the original argument that regulatory transparency policies are self-reinforcing, presents conclusions on how the logics of RTPs and actor interactions inform the evolution of these policies, and discusses findings and insights in light of the literature on transparency.

CHAPTER 1:

A SCHOLARLY PLURALISTIC APPROACH TO THE TRAJECTORY CHANGES OF RTPs

Introduction

This chapter introduces the analytical framework used in this thesis to analyse the case studies. It argues that the literature on institutional change offers useful tools for the study of the trajectories of regulatory transparency policies (RTPs). I claim that a scholarly pluralism in studying institutional change, which combines elements of historical institutionalism and rational-choice approaches, while taking into account both the formal and informal institutional environment, provides the most appropriate model to analyse the trajectories of RTPs.

While the wider socio-political environment, defined by culturally embedded norms and principles enshrined by key political institutions, provides a key impetus for the creation of transparency policies, I suggest that once these policies are in place, they can expand, retrench, stagnate or be contested even in the absence of critical junctures like external shocks, crises or legislative turning points. The fact that the RTPs analysed in this research are not enacted through primary laws (unlike, for instance, FoIAs), and hence the procedure to amend them is often less complex, also suggests that they may be more open to frequent modification after creation; this is a story that also emerges from the case studies. To understand the determinants of the possible trajectory of an RTP, I argue that we need to focus on actor positions and interactions, which can be influenced by the specific 'logic' of the RTP.

The chapter starts by engaging with the existing theoretical debate on institutional change, focusing on the scope of institutional analysis and questions of abrupt versus incremental change. Second, to shed light on where the debate on transparency is rooted, and to situate regulatory transparency policies within the wider socio-political context, I introduce a three-layer framework, which consists of culturally embedded norms (*macro layer*), the political system (*meso layer*) and governance (*micro layer*). While the case studies focus on the micro layer, I explore the linkages between the three layers, which supports the explanation of the policies' evolutionary trajectories.

Informed by this framework, the third and final section of the chapter introduces the key hypotheses of the research concerning the trajectory of change in RTPs. I argue

that once they are created, RTPs are self-reinforcing, i.e. they tend to follow the original purpose (or path) they were created for. This does not mean, however, they cannot expand, stagnate or even retrench on this path. To explain when and why they would follow a particular trajectory, I propose looking at actors' interactions, in particular the ability and willingness of certain actors to push for or resist disclosure, as well as the specific logic of an RTP, which, I suggest, can influence trajectories by shaping actor relations.

1. A Pluralistic Approach to Institutional Change

In his influential article on 'New Institutional Economics', Nobel prize laureate Oliver Williamson (2000, p. 595) makes a confession, an assertion and a recommendation:

The confession is that we are still very ignorant about institutions. The assertion is that the past quarter century has witnessed enormous progress in the study of institutions. The recommendation is that, awaiting a unified theory, we should be accepting of pluralism.

Nearly two decades on, there is still no consensus on the definition of an institution, nor a unified grand theory to explain institutional change. But the multiplicity of definitions and theories does not necessarily mean a weakness in the literature. An increasing number of scholars of institutional change seem to accept and suggest that a pluralistic approach that combines aspects of different traditions may be better suited to understanding how and why institutions change (Grief and Laitin, 2004; Streeck and Thelen, 2005; Hall, 2010). Hall, for example, argues that "the greatest advances will be made by those willing to borrow concepts and formulations from multiple schools of thought" (Hall 2010, p. 220). In this vein, this research uses insights from historical institutionalism and rational choice to understand the trajectories of change in RTPs. The present section aims at highlighting some of the key debates within the literature that are useful in conceptualising a pluralistic approach. Let me emphasise that what I am putting forward here is a type of 'scholarly pluralism' – not to be confused with 'pluralism' in democratic theory.

The definition of an institution continues to be debated and contested. Here, we can identify three main strands in the literature. The first one defines institutions as "formal rules of the game", i.e. constitutions, laws, treaties, enforcement mechanisms, formal organisations and the institutional design of government (North, 1990). A second strand

defines institutions more broadly to refer to sociological concepts, such as mores, rituals and values, which tend to be unwritten and enforced informally (Powell, 1991). Historical institutionalists emphasise both formal and informal institutions “embedded in the organisational structure of the polity or political economy” (Hall and Taylor, 1996). Mahoney and Thelen (2010, p. 5) define institutions as “relatively enduring features of political and social life (rules, norms, procedures) that structure behaviour and that cannot be changed easily or instantaneously.” According to Streeck and Thelen (2005, p. 10), the defining feature of an institution is “that actors are expected to conform to it, regardless of what they would want to do on their own”. Finally, a third strand, used mainly by rational-choice institutionalists, views institutions as “self-sustaining, salient patterns of social interaction” giving rise to “common knowledge among the players regarding a particular equilibrium path of the game” (Aoki 2007; cited in Kingston and Caballero 2009).

The relevant questions that arise from these multiple concepts and definitions are ‘how does each strand analyse institutional change?’ and, more specifically for the purposes of this research, ‘how can they help us understand the trajectories of regulatory transparency policies?’. Here, sociological institutionalism focuses on the role of culture, while rational-choice institutionalism focuses on the role of actor interactions and power relations. According to the latter approach, institutions form and change as rational actors pursue their self-interest. Institutions are stable when actors’ interests and expectations are in equilibrium. They change when their ‘strategic calculus’ (Hall and Taylor, 1996) shifts, the equilibrium is broken (‘punctuated’) and there is search for a new equilibrium (Aoki 2001; Grief and Laitin, 2004).

Whereas rational choice institutionalists explain institutional stability with an equilibrium, historical institutionalists use the concept of ‘path dependence’. From a broad definition, path dependence means that past choices in the design of institutions will have an impact on their future trajectory. In this regard, whereas the concept takes into account the role of actors in shaping policy designs, especially at ‘critical junctures’, the focus is on timing and sequence of occurrences. However, as Pierson (2000) has noted, such a broad definition has limited analytical use. A narrower, more qualified, definition emphasises ‘increasing returns’ (also described as self-reinforcing or positive feedback processes), which suggests that once actors take a specific path at a given moment, that path is likely to persist because ‘the relative benefits of the current activity compared with other possible options increase over time’ (Pierson, 2000, p. 252), which also makes it progressively costly to reverse the path. Levi (1997) offers a particularly insightful way to think about self-reinforcing processes. Rather than a ‘path’, she uses the metaphor of a ‘tree’, where in “the same trunk, there are many different branches and

smaller branches.” While it is possible for a policy to turn around and climb from one branch to another – “essential if the chosen branch dies” – the branch on which the policy sets off is the one it will most likely follow (Levi, 1997; cited in Pierson, 2000, p. 252).

A criticism pointed at path dependence and equilibrium accounts has been their reliance on exogenous factors to bring about change (Saint-Martin, 2005, p. 145). Indeed, in all three branches of institutionalism, the tendency has been to conceptualise institutions as resistant to change by default. According to this logic, once set on a specific path or equilibrium, institutions are stable until change is imposed externally at critical junctures or moments of punctuation. A number of scholars have criticised this tendency and looked for ways institutions can and do change without the need of an external shock (Grief and Laitin, 2004; Streeck and Thelen, 2005; Aoki, 2007; Mahoney and Thelen, 2010).

Significantly, most of the arguments for endogenous or gradual change came from those scholars who combine aspects of rational-choice and historical institutionalist approaches. Building on a game-theoretical framework, but also incorporating criticisms from historical institutionalists that rational-choice institutionalism ignores historical processes, Grief and Laitin (2004) propose a dynamic model in which institutions can be both self-reinforcing or self-undermining, and change can occur exogenously or endogenously.⁶ On the other side of the theoretical divide, Streeck and Thelen challenge the common historical institutionalist assumption that institutions experience long periods of stability that are interrupted by short periods of sudden change:

‘Agency’ and ‘structure’, in other words, do not just matter sequentially – unlike in Katznelson (2003) where institutions mostly constrain and where change has to wait for those rare moments when agency defeats structure. Political institutions are not only periodically contested; they are the object of ongoing skirmishing as actors try to achieve advantage by interpreting or redirecting institutions in pursuit of their goals, or by subverting or circumventing rules that clash with their interests. (Streeck and Thelen, 2005, p. 19)

Based on this premise, Mahoney and Thelen (2010) introduce their “Theory of Gradual Institutional Change” that focuses on the continuous power struggles that occur

⁶ “An institution is reinforcing when the behavior and processes it entails, through their impact on quasi-parameters, increase the range of parameter values (and thus “situations”) in which the institution is self-enforcing. [...] But such reinforcing processes can fail to occur. The processes an institution entails can undermine the extent to which the associated behavior is self-enforcing. Hence, institutions can be self-undermining and the behaviors that they entail can cultivate the seeds of their own demise. However, institutional change will endogenously occur only when the self-undermining process reaches a critical level such that past patterns of behavior are no longer self-enforcing.” (Grief and Laitin, 2004, p. 634)

within institutions even at times of apparent stability. They hold that “there is nothing automatic, self-perpetuating, or self-reinforcing about institutional arrangements.”

Rather, a dynamic component is built in; where institutions represent compromises or relatively durable though still contested settlements based on specific coalitional dynamics, they are always vulnerable to shifts. (Mahoney and Thelen, 2010, p. 8)

Going back to Grief and Laitin’s theory of endogenous institutional change, I find the harmonisation of historical and rational choice institutionalism to be particularly insightful, as it allows to incorporate both the self-reinforcing potential of institutions as well as the possibility for gradual change through continuous actor interactions:

Despite recent advances, we do not claim that game theory is sufficient for institutional analysis (Greif, n. d., part III). We recognize that while game theory provides a useful analytical tool for studying self-enforcing beliefs and behavior in a given situation, by virtue of its sparseness, it does not capture fully the complexity of the interrelationships between individuals and the institutions influencing their behavior. Accordingly, we define an institution not as an equilibrium but in a way that distinguishes between the object of study — institutions — and the analytical tools used to study them. We define institutions as a system of human made, nonphysical elements – norms, beliefs, organizations, and rules – exogenous to each individual whose behavior it influences that generates behavioral regularities. (Grief and Laitin, 2004, p. 635)

In line with the ongoing pluralistic trend in the scholarship, this thesis draws insights from both the interaction-oriented rational-choice approach and the process-oriented historical approach in analysing the trajectories of change in RTPs. It also considers the role of the informal and formal institutional environment in setting the socio-political stage on which actors engage in the policymaking processes. To this end, the next section introduces a conceptual framework where different layers of institutional change can be situated and their relationship with each other can be discussed.

2. Institutional Change in Regulatory Transparency Policies

2.1. A Three-Layer Framework of Institutional Change

Based on the debates touched upon in the previous section, this part provides a conceptual framework that aims at a) outlining the normative basis and political environment in which current transparency debates are rooted; b) locating RTPs within this wider socio-political context; and c) emphasising both the interlinkages between these levels and the different ways they lend themselves to research.

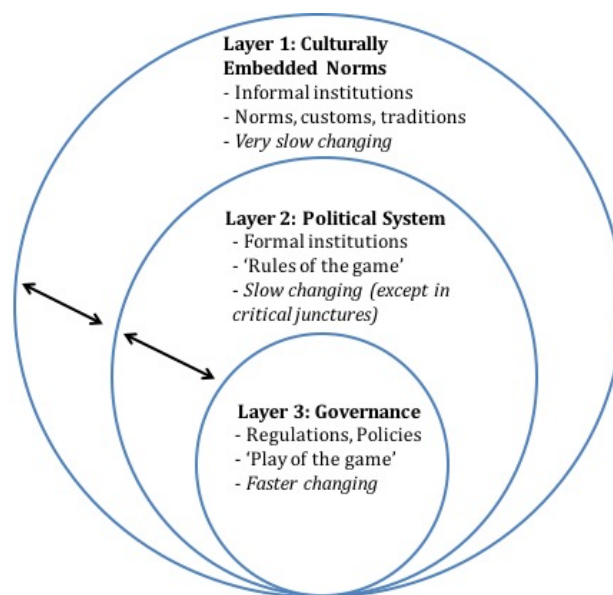


Figure 1.1. Three Levels of Institutional Change

The framework, illustrated in Figure 1.1, is inspired by Williamson's (2000, pp. 596–600) four-level social analysis, which he employs in his overview of New Institutional Economics. These are envisioned as three concentric circles, where the analysis moves between a macro level at the outer circle and the micro level at the inner circle. The outer circle, or Layer 1, is the most abstract layer, which deals with the informal institutions of society; its norms, customs and traditions that tend to inform conventional value systems and play a significant role in shaping formal institutions.

In Layer 2, the meso layer, we look at the formal institutions that make up the wider political system and define the 'rules of the game'. These include primary laws, constitutions, as well as international conventions and organisations that enshrine and promote specific principles, implicitly (through institutional architecture) or explicitly (through the wording of the law). Based on these principles, institutions of the political

system encourage certain behaviours and sanction others, thereby setting the formal ground for regulation and policymaking. Ideological shifts often translate to changes in the formal rules that alter the push and pull dynamics of policymaking.

In Layer 3, which is the empirical focus of this thesis, we zoom into the making of policies in specific policy areas, highlighting the dynamics of change at the micro level of governance. This is where various actors and stakeholders mobilise and engage with each other continuously for policymaking and regulatory purposes. They do so on the basis of the 'formal rules' of the political system, as well as their perceived self-interests and value systems. It is therefore worth noting that actors' value systems are directly related to the normative framework embedded in Layer 1, indicating that even when acting in self-interest, actors take into account the wider socio-political context. Hall, citing Streeck (1997), argues that beyond "hard headed" calculations of interest, actors also judge redistribution of gains on the basis of "conventional conceptions of fairness":

Claims for social justice are not simply an ideological patina washed over arrangements negotiated for other reasons. They are an intrinsic element of the expectations actors bring to decisions about institutional reform. (Hall, 2010, p. 211)

As the case studies dealing with the control and performance logics of regulatory transparency will demonstrate, considerations of proportionality and social justice are not limited to distributive policies only. They also inform actor relations in the making of regulatory policies.

Before applying this three-layered framework to the concept of regulatory transparency, I would like to propose a number of points about the nature and dynamics of change within and between these layers. The first point is about the speed of change, which becomes faster as we move from the macro layer to the micro layer. Change in the macro sphere of culturally embedded norms takes place very slowly, usually measured in the scale of centuries or longer (Williamson, 2000, p. 596), although one can argue that the speed of technological innovation has been accelerating this process significantly. In the meso layer of political systems, institutional change still does not occur very fast; it is usually measured from decades to a few centuries. Finally, the micro layer of governance is where changes are prone to occur the fastest, typically in a matter of years to a few decades. Correspondingly, each case study in this thesis covers a period of approximately two decades.

A related point pertains to the nature of change in the three layers, and the discussion on structure and agency. Given the slow moving dynamics of informal

institutions, the role of structure appears more pronounced in Layer 1. Change at this layer happens through evolutionary processes, i.e. as long-term structural transformations rather than the result of a single major event or deliberate design (Streeck and Thelen, 2005, p. 10). This is not to deny any role to human agency in shaping culturally embedded norms. For instance, we cannot talk about the ideals associated with the Enlightenment, without referring to Enlightenment thinkers. The point here is to emphasise that change at this macro layer is a factor of a great number of events, actor choices, interactions and design over a long period of time.

Actor choices and institutional design become more clearly visible as we zoom into the meso layer. As in Layer 1, change here can happen incrementally, as a product of evolutionary processes; think of the British House of Lords for instance (Mahoney and Thelen, 2010, pp. 1-4). But it can also be abrupt, as a result of major events, such as revolutions, systemic breakdowns or regime changes. Actor decisions at such critical junctures can break paths and create new ones. Some of the best known works of historical institutionalism have focused on this meso layer (e.g. Skocpol, 1979; Hattam, 1993; Pierson, 1995; Mahoney, 2001). Finally, as I will discuss in more detail later in this chapter, the dynamics and the impact of actor interactions are highly prominent at the micro layer.

The third point is concerned with the interaction between the three layers. As the two-headed arrows in Figure 1.1 indicate, the relationship between the three layers is conceptualised as symbiotic, i.e. influence flows simultaneously inwards and outwards. Policymaking is a process of continual interaction amongst various actors and stakeholders on a playing field structured upon the informal and formal institutional environment. At the same time, the policies and mechanisms produced as a result of these interactions also remake politics, as they impose new constraints and incentives on future interactions (Saint-Martin, 2005).

Finally, it is important to note that while certain informal and formal institutional arrangements can strengthen a particular policy trajectory, they do not pre-determine policy designs. This is, first, because the institutions on the macro and meso layers are rarely uncontested themselves. Secondly, policymaking also relies on a set of dynamics specific to the micro layer, namely, actor interests, power relations and the intensity and priority of actor preferences. In other words, although looking at Layers 1 and 2 can give us a good sense of the playing field in Layer 3, we cannot explain the trajectory of a policy without exploring the specific dynamics at the micro layer. Consequently, the main focus of the case studies of this thesis will be at this micro layer.

2.2. The Three Layers of Regulatory Transparency

This section will discuss transparency on the basis of the three-layered framework introduced above and outline the wider normative, institutional and socio-political environments in which RTPs are created and developed. Figure 1.2 illustrates the framework's application to transparency, and the informal and formal environment on which RTPs are created and evolve.

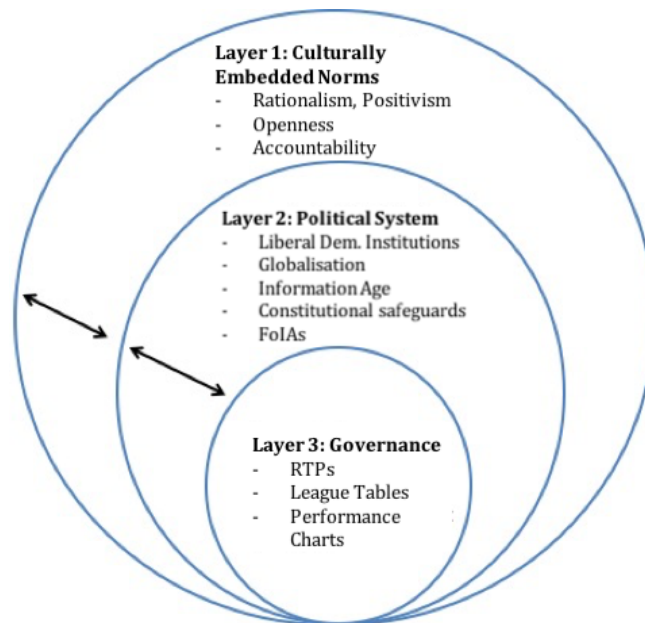


Figure 1.2. Three Layers of Analysing Transparency

Transparency as a norm is rooted in the Enlightenment ideals of rationalism and positivism (Hood, 2006) and in the social and technical transformations of the industrial era. The term 'enlightenment' implies illuminating what is in the shadow, or making the unseen visible, which is a central definition for transparency. In the words of anthropologists Sanders and West (2003, p. 7):

A social world whose workings are transparent to all is a social world that is amenable to the dictates of reason, arrived at openly through the public exercise of irrefutable logic validated by society's sovereign subjects themselves. In such a world, there is no place for suspicion and doubt; there are no dark recesses to harbor occult cosmologies, no closed chambers in which conspiracies might be hatched.

In the creation of knowledge, for example, empiricists like John Locke and David Hume defended observation over belief, and inquiry over blind trust. Jean Jacques Rousseau, Immanuel Kant and Jeremy Bentham identified secrecy and ambiguity as sources of corruption, bad governance and instability. Bentham declared, “The more strictly we are watched, the better we behave” (cited in Hood, 2006, p. 9). But the same philosophy that empowered democratic institutions also justified authoritarianism in the name of a rational society. It was Bentham who designed the ‘panopticon’ (the all-seeing prison building) and advocated mass surveillance in the interests of public order and utility. Discussing Bentham’s panopticon, Foucault in his *Discipline and Punish* (1995, p. 195) emphasised ‘permanent visibility’ was a tool of domination that replaced physical chains in the modern political systems of industrialised societies.

Openness and publicity also gradually became ideals to pursue in regulating economic and financial activities. Liberal thinkers like Locke and Adam Smith called for transparency in commercial affairs. In *The Wealth of Nations*, first published in 1776, Smith (2012) criticised the domination of trade by secretive guilds and mercantilist states. He made the case for a well-functioning free market, which required the gaze of an ‘impartial observer’, i.e. a regulator that publicised reliable information to self-directed individuals (Smith, 2002 and 2012; Mehrpuya and Djelic, 2014). In the early 20th century, the idea of greater visibility became increasingly seen as a way to regulate banks and prevent financial abuses. US Supreme Court Justice Louis Brandeis argued that if bankers published the commission or profits they were receiving when issuing securities, excesses would reduce rapidly. “Publicity,” he famously said, “is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.”⁷

The ideas of openness, publicity and accountability have become culturally embedded norms that underpin the foundations of many of today’s political institutions (Layer 2). As Hood noted, in the course of the 20th century transparency attained “a quasi-religious significance in debate over governance and institutional design” (Hood, 2006, p. 3) whether for purposes of accountability, surveillance or efficiency. The institutionalisation of principles of transparency has occurred in two phases, overlapping with what Huntington (1991) referred to as the second and third waves of

⁷ “Require a full disclosure to the investor of the amount of commissions and profits paid; and not only will investors be put on their guard, but bankers’ compensation will tend to adjust itself automatically to what is fair and reasonable. Excessive commissions – this form of unjustly acquired wealth – will in large part cease. ... But the disclosure must be real. And it must be a disclosure to the investor. It will not suffice to acquire merely the filling of a statement of facts with the Commissioner of Corporations or with a score of other officials, federal and state.” Brandeis (1913, p. 103-104).

democratisation: first, the spread of liberal democratic systems in the aftermath of the Second World War, and second, the simultaneous processes of globalisation, technological innovation and the end of the Cold War.

Especially since the 1980s, a growing number of national governments have been adopting transparency policies aimed at combating corruption and public distrust of government, breaking market inefficiency and dismantling the lack of democratic accountability. A more recent example is the 'Open Government Directive' enacted by the Obama administration in the US in 2009. In establishing the Directive, President Obama made the following promise:

My Administration is committed to creating an unprecedented level of openness in Government. We will work together to ensure the public trust and establish a system of transparency, public participation, and collaboration. Openness will strengthen our democracy and promote efficiency and effectiveness in Government.

Initiatives of open government and transparency are actively supported by international and non-governmental organisations founded upon liberal norms. The Intra-American Convention against Corruption and the UN Convention against Corruption, which came into force in 1997 and 2005 respectively, are legally binding international conventions that, among other themes, promote transparency as a means to combatting corruption. In recent decades, national and international donor organisations such as the IMF, the World Bank, the USAID and the UNDP have adopted transparency standards both for self-regulation purposes and as precondition for recipients to qualify for aid. Transnational NGOs Transparency International and the Open Society Foundation, both founded in 1993, were specifically established with the aim of furthering the ideals of transparency, accountability and good governance in public and private spheres.

In other words, there is a wide range of formal organisations and influential actors that have been pushing for more transparency. Indeed, existing data confirms that governmental transparency has been on the rise (Banisar, 2006; Michener, 2011, 2015; Berliner, 2014). Disclosure in the private sector is also increasing, along with the technologies that allow consumers to compare products and services. From the publication of school performance tables and detailed labels on products in supermarkets, to comparable information regarding financial services and increased visibility of politicians' actions, there is little debate that transparency has become a pillar of socio-political life.

This does not mean that on the level of individual policies (Layer 3) transparency policies are guaranteed to be created and expand continuously. In spite of its advance in recent decades, transparency is still far from being accepted as the ‘only game in town’. Within the financial sector, the 2007-08 crisis revealed how banks and other financial actors devised complex instruments to create opacity and bypass existing regulations. While the immediate response of many governments and civil society organisations to the crisis was to call for more transparency, the crisis also made it clear that transparency alone was not a sufficient regulatory mechanism; it had to be accompanied by other regulatory and governance tools (Crotty, 2009, p. 566).

In the public sector, Roberts (2006) demonstrated that despite the growing number of FoIAs around the world, government secrecy is also expanding, imposing significant barriers for citizens to access public information held by governments. We can speak of a trend where governments limit the scope of certain sets of information while expanding surveillance on citizens both on national and security grounds. This has been happening not just in authoritarian or semi-democratic settings but also in countries where political actors and institutions express strong commitment to transparency: consider the PATRIOT Act and the establishment of the National Security Agency (NSA) in the aftermath of the 11 September 2001 attacks in the United States. In the 21st century, the all seeing-eye watching citizens’ every physical step, in the shape of omnipresent CCTV cameras, and every digital step, through online data gathering by governments and corporations, has become an ominous—yet widely tolerated—part of everyday reality even in the most democratic societies.⁸

In discussing the causes of this trend, it is necessary to explore not only the absence or limitations of transparency as a regulatory mechanism, but also the potentially adverse effects of existing transparency policies on democratic accountability. Referring to the general shift towards a rationale that views transparency as “beneficial for economic efficiency and national economic competitiveness”, rather than a direct component of democratisation, Erkkilä (2012, p. xi – xiii) argues that “the new economic- and performance-driven understanding of transparency [...] creates the potential for unintended consequences and counter-finalities, such as the privatization of information, effectively reducing public access to government records, or diminishing public debate through the pressures of globalization.” Meijer (2009, p. 266) notes that the relationship between trust and openness is an ambivalent one, at the heart of the debates about new transparency. According to O’Neill (2002) while transparency has advanced in recent

⁸ Citing a 2010 poll in the United States about public reactions to WikiLeaks disclosures, Roberts (2012) pointed out that three quarters of respondents affirmed that “there are some things the public does not have a right to know if it might affect national security.”

years, public trust has receded. “Transparency certainly destroys secrecy”, she argues, “but it may not limit the deception and deliberate misinformation that undermine relations of trust.” Roberts has raised similar concerns about the use and abuse of disclosure of information:

There is no such thing, even in the age of the internet, as the instantaneous and complete revelation of the truth. In its undigested form, information has no transformative power at all. Raw data must be distilled; the attention of a distracted audience must be captured; and that audience must accept the message that is put before it. The process by which this is done is complex and easily swayed by commercial and governmental interests (Roberts, 2012, pp. 19–20).

Seen in this light, questions of who obtains information, who discloses it, how it is disclosed, to whom and for what purpose relate to transparency as an instrument of power. As such, actors can support, pursue and enact transparency policies for a host of self-serving reasons that might range from benign to purely Machiavellian from a democratic point of view. Birchall, for instance, emphasises the sedative effect of transparency as a proactive response to public disquiet in moments of crisis or moral failure. Because it is “presented as a technical rather than a political settlement”, she argues, “transparency has attractive, palliative qualities for politicians and CEOs who want to be seen to be *doing* rather than *reflecting*.” (2014, p. 77). This, she notes, “also chimes with a (Western) culture that favors, at least on the surface, confession and disclosure over secrecy as a general *modus operandi*.” It should be noted that in such instances, transparency is often adopted without a clear strategy of how citizens or consumers will interpret and use the information disclosed.

Other scholars have pointed to strategic calculations of political gain in competitive environments that can push actors towards pursuing transparency policies. For example, Michener (2014) suggests that cabinet size and legislative control shape the strength of transparency laws. “In broad multiparty coalitions”, he writes, “leaders trade secrecy for tools to monitor coalition ‘allies’.” Likewise, questioning why so many states pass FoI laws that increase actors’ political costs of using public office for private gain, Berliner (2014) points to politicians’ uncertainty over future control. He argues that “in competitive political environments” the high likelihood of being voted out of office in the long run “creates incentives for incumbents to pass FOI laws in order to ensure their own future access to government information”.

A more cynical use of transparency as an instrument of power would be based on the idea that actors who control what is disclosed also influence what is kept in the dark.

Vargovčikova (2015) illustrates this point by using Goffman's (1959) metaphor of the frontstage and the backstage of a theatre: in the frontstage, actors play roles keeping to expected standards of behaviour, whereas in the backstage the same actors behave without any constraints. In this setting, transparency can bring to the frontstage limited areas of the backstage, leaving other spaces in the dark. It can also allow politicians to control the image of what is being made public, while carrying out their activities in the backstage as usual.

As Part I of this thesis demonstrates, selective and controlled disclosure may ultimately enable politicians to maintain and control their privileges, while having only limited parts of their behaviours regulated. A comparison of the two chapters in Part I also highlights the difference between what Lindstedt and Naurin (2010, p. 316) call agent controlled transparency (implemented by the agent herself) versus non-agent controlled transparency (pursued by a third party, such as a free press) in their respective impacts on the control of corruption, with the latter being more effective than the former.

Overall, these observations suggest that, despite the prevailing norms and powerful institutions championing transparency, the actors involved in the creation or reform of transparency policies may have diverging interests and intensities to promote, contest or resist concerning the evolution of specific RTPs. Therefore, while the wider normative and institutional environment plays a crucial role in providing the initial push for the creation of RTPs, in order to understand their subsequent trajectories, we also need to take an in-depth look at Layer 3 and analyse the dynamics of actor interactions. This final point is discussed further in the following section.

3. Determinants of the trajectory of RTPs

How and when are transparency policies created and what determines their subsequent trajectories? As noted earlier in this chapter, this thesis aims to contribute to the understanding of the creation and evolution of transparency policies from a pluralist approach that takes into account both the historical institutional and actor-based analyses of institutional change. In this vein, this section presents the key hypotheses about the trajectories of regulatory transparency policies that will be tested on the case studies in subsequent chapters. I argue that once they are created, RTPs are self-reinforcing rather than self-undermining. In other words, they tend to follow the original purpose (or the initial path) they were created for. As conceptualised in Levi's tree analogy for path dependence, this does not mean that they cannot branch out in different trajectories. Rather, it means that the trajectories pursued will likely be an extension of

the original path chosen at creation. The hypothesis that follows this is concerned with the trajectories RTPs follow after creation, i.e. the process of branching out. Here, I consider different scenarios of actor interactions in relation to the specific logic of transparency employed on the trajectory of an RTP.

3.1. RTPs as Self-Reinforcing Processes

Once transparency is enacted as the preferred regulatory solution in a given field, it becomes increasingly difficult for regulators to switch to a different solution that disregards transparency. In other words, once an RTP is created, it is likely to continue on the path it started from due to increasing returns processes. The first factor that reinforces the path of an RTP is the existence of powerful informal norms and formal institutions (i.e. Layers 1 and 2 described above) that encourage disclosure and accountability, and provide a consistent push for the creation and proliferation of transparency policies.

This has been widely recognised in the literature. “Whether effective or not”, argue Fung et al. (2017, p. 15), transparency policies have emerged as a politically viable means to responding to crises in the face of diminishing public trust in governments’ capacity to solve problems alone. Erkkilä (2012) points to the role of the international discourse of good governance and the knowledge economy and the consequent surge of international policy programmes that endorse transparency and access to government information in the creation of transparency policies by different national governments. Similarly, Ruijer and Meijer (2016) identify the discourse on democratisation and accountability, together with the rise of new technologies, as “the general drivers of the current thrust of transparency initiatives.”

This is not to suggest that every country will establish exactly the same transparency regime. The studies cited above emphasise the importance of pre-existing national norms and institutions in shaping the transparency regime of a country, within which RTPs are produced. Erkkilä (2012) notes that when these international discourses are adopted, they “tend to take nationally specific forms”. Ruijer and Meijer (2016) argue that transparency regimes evolve against the backdrop of pre-existing institutions and examine historical institutional characteristics, initial paths and critical junctures to explain the routes these regimes take in different national settings.

Nonetheless, what the existence of an overarching normative and institutional framework suggests despite national differences is that even if disclosure is against the interests of certain actors, they may find it politically too risky or difficult to oppose the creation of transparency policies or repeal existing ones. Actors may resist disclosure by

arguing that it is not in the public's interest, but they still have to argue against the idea of "more-transparency-than-thou", which has become the secular version of "holier-than-thou" (Hood, 2006, p. 3). As a result, despite the fact that RTPs can have multiple designs and be enacted to advance different regulatory (and political) objectives, their core character is not easily contested and requires significant amount of institutional power and political clout, or a major change in the normative or political institutional levels (such as a paradigm shift) to be retracted.

Secondly, I argue that RTPs are self-reinforcing because they empower groups that would otherwise not have a say in the development of certain policies. Fung et al. have suggested that, once created, transparency policies are difficult to sustain as they tend to distribute benefits to dispersed users while concentrating costs on small and organised groups that can use their political clout to limit the scope or effectiveness of disclosure (2007, pp. 110 – 111). While this is certainly a possibility that is also evaluated in this thesis, the potential of transparency policies to redistribute power and strengthen beneficiaries and create new interest groups that are invested in their continuation should also not be ignored. For example, the disclosure of educational data for parents' use requires private firms and organisations working in the education sector to conduct student assessments. Other type of businesses may also use the disclosed information to produce statistics and in consulting projects. These new beneficiaries tend to oppose retraction and certain types of changes that would disadvantage them.

Finally, before information is disclosed, there is a need to define what information will be collected, published and how it will be framed for disclosure. In the sequence, the discloser needs to create a mechanism for collecting data and publishing it according to how it was defined by the regulator. This is usually a costly procedure, but once a mechanism for extraction and publication of data is created, the cost of publication decreases. Shifting paths to another regulatory solution implies that these initial high costs would be lost, making RTPs more resistant to change.

Combined, these factors would suggest that RTPs operate as self-reinforcing processes. Staying in the same path, however, does not mean that RTPs do not evolve or retract. On the contrary, they can and do evolve in different directions, but this is likely to be an extension of the original path they started from. The fact that, for example, the Brazilian Transparency Portal, discussed in Chapter 2, was created as a tool for civil society to monitor government's financial expenditure information did not prevent it from becoming a fundamental tool of the government in corruption prevention. But its initial path was maintained and strengthened throughout its development.

Following Hall (2010), I argue that it is an assembly of coalition in favour of changes (or a willing and able RTP driver) and their interaction with other important actors and

coalitions involved in the regulatory process. But before discussing the different actors and actor interactions that determine the trajectory of an RTP, it is useful to briefly explain the four possible trajectories that RTPs can take, namely, stagnation, expansion, retraction and contestation.

3.2. Trajectories of RTPs: Stagnation, Expansion, Retrenchment, Contestation

The **stagnation** of an RTP means that, following its adoption, no additional sets of data are made available to or withdrawn from public access. It also implies that no formal change occurs after adoption, such as a primary or secondary legislation that is directly related to the policy. Stagnation can be seen as a moment of stability, where, for a variety of reasons, neither the drivers of an RTP nor its targets display the ability or willingness to push for more or less disclosure than what is present. This does not mean that the information disclosed was not used by beneficiaries or intermediaries, either for the purposes they were originally intended or for a different purpose. Instead, it suggests that these usages were not reflected on the design of the policy. As I discuss in more detail below, the use (or non-use) of information by beneficiaries and/or intermediaries does not guarantee the expansion (or retrenchment) of a specific policy, while it can affect the disclosers' or targets' ability or willingness to mobilise for a particular trajectory.

Expansion and retrenchment point to the occurrence of similar changes in opposite directions. **Expansion** entails making more information available to the general public, improving the structure of information disclosed in order to increase the regulatory effect of transparency, or increasing and strengthening the formal incentives to promote disclosure or compliance with disclosure. In the opposite direction, **retrenchment** (or retraction) suggests limiting the scope of information available to the general public, changing the structure of information disclosed in order to reduce or remove their regulatory effect, and reducing or removing the formal obligations or penalties associated with disclosure.

Finally, as further discussed in the following section under actors and interactions, **contestation** takes place when different groups of actors attempt to influence the trajectory of an RTP in similarly high intensities. Contestation entails a lack of consensus, between the driver and the targets or the intermediaries, over an RTP's design, format or the type of data it discloses. It is important to note that during periods of contestation, it may be possible to observe moments of expansion, stagnation or even retrenchment in the RTP's trajectory. But as long as the RTPs fail to become accepted as a norm by all players, contestation continues to be the dominant feature of an RTP and remains its main trajectory. During contestation there can be moments when the RTP on this path can give

way to other trajectories if and when one of the sides ultimately gathers more support and mobilises more resources to expand or retrench the policy, or the actors reach a consensus and the policy stagnates.

Table 1.1 below lists different ways in which RTPs can stagnate, expand, retrench or be contested.

Table 1.1. Examples of RTP trajectories

Stagnation	Expansion	Retrenchment	Contestation
No change in the formal institutions / incentives to foster compliance with disclosure	Creation of new formal institutions and/or incentives to foster compliance with disclosure	Weakening or repeal of formal institutions and/or incentives to foster compliance with disclosure	Targets or intermediaries continuously challenge the formal institutions and/or incentives to foster compliance with disclosure
No additional disclosures	Additional disclosures with content and formats for regulatory impact	Repeal of disclosures or of structured disclosures	Public dissatisfaction with the evolution of disclosure information
Original format, structure of disclosure maintained	Obligation to disclose information in an open format, in addition to the structured format already disclosed	Restriction of the format of information to open data only ⁹	Overt disagreement among main actors over the format of information disclosed
No new mechanisms for coercion and monitoring of compliance created	Creation of mechanisms for coercion and monitoring of compliance	Repeal of mechanisms for coercion and monitoring of compliance	Lack of consensus among actors over the design or function of mechanisms for coercion and monitoring of compliance

⁹ This is due to the regulatory aspect of RTPs, which are not fostered through open data.

3.3. Determinants of RTP trajectories: Actors and Interactions

It would seem at a first glance that the main difference between a command-and-control regulatory requirement and a regulatory transparency one is that the latter requires the active participation of the public. One can assume therefore that the success of an RTP depends on whether or not citizens or consumers make good use of the disclosed data. In practice, however, individual citizens are rarely the only, or even the main, group that disclosers have in mind when enacting these policies. Consider, for example, what is now the mainstream practice of publishing information on government expenditures to promote fiscal discipline. Even though budgetary information is theoretically disclosed for citizens' benefit, few individual citizens actually use the data and push for more disclosure. In practice, these tasks are carried out by organised civil society groups, private firms, the media or opposition parties. Moreover, the same policy can be primarily promoted to signal to foreign investors that the country is committed to fiscal discipline.¹⁰

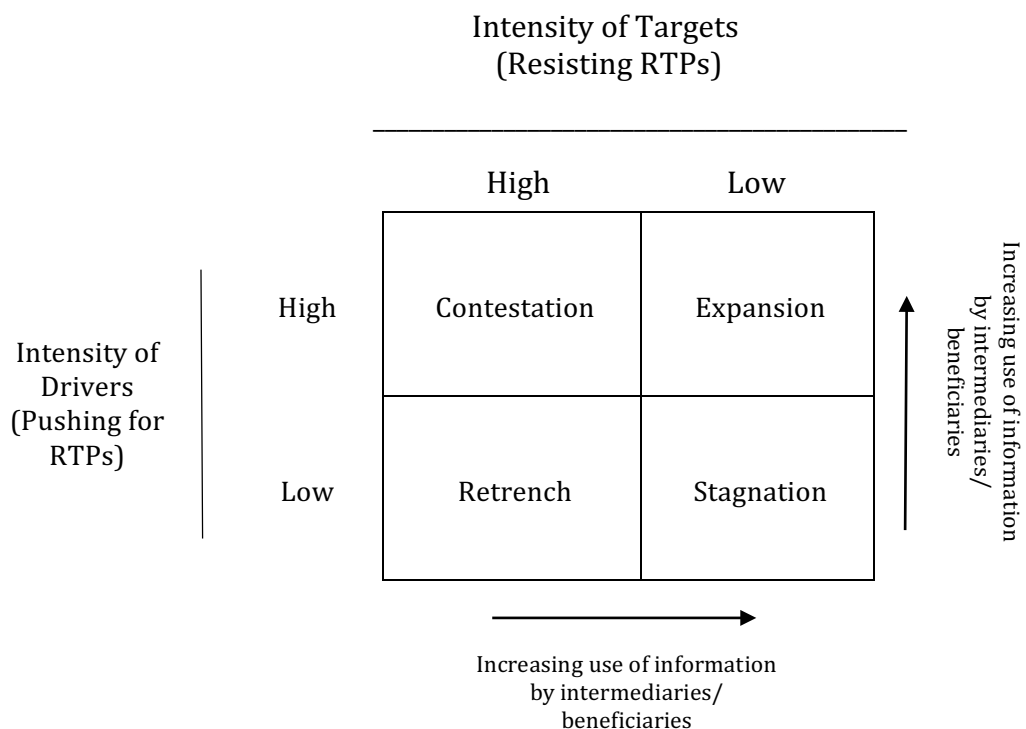
Fiscal transparency is just one example to show that regulatory transparency initiatives involve multiple actors. These actors can be grouped in four categories based on the role they play in these processes: the drivers, the targets, the beneficiaries and the intermediaries. The *drivers* are those groups or individuals who push, lobby or campaign for the adoption and expansion of RTPs. Consumer protection groups, the media, state agencies with a mandate to promote transparency, or political opposition groups can be among the drivers in different scenarios. The *targets* are those individuals or groups whose activities or performance is made visible and regulated by the RTPs. In the case of budgetary transparency, the target would be the government and politicians. In the case of the regulation of the financial sector, the target would be the banks and other financial actors.

The *beneficiaries* are groups who, in theory and/or practice, are expected to benefit from the disclosure of information. In the example of politicians' salaries, the public at large is considered the main beneficiary, but we could also identify more specific beneficiaries, such as think tanks or academics working on the governance of public expenditure. The drivers can also be beneficiaries; for instance, a group of citizens that starts a petition for MPs to impose a ban on certain lobbying practices. What sets beneficiaries apart from drivers is that the former group generally lacks the resources, the organisational capacity (Olson, 2002) or the priorities that enable the drivers to push for RTPs actively.

¹⁰ Societal and governmental interests can also change in response to shifts in the political and economic environment. For example, Roberts (2010a, p. 62) has pointed out that concerns regarding fiscal rules largely evaporated in the aftermath of the Great Recession.

Finally, the *intermediaries* are those actors situated between disclosers and beneficiaries. They are third parties that interpret the raw data that is disclosed in RTPs and make it easier for the public to understand. Keeping to the example of politicians' expenses, an intermediary could be an NGO that publishes rankings of these expenses, and monitors and reports how each MP handles public resources. They can also demand changes in the format or contextualisation of the disclosed information. In these roles, they help to enhance the impact of RTPs. Fung et al. (2007), for example, suggest that strengthening intermediaries (or "groups that represent users") can "alter the political imbalance" of transparency policies and encourage their sustainability.

Table 1.2. Actor Interactions and Potential Trajectories



Inspired by Fung et al. (2007, p.113), Table 1.2. illustrates the possible variations of actor interactions and the trajectories these would direct RTPs towards. Intensity is understood as the ability *and* the willingness of an actor or a coalition of actors to mobilise for or against a particular RTP. It takes into account not only the institutional and political power (i.e. ability) of actors to push for or against an RTP. Willingness, in other words, involves an interest calculation, whereby actors consider the perceived benefits of action against its perceived costs to decide how much of their ability to invest

in pushing for or resisting an RTP. An example can be politicians, who despite having the legislative power to successfully block an RTP, may find it too costly politically due to societal norms and pressures, and would therefore end up with low intensity. On the other hand, a driver of transparency may have low intensity for further disclosure if they believe the set of policies currently in place satisfy their expectations for the time being.

Both in the design and the life trajectory of an RTP, it is the drivers and the targets who are likely to have the highest intensity or stake in the shape of an RTP. Theoretically, these actors stand on opposite sides, with the driver pressuring for greater transparency and the target pushing for no or less transparency. Often it is easy to tell the drivers apart from the targets. For instance, in the case of politicians expenses in the UK, journalists are the drivers and politicians are the targets. In other cases, however, the drivers and the targets may share similar characteristics. This would be the case when, for instance, opposition politicians are the drivers of a particular RTP and politicians in the government are the target. Similarly, a firm that offers products in lower prices than its competitors may push for the disclosure of product prices across the board to improve its relative position in the market. In such cases, a closer look is needed to differentiate drivers from targets.

The table shows that when drivers and targets have equally high levels of intensity regarding changes to an RTP, i.e. one is highly in favour of disclosure while the other is highly resistant to it, the trajectory will be contested, with the RTP moving in the direction (expand or retrench) of the actors with higher intensity. A key input here can come from the intermediaries and the beneficiaries. If these groups appear to make high use of the information disclosed and attribute high value to it, the drivers may choose to use this to strengthen their effort to maintain or expand the type of information disclosed. Conversely, if the beneficiaries display a lack of interest in the disclosed information, it may become easier for targets to mobilise against maintenance of expansion. It should be noted that non-usage of information by beneficiaries and intermediaries may be a necessary but not a sufficient factor for the targets to succeed in their opposition to an RTP. As argued previously, transparency policies are products of culturally embedded norms and political institutions. If, for example, citizens or intermediaries make no use of schools' performance information, and schools demand their scrapping, governments can respond by arguing that the right to know is an end in itself that needs to be protected, whether or not citizens make high use of that right.

Table 1.2. also shows that the interaction between drivers and targets is not always contested. When the level of driver intensity is unequal to target intensity, RTPs are likely to evolve in different trajectories. When the intensity of the driver is high but the intensity of the target is low, the expected trajectory of an RTP is expansion. In contrast, when the

driver intensity is low and the target intensity is high, we can expect to see retrenchment. When neither the driver nor the target have a high intensity, the RTP would be expected to stagnate, i.e. information would continue to be disclosed regularly without expansion or retrenchment, based on the original design.

Driver or target intensity may be low for various reasons. The driver may conclude that the RTP as a regulatory mechanism has produced suboptimal results. If there is high resistance from the target at this point, the policy can retrench, otherwise it would likely stagnate. A paradigm shift in Layer 2 can also reduce the intensity of the driver. Given the slower pace of change at this layer, such shifts can be expected to occur with somewhat limited frequency. Over the two decades covered for each of the six case studies in this research, only one instance of paradigm shift was observed. As detailed in Chapter 7, after the coalition of Conservatives and Liberal Democrats took office in the UK in 2010, the government scrapped the disclosure of information on bank tariffs and created non-RTP initiatives for the same purpose on the basis of new arguments from behavioural economics.

There are also reasons why targets may have low intensity in mobilising against transparency. First, even though RTPs often reveal much more than targets would be inclined to show, compared to other regulatory mechanisms, disclosure of information may be seen by the targets as a less impactful and intrusive option. Targets may therefore prefer transparency over the alternative regulatory options. The impact of an RTP can also be limited if there are mismatches between the information disclosed and the cognitive capacities of the beneficiaries. As discussed in Chapter 3, for instance, before a scandal brought the UK Member of Parliament Registry of Interests to public's attention, potential conflicts of interest were already being published for years with no attention and no impact. Not all reasons for low target resistance is related to the comparable weakness or inefficiency of RTPs. Targets may also not be in a position to resist the adoption or expansion of RTPs during periods of increased lack of trust, when there are widespread expectations for increased transparency.

Knowing the type of actors involved in the institutional change of RTPs as well as the circumstances that can point to the intensity of their involvement in these processes can shed light on when regulatory transparency policies stagnate, expand or retrench. It cannot, however, explain the relative power of each actor in a given scenario, nor the way the type of information disclosed may affect actor interactions. In order to find out about these, I propose looking into the core characteristics of the three main logics of regulatory transparency.

3.4. Determinants of RTP trajectories: Logics of Transparency

As noted in the Introduction to this thesis, the ‘logic’ of a regulatory transparency policy refers to its underlying rationale or purpose of disclosure. Regulatory transparency policies can be categorised in three different logics. In each of these logics, different sets of information are disclosed and diverse actors constitute drivers, targets, beneficiaries and intermediaries that interact in particular ways (see Table 1.3 below). Specificities of each logic can provide insights into the nature of the information disclosed and the organisation of actor interactions. The logic of transparency, in other words, can have a potentially decisive impact on the trajectory of an RTP by influencing the intensity of key actors for or against transparency.

The **logic of control** refers to those RTP initiatives enacted to support governments in controlling the behaviour of politicians or public officials, and making them comply with various governmental disciplines, such as ethics standards, fiscal rules and limited spending. This logic can be activated by a government to control politicians or public officials on the same level, or adopted by the central administration to control subnational units. In all these cases, the logic of control implies the publication of often disaggregated financial and administrative information. Because the information disclosed in this logic amounts to *full disclosure* concerning a specific set of information (e.g. lists of family members recruited by MPs or lists of expenses for each MP), retraction means repealing and expansion means disclosure of new sets of information.

When RTPs are adopted to regulate the behaviour of politicians and public officials, the underlying assumption is that by allowing the public to monitor their activities these actors will adjust their behaviour to society’s expectations. We can expect different trajectories depending on who the target of a specific RTP is. The resources available to politicians, i.e. the very actors who are responsible for rule making, including granting the public access to government information, differ greatly from the resources of public officials. Politicians have much more institutional power than most public officials to determine what sets of information will be disclosed by RTPs.

With their legislative power and having to regulate their own activities, politicians can be expected to wield considerable influence over the shape of RTPs. This does not mean that RTPs will necessarily retract or even stagnate, as power is not used only to resist transparency; legislators may push for greater openness from the government. Similarly, as noted above, actors within large coalition governments may push for increased levels of transparency to increase their ability to monitor the performance of other coalition partners (e.g. Michener, 2015). They may accept a certain level of transparency, though not enough to threaten their posts or their parties. This calls attention to the fact that politicians could adopt RTPs periodically, whenever it is in their

benefit to do so, leading to a patchwork of disclosures that do not cover the entire regulatory scope of a certain policy area.

Finally, the control logic of transparency can be adopted to increase central governments' regulatory power over decentralised policy units. In the public administration lexicon, until the rise of New Public Management (NPM), the term control was related to hierarchy and used in reference to the design and supervision of the operations (i.e. activities) and outcomes of a subordinate unit. With the advent of NPM and the increasing disassociation of governments from direct provision of services, the concept of control came to indicate a more decentralised and less hierarchical type of relationship. The new institutional economics, one of the theories supporting the emergence of NPM, emphasised incentive structures, contestability and transparency in opposition to traditional bureaucratic ideas of good public administration (Hood, 1991). In line with increased cuts to costs and stricter labour discipline advocated by the managerial model, there was a need for an effective yet fundamentally different type of control mechanism (Hoggett, 1996). In this context, governments pursued the transparency of budgetary and financial information of subnational units, and continue to do so, in order to control their expenditure (e.g. Worthy, 2013, pp. 15–17). Central governments could, as often still can, choose to disclose such information as a unilateral measure to increase their regulatory power over subnational units. While central governments may have considerable ability to pursue this strategy, the power of subnational governments to resist or negotiate disclosure tends to be limited.

The **performance logic** of regulatory transparency refers to the publication of indicators created to reflect the performance, and where available, the objectives, of decentralised public service units, such as public schools, hospitals, etc. The literature highlights a multiplicity of reasons that governments use to justify publishing the performance records of decentralised policy units: responding to citizen requests for evidence of effectiveness of specific policies, improving communication between citizens and the government, improving accountability and policy decision processes, increasing the effectiveness of public programmes, enabling the comparison of policy units' performance with units of similar conditions, informing choice about public services, and increasing the ability of the central government to influence the outcomes of policy units (e.g. Behn, 2003; Hienrich, 2003; Propper and Wilson, 2003; Andrews et al., 2005; Pidd, 2005; Van de Walle and Roberts, 2008; Boyne et al., 2009; Woolum, 2011; Allen et al., 2014; Hujala at al., 2014; James and Moseley, 2014).

Table 1.3. The Logics of Regulatory Transparency Policies

	CONTROL LOGIC	PERFORMANCE LOGIC	TRANSACTION LOGIC
TARGET [the public regulated]	Politicians Public Officials [Of central or subnational governments]	Units of public services	Private regulated units
DRIVER (ENABLER) [those who pressure for disclosure]	Politicians, Organised civil society, Media, Political opponents, Regulatory Body	Central government	Consumer protection associations
BENEFICIARY [the direct beneficiaries of disclosure]	Citizens	Mixed category [Citizens or consumers depending on the RTP design]	Consumers
INTERMEDIARY [those that interpret or reinterpret the disclosed information or use it for a different purpose]	Organised civil society	Media, unions, expert group organisations	Private parties, including price comparing websites and financial advisers
TYPE OF INFORMATION DISCLOSED	Mainly budgetary data, but it can also include other administrative information (e.g. time the government spends to approve an environmental license), always published in raw format on specific filters	Usually aggregated data, suggested as the best indicator for the performance of a specific unit, among a range of other possibilities	Raw data about features of products or services, such as price, risk, and expiry date

Besides such intended practical outcomes, governments use disclosure of performance data as a regulatory mechanism that pressures, or are intended to pressure, decentralised policy units to adhere to the performance standards and goals set out by the government. The underlying rationale here is captured by Albert Hirschman in his *Exit, Voice and Loyalty*. Hirschman (1970, pp. 4–5) suggests that the manager of a firm can find out about the deterioration of a product via two alternative routes: exit (customers stop buying the product) or voice (consumers express their dissatisfaction either directly to the management or to another authority to which the firm is subordinate). In the same vein, by disclosing information to the public about the performance of units of public services, governments allow citizens to voice their dissatisfaction or move to another unit, therefore informing the units of their own performance. This way, in theory, the decentralised units are pressured to increase their own performance.

Some RTPs in the performance logic are designed to allow for exit; such as in the case of school performance charts in the UK, studied in Chapter 5. In this context, parents, the officially intended beneficiaries of the RTP, could use the disclosed information to choose which schools to send their children to. Others exclusively allow for voice, as in the case of school performance data disclosed in Brazil, studied in Chapter 4. In this case, parents did not have the option of choosing between schools, but the hope was that the comparison of the data would put pressure on low performing schools to improve their performance.

The public disclosure of performance indicators of decentralised policy units is often referred to by governments and civil society groups as an accountability system. According to this narrative, citizens are the core beneficiaries of these policies, either because they are allowed to get engaged in and contribute to the debate about the delivery of public services, or because they can make better and more informed choice of a public service. However, as other case studies in the literature have demonstrated (e.g. Meijer, 2007, pp. 181-182) and the two case studies on education in this thesis suggest, decentralised policy units do not necessarily produce better results in response to citizens' exit or voice. Instead, performance increases mainly reflect the readjustment of the units' focus to the particular indicator that is highlighted and disclosed by the RTPs.

Choosing which indicator to measure, highlight and disclose is often a sensitive issue. Because targets also have a high stake in this debate, policy units may have strong reasons to resist performance transparency. Such resistance, however, is rarely articulated as a categorical opposition to transparency as an idea per se. Since transparency transfers informational powers to other groups, especially citizens, making the case against it becomes very difficult. Consequently, the negotiations between central government (driver) and units of public services (target) revolve around the definition of

the indicator or group of indicators published, and the objective of disclosure. In these negotiations, targets can mobilise a range of other ideas, such as fairness and privacy.

Finally, the **transaction logic** of regulatory transparency refers to the publication of information on features of consumer products or services to inform choice. This logic differs from the logic of control, because the main goal of publication of information is not to increase the control over the organisation whose products or services are the object of disclosure. It differs from the performance logic, because the type of primary information disclosed is not of performance, but rather the basic features of products and services, such as contents, expiry date, weight, size, etc. The basic assumption of any transparency policy is that reducing information asymmetries can help improve the relative position of an actor, be they drivers, citizens or consumers.¹¹ An obvious context for this is the economic market, in which the level of information about products, services or firms' production processes tends to differ significantly between sellers and buyers. This asymmetry of information is the core aspect of a series of transactional problems. In a competitive market with information asymmetry, providing free access to information could reduce the chance of 'lemon choices', i.e. the case of the market being flooded with low quality products (Akerlof, 1970), by informing consumers about the relevant characteristics of a product or firm.

There are multiple reasons for why regulators or drivers of the transaction logic would want such commercial information to be published. For example, for regulators, who have the power to decide on the standardisation of products, publishing the information could reduce enforcement costs. A series of other regulatory reasons related to the informational environment available to consumers (intermediaries with commercial interests promoting partial disclosures, obfuscation, differentiation in price, disclosures without any consideration of behavioural aspects, among others) also justifies the regulatory push for the direct publication of information.

A particular aspect of the transaction logic RTPs, which sets it apart from the two other logics, is that the information published is not always held by regulators, public offices or governments, but instead by private parties. In this regard, when information is to be published, negotiations must take place between the regulator and the target of RTPs, at least to ensure regulator's access to data. In this process, if the driver does not oblige the target to submit data for disclosure or does not impose any sanction for non-submission, RTPs may still be created but the full and ongoing cooperation of targets may

¹¹ It is not naïve to claim that transparency policies are adopted in the exclusive circumstance of latent information asymmetry. In many cases, information asymmetry is a key argument utilised by the drivers to push for further transparency.

not be assured. In turn, this could reduce the impact of the policy or create distortions in its intended outcomes. Therefore, in order to be successful, the disclosure regime would have to offer benefits to the targets. If the latter is resistant to cooperating with the regulator and if the drivers' intensity towards disclosure is high, it is expected that the regulator will normalise disclosure. In this case, the regulator may also request that the targets themselves publish the information, making RTP a supplementary disclosure policy. The maintenance of the RTP, in this case, is dependent on the benefits foreseen by regulators or the pressure coming from the driver.

Conclusion

Treating transparency as 'quasi-religious' concept is paradoxical, given the rationalist values and ideals that it is historically rooted in. Nevertheless, in the course of the 20th century, transparency has attained a central place in liberal democratic governance. Seen as a powerful remedy for a wide range of ills from corruption to market inefficiencies, it has been enshrined as a principle to strive for by governments, international organisations and civil society alike. Although at the time of writing, the long term survival of these societal norms and the liberal democratic system looked less certain than at any time in the recent past – and the use and abuse of transparency policies for various political gains notwithstanding – we can argue for the time being that these wider structures continue to provide a push for the creation of new regulatory transparency policies.

How do RTPs evolve? Inspired both by historical and rational-choice institutionalisms, this chapter presented an approach based on scholarly pluralism to address this question, and proposed that a) RTPs are self-reinforcing processes, i.e. they are likely to follow the original path they were intended for; b) their trajectories on this path are determined by the relative intensity of those actors that push for disclosure against those who resist or contest it; and c) examining the logic (or the underlying rationale) of an RTP can give us insights into its trajectory based on the type of information disclosed and the distribution of actor intensities.

With this framework and hypotheses in mind, the following three parts of this thesis will explore the creation and evolution of RTPs across the three logics and within three sectors in Brazil and the UK. The discussion on the specific characteristics of the three logics above would lead us to expect the presence or absence of a formal regulatory body with the mandate to push for disclosure to play a key role in the logic of control. In the performance logic, the type of information disclosed, as well as its format, ownership,

contextualisation, is likely to push the targets to resist disclosure or have a greater say in the design of the RTP. I will observe whether and how the existence or the absence of the 'exit' option in the performance logic impacts the evolution of an RTP in this logic. Finally, in the transaction logic, we can expect the availability or exclusivity of information disclosed to influence the distribution of actor intensities and in turn the trajectory of an RTP.

PART I.

THE LOGIC OF CONTROL

As suggested in Chapter 1, when adopted in the logic of control, regulatory transparency policies aim to restrain – i.e. control – specific behaviours through disclosure of information, mainly budgetary, published in raw format and through specific filters. The chapters included in this part cover in depth narratives of three case studies, one in Chapter 2 (the Transparency Portal of the Brazilian Federal Government) and two in Chapter 3 (MPs’ Expenses Scheme and MPs’ Register of Interests in the United Kingdom). The three cases describe the adoption and trajectories of regulatory transparency policies to curb corruption and promote integrity. The impetus for these policies can be traced to the principles associated with Layer 1, such as the right to know, and the institutional norms and frameworks embedded in Layer 2, including fiscal transparency and FoIA, albeit with varying strengths in each case. The main difference between the Brazilian case and the British cases is the actors’ relationships. In the case studied in Chapter 2 the driver of regulatory transparency is a government agency with a mandate that can be strengthened by disclosure of information and the target is public officials and politicians of the Executive branch. In both UK cases, MPs are the targets of disclosure, but in one case (Register of Interests) they are also the drivers. In the other UK case (Expenses Scheme) the main drivers are the media, while intermediaries also take up a driver role. A cross-case analysis is provided in the conclusion to Part I, where I discuss the determinants of the RTPs’ trajectories in the logic of control.

CHAPTER 2: THE BRAZILIAN TRANSPARENCY PORTAL

Transparency is the best remedy to curb mismanagement, not just corruption, but waste, negligence, lack of care with public money. (Former minister of the Brazilian Office of the Comptroller General Jorge Hage Sobrinho, 2012)¹²

The idea of transparency was introduced ... as a public policy, with the creation of the Office of the Comptroller General, precisely with a focus to preventing and combating corruption. (Former minister of the Brazilian Office of the Comptroller General Jorge Hage Sobrinho, 2015)¹³

This chapter looks into the case of transparency as a regulatory policy adopted by the Brazilian Office of the Comptroller General to prevent and combat corruption in Brazil. According to the 2014 Corruption Perception Index (CPI), published by Transparency International, Brazil ranks 69th place (out of 175) in the list of most corrupt countries in the world, with 43 points out of a 100 (highest score indicating less corruption). From mid-2014 until the time of writing, Petrobras, the Brazilian semi-public oil company, was the focus of the biggest corruption scandal in the country's history, one of the reasons why Brazil dropped from its 76th position in the previous year in the CPI (Transparency International, 2016, p. 8).¹⁴ In November 2015, citizens ranked corruption as the worst problem of the country, followed by health problems, unemployment, education and violence (Datafolha, 2015, p. 3). A few years earlier, in 2009, in a survey conducted by *Enterprise Surveys* with business owners and top managers of 1,802 Brazilian firms, 68.8% reported corruption as a major constraint to their businesses in the country.

¹² EBC (2012) Hage explica Lei de Acesso à Informação Pública. *EBC Serviços*. 29 March.

¹³ Sobrinho, J. H. (2015) *Interview on 26 June 2015*. [My translation; recording in my possession.]

¹⁴ It is important, however, not to take perception of corruption at face value, as perceptions of corruption could be influenced by the political and economic environment, or "based on prejudiced gossip or media sensationalism" (Miller, 2016, p. 168). In the absence of other measurements, however, the CPI can shed light about the state of corruption and of anti-corruption measures in a country.

During the same period, transparency has been intensely advocated inside and outside of government as an essential tool to curb corruption. The anticipation that greater access to governmental information could reduce the levels of misbehaviour is based on two distinct (and complementary) explanations. The first is the argument that once politicians or public officials learn that their acts will be exposed to the public they change their behaviour by anticipating the public's reaction to disclosure. The second is that access to information enables citizens and the media to identify and report mismanagements and, therefore, corruption is reduced in response to increased oversight.

The case under examination, the Brazilian Transparency Portal, is an example of the control logic of regulatory transparency and it demonstrates how the driver of the policy, i.e. the Brazilian Office of the Comptroller General (Controladoria Geral da União – CGU), pursued increased disclosure of the federal government's financial expenditure and the development of queries to facilitate citizens' searches as a tool of 'police patrol' to support its mandate of internal control and anti-corruption. The chapter explains and highlights the self-reinforcing characteristics of the Transparency Portal and provides insights into the ways in which disclosure of information empowered new beneficiaries, including some working with the driver, who then supported further transparency. Finally, the case presents evidence against claims that RTPs in the logic of control are created and evolve exclusively in response to exogenous shocks, as the expansion in question here is of an internal and incremental nature.

1. Socio-Political and Institutional Context

1.1. Fiscal Responsibility and Regulatory Transparency

The legal framework for publication of budgetary and governmental spending information in Brazil dates to the year 2000, with the adoption of the Law on Fiscal Responsibility (Lei de Responsabilidade Fiscal – LRF). Adopted ten years before the country's Freedom of Information Act (FoIA), the LRF was the legislation that most comprehensively required the publication of sets of information about a specific policy area. Besides its primary objective of establishing limits to public spending, the LRF obliged the federal, state and municipal governments to make core budget-related

documents publicly available, including electronically.¹⁵ The central aim of the Law was to drastically reduce public debt and stabilise it relative to GDP regardless of the previous economic conditions of governments (Correa and Spinelli, 2011). The formal introduction of fiscal transparency as part of the fiscal responsibility framework was officially justified on the basis of the prevalent international arguments and evidence that showcased transparency as one of the most effective instruments for attaining fiscal discipline.¹⁶

As a mechanism of fiscal discipline, governments have used transparency to counterbalance the short-term limit rationality and incentives of elected politicians with regards to public expenditure, as well as to signal to foreign lenders their commitment to fiscal discipline (Roberts, 2010a, p. 58). Governments seemed to incur bigger losses when fiscal rules were violated, making noncompliance more costly and their adoption worthwhile for disciplinary matters. None of these causal relations were very straightforward; tying the hands of bureaucrats and politicians with fiscal discipline legislation did not always produce the desired results, as some treasuries left too much discretion for governments to conform with the law in their own time. The notion that budgetary discipline served as a powerful signalling mechanism to financial markets often appeared exaggerated, and expectations from the law reduced significantly during crises (Roberts, 2010a, pp. 63-64). Nonetheless, the belief and the hope in budgetary discipline and, consequently, in fiscal transparency (Layer 1) as keys to better governance supported the expansion of fiscal discipline and fiscal transparency norms (Layer 2) in a number of different jurisdictions.

Besides supporting fiscal discipline, the argument goes, fiscal transparency is also enacted to allow citizens and organised civil society to participate in the processes of elaboration, planning and expenditure of governmental budgets. Since the late 1990s, institutional documents in support of budgetary and fiscal responsibility practices have been adopted worldwide. Currently, fiscal transparency continues to be advocated by numerous NGOs on national levels, by international organisations, such as the World Bank, the International Monetary Fund (IMF) and the Organisation for Economic Cooperation and Development (OECD), as well as by multilateral initiatives such as the Global Initiative for Fiscal Transparency (GIFT).

In Brazil, the Law on Fiscal Responsibility obliged the publication of the four-year Pluri-Annual Plan (Plano Plurianual), the three-year Budget Guidelines Law (Lei de Diretrizes Orçamentárias), the Draft Annual Budget Law (Projeto de Lei Orçamentária

¹⁵ Supplementary Law 101, 4 May 2000

¹⁶ E.M. Interministerial 106/MOG/MF/MPAS, 18 May 1990

Anual), the Annual Budget Law (Lei Orçamentária Anual), in-year budget execution reports, and year-end government accounts and their prior opinion before being externally audited by the Federal Court of Accounts (Tribunal de Contas da União - TCU) (OECD, 2008, pp. 117-118). The in-year reports present expenditure by each organisational administrative unit and compare the executed and budgeted amounts for most expenditure categories, but not per government programme or action. Extra-budgetary funds and quasi-fiscal data are not included in the budget and are not obliged to be disclosed, limiting the scope of budget transparency in Brazil (OECD, 2008, p. 118).

In a country with endemic corruption problems, such as Brazil, governmental expenditures did not only indicate the priorities of governments, they carried the hope to raise alarm into mismanagement. This is in spite of the fact that, as Wehner and de Renzio (2013, p. 10) argue, only a couple of scholarly papers have successfully demonstrated the positive impact of budgetary and financial expenditure on anti-corruption. One of them, by Reinikka and Svensson (2004), showed that after the central government of Uganda started publishing information about funds transferred to local schools in the national newspapers, and posting them on school notice boards, the disbursements that reached schools rose from 25.4%, in 1996, to 81.8%, in 2001. Another study, by Ferraz and Finan (2007), found that the publication of auditing reports conducted by the Brazilian Office of the Comptroller General, when revealing corruption within the mayor's office, decreased the incumbent's likelihood of re-election by about 20%. The likelihood was higher in municipalities with radio stations, which increased the effect of transparency. Only three years after the adoption of the LFR, besides documents, the government's financial information became available to citizens in the form of an RTP. The driver of this idea and the policy was the CGU, the same body in charge of the Transparency Portal.¹⁷

1.2. The Brazilian Office of the Comptroller General

Created in 2001, the Brazilian Office of the Comptroller General was first established as the Inspectorate General of Administrative Discipline (Corregedoria-Geral da União) with the aim of conducting administrative investigations into potential misconducts of federal public officials, both *ex officio* and in response to credible reports.¹⁸ Almost a year later, the Federal Secretariat of Internal Control (Secretaria Federal de Controle Interno) and

¹⁷ This analysis focuses exclusively on the transparency policies adopted by the CGU (the body's name was changed to *Ministry for Transparency and Office of the Comptroller General*, in 2017, due to political reasons).

¹⁸ Provisional Measure 2,143, 2 April 2001.

the Office of the Ombudsman General, from the Ministry of Justice, joined the structure of the Inspectorate General of Administrative Discipline.¹⁹

The structure of the CGU was further strengthened during Lula da Silva's (henceforth Lula) two terms in the presidency of Brazil. Two of his key campaign promises had been to promote anti-corruption measures and to increase civic participation in governmental activities. In 2003, the CGU was elevated to ministerial level and equipped with new mandates typical of those of an anti-corruption agency, i.e. public oversight, public audit and internal control, prevention of corruption, ombudsman, public transparency promotion, treatment of substantiated reports about mismanagement of the federal patrimony, among others. Additionally, a Council for Public Transparency and Anti-Corruption (Conselho de Transparência Pública e Combate à Corrupção) was created within the structure of the CGU, to contribute to formulating guidelines for policies.²⁰

With the Federal Secretariat of Internal Control as part of the CGU, the Comptroller General was responsible for the internal control of the executive branch at federal level as defined by Article 74 of the Federal Constitution.²¹ This included overseeing the execution of federal programmes, including funds voluntarily (not legally mandatory) transferred from the federal government to states and municipalities, and directly to citizens. This mandate included programmes that were present in every city of the

¹⁹ Decree 4,177, 28 March 2002.

²⁰ With the enactment of the Brazilian Federal Constitution in 1988, Policy Councils linked to ministerial structures became formal mechanisms of ensuring civil society participation in the process of policy formulation.

²¹ Article 74 from the Brazilian Federal Constitution states that:

The Legislature, Executive and Judiciary shall maintain integrated systems of internal control in order to:

- I. evaluate attainment of targets established in the multi-year plan, implementation of governmental programs and the budgets of the Union
- II. determine the legality and evaluate the efficacy and efficiency of budgetary, financial and patrimonial management by agencies and entities of the federal administration, as well as application of public resources by private law entities
- III. exercise control over credit transactions, avals, and guarantees, as well as over the rights and property of the Union
- IV. support external control in the performance of their institutional missions.

§1°. Upon learning of any irregularity or illegality, those responsible for internal control shall notify the Tribunal of Accounts of the Union thereof, upon penalty of being jointly liable.

§2°. Any citizen, political party, association or syndicate has standing, as provided by law, to denounce irregularities or illegalities to the Tribunal of Accounts of the Union.

country, such as the famous Brazilian cash transfer programme Bolsa Família. A key program in the efforts to lift millions of Brazilians from poverty during the presidencies of Lula and Dilma Rousseff, Bolsa Família was a federal programme in which municipalities are responsible for the registration of beneficiaries and the federal government is responsible for money transfer and its oversight.

Soon after its inception, the CGU turned to strategies of empowering citizens to act as auditors of federal funds transferred to their locality. This was claimed to be a practical necessity for the control of corruption, given the CGU had a team of less than two thousand auditors to cover a vast geographic area (namely, 26 states, one Federal District and more than 5.5 thousand municipalities). One such strategy, the programme *Smart Eye on Public Money* (Olho Vivo no Dinheiro Público) was implemented in 2003 and was still in effect at the time of writing in 2016. The initiative aimed at advising citizens, notably members of public policy councils and municipal leaders, in overseeing the proper use of funds transferred from the federal government to states and municipalities.²² From early on, the CGU developed strategies of civic engagement to support its own role as an anti-corruption institution.

In the same year, the CGU launched the Random Audit Programme, an initiative jointly executed with the national lottery to audit randomly selected municipal governments for the implementation of policies funded by federal money. The idea was to create an extra incentive for mayors and municipal officials to avoid mismanagement or corruption, and to supplement the traditional audits conducted by the CGU, defined on the basis of materiality and relevance. The Random Audit Programme comprised a large share of the annual audit activities of the Secretariat of Internal Control, varying between 30% and 70% between 2005 and 2010 (OECD, 2011, p. 207). After conclusion, the audits were published in the format of reports, where the CGU's auditors identified their main findings, including evidence for mismanagement. As I noted earlier, Finan and Ferraz demonstrated that the publication of these reports had a significant impact on electoral accountability, with corrupt politicians having a lower likelihood of re-election.

The process to open up the budget and later to make it a tool for fighting corruption was unilateral and very much centred on the drivers' (the executive branch and the CGU) own preferences. A number of institutional and socio-political factors contributed to this process. Institutionally, budgetary transparency was not a legal novelty; on the contrary, Brazil had already enacted LRF granting access to fiscal documents and information. In

²² Public policy councils were organised at all levels of government, in response to constitutional requirements, providing forums in which citizens joined service providers and the government mostly for overseeing their implementation, including expenditures, which needed to be approved by councils.

the socio-political realm, ahead of his first election in 2002, Lula had made managing a strong and fiscally responsible economy one of his key campaign promises (Anderson, 2011). Demonstrating this commitment via enhanced expenditure transparency could help mitigate risks while incurring benefits for his government.

First, stock markets frequently feared, and therefore punished, incoming left-wing governments. Additionally, this was a particularly sensitive moment in time, as Brazil's largest neighbour, Argentina, had recently declared the biggest sovereign default in history, and many in financial markets looked upon Brazil as the next country in line (Anderson, 2011). Alongside picking an orthodox team for the Ministry of Finance and for the Central Bank, transparency of public spending could attest to the government's commitment to fiscal discipline and help assuage stock markets' fear of the government. Secondly, Lula's ruling coalition was composed of eight political parties at the level of the federal legislature, while his Labour Party was in charge of only 411 municipalities (out of more than 5.5 thousand). Given the limited direct control over these units, enhanced transparency could help the executive branch increase its capacity to oversee federal expenditures and detect potential mismanagement of funds across government (see Michener, 2015, for a similar argument in this regard for FoIAs).

In 2004 the CGU created the Transparency Portal, a regulatory transparency policy designed as a website to publish the spending information of the federal government. According to Jorge Hage Sobrinho, deputy minister at the CGU at the time, the main thrust for the creation of the Transparency Portal was the political campaign promise of then President Lula to open up to civil society the Integrated System of Financial Administration of the Federal Government (Sistema Integrado de Administração Financeira do Governo Federal – SIAFI), which at the time was only accessible to some parliamentarians (Sobrinho, 2015).²³ The focus on SIAFI, which is the accounting and financial reporting system of the federal government, indicated that the CGU was emphasising one area of the budgetary process – government's expenditure – to expand its regulatory transparency policy.

²³ SIAFI is the accounting and financial reporting system of the federal government, including the indirect administration of the executive, the legislature and judiciary, and hosts all the financial information of the government. The system is operated in a decentralised fashion by public bodies which are obliged to provide documentation, such as bank transfers, in order to insert data in the system. It is therefore one of the main sources of internal and external audits.

2. The trajectory of the Transparency Portal

2.1. Creation and Institutionalisation

When the CGU was negotiating opening up SIAFI to wider usage with officials at the National Treasury, who were in charge of the SIAFI system, the latter raised concerns about the feasibility of the proposal. First concern was regarding the operating system of SIAFI, which was too old and would not support thousands or millions of simultaneous accesses. The second point raised by the Treasury officials was that the general population would not understand the available data given the technicalities of government accounting. Additionally, many of the federal programmes widely known to the public had different, technical, names under SIAFI. The CGU nonetheless insisted on disclosure. In the words of Sobrinho (2015):

We concluded that we should take another path; that of creating a Portal that would translate what was in SIAFI into citizen language [friendly language] [...] That's when we thought of creating a Portal with this name: the Transparency Portal. But as you see, at its genesis is the SIAFI; the idea was to work with budgetary execution, to create a Portal with the budgetary execution, understanding that this was the big first step to give transparency to public accounts and, therefore, to serve the purpose of preventing corruption. All else came incrementally, i.e. adding information about agreements with states and municipalities, this and that, all incrementally.

The solution agreed upon by the two offices was the creation of a public portal that would disclose financial information in a format and language that could be more easily understood by citizens. A facilitated language, named *citizen language* by officials at CGU, was adopted in order to translate some of the technical terms that could be a barrier to citizen engagement.

The Transparency Portal of the Federal Public Administration (Portal da Transparência - www.portaldatransparencia.gov.br) went online in November 2004, with information about the transfers of resources from the federal government to subnational governments. This was the first move by the CGU to disclose financial information in the hope that citizens would help monitor the funds' proper implementation by subnational governments. Information about direct spending by the federal administration, including the Federal Government Corporate Card, which is used by certain officials within the federal government, was added in 2005 in a detailed and easier-to-read format than the fiscal reports available to citizens. Only seven months after its publication, the Portal was formally institutionalised, granting the CGU the power to

access data hosted by the integrated systems of the federal government when requested, and reducing political and bureaucratic hurdles that the CGU could encounter to manage and expand the initiative, such as facing difficulties or delays in accessing data from federal electronic systems.²⁴

In none of these events, were there any attempts or organised protests from the targets of the policies, i.e. public officials from the national and subnational executive levels, to avoid regulatory transparency. In contrast to Fung et al.'s argument about the difficulty of sustaining targeted transparency policies due to the imbalance of distribution of costs and benefits (2007, p.110), in this case, the intensity of the CGU to continuously foster regulatory transparency enabled the policy's incremental expansion, even though the costs of disclosure were imposed on a small group of targets, and the beneficiaries constituted the large and dispersed group of citizens. On the one hand, the Office of the Comptroller General had the mandate to control public expenditures and increased transparency was among the mechanisms chosen by the public body to support this role. On the other hand, at least in part, subnational governments were not only the targets but also the beneficiaries of the Transparency Portal, as it allowed them to better monitor online the flow of federal resources that were transferred to them.

Two years after the creation of the Portal, the Secretariat for Corruption Prevention and Strategic Information (Secretaria de Prevenção da Corrupção e Informações Estratégicas - SPCI) was created within the structure of the CGU (Loureiro et al., 2012). Among the SPCI's mandates was promoting transparency and putting forward activities to foster the participation of civil society in preventing corruption, therefore becoming the unit in charge of the Transparency Portal within the CGU.²⁵ Simultaneously, the mandate to adopt transparency as a way to curb corruption was further institutionalised, making the trajectory of the Transparency Portal less likely to retrench. By the time the Secretariat was created, anti-corruption, transparency, and citizen engagement to prevent corruption were pressing demands coming from citizens, civil society, interest groups and the international community. Internationally, Brazil was also expected to strengthen anti-corruption measures, including transparency of government data and promotion of citizens' engagement for their use in response to the Inter-American Convention against Corruption, and the United Nations Convention against Corruption,

²⁴ Decree 5,482, 30 June 2005

²⁵ Decree 5,683, 24 January 2006

as well as to the recommendations issued by the corresponding monitoring bodies of these Conventions.²⁶

With the creation of SPCI, the CGU strengthened the links between transparency and anti-corruption not only in legal terms, but also in practice. The body publicly promoted the idea that access to information and public oversight were central to good governance and that transparency was the best antidote to corruption. In terms of the three-layer approach presented in the previous chapter, we can say that the CGU's justifications were based within the wider normative and political framework of the macro and meso layers (Figure 1.2, in the previous chapter). The CGU minister and officials often emphasised the important role citizens had to play as controllers; advocating a system of 'fire alarm', to use the terminology of McCubbins and Schwartz (1984). Given the geographic vastness of Brazil and its many administrative units, the argument went, the CGU's capacity to ensure integrity in the use of public money was naturally limited and the help of citizens was crucial. Unlike 'police patrol', in which the public body with an oversight mandate would have to spend time and financial resources to inspect actions which may exhibit no violations or irregularities, regulatory transparency was expected to trigger in-depth oversight by the organised citizenry, interest groups or other stakeholders. Moreover, by doing so, the CGU concomitantly justified the difficulty of ensuring full integrity in the execution of federal funds, making it more acceptable that eventual cases were reported by citizens before identified by law enforcement authorities.

In line with the CGU's mandate as the internal comptroller of the executive branch and the strategy of 'fire alarm', in May 2007 the SPCI developed an online push system to notify citizens weekly about voluntary transfers of funds from the federal government to states, municipalities, NGOs and other benefiting entities.²⁷ This was an attempt to automatically activate citizens to carry out local audits to check if the money transferred from the federal government was being used for the right purposes. More than 800 people voluntarily registered to the push system within its first month of existence. A year and a half later, there were 17,000 registered individuals. By May 2015, more than 91,000 registries had been recorded. The CGU stated that numerous citizens contacted the body to ask further questions about the transfers and to report delays in the execution

²⁶ In 2006, for example, the Follow-Up Mechanism to the OAS Anti-Corruption Convention recommended further actions to promote transparency and civic participation in Brazil. (OAS. (2006) SG/MESICIC/doc.168/05 rev. 4)

²⁷ Voluntary transfers are those made by the federal government to states, municipalities or to the federal district as a result of agreements, adjustments or other formal instruments used to advance the execution of public works or services of the interest of the Union and a subnational level administration.

of public works or of provision of products or services. Several registered individuals were public officials and representatives at state and municipal levels, who benefited from the information to learn about transfers that were being made to their localities.

2.2. Consolidation and Expansion

In early 2008, a corruption scandal broke out on the basis of the information disclosed at the Transparency Portal, which showed potential misuse of the Federal Corporate Cards by ministers.²⁸ The case surfaced after a newspaper, *O Estado de S. Paulo*, published two news articles about the issue; one about the excessive use of the cards during the Lula administration and another highlighting that the then Minister for Racial Equality, who ranked first in the use of cards, had spent more than £41,000 in the previous two years with the card. Further analyses of the data by the press showed that more than 70% of the minister's use of the card had been on car rentals, always from one single firm. The remaining percentage had been spent on duty free purchases and meals. Journalists and citizens questioned not only the value of these purchases, but also the abuse of the card for ministers' everyday personal needs.²⁹ Ten days after the case, two federal enforcement authorities launched an investigation into the use of Federal Corporate Cards. Less than twenty days after the scandal erupted, the Minister for Racial Equality resigned and the political crisis led to changes in the usage of the cards and to identification of other cases of mismanagements through transparency of financial information.

In March 2008, after the scandal and the creation of a Congressional Commission of Inquiry to investigate the subject, a new and succinct presidential decree was enacted to regulate the usage of the Federal Corporate Credit Cards towards increased regulatory transparency in the logic of control.³⁰ The decree brought two significant changes: it restricted the possibility of federal public bodies to use bank accounts for purchases of goods of small value (obliging the use of a Card, which allowed for detailed transparency of purchases online), and banned cash withdrawals using the cards, except in the very limited cases specified in the rule. The rationale for these two changes was that, as the case of the Corporate Credit Cards had just proved, transparency would both control the

²⁸ The Federal Government Corporate Cards (*Cartão de Pagamentos do Governo Federal*) are bank cards given to officials with specific posts in the Federal Public Administration, such as a minister, that allows for the rare purchases of goods of small value. They are also referred to as 'emergency cards'.

²⁹ In one case, for example, a minister had used the card to purchase a £2.00 sandwich, sparking a debate about public morality.

³⁰ Decree 6,370, 1 February 2008.

behaviour of card users and allow the media and citizens to collaborate in overseeing another set of expenditures.

Though the latent need to recover public trust may have supported the CGU to advance the regulation of public expenditure through transparency, this was the first time that a political scandal had pushed for greater transparency in relation to the Transparency Portal. Until this moment, it had been the CGU's mandate of internal control and its argument that officials restrained their behaviour in anticipation of the impacts of transparency that had informed the expansion of the Transparency Portal.

The same year, as a consequence of the crisis and following a suggestion by the Brazilian NGO *Transparência Brasil*, the CGU created a query that granted users of the Portal more direct access to the expenses made by Corporate Credit Card holders, by allowing users to search by users of the Cards. This was meant to facilitate media investigations and citizen monitoring. Since 2008, no allegation of misuse of the Cards has been reported by prosecutorial authorities or by the media. However, despite the expansion of disclosure through new obligations of usage of the card, secrecy still prevailed over transparency in a few circumstances. According to data available at the Transparency Portal, 97% of the purchases done by the Presidency of the Republic between 2006 and 2016 were secret.³¹ In 2016, a senator from the opposition introduced a bill to regulate the usage of the cards at the Presidency of the Republic, based on data from the Transparency Portal that revealed the high level of secrecy.³²

Besides the changes related to the Federal Corporate Cards, the CGU adopted new initiatives to promote anti-corruption through enhanced transparency in 2008. These reflected the expansion of transparency as a regulatory mechanism in the logic of control to other areas of the CGU's mandate, indirectly related to public financial expenditure. One of these initiatives was the publication of the Registry of Non-Reputable or Suspended Companies (*Cadastro Nacional de Empresas Inidôneas e Suspensas – CEIS*). CEIS presented names of companies that had been fined due to mismanagement in contractual relations with the federal administration or due to corruption and, as a consequence, were not allowed to participate in public bids. At the federal level, CEIS gathered information from the Court of Accounts, the Office of the Comptroller General and information published them in the Official Newspaper. When launched, the Registry included information from the federal government and from those states that had voluntarily signed up. By the end of 2014, 15 states and the Federal District had signed up to CEIS.

³¹ In no other body of the federal executive was this the case.

³² Projeto de Lei do Senado 62/2016

The main objective of the publication of the databases by the CGU was to share with the public, and especially with officials at the national and subnational levels, the names of companies and individuals (in the condition of service providers, e.g. consultants) that had not provided a good service or had been involved in mismanagement or corruption. The hope was that this would lead other public bodies from different levels of government to avoid contracting firms banned at the federal level, and discourage firms contracting with the government from engaging in mismanagement.³³ In other words, the CGU called for close scrutiny when firms held liable by the federal government were providing services or products to another level of government, so that other modes and instances of corruption could be identified once information was published.

While still preparing for the publication of the first list of CEIS, the CGU identified an individual that was the shareholder in 59 different companies that negotiated with the public administration across the country, which could potentially allow for non-banned companies to substitute banned ones.³⁴ According to reports of the Federal Inspectorate within the structure of the CGU, companies closely monitored their presence in CEIS and contacted the body frequently to make sure their names did not remain on the blacklist after the end of their sanction period, which was interpreted by the CGU as a sign of the regulatory transparency's effectiveness. At its launch, a thousand companies were registered in CEIS. By May 2015, almost 12,000 companies appeared in the Registry.

The CGU subsequently proposed extending the use of CEIS to the private sector, a move that would expand the body's mandate through the logic of control. This initiative emerged out of the CGU's partnership with the Brazilian Ethos Institute for Corporate Social Responsibility, an NGO fostering the 10th Principle of the Global Pact and the OECD Guidelines for Multinational Enterprises, among other documents. After the creation of the Registry, the Ethos Institute amended its Directives against Corruption (*Pacto Empresarial pela Integridade e Contra a Corrupção*) to include a clause stating that the signatories of the Directives should avoid doing businesses with companies listed in CEIS. Additionally, if the company was listed in CEIS, it would not be allowed to join or continue as a signatory of the Directives. By using CEIS in the private sector, Ethos and the CGU hoped to shrink the market for companies considered non-reputable by the government.

³³ CGU claimed that having a public and compiled Registry would prevent companies listed as non-reputable or suspended from changing their headquarters from one state to another in order to keep contracting the public administration, either at federal or state level. Since the name of the partners would be the same, the company could be identified.

³⁴ CGU (2009) *Empresas inidôneas e suspensas já passam de mil, no cadastro da CGU. Controladoria-Geral da União*, 27 August.

More than 500 firms were signatories of the Ethos Directives in 2010, including some of the biggest ones in Brazil, such as Vale, Ambev and Natura. With a monitoring methodology to ensure that parties fully adopted the clauses of the Directives, the Ethos Institute published a long list of companies in 2013 that were removed from the Pact for not providing information for analysis. According to the Institute, companies had reported not making business with specific corporations because they were listed in CEIS. The main question, which this research could not respond due to the lack of data, is to what extent these choices had a real impact on firms' revenues and if they did, whether firms were able to trace their losses to corruption or to shaming instigated by CEIS. In this convoluted net of causalities, it is likely that the impact may have been limited.

Nevertheless, the experience of CEIS was soon replicated in another area. On 28 October 2011, President Dilma Rousseff amended decree 7592, setting new rules to ensure monitoring of the voluntary transfers of money from the federal government to NGOs.³⁵ The rule was enacted after a crisis involving the Minister of Sports, who had allegedly received bribes from a number of NGOs in order to confirm the voluntary transfers from the government. Reflecting the government's hope that transparency could be an effective tool to damage the reputation of blacklisted NGOs and reduce their chance to partner with other public bodies in different levels of government, the decree called on the CGU to disclose blacklisted NGOs in the Transparency Portal.³⁶ The decree also defined that every agreement between the federal administration bodies and NGOs should be suspended pending analysis for a period of thirty days, after which they could be re-established if no irregularity was detected. By May 2015, 2,495 NGOs were registered in the Portal and multiple news stories had been written demonstrating that NGOs responded to special audits and returned money to the federal government.

2.3. Institutional mandates and political agendas

Although the CGU decided on future disclosures (often detailing an existing group of financial information) and technical improvements of the Transparency Portal on the whole internally, a number of external factors also seemed to inform the trajectory of the RTP. The period from 2010 until 2012 is particularly relevant to shed light on how the Transparency Portal expanded mostly incrementally, but also as a result of punctuations, as well as on how the institutional power of actors and their interaction with the CGU

³⁵ Decree 7,592, of October 28th 2011, was signed by former president Dilma Rousseff, the then Head of the Civil House, and the Minister of the Brazilian Office of the Comptroller General.

³⁶ This was the Barred Private Non-Lucrative Entities (Entidades Privadas Sem Fins Lucrativos Impedidas – CEPIM)

were influential in pushes for greater disclosure. It should be noted that none of these diverted the original role and trajectory of the Transparency Portal from that of increasing control over public expenditure.

Starting in May 2010, revenue and expenditure data were updated daily in the Transparency Portal with a deeper level of analysis, including detailed documentation of explanations for government expenditures. This was in response to the adoption of Supplementary Law 131/2009, which amended the Fiscal Responsibility Law, obliging all levels of government to publish detailed information about their budget execution online and in real time.³⁷ The expansion of transparency was not particularly significant at the level of the federal government, because the Transparency Portal already fulfilled most of the Law's requirements and had been one of the new Law's reference. But it was a significant step for states and municipalities (small municipalities had a deadline of five years to create their Transparency Portal) and made the Transparency Portal of the Federal Government a model to be followed, especially by subnational units that did not yet have a similar initiative. Sanctions for non-compliance with the transparency requirements of the Law included withholding voluntary transfers of funds from the federal government, which were important sums of money, especially for smaller states and municipalities.

The following year, a query of the Payment Cards of Civil Defence (Cartão de Pagamento de Defesa Civil) was made available in the Transparency Portal, on the basis of the logic of control pursued by the CGU and the prevailing argument that government expenditures must be transparent. These cards were used for the transfer of federal funds to states and municipalities in cases of public calamity and emergencies, including due to environmental disasters. The Payment Cards were created in 2011 in the aftermath of floods and landslides that devastated several mountain towns near Rio de Janeiro. Following the tragedy, there were claims of mismanagement of federal funds, and the Card was created both to ensure timely transfers and to provide the government and citizens with detailed information about the proper use of the money. A typical example of the logic of control, the query reassembled the expansion of transparency of the Corporate Card and presented detailed information of purchases (date, type of transaction, name of establishment where product was purchased, and cost of purchase).

Just a year later, with the entry into force of the Brazilian Freedom of Information Act in May 2012, federal public bodies were obliged to proactively disclose datasets that were of public interest and which, they anticipated, would be requested by citizens.³⁸

³⁷ Supplementary Law 131, 27 May 2009.

³⁸ Law 12,527, 11 November 2011.

Legitimised by the principle that transparency should be the rule and secrecy the exception in public administration, one of the queries created in the Transparency Portal granted access to the wages of federal public officials. The query complemented a previous one which disclosed information about the working hours, posts and career stages of public officials, but not about their individual wages.³⁹

Based on the political context of the time, it could be argued that the decision to disclose the information on wages was strengthened by two different reasons. On the one hand, the Rousseff administration adopted a strong model of FoIA, applicable for the federal and subnational units, and wanted to pioneer quick efficacy to the legislation. A second motivation appeared to be political in nature: at this particular juncture, President Rousseff was locked in a disagreement with several public sector unions over demands for wage increases. With 133% of real increase in federal public officials' payrolls since the beginning of the first term of Labour presidency in 2002, and in an economic environment that was decidedly less positive than in previous years, President Rousseff wanted to avoid new wage increases for public officials. Against this backdrop, and facing more than 75 thousand officials on strike, the government could expect that by disclosing the information on wages, it could engage the public on the debate and win popular support in opposing further salary increases.⁴⁰

The CGU advocated the usage of the new dataset published in the Transparency Portal for purposes of democratic accountability, anti-corruption and control. Before introducing individualised data about public officials' wages, the Transparency Portal already offered a query to allow for the identification of officials dedicated to activities incompatible with their public post and to provide citizens with information to identify external signs of wealth disproportionate to the official's salary. Yet this required extensive research and was not a straightforward procedure: it entailed the complex task of correlating one's wealth with their career status on the basis of a statistical report, which was time-consuming and open to misinterpretation. Moreover, additional benefits earned by public officials beyond the time and scope of the research would not be available to the citizens.

³⁹ This was not the case in every branch of government. Disclosure of financial information in the Judiciary, including of judges' salaries, was significantly limited before and after the regulation of the FoIA in that branch of power, with timid calls for disclosure only after Brazil started facing its economic crisis from 2015. Only in mid 2017, the disclosure of judges' wages came into place, after a scandal shed light on the high values of some of them.

⁴⁰ Cruz, L. (2012) Governo aumenta em 133% despesa com folha de pagamento de servidores federais em oito anos. *Agência Brasil*, 19 August.

In the aftermath of the publication of public officials' wages, then Minister of the Office of the Comptroller General, Jorge Hage Sobrinho, affirmed that in response to the 'fire alarm' promoted by the new query, the CGU had started receiving citizen reports claiming that certain officials that had engaged in public procurements were living lavish lives inconsistent with the salaries displayed on the Transparency Portal.⁴¹ Unlike at state and municipal levels and within the legislative and judicial branches, where a number of public sector unions mobilised and appealed to the judiciary to demand secrecy of public wages, the CGU responded to protests at the federal executive:

I remember these initial debates [about disclosure of officials' wages, including judicial complaints from officials of other subnational governments that had announced the measure] and having to give multiple interviews to argue that the public interest and transparency policies should prevail over private interests to keep information secret, and that this was not a breach of privacy. We defended the argument that this was not [private information], because it was related to the public, paid by public money and established by law. It is completely different from the private profits of someone [working] in the private sector, which no one has the right to know. But the wages of public officials are established in law and when [public officials] choose the public life they should take into consideration that they necessarily accept giving up part of their privacy. Another argument brought up by some unions of public officials was about the risk that disclosure could bring: death risks, robbery, kidnapping attempts. [...] But we defended our stance and it was a winning campaign; the Judiciary recognised that the information could be disclosed. (Sobrinho, 2015)

It was also difficult to justify a demand for non-disclosure when the beneficiaries of the information made extensive use of the information: data on wages had become the most searched query since its publication. And without any organised protest from the target public of the policy, there was no reason for the query to retrench. Besides, transparency and access to information were high priorities in the presidential agenda at that moment, and the federal executive had become the reference for transparency practices and access to information in the country.

In 2012, the CGU added yet another query to the Transparency Portal targeting public officials. This time it was the list of public officials who lived in apartments owned by the federal government. The official objective of this query was to publish information to allow for the identification and control, including through 'fire alarm', of particular recipients of indirect federal benefits. The query had been requested by the Brazilian

⁴¹ Kleber, L. (2012) Cidadãos passam a denunciar servidores que levam vida luxuosa e incompatível com a renda. *Estado de Minas*, 18 November.

media for some time. But the measure seemed to align with the goals of a few government bodies, although these were never officially cited among the reasons for expanded disclosure.

One of the bodies that stood to benefit from the disclosure was the Secretariat for Patrimony of the Federal Governmental (Secretaria de Patrimônio da União), which was involved in multiple judicial cases in an effort to reclaim apartments that former public officials (including military officers from the dictatorship era) had lost the right to occupy but would not move out from (this was the case for 121 out of 498 federally-owned apartments in Brasília).⁴²

Cases prepared by the media after publication of the query mainly focused on those officials who lived in the apartments without having the right to do so and who could not be removed due to ongoing judicial cases. In one of the news report about the query, a former public official who lived in a federally owned apartment since 1976, and had lost the right in 1990, complained about the publication of the information, claiming that it was a government strategy to put citizens and the media against former officials in positions like his own.⁴³ He may have been right in his analysis, but who would question that the disclosure in question did not foster an underlying public interest?

2.4. Support for intermediaries

Transparency of financial information by the CGU as a mechanism to curb corruption and control federal expenditure could only have a limited impact without the engagement of intermediaries. First, as I noted, the Transparency Portal did not provide full disclosure of information due to claims to secrecy rights. Second, the Portal did not provide information on every type of expenditure. For instance, while information on Bolsa Família beneficiaries was fully available, this was not the case for details on recipients of Ministry of Education scholarships or beneficiaries of tax exemptions. Third, and most importantly, a basis of the initiative still contained technical information that could not be translated to ordinary language. It was therefore necessary for there to be intermediaries that could understand the information available, process it and take action, such as in the case of the Federal Corporate Card usage. As suggested by Heald (2012, p. 40),

⁴² Nossa, L. (2012) Apartamentos funcionais do Executivo são ocupados irregularmente em Brasília. *O Estado de São Paulo*, 1 September.

⁴³ Ibid

'Missing users' constitute a fundamental obstacle to the achievement and maintenance through time of high standards of effective fiscal transparency, with heavy dependence on 'information brokers'. ... The micro-level of transparency operates in a different context and with different objectives. Public sectors are large and complex, often involving the distribution of funds to delivery organizations (e.g. healthcare and local government) that have geographically based remits. Much effort has gone into the refinement of formula funding mechanisms, with the objective of making funding more closely reflect measured needs.

Although the author focuses specifically on fiscal transparency, the premise of usage of fiscal data for the purpose of control of corruption is the same. And in large part, if the CGU aimed at strengthening the Portal as a tool of control and 'fire alarm' for federal public expenditures, it was necessary to support, and even encourage, intermediaries that had greater potential to identify mismanagement using the disclosed information. Otherwise, the most the CGU could expect was for the Transparency Portal to have a control effect if public officials behaved in anticipation of disclosure. The CGU was aware of the importance of intermediaries. When asked about how to measure the effectiveness of the Transparency Portal, former Minister of the CGU, Mr. Sobrinho, immediately referred to the works of intermediaries:

Turning to a more qualitative analysis, it is possible to assess its importance [that of the Transparency Portal to fight corruption]. If you, for example, measure the amount of news report from media, in general, that were published in the past years based on searches conducted by investigative journalists on the Transparency Portal, you can have a sense of the amount of oversight from society, which was made possible by the existence of the Transparency Portal. [...] News indicating illicit cases, irregularities, corruption problems, all based on information available in the Transparency Portal. (Sobrinho, 2015)

Besides its own initiatives to mobilise civil society organisations and members of municipal councils to use the Portal, the CGU supported initiatives developed by civil society organisations with similar goals. In 2009, the Brazilian Association for Investigative Journalism (Associação Brasileira de Jornalismo Investigativo – Abraji) and Open Accounts (Contas Abertas), an NGO that advocates for openness of the public budget, created an online course to instruct journalists on how to use data disclosed on the Transparency Portal and other similar open databases. From 2009 to 2010, the partnership offered five editions of the course. Individually, both institutions also promoted courses to guide journalists on the use of the available data on government financial expenditure both for the sake of analysing policies and identifying potential

mismanagement. While this points to the existence of societal interest in making use of the disclosed datasets, it also demonstrates, at least in some cases, the inherent difficulty of interpreting them.

A research conducted by the University of Brasília (Universidade de Brasília - UnB) and the CGU in 2014 identified that the majority of users of the Transparency Portal were public officials (41%), followed by students (14%) and employees from the private sector (11%) (UnB, 2014). Sixty-four percent of the respondents claimed to use the Transparency Portal as a citizen, and 26% for professional reasons, e.g. journalists, members of NGOs or public officials. The top three searches were about federal government expenditures (56%), transference of funds to states and municipalities (50%), and wages of public officials (42%). Eighty-two percent of respondents that accessed the Transparency Portal daily agreed it was an effective tool to prevent corruption. When asked about the tools that the Transparency Portal should make available in order to facilitate search, respondents chose “possibility of associating/crossing data and information” as the most important, followed by “visualisation of federal expenditures data in maps and graphs”.

In 2010, the CGU started publishing the Transparency Portal’s data in open format, fulfilling the most crucial of the eight principles of open data, as defined in the Open Data Handbook (Inesc, 2014). Disclosure of data in open format followed pressure from organised groups from civil society, and was encouraged by the group of Open Data within the Ministry of Planning, Budget and Management (Ministério do Planejamento, Orçamento e Gestão – MPOG). Moreover, it followed a number of tailor made extractions of data from the Portal to organised civil society, before each of which an internal process of approval of data sharing was conducted. The impact of the Transparency Portal’s open data as a mechanism to support the creation of applications by civil society to also raise ‘fire alarm’ should not to be downplayed.

3. Shadow cases for the logic of control in Brazil

The trajectory of the Transparency Portal has been closely linked to the high intensity of the driver (the CGU) to push for its expansion as part of the CGU's regulatory mandate. What happens to RTPs in the logic of control when such an intensity is absent in the driver or when the targets display high intensity to resist disclosure? The following shadow cases from Brazil will briefly illustrate these scenarios. In the case of the Transparency Pages, the low intensity of the drivers results in a stagnation of the RTP, whereas in the case of the transparency of the BNDES's operations, high level of resistance from the federal executive has led to delayed and ultimately selective disclosure, despite persistent demands for transparency by the CGU, the Congress, the judiciary and the civil society.

3.1. The Transparency Pages

Shortly after the institutionalisation of the Transparency Portal, the CGU and the Ministry of Planning created the Transparency Pages (Páginas de Transparência Pública), reproducing an earlier initiative adopted by the Ministry of Justice. The Transparency Pages disclosed detailed expenditure information of each federal public body, including state owned enterprises, in a standardised way and in a dedicated area of these bodies' webpages.

The publication of the Pages started in 2006, when they were regulated by Portaria 140/2006 and a standard model was made available by the CGU with the minimum level of information that should be disclosed by each public body. The CGU's idea with the creation of the Pages was to strengthen the transparency of individual ministries and incentivise them to add complementary information as they saw fit. The data for the minimum level of information published on the Transparency Pages were extracted from centralised governmental systems and published by the CGU itself, meaning that in most cases ministries did not put any individual effort for their publication, except for establishing a link on their website to direct to the Pages. Contrary to the Transparency Portal, however, the scope of disclosure covered by the Transparency Pages has seen little expansion since creation. The CGU did not champion them primarily as a regulatory mechanism and therefore did not push for their expansion after creation. As the individual federal bodies (with the exception of the Ministry of Justice) demonstrated little interest in the expansion of the RTP, the Pages stagnated in relation to quantity and quality of information and usage.

The enforcement of the Pages has also been weak.⁴⁴ Brazil's biggest semi-public multinational corporation Petrobrás, for example, had not complied with the regulation until 2012 and no sanctions had been applied to it in this regard. But the publication of the Transparency Pages provided extra incentive for the various ministries and decentralised federal bodies to fill the systems from where financial and non-financial information (such as contracts) were extracted. This, in turn, strengthened the ability of the CGU to control expenses using the federal systems. When compared to the Transparency Portal, little could be said about the actual impact of the Transparency Pages in the logic of control. Although access to them increased significantly after 2011, when the Brazilian FoIA was adopted and public bodies started redirecting citizens for consultation on the Pages, I could not identify any evidence suggesting the usage of the Pages for anti-corruption purposes.

3.2. Transparency of the operations of the BNDES

In the presence of sufficient institutional will (i.e. driver intensity) and direct access to relevant databases, it was fairly unproblematic for the CGU to publish governmental expenses and build queries to support the logic of control. In the absence of these conditions, however, the logic of control did not properly function. Another case in point is the transfer of funds to firms by the Brazilian National Economic and Social Development Bank (Banco Nacional de Desenvolvimento Econômico e Social – BNDES). A key instrument for the economic development policies under the Labour Party government, the operations of the BNDES expanded significantly from 2010. This expansion was not, however, harmonised with greater transparency.⁴⁵ The press repeatedly appealed to courts to gain access to information from BNDES, with limited or delayed success. After its entry into force, the FoIA was similarly used to request access to the Bank's operations.

In view of the contracts won by companies that contributed large sums of money to political campaigns, there was particular public concern in relation to potential mismanagement in the operations of the Bank. In 2011, for example, one of the biggest Brazilian newspapers, *Folha de São Paulo*, submitted a judicial request to have access to the Bank's internal reports concerning concessions of more than £24 million. For this

⁴⁴ By 2016, no sanction was ever applied to any federal public bodies for not complying with Portaria Interministerial 140/2006, although non-compliance was registered in auditing reports.

⁴⁵ From 2008, the Bank published a report titled *BNDES Transparent* where selected information about the Banks' operations was made available (ex., the name of the beneficiary, brief description of the project, value of the operation, and in which sector the company operated).

request, a final decision was given by the Supreme Court granting access to the information as late as in May 2015; for every previous court decision calling for disclosure, the Bank had appealed for secrecy. Using the Brazilian FoIA, the CGU also requested that the BNDES disclose information about its financial operations, maintaining minimum secrecy when necessary and only in the existence of legal justifications. Both within the judiciary and in the executive, the BNDES appealed as many times as possible not to provide access to details of its budgetary expenditures.

In April 2015, the Congress was debating a provisional measure to authorise credit expansion to the BNDES. The measure was sent back for the president's consideration with an unexpected amendment pushed through by the opposition, which aimed at banning the secrecy of any operation undertaken by the Bank, including with foreign nations.⁴⁶ On 22 May 2015, almost at the constitutional deadline to sanction the provision, President Rousseff vetoed the clause, arguing that the level of proactive transparency at the BNDES was satisfactory. The veto was a potential victory for the government in resisting the disclosure of information, which took place in the same month when two court decisions obliged the Bank to disclose new sets of information

The first decision was in a case initiated by the Public Prosecutors' Office in 2013, in which the BNDES was requested to publish the wages of its directors, thereby complying with the decree that regulated the FoIA at the federal level and obliged disclosure of a minimum set of information. The second decision was filed by the BNDES itself, following a 2014 request by the Federal Court of Accounts for the Bank to provide information about credit operations with JBS Group, the biggest campaign financier in the elections that year. In May 2015, as a response to social and institutional pressures for disclosure, the Bank published additional sets of data about its operations, such as the interest rates adopted in selected cases, the identification of companies that have benefitted from the BNDES, and the projects that these companies were developing. Information was selectively disclosed by the BNDES without the participation of civil society, audit and judicial institutions.

⁴⁶ Correa, I. M.; Gonçalves, A. (2015) A caixa-preta do BNDES. *O Estado de São Paulo*, May 21.

Conclusion

In Chapter 1, I suggested that the trajectory of an RTP was dependent on the interaction of three sets of actors: the drivers of the RTP, its targets, and the beneficiaries/intermediaries of disclosure. This chapter has narrated the case of expansion in the existence of a high intensity driver, in this case the CGU. Explaining this high intensity are both the wider socio-political environment and the specific mandate of the CGU to prevent and fight corruption. In Brazil, where new corruption cases emerge frequently and cause significant public outrage, the relative position of the CGU was often stronger vis-à-vis the targets of disclosure, i.e. public officials, including high authorities of the federal executive. In relation to the logic of control through disclosure of financial information this was especially the case after the CGU was institutionally created, which granted the public body access to information available in the SIAFI and in other federal systems. Even if the targets of the RTP did not agree with disclosures, their best bet in most instances was to question the control mechanism used, i.e. the ‘fire alarm’ method used by the Transparency Portal, but hardly the idea of disclosure. Questioning this core idea was difficult to justify given transparency’s association with good governance and accountability, weakening the position of the targets vis-à-vis the drivers.

Moreover, the CGU was also in a position of relative strength as the driver of disclosure, being formally mandated to monitor the internal activities of the federal executive. It was the body that assisted the President of Brazil on issues of internal control and anti-corruption, which strengthened its position compared to other institutions of the same hierarchical level.⁴⁷ However, while the political weight of the presidency provided the CGU with additional intensity for increased disclosure on various instances, the absence of this support could hinder smooth and detailed disclosure of information. As demonstrated in the case of the BNDES, the reluctance of the presidency to assist in the disclosure of the Bank’s operational information added additional intensity to the targets’ ability to resist disclosure, at least for an extended period of time.

I should also note the role played by beneficiaries and intermediaries in the trajectory of the RTP. The main beneficiaries of the Transparency Portal are, in theory, citizens, for whom issues of public expenditures and expenses by individual public officials constitute matters of public interest. Even though individual citizens are less likely to organise to make concerted demands for disclosure, this task has been carried out in the case of the Transparency Portal by a number of dedicated intermediaries. In this aspect, the presence of media organisations and NGOs attentive to issues of

⁴⁷ After the impeachment of President Rousseff in 2016, the CGU was stripped of its advisory role to the Presidency of the Republic and was turned into a ministry.

corruption, through routine monitoring of public expenditures or production of breaking news stories, could be said to have made disclosure more legitimate, and thereby contributed to the expansionary trajectory of the RTP. It is, however, important to highlight that the CGU's initiatives to support the training of intermediaries was key, as the logic of control had little hope to be effective in the absence of users that could search and identify mismanagement using the Transparency Portal.

The story in this chapter supports the argument that RTPs are self-reinforcing processes. Following the inception of the Transparency Portal, additional measures (such as the Payment Cards of Civil Defence) were created by the CGU to be featured in the Portal. These new measures followed the Portal's original path (or purpose), that of increasing the government's internal control capacity and prevention of corruption through transparency. Similarly, the fact that information disclosed at the Portal was the source of fire alarms, which revealed evidence of mismanagement strengthened the incremental disclosure of information for the purposes of control. The evolution of the Transparency Portal took place gradually, without the need for abrupt external shocks, but also in response to external facts. However, even the creation of the query regarding the salaries of public officials, which was developed at least in part with political motivations, advanced the original trajectory of the initiative, based on disclosure of financial expenditure selectively detailed to promote the logic of control.

CHAPTER 3:

MPs EXPENSE SCHEME AND THE REGISTER OF INTERESTS

What the Daily Telegraph did - the simple act of providing information to the public - has triggered the biggest shake-up in our political system for years. Information alone has been more powerful than years of traditional politics. Of course it has been a painful time for politics and for individual politicians - but let us be clear, it is without question a positive development for the country. ... That's exactly as it should be. That is real accountability. That is people power, and we need more of it not less. (Former MP David Cameron, 2009)⁴⁸

This chapter analyses the trajectories of two RTPs in the UK House of Commons established within the control logic of regulatory transparency. In a broad sense, both pertain to issues of good governance and anti-corruption, and politicians' acceptance of or resistance to the logic of control. Corruption is not viewed as an endemic problem in the United Kingdom; nor is it absent from government practices. According to the 2013 Global Corruption Barometer data, a significant number of respondents that had come into contact with a public service reported paying a bribe: 21% of respondents reported paying a bribe to the Judiciary, 11% to land services and to registry and permit services, 8% to the police, and lower percentages to other services, such as education and tax revenues.⁴⁹ Furthermore, 65% of British citizens interviewed believed that over the previous two years the nation's level of corruption had increased, whereas only 5% suggested it had decreased a little (28% of respondents claimed it had not changed).

The 2013 Global Barometer research was conducted three years after the British Parliament faced one of its biggest corruption scandals. That was also when a reform to enhance Members of Parliament's (MPs) compliance with norms of ethical conduct was

⁴⁸ Cameron, D. (2009) David Cameron's full speech at Imperial College London. *BBC*. 25 June.

⁴⁹ The 2013 report of the Council of Europe's Group of States against Corruption challenged citizens' perceptions and experiences with corruption in the Judiciary, claiming that "Nothing that emerged from the evaluation indicated that there was any element of corruption in relation to judges nor was there any evidence of their decisions being influenced in an inappropriate manner". The same Group, however, expressed a less optimistic view of the anti-corruption framework in the legislative, calling for increased transparency in political financing, lobbying and in the civil service.

undertaken, as a result of which a series of structured information was disclosed to the public. Disclosure initially took place in response to a crisis of confidence initiated by leaks of *The Telegraph* daily together with refusals and attempts of MPs not to share information with the public, and was further adopted as a mechanism to regulate the behaviour of MPs.

The first case narrated in this chapter looks at the evolution of the *Register of Members' Allowances and Expenses*, the policy enacted in the aftermath of the expenses scandal. As a careful tracing of its course of development will reveal, the trajectory of this RTP has been punctuated, with changes being enacted in response to external shocks. This was also a highly contested process, due to the competing intensity of the drivers (in this case, journalists and opposition politicians) and the targets (politicians) for and against disclosure. In this case, the public's sustained attention to the scandal, and thereby to the responses of the parliament, ultimately left MPs with no better political solution than to create an independent authority with the mandate to oversee their allowances and expenses and which made significant use of transparency as a regulatory mechanism in the logic of control.

The second case study in this chapter analyses the evolution of the *Register of Members' Financial Interests*, the main mechanism to regulate conflict of interests and lobbying in the UK Parliament. In spite of the fact that this RTP also targeted MPs, its trajectory was considerably different to the first one. Unlike in the case of the *Register of Members' Allowances and Expenses*, the expansion of transparency to regulate conflict of interest was not deemed to be controversial or highly contested, not least because the MPs had the opportunity to debate and decide on last instance on what to disclose, and importantly, what not to disclose. Therefore, the trajectory of this RTP was one of expansion. I should note at this point that the scope of this chapter does not include the All-Party Parliamentary Groups, the cross-party specialist subject groups with semi-official status.

1. MPs' Expenses' Scheme

1.1. Socio-political and Institutional Context

The United Kingdom's Freedom of Information Act was approved in 2000, a relative latecomer compared to the information revolution and other movements from the government towards openness (Worthy, 2000, p. 566 – 568). Its implementation was

phased and its complete entry into force took place on 1 January 2005. The FoIA 2000 obliged every public authority to make available a 'Publication Scheme', i.e. a set of information which every public body under the FoIA committed to publishing proactively. Every Publication Scheme needed to be submitted for approval of the Information Commissioner's Office, the UK's independent body set up to uphold information rights. The FoIA also gave to the Commissioner the power to approve model publication schemes to be adopted by the public authorities falling in the scope of the Act. The 'model' scheme was a minimum collection of information that would be made mandatory to public authorities. In general, examples of information that formed the schemes of public offices were policies and procedures, minutes of meetings, annual reports and financial information.

The Publication Scheme requirements entered into force for parliament in November 2002. Data on finance and personnel were added to the House's scheme in June and December 2003. In preparation to the entry into force of the Act in 2005, the House of Commons released information of individual Members' allowances in October 2004. The information covered the financial years from 2001-02 broken down in nine categories: Additional Cost Allowance (ACA), London Supplement, Incidental Expenses Provision, Staffing Allowance, Members' Travel, Members' Staff Travel, Centrally Purchased Stationery, Centrally Provided Computer Equipment, and Other Costs. Transparency was promoted within the limits mandated by the law and agreed by politicians in the House of Commons.

This was the first time that individualised financial data for MPs of the two Houses of Parliament was disclosed in such detail, defining a new moment for transparency of financial information in the House of Commons. The numbers immediately caught public attention. Newspapers reported extensively about the average cost of an MP in the British democracy, i.e. how much was spent in their salaries and in expenses. Some news articles highlighted who the most expensive MPs were, the shops where they spent most of their expenses allowances, among a series of other comparisons and analyses.⁵⁰ Only with the approval of the FoIA 2000 could the public and the media have so much access to the House financial information. Previously, even the House of Commons' Green Book, the financial manual of the Commons, was secret.

⁵⁰ See, for example: BBC (2004) MPs' expense accounts laid bare. *BBC News*. 21 February; Hencke, D.; Maguire, K. (2004) Average MP's expenses cost taxpayer £118,000. *The Guardian*. 22 February; BBC. (2004) Most expensive MP defends record. *BBC*. 22 February; Helm, T.; Sparrow, A.; Carlin, B. (2004) £118,000 expenses, £57,000 salary (that's the cost of your MP). *The Telegraph*. 22 February.

Before the entry into force of the FoIA, detailed disclosure of members' allowance followed the decision of the House to create the House of Commons Members' Estimate Committee to delegate matters relating to the House administration. The creation of the Committee had been the result of the investigation of the Leader of the Conservative Party MP Duncan Smith by the House Committee on Standards and Privileges, in the scandal known as 'Betsygate'. The complaint against the MP was submitted by BBC journalist Michael Crick after investigation showed that the parliamentarian's wife was being paid with the Leader's Costs Allowances (Standards and Privileges Committee, 2004). Duncan Smith was not considered by the Committee to have engaged in wrongdoing, but the media and the investigation exposed the inadequacies of the House's financial control. Two years previously, a Commons' official had already raised concerns about the House's management of MPs' expenses and been assured that there was no reason for concern (Worthy, 2014).

In the month of the entry into force of FoIA 2000, MP Norman Baker, a Liberal Democrat and member of the opposition, submitted a FoI request

(...) for a breakdown of the already published aggregate figure for travel claims by MPs, for the most recent year for which figures were available ... 'in a format which would show for each MP the amount claimed by mode of travel, and therefore giving specific figures for rail, road, air and bicycle'.⁵¹

The request by MP Baker, who published the information about himself on his website, was motivated by a *Telegraph* and Despatch Agency article uncovering figures about ministers' car use, which were double those that Baker had obtained from the government previously.⁵²

A similar FoI request to that of MP Norman Baker was submitted by Carr Brown of *The Sunday Times*. Parliament denied both information requests as well as first appeals on the ground that it had already disclosed the relevant information, but simply did not break them down in detail. The denials were appealed to the Information Commissioner, who upheld the complaints and required disclosure of the information on February 2006, after which the House appealed to the Informal Tribunal.

⁵¹ UK. Information Tribunal. Appeal Number EA/0006/0015 and 0016. February 2007.

⁵² Brooke, H. (2004) Anonymous query unearths true cost of ministers' cars. *The Telegraph*, 31 December.

1.2. Political Moves Against Expenses' Disclosure

The process leading to the publication of MPs' Expenses' Scheme was long and politically charged, with several attempts by MPs to resist disclosure. The effort to limit public access to information of MPs' expenses led to an attempt by some MPs to change the FoIA itself. On 18 December 2006, Conservative MP David Maclean, introduced a bill to exempt both Houses of Parliament from the Act. According to Maclean, letters exchanged between MPs and public authorities sent on behalf of constituents, for example, should remain confidential and the FoIA 2000 was not clear about this. If approved, the bill would also statutorily exempt disclosure of members' allowances (House of Commons Library, 2007). Civil society pressure groups, such as the Campaign for Freedom of Information, and the media vocally opposed the proposal. In that context, the Leader of the Conservative Party, MP David Cameron, requested peers to vote against the bill.⁵³ Eighteen Conservative MPs (out of 165) still voted in favour of the bill, as did 78 Labour MPs (out of 403), including the government's Treasury Minister, Ed Balls, an MP close to Prime Minister Gordon Brown. Amidst allegations of the dangers caused by greater transparency on one side and accusations that the bill would ultimately exempt corrupt MPs from greater openness on the other side, the document passed the Commons with 96 votes in favour and 25 against.

Coinciding with and contradicting PM Brown's promises to restore trust in politics, the outcome of the votes drew substantial heat on the Labour government, which was seen to have unofficially supported the bill. After criticisms that the bill would not allow access to MPs' detailed expenses, the Prime Minister promised to "correct" the legislation in the House of Lords.⁵⁴ The passing of the bill was also criticised by the Liberal Democrat MP Norman Baker, who pushed for openness of the government. As pressure against the bill increased outside Westminster, the bill failed to advance in the House of Lords.

In 2007, the House of Commons lost another battle to maintain its expenses secret as the Information Commissioner ruled that the former should publish the breakdown of MPs' travel expenses. The 2007-08 revision of the rules of parliamentary pay, pensions and allowances, conducted by the Review Body on Senior Salaries, proposed no other change to MPs' travel scheme, except for recommending that "partners of MPs who are named in the Parliamentary Contributory Pension Fund as sole beneficiaries should be entitled to the same travel arrangements available to spouses and civil partners" (House of Commons, 2007). Detailed disclosure of travel expenses was just the first of a disclosure list to be demanded by the Information Commissioner, ultimately leading to

⁵³ Woodward, W. (2007) Cameron urges opposition to chief whip's bill. *The Guardian*, 23 May.

⁵⁴ Higgins, C. (2007) Brown promises to reverse vote for secrecy by MPs. *The Guardian*, 28 May.

the expenses scandal. In June 2006, three journalists (Heather Brooke, also a campaigner for access to information, Michael Thomas and Ben Leapman) requested a breakdown of MPs' Additional Cost Allowances (ACA), including those claimed by then Prime Minister Tony Blair and other thirteen MPs including Margaret Beckett, Peter Mandelson, Gordon Brown, David Cameron and George Osborne.⁵⁵

Similar to the travel expenses, the House of Commons denied the requests of access to ACA's information and appealed to the Information Commissioner, who decided that the House should provide the information in detail following the references of the expenses categories defined in the Green Book. The Commissioner's decision expanded the information provided by the House of Commons, albeit not as widely as was requested by the appellants. The decision was not satisfactory to any of the parties in the process and both the applicants and the House of Commons appealed against it to the Information Tribunal.

The House lost its appeal in February 2008 when the Tribunal demanded the publication of the information within 28 days. Still refusing to give in, the House of Commons appealed against the Tribunal to the High Court. Before the High Court decision, the House of Commons disclosed the list used by the Commons clerks to judge whether prices of MPs' claims were reasonable. Publication of the information took place in response to another freedom of information request, this time from the Press Association. The information led to a series of debates and dialogues that shed light on the potential of transparency as a regulatory and disciplinary mechanism.

In a debate between the House of Commons clerk and Hugh Tomlinson, representing journalist Heather Brooke, the former argued that

The true concern of the House [...] was not intrusion into the private lives but the House's concern not to have greater public scrutiny of what amounts to a self-certified system of expenses. Many people may have opinions about whether it is reasonable to spend £200 on a television or not – our job is to look at whether it is within the rules.⁵⁶

Tomlinson responded that his interest was not to question the rules themselves, but the House's management of them, since without greater disclosure it was not possible to ensure that discipline was being maintained. With previous experience in investigating

⁵⁵ Information Tribunal. Appeal Number EA/2007/0060, 0061, 0062, 0063, 0122, 0123, and 0131. February 2008.

⁵⁶ Griffiths, E. (2008) 'John Lewis' List kept from MPs. BBC, 8 February.

politicians' expenses and having been warned by journalist Michael Crick of potential abuses by MPs, Heather Brooke was interested in the details of the information. "What came out in 2004 were bulk figures in various categories: travel, staff, second homes etc. I wanted the detail. I wanted actual receipts. That's where you find the truth" (Brooke, 2010, p. 229).

In the same period of February to April 2008, the Member's Estimate Committee started a debate on MPs' allowance. Besides the public debate, it followed a decision by the Commons that the Committee should review the recommendations of the Review Body on Senior Salaries' (RBSS) of its 2007 Review of parliamentary pay, pensions and allowances in relation to allowances (House of Commons, 2007). As shown in the next section, this was the first step that would eventually lead to a new system for members' allowances and expenses. Besides the 2007 Review by the RBSS, Estimate Committee's 'root-and-branch' scrutiny of MPs' allowance took into consideration the report by the Committee on Standards and Privileges into Conservative MP Derek Conway's employment of his son (Members Estimate Committee, 2008). One of the main targets of the report was to recover legitimacy and trust in the parliament, although it was less than certain that revealing further evidence of mismanagement through more transparency would actually restore –rather than further erode – trust.⁵⁷ Before transparency became mandatory, the party leaders in Westminster promoted a call to proactively disclose detailed information related to MP's expenses, notably in relation to the employment of family members.

As evidence of mismanagement increased public distrust for the House, all political parties acted in anticipation of a decision towards greater transparency. MP David Cameron announced that members of the Conservative Front Bench would be obliged to fill a 'Right to Know' form and that the back benchers were expected to do the same.

The form will be used by all Front Bench members of the Conservatives to publish full details of their office expenses. It will include a comprehensive list of staff and their positions, an indication of any family members employed, and a breakdown of office running costs and expenditure incurred by 'staying away from main home. (House of Commons' Library, 2008)

57 The UK FoIA has not increased the public's trust in government, nor has it been the main reason to disrupt it. As suggested by Worthy (2010, pp. 574 – 577), FoIA "is shaped by pre-existing low levels of trust, as the MPs' case appear to show. The media report stories that conform to poor expectations of politicians. Requesters' lack of trust may be reinforced by their use of FoIA to disagree with the government or pursue a particular issue".

PM Gordon Brown similarly called for further disclosure:

I have made clear to all Labour MPs that they must be fully transparent in their declarations and must abide, not by April but as soon as possible, with the Committee on Standards and Privileges' opinion that the employment of family members should be declared. (House of Commons' Library, 2008)

Besides urging Liberal Democrat MPs to declare their employment of family members, the party leader MP Nick Clegg also called for a limitation in the number of family members that could be employed by MPs:

To improve public faith in the system there should also be a limit of only one family member being allowed to work in an MP's office. Unless all parties take action, the public perception of politicians will continue to worsen. It is time for Westminster to accept that it needs to move out of the 19th century and into the 21st.⁵⁸

Following recommendations of the Committee on Standards and Privileges on Employment of family members through the Staffing Allowance, the House agreed to introduce greater transparency and paper monitoring of the existing practices of MPs' employment of family members. As shown in the analysis of the next case study in this chapter, this was not the first time that instead of a statutory solution, the decision makers opted for a transparency solution coordinated with increased enforcement mechanisms. On 16 May, the High Court ruled in favour of disclosure of MPs' expenses:

We have no doubt that the public interest is at stake. We are not here dealing with idle gossip, or public curiosity about what in truth are trivialities. The expenditure of public money through the payment of MPs' salaries and allowances is a matter of direct and reasonable interest to taxpayers. They are obliged to pay their taxes at whatever level and on whatever basis the legislature may decide, in part at least to fund the legislative process. Their interest is reinforced by the absence of a coherent system for the exercise of control over and the lack of a clear understanding of the arrangements which govern the payment of ACA. Although the relevant rules are made by the House itself, questions whether the payments have in fact been made within the rules, and even when made within them, whether the rules are appropriate in contemporary society, have a wide resonance throughout the body politic. In the end they bear on public confidence in the operation of

⁵⁸ Mulholland, H. (2008) MPs may be subject to spot checks on expenses. *The Guardian*, 1 February; Eaglesham, J. (2008) MPs could face spot checks on expenses. *Financial Times*, 2 February.

our democratic system at its very pinnacle, the House of Commons itself.⁵⁹

The Members' Estimate Committee (MEC) decided not to appeal against the High Court's decision and prepare the information and documents required for publication. This was done, in the first instance, for the 14 MPs mentioned in the FOI requests; the rest would be prepared within a provisional timeframe by October 2008. But less than a month later, the MEC concluded it would take longer than promised to release detailed information on ACAs.

1.3. The Creation of IPSA and of the MPs' Expenses' Scheme

From February to July 2008, the MEC published four reports on members' allowances. In its first report it decided that all claims for items worth £25 or more, instead of the previous *de minimis* £250, should be accompanied by receipts with effect from 1 April 2008 (Members Estimate Committee, 2008a). In its last report on the topic, the Committee proposed that members should no longer be allowed to claim reimbursement for furniture and household goods or for capital improvements (known as the 'John Lewis' list). Among other recommendations, the report suggested that from the start of the 2009–10 financial year the threshold for transparency should be reduced from £25 to zero, and that the Green Book be revised to specify more detailed rules. Though as mentioned before a *de minimis* clause was traditionally practiced in the House of Commons, under high social pressure for MPs to reveal details of their practices transparency became more relevant than the notion and principle of proportionality.

More than half of the proposals made by the Committee was adopted in a divided vote (172 in favour and 144 against). The decision kept in place the House's ACA system and the 'John Lewis' List, and approved an auditing arrangement in which MPs would mandatorily respond to internal financial checks once per parliament. The result of the vote caused a public outcry and was portrayed by the media as defying the citizens' demand for a tougher system of allowances. Shortly afterwards, on 15 July, the Conservative Party filed a motion to revisit the decision about ACA and the role of external auditors (House of Commons' Library, 2008a). The opening speech of the session by the Shadow Leader of the House, MP Theresa May, reflected the impact of the previous decision:

⁵⁹ High Court of Justice. Case N. CO2888/2008. *Corporate Officer of the House of Commons v Information Commissioner, Heather Brooke, Ben Leapman, Jonathan Michael Ungood-Thomas.*

Two weeks ago, the Commons had the opportunity to put its house in order, to clear its name and to go some way to restoring public confidence in Parliament as a body and hon. Members as individuals. It failed to do so. Members voted to keep the John Lewis list and rejected a system of external auditing. The newspapers, which had welcomed the report from the Members Estimate Committee, were accordingly negative about the vote taken by this House. Of course, we should not be driven by the media — [laughter in the House] I say to those hon. Members who are laughing that we should listen.

The robustness of the allowance reform, relying on transparency as a regulatory mechanism, had proved to be fully dependent on the public's reaction. In the second vote held in July, only 21 MPs from the Conservative Party voted against the position that the Shadow Leader of the House was now supporting. At that point, a government proposal was approved calling for a revision of the Green Book by the Advisory Panel on Members' Allowances (APMA), complemented by two independent external appointees, and defining certain requirements to be addressed in the revised Green Book.

The MEC published the Revised Green Book and audit of Members' Allowances in January 2009. The paper was issued after draft reports were prepared by the APMA and recommendations were issued by the Committee on Standards and Privileges. The House of Commons disclosed detailed information and scans of receipts of MPs' expenses in June 2009. More than a million documents were made available to the public. Disclosure took place about 40 days after the *Telegraph* printed the first in a series of leaked documentation of MPs' second homes claims. These reports further pressured the House to take additional measures to address their growing legitimacy crisis.

The path from secrecy of MPs' ACA expenses to transparency had been far from smooth. When transparency was finally enforced, a series of expenses abuses became public knowledge, constituting one of the gravest crises in the British parliament. Just to mention a few developments, six Ministers resigned, the Speaker of the House stood down, 89 MPs retired or resigned after the scandal, and many Members re-paid sums of money in a total of six figures of British pounds.⁶⁰ The political impact was also significant. Although an objective monetary measure of the wrongdoing did not matter for the resignation or electoral returns of MPs, the incumbents involved in the crisis were more likely to lose elections, if they ran (Eggers and Fisher, 2011; Larcinese and Sircar, 2014).

The measures that the House had approved less than a year before the crisis proved

⁶⁰ See, for example: The Telegraph (2010) MPs' expenses: how the scandal was disclosed. *The Telegraph*, 10 January; Barret, D.; Bloxham, A. (2010) MPs' expenses: the timeline. *The Telegraph*, 3 October.

insufficient to either tackle the problem of mismanagement or restore public trust. On June 2009, after announcing his resignation, the Speaker of the House informed that party leaders had agreed to adopt tougher rules for Personal Additional Accommodation Expenditure (second home allowance) and that the Prime Minister had a proposal for regulation of the House by an independent body. Although these decisions were largely consulted inside the parliament, it was the government that had taken the initiative when it became apparent that MPs had failed to put forward a proposal that would address the issue in a satisfactory manner (Hine and Peele, 2016).

The bill introduced by the government, the Parliamentary Standards Act 2009, had its first read on 23 June and was rushed through the legislature, receiving royal assent on 21 July 2009, before the parliament's summer recess. Besides its administrative role, the newly created Independent Parliamentary Standards Authority (IPSA) became the body responsible for preparing and revising an allowances scheme for MPs and for defining procedures for investigations.⁶¹ Hine and Peele (2016) suggest that the natural solution for the crisis was probably to refer the issue to the CSPL, but with pressure from the media the government decided that there was no time for a lengthy inquiry. IPSA then became the independent regulator of expenses at the Commons and the driver of regulatory transparency measures in the logic of control.

A month after banning a range of expenses, such as second home allowances and first class travel, IPSA made available for consultation a proposal for the House of Commons' expenses' publication scheme from June 2010 (Independent Parliamentary Standards Authority, 2010). Supported by the Information Commissioner, and with the public's support for greater openness, the paper put forward proposals for publication of: (1) salaries for the staff of all MPs in ranges of £5000 and the full salary for 'connected parties' (relatives employed by MPs); (2) date, origin and destination of MPs' travels; (3) first half of the postcode of MPs' addresses; and (4) total amount claimed for security and disability costs, not broken down by individual MP.⁶²

IPSA proposed to publish all MPs' claims, both accepted and rejected, in a clear movement to further regulatory transparency to discourage MPs to submit claims unlikely to be accepted. It also suggested publishing the claims monthly and the raw data

⁶¹ IPSA's board consists of a Chair and four members. According to the Parliamentary Standards Act 2009, one of the board members must be a person who has held high judicial office; one member must be a person who is a qualified auditor; and one member must be a former MP.

⁶² A "connected party", according to IPSA, is: a spouse, civil partner or cohabiting partner of the member; a parent, child, grandparent, grandchild, sibling, uncle, aunt, nephew or niece of the member or of a spouse, civil partner or cohabiting partner of the member; or an individual or organisation where there exists a relationship as set out in the Companies Act 2006.

in open format quarterly, in order to encourage intermediaries, e.g. organised civil society, to use the information. Transparency, along with a rigorous system of oversight, was the main choice of IPSA to assure citizens that MPs' misbehaviours in 2009 would not repeat. The choice for transparency was also strongly supported and based on the UK's FoIA regime. The level of transparency and the regulatory burden created by it as a regulatory mechanism was an issue of dispute between MPs and IPSA and led to questions about the accountability and the role of the Authority. On its final Policy on Proactive Publication of MPs' Expense Claims, published in December 2010, IPSA defined that information would be published every two months and additional information about MPs' use of public funds, e.g. constituency offices and connected parties, annually.

This dispute provides us with insights into the impact that different type of actors may have on the trajectory of a regulatory transparency policy. In the absence of proportionality as a priority, the rationale of an external body like IPSA is likely to function in the opposite direction to that of self-regulating politicians. In other words, mindful of reputational risks, the former would be more likely to overregulate, while conversely reputational considerations could push the latter towards under-regulation.⁶³ The design of the Publication Scheme had received considerable public support and pressure of transparency from the perspective of a democratic principle.

1.4. The Trajectory of the MPs' Expenses Scheme

The trajectory of the MPs' Expenses Scheme after the creation of IPSA has been one of incremental expansion, with few developments between 2010 and 2015. One of these took place in 2013, in response to media reports suggesting that MPs renting accommodation from other standing MPs could be profiting from taxpayers' money (Independent Parliamentary Standards Authority, 2013). In its 2013 Annual Review IPSA put forward three options to overcome the concern: banning the practice, widening the definition of "connected party", or publishing the name of the landlord. IPSA understood that in practice there was little risk of misuse of public money, and for the sake of proportionality it opted for greater transparency as a regulatory mechanism.

In September 2015, IPSA expanded the use of transparency again both to support its mandate and as a mechanism to regulate MPs' behaviours. Along with the publication of the 2014-15 Annual Business Costs and Expenses data, the Authority

⁶³ The issue of proportionality will be discussed in more detail in the next section under the regulation of conflict of interest in the House of Commons.

published the total debit written off (£2,105.43) listed by 26 MPs. The debts disclosed in a 'name and shame' strategy concerned amounts less than £500 per MP, which IPSA no longer considered cost effective to try to recover (MPs had been contacted several times about the outstanding sums and did not respond to IPSA's requests). The initiative did not only put MPs on the spot, but also helped IPSA to fulfil its public accountability duties while avoiding reputational risks.

At the time of writing in 2016, MPs' expenses still attracted the media and public attention. While the media continued to report on newly disclosed information, there were no major calls for further transparency. Every autumn, soon after IPSA's publication of the House of Commons MPs' Expenses Scheme, media channels published their analyses of the data. Some channels created rankings or tools to compare MPs' expenses and single out big spenders. Such efforts were "contextualised by the inveterate public ire over perceived excesses, exacerbated by the on-going austerity measures and a culture of 'naming and shaming'" (Heuwieser, 2015). Although at times these led to pre-mature judgements that failed to account for the specific conditions applicable to each MP's expense, such as their specific budget caps, there has been no attempt to retract MPs' transparency regime since 2009. As pointed out by MP Douglas Carswell, the House of Commons "tried to solve the problem by doing what politicians generally do. We set up a quango, IPSA. But this is not about bean-counting, it's about public confidence. The only way to solve this is to pass power outwards to the people."⁶⁴ For the time being at least, that means transparency.

2. The Register of Members' Interests

2.1. Socio-Political and Institutional Context

While certainly not absent previously, the emergence of professional parliamentary lobbying and the rise in the number of MPs working as consultants and advisers to companies, unions and the like became a source of great public concern in the UK during the 1990s (Nolan, 1995; Hine and Peele, 2016). The first lobbying scandal of that decade took place in 1994 and involved Conservative MPs Graham Riddick and David Treddinick. The two MPs had agreed to the offer of an undercover *Sunday Times* reporter to table parliamentary questions in exchange for £1,000. The publication of the story prompted the House of Commons' Privilege Committee to investigate the case,

⁶⁴ Martin, I. (2014) MPs' expenses: A scandal that will not die. *The Telegraph*, 13 April.

nine months after which the Committee suspended the MPs from service of the House for ten and twenty sitting days, respectively. Their salaries were also suspended for the same period (House of Commons, 1995).

Only three months after *The Sunday Times* story, *The Guardian* exposed another one with a similar content. Ian Greener, the head of lobbying firm Ian Greener Associates, was accused of paying Conservative MPs Neil Hamilton and Tim Smith to ask questions in the House of Commons on behalf of Mohamed Al-Fayed, the owner of Harrods, a well-known upmarket British department store. The negotiation was disclosed to *The Guardian* by Mr. Al-Fayed, who claimed he felt it was his civic duty to publicise these, given that the Committee of Privileges had decided to go into secret session about the previous £1,000 cash for questions investigation. Besides an array of documents with details of the transactions, Al-Fayed declared that during his dialogues with Ian Greener he was told that he needed to "rent an MP just like you rent a London taxi."⁶⁵ Investigations for this case were also opened, leading to the resignation of both MPs. Hamilton resigned after pressure from then Conservative Prime Minister John Major. Fearing that the cash-for-questions scandal, as the case became known, would taint his image and that of the Conservative Party, PM Major went on to establish the Committee on Standards in Public Life with the mandate to:

Examine current concerns about standards of conduct of all holders of public office [including Members of Parliament, Ministers and civil servants of ministerial and non-ministerial bodies], including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life.

The 1994 scandals called public attention to a specific type of misconduct by Commons MPs and to a recurrent flaw in the administration of the House to curb such behaviour. At the end of the day, the cash-for-questions scandal was a repetition of previous misbehaviours related to lobbying and conflict of interests. Earlier in the decade, the same Ian Greer had admitted to have made 'Thank you payments' to MPs, after which an inquiry on lobbying was conducted and the Select Committee on Members' Interests recommended that the House create a register for lobbyists. The proposal had never gone forward.

The Nolan Report, as the first report of the Committee on Standards in Public Life

⁶⁵ Hencke, D. (2004) Tory MPs were paid to plant questions says Harrods chief. *The Guardian*, 20 October.

became known, identified lobbying as a widespread and potentially harmful activity in the House of Commons. Three hundred and eighty-nine of the 566 elected MPs (68.7%) had “financial relationships with outside bodies which directly relate[d] to their membership of the House”. In its first report the Committee proposed the adoption of the so-called Seven Principles of Public Life, namely, selflessness, integrity, objectivity, accountability, openness, honesty, and leadership.⁶⁶ The proposal was approved by the House and since 1995 the ‘Principles’ have served as the guiding values of public life in the UK.

2.1. The re-Creation of the Register of Members’ Interest

To tackle problems with lobbying and conflict of interests, the Committee on Standards in Public Life considered and presented a series of measures at the end of which the chosen regulatory mechanism was transparency. It can be argued that this outcome was based on several reasons. First and foremost, considering the regulatory alternatives put forward to parliamentarians, such as an outright ban on paid work, transparency came across as a less rigid regulatory response to settle the crisis. While advocating for transparency, members of the Committee suggested that the implications of a ban could disrupt the ongoing functioning of the House and that more information was needed for the prohibition. They argued that transparency “is a powerful and flexible mixture of the disclosure and enforcement which will serve the public interest better than the inflexibility of statutory purposes”, and proposed that “full disclosure of consultancy agreements and payments and of trade union sponsorship agreements and payments, should be introduced immediately”.

The Committee went on to recommend immediate update and disclosure of the Register of Members’ Interests (henceforth, the Register) with improved entry requirements “to give a clearer description of the nature and scope of the interests declared.” The Register had been created back in 1974, with the purpose of making transparent the pecuniary interests of MPs on a continuous basis. It stipulated the registration of any interest or action that could be thought to influence the deputies’ parliamentary conduct. Although this was a transparency system that yielded valuable information about the nature of the interests, the Committee pointed out that the “introduction of the Register of Members’ Interests [in 1974], designed to further the wholly admirable concept of disclosure of interests, has tended to create a false impression that any interest is acceptable once it has been registered”.

⁶⁶ Also known as the Nolan Principles.

Hine and Peele (2016) suggest that besides the regulatory dilemma of accountability and independence, only the dilemma of proportionality is as important in ethics regulation. “Proportionality”, the authors write, “is widely recommended as a prime virtue of good regulation, but few observers have any general guidelines to offer about its meaning” (2016). Without any clear guidance about what constitutes over-regulation and under-regulation, conclusions arrive as debates about new cases or the regulatory design unfold. In debating institutional change, Hall (2010, p. 215) observes that even when new institutions can be modelled as coordination games, distributive issues arise and are resolved based on the relative power of actors “and on normative beliefs about fairness”. In the regulation of ethics, proportionality is the normative belief.

In terms of proportionality, RTPs have at least three characteristics for offering MPs large opportunity costs. First, MPs are the very actors regulating their own behaviour. In this regard, MPs will be the ones defining the specific content of the information disclosed, without having to opt for intrusive bans. Most likely RTPs will control conflicts of interest and illegal lobbying at least to some extent because it makes engaging in these acts more complex. For example, an MP that eventually wants to take a consultancy job that clashes with his duties at the Commons will have to provide credible explanations to the public or will not comply with the RTP requirement, which increases risks of liability. Second, if transparency can control misbehaviour to some extent, in the occurrence of minor lobbying scandals, it is the individual that becomes exposed, not the regulatory framework adopted by MPs. The last reason is in fact an assumption:

The assumption is that the elected representative is resistant to improper lobbying and that the public interest will be safeguarded by the process of socialisation, honour, the rules on transparency, declarations of interest, and ultimately the need for re-election (Hine and Peel, 2016, p. 202).

In response to the Nolan Report, the House of Commons adopted a Code of Conduct self-regulating probity and integrity and restating the validity of the Register, which then innovated in relation to its 1975 version by obliging members to disclose the amount of remuneration obtained in other paid works, by explicitly describing the categories of registrable interests, and by clarifying the cases in which disclosure was expected. Published soon after the beginning of a new Parliament and annually afterwards, and updated in a loose leaf form, the Register’s purpose was

To provide information of any pecuniary interest or other material benefit which a Member receives which might reasonably be thought by others to influence his or her actions, speeches or votes in Parliament, or actions taken in his or her capacity as a Member of Parliament. (Select Committee on Members' Interests, 1992)

In addition to the Register, the House reiterated its 1947 Resolution that prohibited members from engaging in advocacy on behalf of outside bodies or persons from whom they received payment.

2.2. The Trajectory of the Register

The waters did not calm in the years after the publication of the Nolan Report, as lobbying and conflict of interest controversies continued to remain an issue. In 2001, following a divisive decision of the House of Commons not to reappoint Elizabeth Filkin as Commissioner for Standards, Sir Nigel Wicks was designated for the post and started an investigation of the regulation of conduct in the House.⁶⁷ The final report, published almost a year later, argued that it was not time yet to statutorily regulate the conduct of MPs. To deal with the issue of monitoring and to convey trust about an evolving issue, MPs approved the report's recommendation that the Code of Conduct and Guide to the practices in the House should be initiated by each parliament.

Consequently, a new Code and Guide to the Rules of Conduct entered into force in the House of Commons in 2002, following the recommendation of the Committee's Ninth Report to remove a loophole about lobbying for reward or consideration. The revised Guide amended the rules of the House to clarify that paid advocacy was banned whenever an MP took part in any parliamentary proceeding or made any approach to a minister or servant of the Crown which sought to confer benefit exclusively upon a body (or individual) outside parliament, from which the MP received, was receiving, or was expected to receive a pecuniary benefit, or upon any registrable client of such a body (or individual) (Select Committee on Standards and Privileges, 2002). Moreover, the Committee clarified that failing to provide information to the Register of Members' Interests would be regarded as a serious breach of conduct.⁶⁸

⁶⁷ Elizabeth Filkin's departure was allegedly due to government pressure, after her investigation of Labour MP Keith Vaz led to the latter's one-month suspension from the Commons. The MP had accepted payments from a solicitor and had failed to register them. In September 2016, the same MP was the centre of a similar scandal, when he was being questioned for not declaring hospitality in the Commons Register of Interest.

⁶⁸ Incremental improvements in the Register also included obligation to disclose benefits received by partners or by spouses.

On the retraction side, interests for which values did not exceed one per cent of the parliamentary salary (about £550 at the time) did not have to be registered, unless the MP thought the material benefit received could be thought by others to influence his or her actions as an MP. The proposal of a “Realistic *de minimis* figure” was justified by the Select Committee on Standards and Privileges on the grounds that “interests in the Register which are of substance will be obscured by the proliferation of relatively insignificant benefits, the recording of which do not serve the Register's main purpose”. Although it reduced the amount of information available to the public, adopting *de minimis* clauses was a widespread practice in the UK government and in Westminster based on arguments of proportionality. Moreover, it was socially accepted and congruent with the design of the Register, giving MPs other principles to adopt than uniquely those related to accountability and transparency existent in Layer 2.⁶⁹

The content of the Register was not modified significantly until 2008, when information about MPs’ employment of family members paid with staffing allowance was introduced. The decision followed an investigation of a complaint by the *Sunday Times*. The newspaper alleged that Conservative MP Derek Conway was employing his son as research assistant and paying him with parliamentary staffing allowance, while the youngster was still in full-time education. Approached by the newspaper, the MP refused to share details about the activities his son performed and the number of hours he worked. After investigating the case, the Committee on Standards and Privileges settled that Derek Conway paid excessive bonus and infringed the rules on staffing allowances (House of Commons, 2008a).

In response to the public outcry surrounding the case, the Committee on Standards in Public Life, with the support of the Labour Party, the Conservative Party and the Liberal Democrats, proposed a new category in the Register for family members employed and remunerated through staffing allowance. This was agreed by the House on March 2008, taking compulsory effect from August 2008. The Committee recommended procedures to be followed by MPs when hiring relatives (e.g. if they had the adequate skills for the post), but defended that banning the practice was unnecessary and undesirable (House of Commons, 2008). In this particular case, proportionality was also a matter of fairness. If MPs’ families had to abandon their jobs to move to London and if they could professionally support MPs’ work, the argument went, the practice should be monitored, not banned. This was especially the case in the absence of any meaningful pressure from citizens for a ban. The chairman of the

⁶⁹ The threshold for some categories were higher, due to specific reasons. Sponsorship (one of the categories of the Register), for example, was higher (of £1,000), in line with the requirements of the Political Parties, Elections and Referendums Act 2000.

Standards and Privileges Committee, MP George Young, reasoned:

Essentially, faced with the situation following our fourth report, there were three possible options concerning the employment of family members. One was to do nothing, the second was to ban the practice and the third was to introduce greater transparency. I simply do not believe that the do-nothing option is tenable against the climate of public opinion. The second is the possibility of a ban, as the chair of the Committee on Standards in Public Life accepted in his statement of 30 January, although he conceded that it could 'seem a rather harsh answer to the problem'. He went on to say that 'an alternative approach would be to insist on greater transparency and proper monitoring of existing requirements, which is generally better than creating new rules and prohibitions.' I agree with that; we should not compel hon. Members to dismantle arrangements that have enabled them to provide a high-quality service to their constituents.

In the field of ethics regulation "there is clearly a trade-off between the deterrence of misconduct and broader costs like loss of flexibility, initiative and public-sector entrepreneurship" (Hine and Peel, 2016, p. 15). As I mentioned earlier, it may be difficult to assess what the right trade-off is in many cases. As MPs, who decide on the issue do not desire and tend to refrain from over-regulation, transparency becomes the mainstream regulatory mechanism to resolve conflicts of interest, as was the case in the UK House of Commons in this instance. The RTP fulfilled both the principle of proportionality in the House, and the MPs desire to provide an immediate response to the public using another principle accepted and desired by society.

Lobbying, just as it should not be abused, should not be banned altogether either. This brings other principles (Layer 1) and norms (Layer 2), such as proportionality, into the centre of the debate on the regulation of ethics. "Much of the work of an ethics commission", write Hine and Peele (2016) about the Commission for Standards in Public Life, "covers behaviour where the precise definition of right and wrong is elastic and hard to pin down". In such cases, transparency serves as a useful tool.

2.3. A Consistently Expansive Trajectory

The 2009 version of the Code of Conduct obliged the disclosure of information about donations MPs received in the course of their parliamentary duties (House of Commons, 2009). Registration of donations to party organisations followed the investigation of the conduct of an MP, this time Conservative MP George Osborne. Labour MPs Kevan Jones and John Mann filed a complaint against Osborne a day after the *Mail on Sunday* newspaper published an article suggesting that the MP had failed to include in his Register of Members' Interest a sum of approximately £500,000 paid

through the Conservative Party (House of Commons, 2008b). The two MPs reported that “Mr. Osborne failed to include in his personal entry in the Register details of donations made to the Conservative Party and used by the Party to support the cost of running his office as Shadow Chancellor of the Exchequer”.

During the investigation of the case, the Committee on Standards and Privileges concluded that the conduct of George Osborne was in fact adopted by most members of the Shadow Cabinet. Recommendations were addressed to all members of the Shadow Cabinet, including those in more junior posts. The Committee decided that each political party should register under the MPs’ names the donations to the party that had an indication of a specific MP as the final beneficiary. Members in Shadow Cabinets were given four weeks from the report’s publication to disclose information about donations made in the mentioned terms. The Committee further stipulated that if members complied with this recommendation and continued to register donations when the donors expressed how they wished the money to be spent, complaints about previous instances of non-registration would not be investigated.⁷⁰

As suggested in the previous section, the expenses scandal dominated the debates in the House of Commons in 2009. Moves and proposals to deal with the crisis came from multiple sides, e.g. parties, individual MPs, House Committees and the government. In one of the motions tabled by the Leader of the House on April 2009, the Commons agreed to the government’s proposal and dropped *de minimis* clause for employment in the Register. According to the same motion, MPs would start registering allowances for the work or services they provided on a monthly basis, while providing information about the nature of their work, the number of hours and, with limited exception, details of the person or organisation they received money from. The Committee on Standards in Public Life raised concerns regarding some of the new clauses:

The Committee takes the view that it is important that constituents have access to as complete information as possible about the extent of their MPs’ activities outside the House of Commons. Recording the number of hours worked, as well as the payment received will increase transparency. In particular, it will inform the public so that they can judge the extent of an MP’s commitment. However, it is also important that the issue is dealt with proportionately. The new arrangements should therefore be reviewed early in the next Parliament to assess whether they are working

⁷⁰ Details of donation disclosure were defined in the 2009 review of the Code of Conduct also in order to promote adequacy to disclosure obligations imposed by the Political Parties, Elections and Referendums Act 2000 (PPERA), as amended by the Electoral Administration Act 2006, such as loans and credit arrangements over £500.00 relating to political activities.

effectively and without disproportionate effort. This should include consideration of a sensible *de minimis* rule for registering individual payments. [...] Fascinating as some may find it to know which Members have received jars of honey or bunches of flowers, this has little if anything to do with the purpose of the Register, which is to enable anyone to form a view as to whether a Member has received a material benefit which might reasonably be thought to influence his or her actions, speeches or votes (Committee on Standards in Public Life, 2009).

De minimis clause was dropped as an urgent response to a public outcry. Over the course of the following year, a calmer socio-political environment allowed MPs to debate the consequences and practicalities of the decision. The Committee on Standards and Privileges (2011) argued that the lack of a threshold had led MPs to spend an excessive amount of their time reporting information about gifts as a compensation for a service provided, leading to an unnecessary amount of disclosure and making the Registry to lose its main purpose. Also considering the recent establishment of new regulatory mechanisms, like IPSA, to monitor MPs' expenditures, the House determined that dropping *de minimis* clause had been a case of over-regulation. Subsequently, the clause was readopted, suggesting that when transparency is not the same game in town, drivers can propose their retrenchment with less opposition. This particular case supports the argument of Fung et al (2007, p. 110) that transparency laws tend to degrade overtime, as "... the dependence of momentary public attention also makes them vulnerable. As crisis fades, so does support", although as this thesis suggests this is the case only in a limited number of circumstances.

The MPs' preference to transparency and resistance to statutorily regulate lobbying was really put to test after 2010, following another scandal, known as the 'Dispatches Case'. The scandal was triggered when undercover journalists from the *Sunday Times* and producers of the Channel 4 series *Dispatches* approached a number of MPs who were due to stand down in the forthcoming general elections. Pretending to be representatives of a fictitious company, the undercover reporters requested the MPs to provide them with access to ministers and officials. After the *Sunday Times* broke the story, some of the MPs who had taken part in these 'negotiations' referred themselves to the Standards and Privileges Committee. The body investigated six MPs, five from the Labour Party and one Conservative.⁷¹ Three Labour MPs were penalised. MP Geoff Hoon, Secretary under Tony Blair, had to return his Parliamentary photopass for five years and apologise to the House. MP Stephen Byers, a former Transport

⁷¹ The newspaper contacted 20 MPs and scheduled meetings with ten of them.

Secretary, was barred for two years. And Richard Caborn, a former Sports Minister, was ordered to apologise and banned for six months for failing to register his financial interests.

Despite the political fallout from the scandal, the Committee, echoing some of its earlier decisions, suggested that the investigation had “not of itself provide[d] sufficient basis for specific recommendations for changes to the rules”. The Committee did conclude, however, that the scandal had provided a solid reason to review the rules on lobbying, notably in relation to paid advocacy, activities of former Members, and meetings with officials (Select Committee on Standards and Privileges, 2010). The scandal had exposed MPs, but the specific case had really shed light on how the British Government was open to abuse by lobbying. On the eve of the 2010 general election, the case prompted responses from the government, but no change in the House of Commons.

A bill to regulate lobbying was introduced by the government in 2013, three years after the Conservative-Liberal Democrat coalition was formed. While the bill targeted the inadequate transparency of lobbying within the executive branch, it did not put forward any clause to strengthen the regulation of conflict of interests and lobbying regime in the House of Commons. By the time that the ‘Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill’ was approved, Kathryn Hudson, the Parliamentary Standards Commissioner, expressed “grave concern” that changes proposed to tighten controls on lobbying on the House’s Code of Conduct had been put forward in 2012 and not yet debated by the House.⁷² Commissioner Hudson’s criticism of the sluggishness of parliament to debate the Committee’s 2012 proposals was included in the 2013-14 Annual Report of the Parliamentary Commissioner for Standards, coincidentally published a few months after the resignation of Conservative MP Patrick Mercer for tabling parliamentary questions after accepting £4,000 from undercover reporters.⁷³ Unlike the two previous lobbying scandals that triggered the proposal of the government’s lobbying bill, this one highlighted the inability of Westminster to regulate the behaviours of its own members.

⁷² On December 2012 the House agreed to appoint Lay Members to the Committee on Standards, following a report from the Committee on Standards and Privileges. Since January 2013 besides the Committee on Standards, a separate Committee of Privileges was established.

⁷³ The case was a result of an investigation by The Daily Telegraph and the BBC’s Panorama.

2.4. Expansive Trajectory in Spite of Effectiveness

In its 2012 report, the Commissioner for Standards recommended that MPs should be subject to lobbying restrictions for two years after their departure from the House in relation to any approach they made to ministers, other MPs or public officials (Transparency International, 2015). Further in the process, the Standards and Privileges Committee rejected the proposal of a two-year ban. Instead it settled for a ban of six months, despite agreeing with the Commissioner for Standards that, for the interests of public confidence in the parliament, MPs should not be perceived as driven in their official capacities by the expectation of making personal gains (Standards and Privileges Committee, 2012). The proposal harmonised the ban for MPs with the ban imposed on minister and public officials.

The changes to the Code of Conduct of the House of Commons were not finalised until March 2015. MPs debated and approved a report proposed by the Parliamentary Committee for Standards, which would be adopted by the upcoming parliament. The Committee suggested, among other proposals, to improve regulatory transparency and lower the threshold for registration of certain gifts and benefits. Approved by the House in 2015, the Code obliged MPs to register family members engaged in lobbying and obliged “Former members [to] abide by the restrictions of the lobbying rules for six months after their departure from the House in respect of any approach they make to ministers, other members or public officials”.

The approval of the House’s Code of Conduct ban followed the lobbying scandal known as “cash for access”, which targeted Labour MP Jack Straw and the Conservative MP Sir Malcolm Rifkind. Similar to previous lobbying cases in the House of Commons, this one involved MPs offering the advantages of their public position to business representatives, who were in reality undercover reporters from the *Daily Telegraph* and Channel 4’s *Dispatches*, in exchange for thousands of pounds in payment. In the meeting arranged by the newspaper with MP Jack Straw, he explicitly stated that he would only agree to the job after he left parliament in May.⁷⁴ Straw suspended himself from the parliamentary Labour Party and Rifkind resigned as head of the Intelligence and Security Committee and as a candidate for the upcoming elections.

The trajectories of changes made to the Registration of Members’ Financial Interests and the statutory changes to fight abuse in lobbying since the early 90s have nonetheless been deemed insufficient by a number of organisations and think tanks,

⁷⁴ Dearden, L. (2015) 'Cash for access' scandal: What is it about, what impact will it have and who is involved? *The Independent*, 23 February.

including Transparency International (TI). At the launch of its report “Lifting the Lid on Lobbying”, TI Director Robert Barrington highlighted that

Many recent lobbying scandals have largely fallen within the rules, clearly demonstrating that the current regulatory regime is inadequate. It’s curious and confusing that something is permitted in the Lords but not the Commons, and that the devolved assemblies have better rules than Westminster. If politicians are serious about cleaning up politics, they need to close the lobbying loopholes that open the door to corruption.

According to Transparency International, within the UK Parliament and Assemblies, the House of Commons had the weakest rules to tackle illegal lobbying. Nonetheless, a wide range of information to prevent conflict of interests and abuse in lobbying was available, giving the illusion that a regime to prevent conflict of interest and lobbying was in place.

There must remain doubt, however, that simply shedding light – however comprehensively – on the subject matter, timing and content of meetings, or even the financial rewards to lobbying companies that flow from it, will ever get ahead of public and media scepticism about the purpose and the effect of lobbying. [...] A rise in use of information about lobbying, therefore, will probably not create any parallel rise in public trust and confidence. (Hine and Peel, 2016, p. 213)

Conclusion

The two case studies narrated in this chapter share a number of similarities. Both cases feature similar structures of disclosed information and type of drivers, targets, beneficiaries and intermediaries involved in the processes. In both RTPs, the primary beneficiaries are argued to be citizens, given that, in theory, transparency is a tool to better governance, which, in the logic of control, restrain the behaviour of specific targets in favour of a more robust democracy by threatening to and exposing mismanagement. The main drivers of disclosure in both cases are journalists and politicians themselves, and the targets of disclosure are MPs and their behaviours in their official capacities. This last point puts the two cases under the category of the control logic of transparency, and emphasises the potential difficulties associated with self-regulation, especially when influential politicians are both the targets and at the same time opponents of disclosure.

While public attention played a role in influencing the way the House dealt with both the expenses and conflict of interest and lobbying scandals, this was largely thanks to the resilience and institutional power and capacity of key drivers, in particular the media organisations that pursued and broke the stories, rather than high usage of the disclosed data by individual citizens. Finally, we can argue that in both cases, the targets ultimately promoted regulatory transparency over other available methods of more direct and stringent regulation. That being said, they were much more openly resistant to transparency in the first case than in the second one. While in both cases, the RTPs expanded over time, this difference of intensity had a profound impact on the way this expansion occurred.

In other words, the two RTPs reveal significantly different ways towards expansion when the target of disclosure has a high or low intensity towards information disclosure. In the case of MPs expenses, politicians displayed a high level of resistance to transparency, working to challenge, block, limit, delay or influence the process of disclosure within the constraints of the law, their public reputation and the prevailing social norms. This might explain why the expansion of the Register of Members' Allowances occurred exclusively by means of exogenously sourced punctuations or shocks before IPSA became responsible for it. While this does not mean that the Register of Members' Allowances and Expenses could not have evolved incrementally in the absence of the expenses scandal, it is simply the case that what triggered the impetus for extension were leaked reports from the media, that corroborated existing suspicions from media itself and from the public, together with FoI requests submitted by journalists, which brought to public view previously unseen details of MPs expenditures, immediately catching the public's attention. In this case, not only the targets, but also the drivers and intermediaries of the RTP had strong institutional power to pursue openness, making the way towards the adoption of the Register significantly contested. For political purposes, the members of the House ultimately agreed to the creation of an independent body, IPSA, that expanded the Register to periodically publish updated information of the same class of information shared with the public in the aftermath of the crisis.

Conversely, in the case of the incremental trajectory of regulatory transparency of conflict of interest and lobbying, as both drivers and targets at the same time, MPs had the opportunity to design the regulatory transparency mechanisms themselves. There were several reasons for why this was the case. Unlike the expenses scandal, which implicated a very large number of MPs, the lobbying controversies touched a relatively limited number of MPs per crises. Furthermore, while in the case of expenses the normative standards of good behaviour and the right to know (Layer 1) seemed

rather obvious and widely shared, in the case of lobbying the distinction between good and bad practice was blurrier and harder to associate with by the wider public. This meant the scandals in this case were less severe, for being supported by less shared principles and norms in society (Layers 1 and 2), and therefore the manoeuvring space of the MPs more extensive. MPs preferred to adopt RTP in the case of lobbying regulation, because they saw it as a less intrusive response, whose design they could control. This seems to validate concerns that, despite in cases having a powerful regulatory potential, transparency, especially when applied selectively, may not be sufficient to change the overall behaviour of politicians (Lindstedt, 2010; Vargovčíková, 2015).

Related to this last point, we should identify the specific value (Layer 1) furthered by transparency in the two RTPs, both increasing the support for their adoption but also for their sustainability overtime. In the case of MPs expenditures, the value furthered by transparency is that of democratisation, public accountability and public interest, while the regulatory objective of disclosure may look limited and secondary. In the case of lobbying, MPs willingly adopted transparency primarily as a regulatory mechanism, not so much because of public interest. Lobbying is a difficult activity to regulate. It is not necessarily a bad practice in itself; on the contrary, when not abused, lobbying can be seen as a pillar of representative democracy, just like transparency itself.

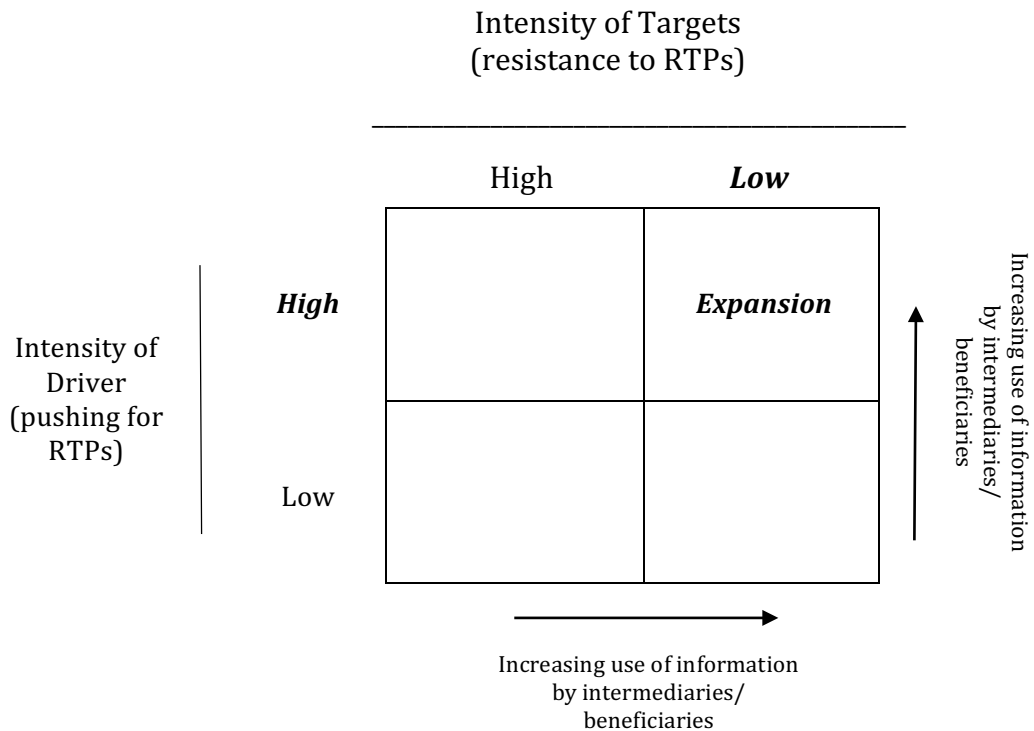
Comparative Analysis: The Brazilian and the UK cases in the logic of control

The cases analysed in Chapters 2 and 3 narrated how transparency was adopted to control the activities and behaviours of politicians and bureaucrats specifically in order to avoid and reduce abuses and excesses. In these cases, it is argued that the eyes of the public can serve as a control mechanism on the actions of those who govern them. For fulfilling the purpose of limiting the power of those in government, the disclosures in these cases are often related to ideas of liberal democracy, and of citizens' right to know and the corresponding governments' duty of transparency, which have become themselves directly associated with more robust democracies. These are the values of Layer 1 that are reflected in many of the arguments that supported the expansion of the RTPs studied in this Part of the thesis.

In spite of being initially pushed and supported by the same normative and institutional contexts (Layers 1 and 2), the type of change and trajectory observed for the Brazilian Transparency Portal, covered in Chapter 2, differs from the cases in Chapter 3. As suggested in the narrative of the case, this is because the driver in this case was an external actor with an auditing mandate and a clear set of objectives and benefits for making information publicly available. Moreover, because the CGU had institutional access to public data, its intensity to push for transparency was mostly dependent on its willingness.

On the other hand, as the case showed, the ability of targets to oppose transparency was relatively low. This is, first, because the information disclosed by the CGU is a detailed part of government expenditures and falls into the category of public interest and citizens' right to know, which is often difficult to oppose, as corroborated by the disclosure of information about public officials' wages and official apartments. Second, because the information periodically released by the Portal also empowered beneficiaries and intermediaries, and at times was even proposed by them. In theory, the higher the use of information by users and intermediaries, stronger the incentive of CGU to disclose information, as it also increased the chances of fire alarms. This case is illustrated in Table I.1.

Table 1.1. Trajectory of RTPs in the Control Logic



The type of institutional change observed in this case is of internal and incremental change. This contrasts with the punctuated changes witnessed in the UK expenses case.

One of the relevant aspects of the logic of control is the fact that the targets of the RTPs can also be the actors with the institutional power (legislative and/or regulatory) to regulate their own actions and behaviours. This implies that the drivers have significant influence over the scope and the trajectory of the RTPs that they enact, especially when the beneficiaries or intermediaries of the RTPs are not entrusted with institutional power nor collectively organised to contest such choices. In such circumstances, acting as both the drivers and the targets of disclosure, politicians can negotiate and agree on the type and scope of the data to be disclosed. One of the potential outcomes of such distribution of power is ‘selective transparency’. Selectivity is not a problem per se; nor can it be fully avoided in the case of RTPs. However, in the control logic, it can imply that politicians hand-pick data that is not compromising (or minimally compromising) of their past and future behaviour while they can leave important information outside the light of public scrutiny.

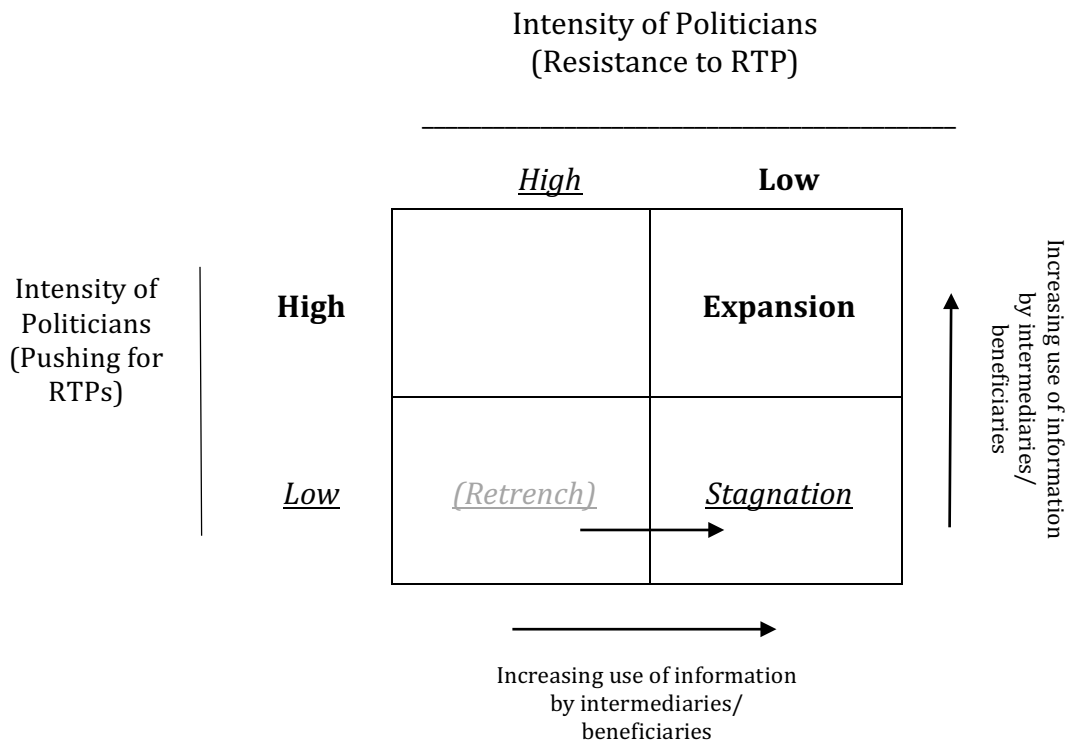
This duality of roles is visible in Chapter 3, both in the UK expenses and lobbying cases. In the case of the MPs’ Expenses’ Scheme, before the FoIA entered into full force in 2005, MPs agreed on a minimum level of information on expenses that was to be

disclosed as part of the Publication Scheme. The data disclosed at the time did not cause controversies or scandals, as it did not include the detailed information that later revealed the misconduct of MPs. Similarly, in the case of lobbying regulation in the House of Commons, MPs have incrementally expanded the Members' Register of Financial Interests. In this case, however, although the disclosed information was based on consensual agreements among MPs as the more proportional and preferable option among other regulatory solutions, expansion has often been in the aftermath of cases of individual illegal lobbying uncovered by the media. This suggests that in the control logic where the drivers are also the targets of the RTPs, the initial push for change can be expected to come as an external shock or crisis that strongly increase the incentives of politicians to take action reactively. However, the reasons for politicians to adopt RTPs are not limited to issues of trust; other reasons can include overseeing their peers, for example.

Based on the discussion above, the two trajectories that RTPs in the control logic can be expected to follow are illustrated in Table 8.1. The first case reflected on the table is that of UK lobbying, in **bold**, where there is little resistance from politicians towards disclosure for reasons explained above. The second case refers to the re-adoption of *de minimis* clause, indicating the amount below which MPs were not obliged to report expenses, after it was scrapped in the midst of the MPs expenses scandal. While the clause was dropped as part of their response to a public outcry, following the scandal the House debated on it again and agreed to re-adopt it. As this thesis was being finalised, on March 2017, IPSA decided to stop publishing information about the places MPs travelled to or from when they claimed mileage and the names of MPs' landlords. The decision followed increased concern with MPs' safety after the murder of Labour MP Jo Cox in 2016 and a terror attack in Westminster earlier in the month.⁷⁵ Therefore, although the example of *de minimis* clause and of MPs' travel details appear to be less common, they also prove that transparency is not the only game in town nor the only value mobilised from Layer 1 by drivers and targets when deciding about the design of the RTPs. RTPs can and do retrench, although because of the often high costs of retrenchment, it seems more common to expect them to stagnate, as illustrated in the case underlined in Table I.2 below.

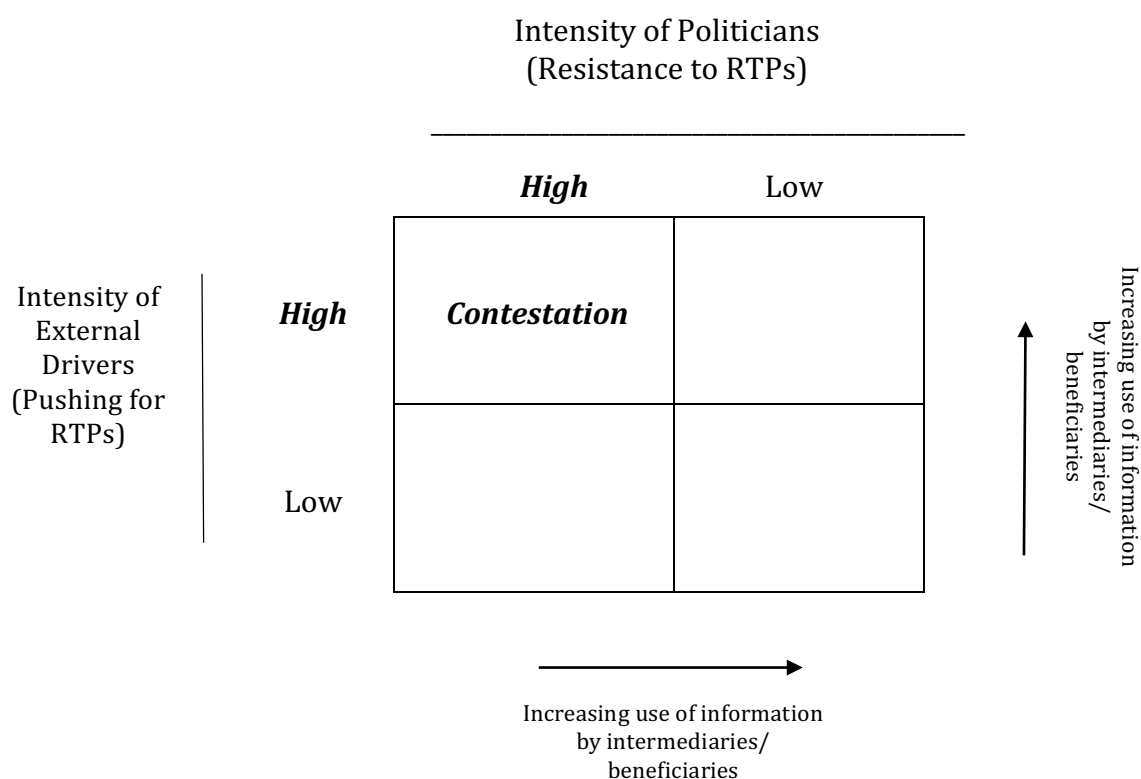
⁷⁵ BBC (2017). IPSA to stop publishing MPs' travel details amid 'attack' fears. *BBC*, 30 March.

Table 1.2. Trajectory of RTPs in the Control Logic



The expected trajectory in the control logic would be different in the presence of high intensity external drivers of disclosure that are not in a position of self-regulation. In the existence of a high intensity external driver, the expected trajectory would be towards expansion (in the case of low resistance from targets) or contestation (in the case of high resistance). The former case relates to the CGU and the Transparency Portal in Brazil. The latter was the case when journalists used the UK FoIA to request information about MPs' expenses and allowances beyond those defined by politicians at first for composing the MPs' Publication Scheme. The MPs resisted disclosure, but after leaks from the media and a long judicial battle, they were obliged to disclose more information to the public. Hence, the RTP was created following a period of contestation, captured in Table 8.2 below, after which its trajectory was mostly expansive.

Table 1.3. Trajectory of RTPs in the Control Logic



It must be noted that in the context of the control logic, expansion means the disclosure of more detailed information. Contestation takes place not because those who demand more disclosure contest and disagree with the design of the information disclosed (as will be seen in the performance and transaction logics), but with how much that information reveals about the world of politicians and bureaucrats. Instead of contesting the content or the methodology of the existing information, beneficiaries and intermediaries request more information. In this regard, in the case of the MPs' expenses, as soon as an independent judicial body ruled for greater disclosure, contestation gave way to expansion and, eventually, as the media did not drive for new information, to stagnation.

Finally, the case studies in Chapters 2 and 3 show that once a set of information in the control logic is published, they tend not to retrench or to just partially retrench. However, following episodes of expansion, very often the trajectory of the RTP can turn to stagnation. Stagnation can happen under three scenarios. First, once the driver succeeds in guaranteeing the disclosure of the information it had pushed for, it may no longer feel the need to fight for further disclosure. At the same time, because the target

adapts its behaviour in relation to the new information available, it lowers its intensity to resist. A second scenario is where the target would still prefer to oppose the RTP, but the information disclosed is used by intermediaries and/or beneficiaries, or at least the target assumes this is the case. Last scenario is that in which the disclosed information becomes a social norm, and none of the actors expects secrecy.

PART II.

THE LOGIC OF PERFORMANCE

The performance logic of regulatory transparency refers to the disclosure of performance information of decentralised policy units, in the expectation that such disclosures will influence these units to adhere to the published performance standards and goals, through the mechanisms and underlying logics explained in Chapter 1. The two chapters in this part analyse the regulatory transparency policies adopted in Brazil and in the United Kingdom in relation to secondary schools. Although both countries publish the schools' performance results, the cases present an important difference. As shown in Chapter 4, there is no school choice in Brazil in the public sector and, therefore, the disclosure of school performances is justified based on its expectation to inform and, therefore, engage society in the debate about the quality of education and the hope that it would prompt citizens to question and support the managers of individual schools in improving the quality of the service provided. Chapter 5 traces the creation and trajectory of the disclosure of secondary school performance tables in England, where there is school choice. In spite of such a notable difference, the trajectory of both RTPs follow a parallel pattern – that of contestation – in which the driver of the RTP, i.e. central government, is often and incrementally promoting changes to the policies, both to reflect its own ideas and regulatory purposes and to accommodate demands from society.

CHAPTER 4:

DISCLOSURE OF SECONDARY SCHOOL PERFORMANCE IN BRAZIL

Even if MEC [Ministry of Education] publishes the index in the media, it is necessary to raise better awareness of Prova Brasil inside the schools, [on] how the process takes place, how the index is calculated, [how to] make use of MEC's guidelines, [how to] articulate the results with every school's syllabus in order to introduce these with quality to students. (Municipal school coordinator, 2013)⁷⁶

In every area, it is necessary to promote accountability. Why should it not be the case in education? [...] One can make a pro-mobilisation discourse. We tried to make that discourse. (Former president of the National Institute of Education Studies and Research, Reynaldo Fernandes, 2015)⁷⁷

Unlike several other countries that also promote transparency of school performance indicators, such as the United Kingdom, the United States or Chile, in Brazil there is no school choice in the public system of education.⁷⁸ Because of this, the justification for performance transparency in Brazil is limited to its potential to boost improvements of performance – through raising awareness of schools of their performance deficiencies and/or fostering competition among them for better positions in rankings – and, as argued by many, to promote accountability, which carries a strong normative weight (grounded in Layer 1). Increasing performance through transparency can take place in two ways. First is when subnational policy units (the targets of regulatory transparency) act as if they had received signals given by parents, the educational community, the media and alike (beneficiaries and intermediaries) about the school's performance regardless of whether these signals were in practice sent (Meijer, 2007). The second way is based on Hirschman (1970) and suggests that in the absence of an exit option (opting out of a company, product or service – in this case, a school – because of performance

⁷⁶ Melo, 2014

⁷⁷ Fernandes, R. (2015) *Interview on 10 July 2015*. [My translation; recording in my possession]

⁷⁸ The municipality of Rio de Janeiro is an exception in this regard.

issues without making an effort to improve it), voice is likely to increase (complaining about an existing problem and trying to remedy the defects).

The performance logic of transparency in play in this case is expected to offer a different set of operational dynamics than those observed in the control logic, in particular with regards to the nature of actors' interactions. Since an RTP in this logic is primarily used to regulate the goals of subnational units and, therefore, the central government's relationship with subnational units, the engagement of beneficiaries may be less central to the outcome. The main focus, rather, will be on the targets' capacity and willingness to comply with the goals of the RTP.

The mandate and management of primary and secondary schools in Brazil is mainly in the hands of states and municipalities. The formal responsibilities of the federal government, which publishes the performance data of schools, municipalities and states, include coordination and monitoring of the national system. Among these responsibilities are elaborating the National Education Plan with the support of states and municipalities, providing technical and financial assistance at the subnational levels, defining the goals and guidelines to primary and secondary education with the contribution of states and municipalities, and ensuring national evaluations of student performances, in order to inform the definition of priorities and the improvement of service quality. Transparency of secondary schools' performance was introduced in 2006, under the Labour Government of Lula da Silva and was subject to changes in the course of the following decade.

This chapter follows the creation and trajectory of performance indicators, adopted to assess the quality of education provided in secondary schools in Brazil. It traces both the origins and the evolution of the RTP over a period of a decade, starting in 2005. In particular, I focus on two main components of the RTP – Prova Brasil and Ideb – which display different evolutionary patterns, due to divergent levels of resistance from targets and, in particular, highly engaged intermediaries.

1. Socio-Political and Institutional Context

The creation of the national exams in Brazil is a result of two processes: first, on the national level, the reorganisation of the education system in the aftermath of the enactment of the last Constitution, and second, on the international level, the emergence of national exams as a consolidated tendency. The 1988 Federal Constitution of Brazil defined 'quality' as one of the principles of education. In 1996, Constitutional

Amendment 14 attributed to the federal government the duty of ensuring a minimum quality standard. Whereas the literature is limited on the influence of civil society and the legislative in the creation of the National System for Assessment of Basic Public Schools (Sistema Nacional de Avaliação do Ensino Público - SAEP), the role of the Federal Constitution and the World Bank (WB) in its creation has been comprehensively studied. At the time of the enactment of the Constitution, the WB advised the Brazilian government to start measuring the quality of education for the Northeast Project (Projeto Nordeste), adopted as part of the VI Agreement between the Ministry of Education (Ministério da Educação - MEC) and the International Bank for Reconstruction and Development. As a result of the negotiations between the two institutions, in 1988 the Ministry of Education created and adopted a pilot of SAEP in the states of Paraná and Rio Grande do Norte to test the adequacy and applicability of the exam. After this pilot, in 1990 the federal government designed and adopted the System for Assessment of Basic Education (Sistema de Avaliação da Educação Básica - SAEB), introduced in cycles.

Each cycle of SAEB increased the depth of information that the federal government obtained from the subnational units. The objective of the first cycle was to improve the evaluative capacity of the education management units, i.e. MEC and state and municipal agencies, across the nation. In 1992, the National Institute of Education Studies and Research Anísio Teixeira (Instituto Nacional de Estudos e Pesquisas Educacionais Anísio Teixeira - INEP), an entity linked to MEC, was given the mandate to conduct the national assessment of the education system. SAEB' second cycle, launched in 1993, aimed at providing information to support education policies, coinciding with the period that Brazilian states started developing their own evaluations, adding another level of regulation that was more region-focused and aligned with states' policies (Bonamino, 2002). Both cycles were organised in coordination with subnational units and emphasised the pedagogic and managerial practices of local and state school management.

In the first two cycles of SAEB, the exams included samples of students from the 1st, 3rd, 5th and 7th grades of fundamental education, who responded to questions aimed at measuring knowledge in reading skills, mathematics and science. In the first cycle, schools also responded to contextual tests, which contained questions about policies adopted by states and municipalities towards fostering the universalisation of education, democratisation of management and information regarding teaching conditions and competencies (Bonamino and Franco, 1999). The second cycle included a significant number of contextual questions about the work condition and capacity of teachers and the management of schools, including existing equipment, activities

developed by the school and the management style of directors. These two cycles reflected an interest in diagnosing the effect of intra-school indicators in the performance of students, in a dynamic that tried to increase the federal government's level of knowledge about education beyond the previously available data.

Shortly before the end of President Itamar Franco's government in December 1994, his Minister of Education Murillo A. Hingel institutionalised SAEB as the national education exam, highlighting that effective outcomes in the education sector required permanent monitoring, and that the evaluative process had to be systematically organised, involving all levels of government, universities and research centres, and finally that information should be publicly available to ensure the participation of all members of society.⁷⁹

In 1995, when Fernando Henrique Cardoso of the Brazilian Social Democrat Party succeeded Franco as president, he expanded the scope of SAEB. The president to undertake the most comprehensive administrative and liberalisation reforms in Brazil since the re-democratisation period, Cardoso shared the view of the World Bank that the Ministry of Education should define and control the goals of evaluation and commission its execution. This policy was adopted for the 1995 exam and financed by the WB. Besides including the evaluation of the socio-economic profile of students, another change introduced to the 1995 SAEB exam was the centralisation of its conceptualisation and execution at the level of the federal government. From that year onwards, SAEB was adopted as a biannual exam assessing the performance of students of the public and private systems in the last grades of primary and secondary education, of urban and rural areas, in sample surveys.⁸⁰

Until 2005, SAEB filled the role of informing the design and reformulation of policies. Several programs were designed at the federal level based on SAEB results and in an attempt to improve the quality of primary and secondary education. These include the National Programme Library at School (Programa Nacional Biblioteca na Escola), Programme for Training current Teachers (Programa de Formação de Professores em Exercício), National Network for Permanent Training of Teachers (Rede Nacional de Formação Continuada de Professores), and Programme to Support Municipal Education

⁷⁹ Portaria 1,795/1994

⁸⁰ At the beginning of the Cardoso government, a study commissioned by an educational government body concluded that the abilities taught across states were significantly different in the four sampled grades, less so in the last years of primary and secondary education; that the use of different statistical methods could provide further information without increasing the number of questions students had to respond; and that it was necessary to increase the comparability of exams throughout years and among the grades assessed. This research informed part of the changes during President Cardoso's term.

Administrators (Programa de Apoio aos Dirigentes Municipais de Educação).

In 2005, under the government of President Lula da Silva of the Brazilian Labour Party, SAEB expanded to become the Evaluative System of Basic Education (Sistema de Avaliação da Educação Básica - SAEB), which comprised of two national exams: the National Assessment of Basic Education (Avaliação Nacional da Educação Básica) and the National Assessment of Education Performance (Avaliação Nacional do Rendimento Escolar – Prova Brasil). Both exams were national, standardised, biannual, accompanied by socio-economic questionnaires, and aimed at assessing the quality of education offered by the Brazilian education system. The Prova Brasil exam was applied to every public school with more than 30 students (rural schools were included in 2007). The institutionalisation of this exam was justified by INEP as a response to the need to supplement the information produced by SAEB.⁸¹ Moreover, in spite of the success of SAEB in informing the federal government and society about the status of the Brazilian education system, it had proved to be ineffective in prompting the decentralised education systems to formulate policies and increase the quality of education.

2. The Trajectory of Prova Brasil and Ideb

2.1. Creation and Institutionalisation of Prova Brasil

Prova Brasil was developed as a voluntary instrument, with results being published since the creation of the examination. Fernandes (2015), the president of INEP at Prova Brasil's inception, suggests that the publication of Prova Brasil's results followed an international trend of publishing the results of schools' individualised exam results. Additionally, because of Brazil's decentralised system of provision of basic education, INEP deemed it important that those providing education services had access to exam results, especially as some of them did not have the financial means or capacity to develop their own exams.

Notable resistance to Prova Brasil came from some educators and experts of education assessments (intermediaries) who argued that it was not statistically necessary for all schools across the country to be sampled for the government to have a good diagnosis of the general level of education. Therefore, publication of Prova Brasil's information endured largely due to the alleged accountability function it came to serve.

⁸¹ INEP (2005) Portaria 931, 21 March 2005

Here, the normative weight of transparency and accountability arguably increased the institutional power of MEC and INEP (the drivers of RTP) to push for regulatory transparency. In the words of Fernandes (2015):

The publication [of Prova Brasil results] was all negotiated [with states and municipalities]. I mean, not negotiated, Prova Brasil is voluntary, if a municipality does not want to adopt it, it will not have its results published. But what happened is that nobody gave up. [...] It was hard to say no. São Paulo hesitated, it became [politically] difficult, people said 'they are trying to hide' [the results]. Everybody adopted it. From the political perspective, we did encounter difficulties, which were in large part overcome, I think often easier than I had thought [it would be]. There are groups that resist [Prova Brasil] up to today. These groups see it as something a little Thatcherite or Reaganite. The main focus of resistance are scholars of education. The managers like it, especially if they don't have the means [to run an independent exam]. They are upset sometimes when the numbers are published and the results aren't good, but they want to see [the results], they want it for themselves.

As already noted, with the exception of the municipality of Rio de Janeiro, school choice does not exist in the Brazilian public education system. Therefore, the push to disclose individualised, structured and comparable data for schools did not emerge as a consequence of a system in which parents needed information to decide where to enrol their children. Officials of the Ministry of Education highlighted the importance of performance data to mobilise the public and inform members of the education community (for example directors and teachers at schools of the municipal and state level) about the quality of schools and of the education system. Transparency, the government argued, aimed at wider civic participation, with the hope and expectation that, in the absence of choice, published results would lead parents to voice demands for increased performance in their children's schools (Hirschman, 1970) and increase accountability. If the notion of accountability was important to increase the relative intensity of MEC and INEP in pushing towards disclosure, and reduce that of targets, the same idea applied for the promise of increased performance.

The results of Prova Brasil undertaken in 2005 were published in June 2006, with individualised scores for schools, municipalities, states and for the country. Every participating public school received a leaflet with technical information of the exams, and two posters, one with general information about the exam and another with performance data.⁸² The latter showed the results achieved by each school in

⁸² Portaria INEP 69, dated 4 May 2005, defined the content of the document sent to schools.

comparison to the municipal, state and national averages, all in comparative fashion: percentages of approval, fail rates, and drop outs; the average of daily hours taught; the percentage of teachers with higher education; and age – grade distortion.⁸³ The graphic and illustrative format chosen for disclosure of the results attempted to make the information more easily understood by teachers, school directors and municipal and state managers.

Despite INEP's consistent efforts to simplify and clarify the data, for instance by providing detailed explanatory notes to teachers, individual school scores still caused a degree of confusion among the targets. Based on Prova Brasil, INEP disclosed information on school performances on a specific webpage, along with data of the education census that could influence the quality of pupil and school performances. These included the number of school retention rates (pass, fails and dropouts), average daily school hours, age-grade distortion and the number of teachers with high education. Lacerda (2015) suggested that the published data was too technical: "The debate, using SAEB's scale, was always very difficult [to promote]. A score of 150 and that is more than a hundred, but the measure goes up to 525. These are scales that are technical, but not popular".⁸⁴ However, the decision not to employ scales preferred and routinely used by teachers, e.g. from zero to 10 or zero to 100, had been a deliberate one. It meant to highlight the differences between the design of performance ratings and exams used in school, where, for instance, not every question would be weighed equally according to the item response theory (Fontanive, Elliot, and Klein, 2007).

A first expected consequence of the transparency of school results on Prova Brasil was increased pressure on school directors and politicians on subnational levels to improve the performance of the schools under their management. Then Minister of Education, Fernando Haddad, spoke about the role that Prova Brasil played in fostering schools to improve their performance:

The data is important for everybody to define their performance goals for the next edition of Prova Brasil. The innovation of this program is to transform an evaluation considered passive to one that can mobilise the education community. We are supporting the transformation of the evaluation, because it will increase the level of responsibility and commitment, and increase the number of people engaged in achieving quality goals. (Faria, 2006)

⁸³ See Appendix III for an example of the mentioned leaflets.

⁸⁴ Lacerda, M. P. (2015) *Interview on 8 July 2015*. [My translation; recording in my possession.]

Fernandes (2015) similarly explained how transparency could allegedly lead school managers to try to reach higher compliance when performance indicators were defined at the federal level:

People often confuse responsiveness with fault. That was not the point. We showed that the performance of students in one school was worse than in others. Managers may have good explanations for that, for example the area may be very violent and schools are constantly closing. But they have to come public and state that. And then they have to try to improve the performance.

Although the general concept of performance is fairly uncontroversial, what defines the performance of a unit is hardly ever straightforward or socio-politically neutral. A performance indicator may emphasise outcomes with or without taking into account the conditions under which they were achieved. It may weigh performance by economic or social indicators. In doing so it may use more progressive or conservative theories and criteria. Indicators can respond to the interests of bureaucracies, for example, which may differ from those of citizens (Woolum, 2011). By deciding on a specific set of indicators, governments emphasise their importance and validity as proxies of the practical performance of a school, hospital, prison, or any other policy unit. By deciding on the transparency of such indicators, governments can manage to increase their regulatory influence over policy units. As suggested by Bevan and Hood: "What's measured is what matters" (2006, p. 517).

Though no study has yet decoupled the regulatory effects of Prova Brasil from that of the transparency of its results, several articles have highlighted changes of teaching focus due to attempts of improved scores on the exam. A research analysing the impact of the exam in the pedagogic practices of Portuguese language in the municipal schools of Costa Rica, in the state of Mato Grosso, concluded that although the exams shed light to the many aspects of education in Brazil, "data collected revealed that Prova Brasil was more characterised as an instrument of regulation, with a strong inductive aspect" (Correa, 2012, p. 113). Another study, which evaluated the use of Prova Brasil data by the Education Secretariat of the Federal District, identified that

In the activities developed by the Secretariat of Education of the Federal District, what prevails is the control of the average grade obtained in the evaluation and of Ideb goals, leading to increased competition among schools and holding them responsible for quality improvement. When they felt pressured, the school teams tended to standardise their pedagogic work in order to prepare the students to the exam and increase the position of the

school in the ranking. (Oliveira, 2011, p. viii)

This makes explicit the hierarchical position in which Prova Brasil put subnational schools in relation to the standards defined by federal institutions. Applying Hood's typology of control to discuss dysfunctionalities in public services measurement, Pidd suggests that when the staff works to meet "externally defined norms and procedures, then the hierarchist position seems the best way to regard them. [...] It seems most likely that a hierarchist position will apply in the public sector" (Pidd, 2005, p. 491).

In the ten municipalities of Ceará studied by Vieira and Vidal there was unanimous acceptance of Prova Brasil and its matrices as the guideline for curriculum proposals (Vidal and Vieira, 2011, p. 430). Ovando and Freitas (2011, p. 975) pointed out that several school systems used the result of the exams as a managerial instrument to improve quality of education. The authors suggested that in most of these school systems the national exams were perceived, especially, as a regulatory mechanism of the federal government to control and coordinate the state and municipal education systems.⁸⁵ Looking at ten municipalities in the same state, Ovando (2011, p. 96) concluded that the exams were supporting the improvement in subnational education, given their inductor, regulatory, characteristic.

2.2. Creation and Institutionalisation of Ideb

A year after Prova Brasil's results were published for the first time, in his 2006 electoral campaign, incumbent presidential candidate Lula da Silva pledged to promote education in cooperation with states and municipalities (Camini, 2010). In line with this goal, considering previous government plans for education and in coordination with a nationwide education movement entitled All for Education (Todos pela Educação), the government approved the Programme of Commitment to Goals "All for Education" (Plano de Metas Compromisso Todos pela Educação).⁸⁶ The mechanism institutionalised further coordination and collaboration in promoting higher quality of education among the federal government, subnational units, civil society and the private sector, the last two of which being intermediaries.

⁸⁵ The authors also explain that, in organising and developing educational policies, municipalities have taken into account the national exams and the monitoring produced as a result of the routine access to information.

⁸⁶ Todos pela Educação (All for Education - TPE) is a movement created in 2006, financed by the private sector, with the aim of bringing together stakeholders of the community to contribute for guaranteeing quality in primary and secondary education for all Brazilian children and youth by 2022.

The new index for measuring school performances, the Index of Basic Education Development, known as Ideb (Índice de Desenvolvimento da Educação Básica), was created in the abovementioned socio-political context. Applicable to primary and secondary education and to high schools, the index introduced a new concept to define the quality of education, which considered pupil retention rates, i.e. rates of approval, failure and dropout. The inclusion of retention rates in the performance indicators did not only follow demands from civil society, but also of INEP's technical acknowledgment of the negative impact of persistent failure and retention of students, which was on the rise in Brazil. Furthermore, Ideb created individual goals for all the targets of Prova Brasil's disclosure. "The idea [with the creation of Ideb]", argued Fernandes (2015), "was to have a system of targets, [...] plans to reach the targets, and to allow for the analysis of what later became PAR (Plan for Articulated Actions)".

For the calculation of Ideb, INEP used biannually collected census data to calculate retention rates and Prova Brasil for student performances. A specific Ideb goal was set for each school, municipality, state and for Brazil, i.e. each school had its own Ideb goals until 2021. Calculation of each individual index was based on data of the 2005 exams and defined the year in which every state in Brazil should converge to the same education level (INEP, 2007). All individual goals were defined by INEP based on a national target, which aimed at increasing the quality of education to the average of OECD countries on PISA by the year 2022. The decision to set the Ideb goals until the end of 2021 was aligned to the date defined by the movement All for Education, although the specific goals of the Movement were tighter than those set by government. The short and medium Ideb goals for each school and school network were also specified and were expected to contribute to reducing the nationwide inequality in education quality.

Moreover, instead of a complex scale as used by Prova Brasil (with a range from zero to 350 in Portuguese and to 375 in Mathematics and with nine different performance points) which many school teachers, directors and citizens claimed not to understand, Ideb provided a simple scale of one to ten, where a higher score meant higher education quality. "The debate about Ideb came from this", suggested Lacerda (2015), "from the need to create an index that was understood by the large part of society, that was not limited to the results of the Portuguese and Mathematics tests, and that also considered schools that failed students more, because these are variables that clearly influence the quality of schools". Publication of the results was within the mandate of INEP, but creating awareness of the results became a shared mandate of every participating school and subnational unit in 2007.⁸⁷

⁸⁷ Decree N. 6,094, 24 April 2007.

In theory, assigning every school, municipality and state with a unique goal, different from one another, would help foster comparisons of performance within each unit over time, rather than a comparison across units, given the latter's potentially problematic aspects. By publishing schools' Ideb goals INEP aligned the expectation of parents and of the education community vis-à-vis the performance that they should expect for every unit. In practice, however, the performances of schools, municipalities and states were compared both according to their specific goals and relative to other units.

Unlike Prova Brasil, the negotiation for participation in and publication of the index's results did not prove to be controversial. First, Ideb was the indicator that would be used by the federal government for the development and implementation of other educational policies, in line with what Lula da Silva had promised in his political campaign. Second, the indicator for individual school performance used in Ideb was Prova Brasil, which was already adopted, both in terms of implementation and disclosure, by most public schools. Last, Ideb had been adopted within the larger framework of the Plan All for Education, by the federal government in partnership with subnational governments and civil society, which provided 28 guidelines for federal government's financial and technical support in the implementation of education policies by subnational governments. Alejandra Valesco, Coordinator of Movement All for Education, suggested that the indicator also pleased some civil society organisations

For organisations similar to All for Education, Ideb's creation was great news. It gave objectivity to the debate about quality of education, it put into discussion the logic of working for certain results. [Minister] Haddad was very much recognised for taking that step, which was a courageous one. [...] Resistance came more from those that thought that the evaluations themselves are not good for the education sector, that they could be demoralising for the teacher, and in this regard there were other intermediary positions. [...] When one talks about civil society it is not all one sided.⁸⁸

By mid-2008 all the states and almost every municipality (5,563 out of 5,570) had signed up to Ideb.

After the MEC started using Ideb, it detected, for example, that out of the 1,242 municipalities with the lowest index, none, except one, had ever benefited from

⁸⁸ Valesco, A. (2015) *Interview on 22 July 2015*. [My translation; recording in my possession.]

voluntary transfers from the federal government.⁸⁹ According to Lacerda (2015), the Secretary for Primary and Secondary Education at the MEC from June 2007 to January 2012:

After Ideb, MEC started prioritising support to these municipalities [with low Ideb]. Among these was one [state] capital: Macapá. Among the rest, 80% [of the municipalities] were in the northeast and the remaining 20% were distributed all over Brazil. This was, for me, the most significant result of Ideb, i.e. to have created instruments to support municipal [educational] management [...] and to direct MEC's policies to municipalities that had worse results [in the index]. That, for me, is the big result.

In its 2007 edition, Prova Brasil included rural schools (end of the first cycle of fundamental education) and expanded its range from schools with a minimum of 30 pupils to schools with a minimum of 20. The publication of Prova Brasil results was not allowed in a number of cases for technical reasons (schools or municipalities that did not have at least 50% of students participating; public schools with less than 20 students enrolled in each of the grades assessed; private schools that were selected to be part of a sample for states, region and the country schools that opted out of Prova Brasil; schools with exclusive professional teaching) and was optional in two others (schools that requested no transparency of the results for having adopted the evening school system for fundamental education on the previous year; and, schools that have less than 20 students but that participated in a special edition of Prova Brasil for the purpose of gathering information for calculation of Ideb).⁹⁰ These were not evidence of the RTP's retraction, as some of these measures were mere adaptations to a revised methodology of Ideb.

In analysing the influence of Ideb in the activities of schools, several studies suggested that Ideb, often due to being based on Prova Brasil, produced regulatory impacts. By studying municipal schools in Paraíba, Silva (2012, p. 12) identified that directors and teachers had a generally positive assessment of the index, considering it an instrument that helped to improve quality of education by helping schools and teachers to develop actions to improve their index. The study identified that most

⁸⁹ A voluntary transfer is one that is not constitutionally or legally mandatory (which is the case of those that obliged the transference for the purchase of books, school lunch, transportation). If municipalities or states present a proposal to the federal government and such proposal is approved, the money is transferred for implementation of the suggested actions.

⁹⁰ The last case was valid for the editions of Prova Brasil in 2011, in accordance with Portaria INEP N. 403, October 31st 2011, and in 2013, in accordance with Portaria INEP N. 304, 21 June 2013.

teachers and school directors had a positive assessment of the policy and thought that the disclosure of the index helped to improve the quality of education offered by schools. Another study suggested that in São Desidério municipality, in the state of Bahia, Ideb generated valuable information for schools and their management boards, although it also promoted a competitive environment among the municipal schools (Melo, 2014). The municipality's mayor had a positive view of the exams and said, "we made an analysis of our situation, we showed our failing rates, the index of drop-outs, grades on Prova Brasil, we compared [ourselves] with other municipalities, proving our reality and showing that it was possible [to improve performance]."

It might be useful to compare the regulatory purpose and outcomes of the disclosure of Ideb scores with a parallel initiative also undertaken by INEP that did not involve disclosure. In 2007, INEP created an external exam, known as the Brazil Little Exam (Provinha Brasil), in order to measure the literacy levels in the second grade of primary school. The results of this exam were not publicised; they were meant solely for purpose of keeping school teachers and administrations informed of the changing literacy levels of their students. The exam was developed in order to support the goal of the Plan All for Education, which stated that every child should be literate by the age of eight. Non-disclosure was a deliberate decision by the government, as transparency was not deemed to contribute to this larger purpose. Lacerda (2015) stated that

There was a firm position by my team not to disclose the results of Provinha Brasil. If we did, Provinha Brasil would lose its characteristic of instructing teachers. It is an instrument for teachers to know how their students are doing in the beginning of the year and what they could and should do in that year to guarantee to each student the necessary learning during the period when they are becoming literate. If the results started being published, instead of being an instrument to instruct teachers, it [Provinha Brasil] would become one of pressure and the results would be manipulated.

Manipulation did not mean that students' exam results would be falsified or changed by teachers, but rather that teachers and school managers would adapt their focus to the structure of the exams. In contrast to Provinha Brasil, Prova Brasil aimed at regulating performance through transparency, as the external pressure generated by the publication of Ideb scores pushed schools and subnational units precisely towards this type of adaptation.

Differently to the suggested regulatory impact produced by Ideb, the RTP's officially declared accountability goal faced a significant challenge related to the transparency system itself, i.e. in making sure that the potential beneficiaries

understood the disclosed information. Ernesto Faria, a then member of QEdu, a well-known educational project by the non-profit Lemann Foundation (Fundação Lemann), acknowledged the targets' cognitive difficulties in making sense of the data.⁹¹ "We understand that the average data of Prova Brasil", he said "is hard to be interpreted [...] and if a parent or director sees the average of their school, but do not know what it means, they ask themselves if it is good or bad." Although Ideb as an indicator was in theory more easily understood than Prova Brasil it also faced significant difficulties in promoting the public engagement expected by the government. According to Lacerda (2015), who referred to the transparency of performance indicators as an accountability mechanism,

There was a large debate among managers and the leading media, but there was not – as there still is not today – such a strong engagement of civil society. To me, this is a significant problem, because what one expects in an accountability policy is that society puts pressure on the government to explain why certain results are not satisfactory. But that did not happen [...] There was a great amount of work from MEC, we created leaflets, an explanatory poster about the position of each school in terms of their Ideb grade, but there still was not a national mobilisation – as there still isn't today. [...] Eventually, politicians got more involved and Ideb became a part of political campaigns, particularly on the municipal – rather than state – level. But the expected social mobilisation was not achieved.

Oliveira (2011), however, demonstrated how the low level of understanding of Ideb's data, counterintuitively, led municipalities of the Federal District to try and improve their performance in Prova Brasil, thus fulfilling its regulatory purpose, even in complete lack of understanding of the assumptions behind it:

The strategy of INEP to raise awareness of Prova Brasil was considered inadequate by many in the municipal schools, because of its rankings, and insufficient given that directors and teachers have doubts about the evaluation, notably in terms of the information it provides. In consequence, one notices that in the activities developed by the Secretariat, what are prevalent are the control of the average grade in the evaluations and the goals of Ideb, leading to competition between schools and holding them accountable for quality improvement. When they feel pressured, school teams tend to standardise their pedagogic work in order to prepare the students to the exam and improve the position of the school in the ranking.

⁹¹ Faria, E. (2015) *Interview on 19 May 2015*. [My translation; recording in my possession.]

The difficulty of the potential beneficiaries of the policy to engage with the information disclosed and dissatisfaction with aspects of the indicator propelled intermediaries to develop initiatives and demand changes in the methodology behind the disclosure system, highlighting the importance of the role of intermediaries in the evolution of the RTP.

2.3. The role of intermediaries in the evolution of Ideb

In spite of being widely adopted, several education groups and experts saw Ideb as a problematic indicator in many different aspects. One criticism was about the way performance goals were calculated. In order to set the goals for individual schools, municipalities and states, the indicator considered the performance of schools on Prova Brasil in the year of 2005. Therefore, as some critics noted, schools that performed exceptionally bad or exceptionally well on that year had unrealistic goals. In 2008, for example, a journalist reported the story of a school in the state of Bahia, in which the quality of education was considered “deplorable” despite the fact that its 2011 goal had already been reached.⁹² In other cases, schools that had performed very well before the definition of the Ideb targets had significant difficulties reaching their goals.⁹³ Another criticism was about the assumption that by the final year for which the performance targets were defined, schools had to reach unrealistically high scores, way above any performance ever attained by a school in Brazil. Perhaps most importantly, the indicator allegedly had a significant relation to pupils’ socio-economic status.⁹⁴

Among many of the problems diagnosed by intermediaries in relation to the indicator were problems with the disclosure system, namely with the publication of the data itself. The above-mentioned education initiative QEdu was created in this framework by Fundação Lemann in late 2012. Its stated aim was to support education policies and “give life to data in order to support better choices in education”. A founding motivation for the initiative was the understanding that education “data was being used to create a ranking, but not to provide guidelines to schools about what they could actually do [to tackle low performance]” (Faria, 2015). QEdu addressed the necessity to overcome teachers and school directors’ cognitive difficulties in dealing with the publicised results in order to develop more informed and comprehensive policies. It also highlighted the importance of acknowledging the impact of pupils’ socio-economic

⁹² Aranha, A. (2008) O que os números não mostram. *Revista Época*, 30 June.

⁹³ Schwartzman, S. (2013) Metas que não conversam com a realidade. Simon’s Blog, 19 July.

⁹⁴ See, for example, Almeida, Dalben and Freitas (2013)

background on school performances by providing comparisons among schools of similar socio-economic levels.

Besides launching a more user friendly website to explain and promote the use of Ideb data, QEdU used an indicator called “adequate level of learning” independent from Ideb. The indicator was created by the committee of experts of All for Education and used by a wide range of education experts, including the Education Secretariat of the State of São Paulo. QEdU also used data from Prova Brasil but arranged it in a different way to Ideb. The scale of ‘learning’ used by QEdU was based on the points pupils scored on Prova Brasil, divided in four categories: insufficient, basic, proficient and advanced. The last two categories were considered “adequate learning”. The creation and promotion of an alternative indicator to Ideb was carried out on the basis of disagreements with the statistical assumptions of Ideb, the fact that the pedagogic use of the exams’ data was limited, and concerns that the official index insufficiently acknowledged the impact of other indicators, especially socio-economic status.

The creation of a supplementing indicator to Ideb was a challenge to the federal government’s monopoly on defining the metrics by which the public perceived the schools. In other words, it could potentially reduce the government’s regulatory power. Whether or not the targets and beneficiaries would resort to non-official indicators also depended on the benefits the subnational units would incur from complying with the metrics promoted by the central government. For the large part, QEdU users were journalists, teachers and managers of municipal and state school systems. By the time of writing in 2016, QEdU had received an average of 1.5 million visits per year, still 30 times less than Ideb’s website.⁹⁵ When asked whether Fundação Lemann planned to facilitate the use of data by parents, Faria stated that it had been debated, but data needed to be well contextualised and disclosed in order not to mislead parents. One of the concerns of the organisation was that the performance of a school on the national exams overlooked many important variables that impacted children’s performance. Mobilising parents based on indicators, which could not convey a comprehensive idea of the conditions underlying the performance of schools, therefore ran the risk of fostering mobilisation on wrong or misleading grounds.

Other intermediaries created other, smaller, initiatives to allow individuals to supplement Prova Brasil with other school indicators or to advance its pedagogic use. ‘The School We Want’ (A Escola que Queremos), for example, is a website that allows users to add variables to schools’ performance and calculate personalised indicators of schools, matching what users think schools should have. Some of these extra variables

⁹⁵ Calculated based on annual visits from 2011 to 2015, as informed by INEP.

include infrastructure, existence of libraries, provision of quality food during school time, offer of didactic books, functioning of democratic councils, and the pedagogic team of the school, among others. The website and application were created during a 'hackathon' promoted by Inep and Fundação Lemann in 2013 with the aim of promoting the creation of initiatives that could engage and mobilise more people around the Prova Brasil data and the education census. The initiative's creators explained that its goal was to try to provide an alternative to the logic of ranking, often pursued by the media, and to deconstruct Ideb as the only education quality indicator in the country.⁹⁶

The combination of standardised indicators and the low level of understanding by the general population led to a range of news reports comparing and ranking school performances, highlighting the extremes every year when the indicators were published. This sensationalist media focus diverged public debate from one of the main goals voiced by government, i.e. that of engaging school communities to support improvements in schools, towards anecdotes of extreme failures or extreme successes. Against this trend, more recently a number of analytical articles started focusing on how certain education strategies were helping schools reach sustainable and higher scores in Prova Brasil and Ideb. In mid-2016, the Brazilian Journalists' Association for Education (Associação de Jornalistas de Educação) was created in order to publish valuable journalistic news about education and to provide training for journalists interested in covering the topic of education. According to journalist and researcher Rodrigo Ratier, 99% of Brazilian journalists who reported on education in the country were untrained to cover the topic.⁹⁷ Writing about how the media approached one of these 'success stories', journalist and education campaigner Antônio Gois argued:

A Google search to identify news from the time [that a city was very well analysed] will prove that there are many narratives to justify the success of the city: an attentive look to the students, a partnership with a private university, attention with teachers, use of structured didactic material, small number of students in class... We [journalists] produced theses for all tastes, to the left and to the right on the educational field.⁹⁸

José Francisco Soares, president of INEP from February 2014 to March 2016,

⁹⁶ Campagnucci, F. (2013) Projeto vencedor de maratona hacker no Inep propõe ampliar conceito de qualidade da educação. *Open Knowledge Brasil*, 24 April.

⁹⁷ Associação Brasileira de Imprensa (2016) *Jeduca* chega para qualificar cobertura de educação. *Associação Brasileira de Imprensa*, 23 June.

⁹⁸ Gois, A. (2016) Cuidado com os extremos no Ideb: lições de São Paulo e do Paraná. *Jeduca*, 7 August.

blamed the news media for its inability to produce good reporting on Ideb. He argued that the indicator was intended as a summary that helped monitor a large and heterogeneous system, but that it had “led immediately to creating hierarchies as a way of analysing the context of education. A large portion of the press is limited to producing this. This is not, however, a limitation of the indicator” (Soares and Xavier, 2013). Reynaldo Fernandes, one of the creators of INEP and its president between 2005 and 2009, also criticised the media coverage of educational indicators. “Most importantly”, he argued, “media coverage cannot produce oversimplified analysis of the results that, besides not helping about how to improve education, can contribute to increasing the rejection of large scale examinations by some education professionals”.⁹⁹ As an intermediary of Ideb’s transparency system, one could argue that the media often contributed with more noise than clarification about the performance of schools.

In mid-2014 the National Campaign Right to Education (Campanha Nacional Direito a Educação), a network of around 200 organisations working on education, published an open letter to the president of INEP requesting pupil performance results to be published alongside the socio-economic level of their families and the schools’ geographic areas, until other educational indicators that internalised these variables were developed by the Institute.¹⁰⁰ Contextualisation of Ideb had been the request of education organisations for some time, based on the view that the index did not internalise social indicators and media’s ranking were mostly considered unfair to such organisations.

In response to societal demands, mostly from education organisations, and in line with its renewed managerial body, INEP published the results of Prova Brasil along with a socio-economic indicator and an indicator for assessing the adequacy of teachers’ capacities. Whereas the provision of information about the socio-economic status of students had been a negotiated process with the education community, information on the adequate level of teachers seemed to have been adopted by INEP based on a series of federal norms that regulated the desired degree and trainings of teachers.¹⁰¹ The indicators were published exclusively on the internet and allowed for comparisons between schools within the same micro-region, same localisation (urban or rural) and similar socio-economic conditions.¹⁰²

⁹⁹ Fernandes, R. (2016) O risco que a imprensa corre ao procurar novidades no Ideb. *Jeduca*, 7 August.

¹⁰⁰ Campanha Nacional pelo Direito à Educação (2014) Carta Aberta ao INEP.

¹⁰¹ INEP (2014) Nota Técnica N. 020/2014. Indicador de adequação da formação do docente da educação básica. INEP.

¹⁰² INEP (2014) Nota Técnica - Perfil de “Escolas Similares”. INEP.

The limitations of the RTP, however, were not only a matter of the variables included in the indicators. As previously mentioned, Prova Brasil had also been criticised for failing as a tool to help improve the pedagogic capacities of schools and teachers, and instead becoming exclusively a regulatory mechanism. In 2015, INEP published a new internet-based platform named Pedagogic Returns (Devolutivas Pedagógicas). The government developed the platform in partnership with All for Education and the Brazilian Association of Education Assessments (Associação Brasileira de Avaliação Educacional), and with the support from the Lemann Foundation and other entities, in response to requests by schoolteachers and directors, and demands from education movements and associations, to simplify school performance data so that it could be used for pedagogic planning. Besides providing comparisons with a series of different categories of schools, the platform offered analyses of Prova Brasil's questions and the knowledge and skills required of students to correctly respond to them as well as statistical analysis of students' responses to the exam questions. The platform did not only serve purposes of pedagogic support, but also strengthened the RTP's regulatory power by facilitating teachers' understanding of the exam and what students needed to learn to attain better scores.

Pedagogic Returns aimed at overcoming the limitations of the publication of Prova Brasil as mainly a regulatory instrument eventually turned into a ranking by the media, by providing explanatory information about students' level of proficiency in the exams, further explaining to teachers the meaning of data and providing comments and statistical data for individual questions in a limited number of exams. This last one proved to be one of the most popular initiatives taken by Pedagogic Returns, since it was the first time that exam questions were used to present to teachers what was expected by students in each measured ability and what each kind of response indicated about students' proficiency level. For its launch, the coordinator of All for Education programme explained: "We believe that connecting teachers and school managers with Prova Brasil by means of pedagogically organised and contextualised questions broadens the focus of the external assessment from mere accountability to transforming teaching practice". As INEP made a move to strengthen the pedagogic impact of Ideb, three bills introduced in the Chamber of Deputies suggested a different trajectory for the index.

2.4. Contestation of Ideb's Transparency System

Three bills were introduced to the Chamber of Deputies in 2011 with the aim to oblige schools and municipalities to display their Ideb scores at the entrance of each school.¹⁰³ The bills were presented by three congressmen of different centre-right parties. The first two bills were introduced in June 2011, following the recommendation of Gustavo Ioschpe, a Brazilian education economist, published in *Veja*, a leading conservative weekly newspaper.¹⁰⁴ In the article, Ioschpe, following a rationale similar to the one on which Prova Brasil was first adopted, suggested that good public schools had good management, parental engagement, a culture of success (as opposed to acceptance of failure), good teachers and monitoring and evaluation. All of these, according to the economist, could be boosted if parents and the education community were given a greater voice. In another article, Ioschpe stated:

I am convinced that as long as the parents of our pupils are wrongly satisfied with the quality of education and transfer to their children the pressure that should be placed on teachers, school managers and politicians, we will not have significant reforms in our schools. [...] I have real difficulties understanding how someone could criticise a measure such as this one, given that it is simply a transparency instrument. [...] Recent research by Victor Civita Foundation showed that 47% of pedagogic coordinators of Brazilian schools do not know Ideb. [...] If this is the situation for professionals, imagine for the parents of pupils in poor schools.¹⁰⁵

The measure was adopted in the municipality of Rio de Janeiro within less than two months of its suggestion through an executive decree. It was part of an attempt by the Mayor of Rio to transfer the experience of a particularly successful school (Rio das Pedras) to other public schools in the municipality. After failing to achieve its Ideb goal in 2009, the director of Rio das Pedras, located in a Rio slum, had decided to paste these goals on every wall around and inside the school as part of an intensive reform drive.¹⁰⁶ The director, however, had also resorted to other measures, such as changes in the curricula and training of teachers. The director supported extended transparency of Ideb in Rio, based on the argument that performance was not necessarily linked to socio-economic conditions; supporting this argument was the fact that some of the highest

¹⁰³ Bills 1530/11, 1536/2011 and 1600/2011.

¹⁰⁴ *Veja*. (2011) Para pobre analfabeto... Tae kwon do! *Veja*, 5 June.

¹⁰⁵ Ioschpe, G. (2011) A favor do Ideb na escola: "Pela transparência e o aprendizado" *Ultimo Segundo*, 1 August

¹⁰⁶ Balmant, O. (2011) Redes colocam notas e metas na porta das escolas. *O Estado de São Paulo*, 31 July.

performing schools in Rio were found in the more disadvantaged areas.

Soon after the decree of the Rio municipality came into force, it was challenged in court by the National Movement of Human Rights. Advocates and scholars of human, children and adolescent rights argued that exposing Ideb scores to everyone, including those not engaged in the education community, threatened to demoralise students in low performing schools and offended their constitutional right of human dignity. The opinion of pupils from public schools also varied in relation to the initiative. Whereas those that studied in public schools with high Ideb value supported the measure, those that studied in low value Ideb schools believed that they would be stigmatised as “a pupil from that horrible school”, although some pupils in the latter category also accepted the initiative as a measure to potentially improve schools’ performances.¹⁰⁷ Several education experts expressed reluctance to label schools exclusively based on Ideb, given that parents would not be in a position to solve all problems that affected the schools’ performance. The Ministry of Education noted that the debate was necessary, but given that Prova Brasil was voluntary, extended transparency risked reducing the number of schools willing to adopt the test.

After the municipality of Rio de Janeiro, the states of Goiás and Minas Gerais also adopted the measure, as part of wider educational and administrative reforms.¹⁰⁸ In Goiás, for example, the measure was implemented in the scope of a significantly broader reform to reclaim managerial power in relation to schools and creating prizes for schools that fulfilled their goals, as well as adding a range of measures related to pedagogic instructions. According to Erick Jacques, former Director at the Secretariat for Education of Goiás, many of the criticisms about the display of Ideb’s scores and goals on the entrance of schools came not from school staffs or the larger community but “... from education experts, whom I guess were reluctant about the stigmatisation of schools”.¹⁰⁹ Jacques reported that parents had become increasingly interested in Ideb and that parents whose children’s school had not yet put up the Ideb scores had been demanding their disclosure. That being said, the direct regulatory effect of expanded transparency of Ideb in Goiás was believed to be limited, mainly because the Prova Brasil results were published after that of state exams, which were the main basis for the design of education measures by the Secretariat of Education. Although in 2014, Goiás improved its education performance, the practice of displaying Ideb scores at the

¹⁰⁷ Gomide, R. (2011) Alunos do Rio aprovam nota do Ideb na escola, desde que seja boa. *IG*, 1 August.

¹⁰⁸ The two states had the third (Minas Gerais) and the ninth (Goiás) highest GDPs in the country.

¹⁰⁹ Jacques, E. (2015) *Interview on 28 January 2016*. [My translation; recording in my possession.]

entrance of schools was discontinued with the end of one government and the start of a new one, in spite of the fact that the governing party had not changed and that reforms were being made to include social organisations in schools' administration.¹¹⁰ According to Jacques the new education team did not support the measure.

In a debate in the Chamber of Deputies about the proposals to display Ideb's results in the entrance of each school, criticisms came from different political parties. Most of them referred to potential prejudices towards schools and pupils of schools with low performance, to the limitation of Ideb as an indicator of school performance, and to the fact that the index should be used primarily as a tool to support the work of teachers and school managers, in the same fashion as a statistical tool. Interestingly, although not expressed in these terms, there appears to have been considerable recognition that the disclosure of Prova Brasil and Ideb data did not constitute accountability measures. The bills also faced significant opposition from a wide range of education organisations, many of them representing employees of schools (for example the National Confederation of Workers in Education, the National Council of State Secretaries of Education, and the Union of Municipal Directors of Education), and others defending children's rights (for example, the Brazilian Association of Toy Producers).

Conclusion

As this Chapter has shown, the federal government adopted disclosure of school performance data following the international trend of using RTPs to improve the performance of subnational policy units. Nevertheless, in Brazil's education system, where there is no school choice, the link between transparency and accountability seemed to have played a considerable role in the design and justifications of INEP to adopt a transparency system for secondary schools' performance. In spite of this expressed intent, its success as an accountability tool that engages society in general is debatable. In this regard, it is important to shed light on the discussion about the relationship between transparency and accountability.

Although transparency and accountability are often assumed to be synonymous and used interchangeably, the literature shows that this is a misleading equivalence.¹¹¹ First, accountability does not in all cases imply that information needs to be made

¹¹⁰ According to Brazilian legislation, during election period, every government material that carries its logo should be taken out of circulation to prevent propaganda. During the elections of 2014, the signs were removed and not placed again.

¹¹¹ For more extensive debates about the relationship between transparency and accountability, see Lodge, 2004; Fox, 2007; Hood, 2010; and Meijer, 2014.

available to the general public. In many instances, agencies of the executive branch give account to parliament and justify specific courses of action without having to disclose every detail pertaining to their decision (Hood, 2010). Second, accountability is a mechanism that starts with the provision of information, but is followed by debates, and ends in potential sanctions (Bovens, 2007; Bovens, Goodin, and Schillemans, 2014). Transparency, on the other hand, does not intrinsically imply the last two steps. Although it is often desired that transparency will lead to wider citizen participation - and there are cases of higher level of civic participation and engagement being reached, notably in cases where choice option is not available (e.g. Reinikka and Svensson, 2004; Dowding and John, 2011) - this is not guaranteed by disclosure policies.

Another widespread assumption is that accountability and transparency are different concepts but that they complement and strengthen one another. Authors who back this assumption argue that accountability “meets obligations of transparency and helps to ensure that public administrators pursue publicly valued goals and satisfy legitimate performance expectations” (Considine, 2002).¹¹² According to this view, transparency promotes accountability through active citizens and engaged interest groups, who support public understanding of the information disclosed and promote debates of public interest. Practical evidence, however, points that transparency does not always promote answerability (Meijer, 2014, pp. 514-521).

Whereas the accountability outcomes of the performance logic of transparency are uncertain, the literature offers more conclusive suggestions about the attempt to increase central governments’ power by promoting transparency of performance indicators, as decentralised units tend to try to live up to high – or higher – performance expectations. The underlying assumption is that comparative benchmarks make it easier for the public to understand performance indicators and pressure public managers, who consider reputational effects, career risks, etc., to increase the performance of the units they manage (Pidd, 2005; Van de Walle and Roberts, 2008; James and Moseley, 2014). This research identified a number of studies that show that schools by and large try to increase their performance by taking into consideration the structure of Prova Brasil.

In spite of the regulatory role of Prova Brasil, the trajectory of Ideb has been contested by intermediaries. It has triggered numerous objections and criticisms from a wide range of actors, especially from education organisations; questions of fairness and accuracy have triggered intense debates and demands from organised civil society;

¹¹² Also see Romzek and Dubnick, 1987; Agranoff and McGuire, 2001; Hujala, Andersson, and Wikström, 2014.

and, recently, INEP started publishing contextual information. A powerful notion around which targets and/or intermediaries have been able to mobilise effectively and influence the trajectory of an RTP in the performance logic is the idea of 'fairness'. This has also been the case with Ideb. Much of the contention to the RTP came from intermediaries, such as organised civil society groups and experts, who criticised the RTP on the basis of its methodology and particularly for not taking into account the underlying socio-economic factors. The civil society challenged the methodology of the performance indicator and demanded change via two main ways: by coordinating with government to modify aspects of the indicator, and by suggesting visualisation of the official exam results alongside other variables that they deemed important. Whereas the former way implied a change in the outcome for all targets, the latter route has implied a more isolated impact, although this could potentially escalate depending on who supports the alternative indicator.

The story shows, however, that the desire to modify and contextualise the indicator is not universally shared among all intermediaries and targets. As highlighted by the three bills introduced in the Congress and the example of the Rio municipality, there is also the view, shared by a group of experts, politicians, civil society groups and school administrators, that the transparency system of Ideb should be implemented more widely (i.e. displaying the results on school entrances) by the educational community. The fact that this perspective has prevailed in a few administrations (whenever the state or local administration decided to expand the transparency of Ideb), emphasises the possibility that the RTP may – and does – follow different trajectories when adopted in decentralised units with distinct views about the regulatory role of Ideb. At federal level, the issue is still being debated within the legislative and civil society, suggesting that aspects of the RTP will continue to be contested in the foreseeable future.

CHAPTER 5:

THE ENGLISH SECONDARY SCHOOL PERFORMANCE TABLES

I believe people do want choice, in public services as in other services. But anyway, choice isn't an end in itself. It is one important mechanism to ensure that citizens can indeed secure good schools and health services in their communities. ... Choice puts the levers in the hands of parents and patients so that they as citizens and consumers can be a driving force for improvement in their public services. (Former Prime Minister Tony Blair, 2004)¹¹³

The rise of the annual performance tables has been synonymous with greater central direction over schools. It has proved as powerful a weapon of control as the medieval thumbscrew. Almost since the league tables began, governments have found ways of moving the goalposts. The terrified victims have complained and moaned and have rushed to comply. The trouble is, like confessions produced by torture, the results have not always been the whole truth. (Education Correspondent for the BBC Mike Baker, 2007)¹¹⁴

The case study analysed in this chapter explores the creation and evolution of regulatory transparency for secondary education in England, notably for Key Stages 3 and 4, namely the 'Secondary Education Performance Tables'. The sets of governmental information most familiar to English citizens are probably the performance indicators of public service units, such as schools, universities, and hospitals. The transparency of performance of public service units, a widely known example of regulatory transparency policy in the performance logic, and now a mainstream policy around the world, dates back to the last decade of the twentieth century. The United Kingdom was one of its pioneers, having inaugurated the RTP for secondary schools in 1992, during the Conservative government of John Major. The publication of schools' standards was at the centre of the education reforms started in 1988 and aligned with the government's overall agenda of strengthening the market ideology of public services (Le Grand, 1991).

I have two aims in this chapter. First, through the narrative of this case study, I

¹¹³ Blair, T. (2004) Blair on public services. *BBC*, June 23.

¹¹⁴ Baker, M. (2007) League tables: only half the story. *BBC*, 13 January.

intend to show that there is a clear regulatory purpose and effect in designing and disclosing performance indicators, which put pressure on schools, the immediate targets of the performance tables as an RTP, to adopt the priorities and meet the standards set by the government. The regulatory effect of disclosing school performance tables is highlighted by the recurrent testimonies and boycott attempts of teachers protesting the exams' effect of covering too many subjects, weighing the value of English and maths on the performance tables, or narrowing learning by forcing teachers, targets of the RTP together with schools, to focus on the subjects covered in the national exams.

The second goal of the chapter is to narrate the trajectory of the RTP and demonstrate the remarkable sustainability of the RTP in question amidst a lifespan of constant and significant changes, most of which carried out *for*, rather than *with*, their designated beneficiaries and targets. As this chapter suggests, what supports the sustainability of the performance tables across time are the core arguments present in Layer 1, related to choice and accountability, i.e. that parents have a right to choose their children's schools and that an accountability system, which the disclosure of exam results is claimed to provide, is desirable. These key notions inform the behaviour of actors and how they interact to push for the evolution of transparency or for its retrenchment. The case study shows how the intensity of the drivers for greater transparency and of targets for reforms to the transparency system have made the trajectory of the RTP contested. But it also shows how stable and embedded in the educational systems the schools' secondary tables seem to have become.

1. Socio-Political and Institutional Context

A continuous stream of criticisms of the status of education in England in the mid-1980s slowly led to public acceptance that the education system needed improvements and to political championing of reforms. Before the introduction of the 1988 educational reform, Margaret Thatcher claimed that it was necessary to place schools' performance in the centre of the educational reforms as a response to the failure of previous government policies. In defending a new model of educational reforms, the Prime Minister reasoned that:

The starting point for the education reforms outlined in our general election manifesto was a deep dissatisfaction (which I fully shared) with Britain's standard of education. There had been improvement in the pupil – teacher ratio and real increases in spending per child. But increases in public spending had not by and large led to higher standards. (Whetton, 2009)

With the entry into force of the 1988 Education Reform Act (henceforth the 1988 Act), the framework and governance of secondary schools underwent a sequence of changes, shifting responsibilities among education authorities, concentrating managerial responsibilities in the central government and with parents, and away from local authorities. Besides the creation of new types of schools, key novelties introduced by the 1988 Act were the concepts of national curriculum, key stages and national assessments. The English National Curriculum set out the minimum body of knowledge that every public school needed to adopt.¹¹⁵ Besides establishing the core and foundation subjects, the national curriculum was arranged around key stages, for each of which it was necessary to set a programme of study, attainment targets, and assessment arrangements.¹¹⁶ Key stages and the national assessments formed the framework for students' evaluations, and for teachers' regulatory system. At or near the end of each key stage, arrangements for assessing pupils were expected to be put in place and their results to be published.¹¹⁷

Complementing the idea of simultaneous marketisation and regulation of education (this combination came to be known as 'quasi-market'), the government promoted the disclosure of student attainments in structured format in order to fulfil the purpose of providing parents with information to guide school choice for their children. Publication of structured data about secondary education in England was intrinsically related to the availability of school choice, creation of the Standard Assessment Tests (SATs) and had at its birth a competition and regulatory objective, i.e. providing parents with information to foster a free market where schools would be measured up against each other and against other schools nationally. The expectation and the prevailing assumption was that this would improve schools' performances.

Whereas Margaret Thatcher's understanding of the possibilities of educational reforms prior to 1988 was that the English system could either move further along the path of centralisation or along the path of decentralisation, the outcome of the 1988 Act

¹¹⁵ 1988 Education Reform Act, Part I, Chapter I, 2.

¹¹⁶ 'Key stage' was introduced by the 1988 Act to refer to four education cycles in a student's life from five to sixteen years of age. Key stage 1 comprised students from five to seven years old; key stage 2, students of eight to 11 years old; key stage 3, students of 12 to 14 years old; and key stage 4, students of 15 to 16 years old.

¹¹⁷ According to the 1988 Act the government was required to edit regulation requiring the publication of three sets of information: a. the curriculum for maintained schools, b. syllabus to be followed by the pupils, and c. the "the educational achievement of pupils at the school (including the results of any assessments of those pupils, whether under this Chapter or otherwise, for the purpose of ascertaining those achievements)".

was a mix of both solutions. A higher level of teacher and school regulation was combined with parental choice, both performed through the combination of the enactment of a national curriculum and the disclosure of school performances. This was the closest model to voucher schools politically viable in England. “Keith Joseph and I had always been attracted by the education voucher”, reasoned Thatcher, “The arguments against this were more political than practical. [...] Through the assisted places scheme and the rights of parental choice of school under our 1980 Parents’ Charter we were moving some way towards this objective without mentioning the word ‘voucher’” (Thatcher, 1995, p. 184).

Already since 1981, schools were obliged to publish details of the examination results they were subject to under the government’s School Information Regulations, and to publish this information in a common and consistent form ten years later (West and Pennel, 2000). In 1992, when the compilation and publication of school comparisons of the General Certificate of Secondary Education (GCSE) was inaugurated by the Department for Education and Employment (DfEE), then British Prime Minister John Major spoke of an alleged pressure from low performers against transparency, and emphasised parents’ right to know and to choose – the main pillars for performance transparency. “Four years ago,” Major said, “as Chief Secretary to the Treasury, I was the guardian of the public purse”:

You may be surprised that it was ever thought unsafe for parents and public to know this sort of thing. Well, I think I can tell you why. It was inconvenient to some of the providers. It might expose poor performance to the criticism it deserved. But poor performance should be exposed if we are to correct it. [...] We are giving parents a greatly increased voice in their children’s education – a voice they should never have lost. And at the same time we are also letting employers, local business people, and so on see, how effective their schools are.¹¹⁸

Voicing the need to accompany and monitor the work of education experts (e.g. teachers, teacher trainers, local education authority) was part of the government’s discourse to strengthen the reform. “The ‘natural’ conclusion to the sustained attack on the professionalism of teachers was the acceptance of the need for greater accountability” (Perryman et al., 2011). At least in part, this mutual suspicion between the central government (driver of the RTP) and schools (target of the RTP) has informed the contested trajectory of school performance tables.

¹¹⁸ Major, J. (1992) Mr. Major's Speech. The Economist Conference on the Streamlining of the Public Sector. *The Economist*, 27 January.

2. The Trajectory of the Secondary School Performance Tables

2.1. Creation and Institutionalisation of the Tables

The publication of the tables was promised on the Parent's Charter 1991, which "...signalled the start of an information revolution to extend parental choice and raise standards".¹¹⁹ Besides access to the performance tables for local schools, the Charter guaranteed to give parents access to four other documents to increase their role on their children's education: a report on their child's progress at least once a year, regular reports on their school from independent inspectors, a prospectus or brochure about individual schools, and an annual report from the school's governors.¹²⁰ Despite a range of existing data to compare schools against one another, the focus of the government, and then of the media, was the GCSE, given that the exam measured performance at the end of compulsory education. Of the GCSE indicators produced to measure school performance, the main focus was on the percentage of students who scored five or more high grades (A*, A, B and C), since these reflected the standards likely to be used by schools or colleges for students to study General Certificate of Education Advanced (GCE A) levels and then to apply to universities (West and Pannel, 2000, pp. 424). Defining the subject areas that were the focus of the exams formed the basis of school performance regulation.

The examinations were also sources of information for the Office for Standards in Education (Ofsted) in its inspection processes. These inspections could result in a series of consequences for schools, from being labelled satisfactory or as requiring improvement, which could put their existence into risk (West, 2010, pp. 25). Moreover, performing higher could also be associated with additional revenue funding, given that schools had a higher chance of becoming specialist schools.¹²¹

Two main statutory assessment methods were available for testing students, i.e. external tests and teacher assessments of pupils' attainment. In the latter, "teachers make an assessment of each pupil's level of attainment on the scale of levels in relation

¹¹⁹ Department for Education and Science (1991)

¹²⁰ The enactment of the Parent's Charter took place in the political and institutional framework of the Citizen's Charter, adopted with the aim of creating incentives to improve the delivery of public services, notably by promoting competition, privatisation and raising standards with measures such as performance related payment.

¹²¹ Specialist schools are public secondary schools designated in 1993 with the aim of being centers of excellence in specific areas, and benefitted from public funding for that specific purpose. They were supported by the Labour government and by the end of 2010 they constituted over 95% of secondary schools in England.

to the attainment targets of the core subjects” (Clarke and Gipps, 2000). Teachers were allowed to design the assessments, but certain practices, such as observation, regular informal assessment and examples of work, were particularly encouraged. A group or panel of teachers, experts and/or moderators moderated teacher assessments in order to make sure that they met a common standard. Though teacher assessments were also publicly available, the league tables published by the media were based on test results alone, proving their strength as a regulatory mechanism.

The data was published per school and allowing comparison with the Local Education Authority (LEA) and national averages, both featuring at the top of the indicator search. Comparison is a common practice used by governments when they aim at increasing competition of markets or reducing the information asymmetry of consumers to support them in better purchases. It has been persuasively argued that when opinions and abilities cannot be determined by reference to the physical world, individuals search for comparisons to inform their decision making process (Festinger, 1954). This is an important aspect of the transaction logic that will be discussed in the next two chapters, however it is also applicable and relevant in the performance logic where choice is available.

The publication of raw examination results caused immediate criticism. Jack Straw, Shadow Education Secretary in 1991, categorised the school tables as ‘crude’ and demanded the publication of a value added measure that considered characteristics of intake students (Reed and Hallgarten, 2003). In 1992, the left-oriented daily *The Guardian* tried to avoid publishing the GCSE and league tables and called for the publication of value added analysis (Maw, 1999). A number of other newspapers warned about the limitations of the tables as instruments of parental choice, but published them anyway given their commercial value.¹²² Various education practitioners and experts also voiced concern about the impact of students’ intake measures, arguing that the performance measures did not reflect the work done by schools. Scholars suggested that schools’ intakes influenced school performances significantly, and that they were responsible for up to 70-75% of school variation in 16-year-old performers (Thomas, 1998).

Opposition to the assessments and publication of performance tables, i.e. the RTP, also came from some of the targets of disclosure. A boycott of the national assessments was spearheaded by the National Union of Teachers (NUT) and the National Association of Schoolmasters Union of Women Teachers (NASUWT), and involved all teacher unions,

¹²² The *Times Educational Supplement*, for example, introduced the school performance data as “Tables to be served with a pinch of salt”.

multiple governing bodies and mass parental support. The 1993 boycotts started as an opposition specifically to the English tests for Key Stage 3 pupils (14 year olds, Year 9) and teachers' overload, but the "wider opposition to the tests embraced a rejection of the whole Conservative market model of education with its reliance on crude school by school comparisons in the form of league tables" (Coles, 1994).

At that juncture, the position assumed by the beneficiaries of the tables was a decisive factor. The government tried to gain support from parents by placing adverts on national newspapers, while at the same time urging teachers and governors to enforce the law. When these strategies failed, the government promised to slim down the tests in the future.¹²³ But the boycott went on. For 1993, no performance tables were published. As a consequence of the boycotts, teachers were able to influence the government's regulatory proposals, which, in response, simplified the national curriculum and suspended school performance tables at ages seven to 14. This was just the first change the tables would go through among a series of future others.

In 1994, an updated version of the Parent's Charter featured for the first time school results for the GCE A (Advanced) and AS (Advanced Supplementary), besides the core performance information. But the real novelty was the comparative publication of absence record for pupils of compulsory school age, lesson time and the total number of pupils with statements of special educational needs (SEN). These were essentially not the type of data that could help parents assess the value added by each school in students' performance, such as socioeconomic information or the performance of intake students (West and Pannel, 2000, pp. 432). First of all, they did not feature on newspapers' league tables. Moreover, their impact on school performances was dubious. Attendance was very much related to students' socio-economic background, which was itself related to students' performance (O'Keeffe, 1994). With regards to special educational needs, although the government claimed that schools with more than two per cent of pupils with special needs could impact examination results, research suggested that it was unrelated to GCSE passes and, consequently, to school performances (West et al., 1999).

In reality, the newly disclosed sets of information supported another goal of the government's complimentary educational agenda. Whereas transparency was claimed by the government to be a tool to inform choice, it also supported government in its regulation of schools. This was clearly stated by the Secretary of State for Education and Employment on his foreword to the 1994 National Pupil Absence Tables:

¹²³ Baker, M. (2009) School tests boycott: Déjà vu? *BBC*. 27 march.

The Government believes that all schools - maintained and independent, primary and secondary - should pay particular attention to maintaining high levels of attendance. We recognise that many factors contribute to irregular attendance and that some of these - notably family problems - lie outside the direct control of schools. Nevertheless, every unjustified absence is a serious matter because of the loss of precious learning time and needs to be properly investigated.¹²⁴

Just before the end of the Conservative government, the Secretary of State for Education and Employment announced that a research conducted by the DfEE had concluded that two thirds of parents, whose children were being enrolled in secondary schools for the first time, had consulted the tables. For the first time it also declared that the tables should be one of many sources of information, listing as additional sources the individual school prospectuses, governors' annual reports and inspection reports by the Office for Standards in Education (Ofsted), some of which, as already mentioned, reinforced the use of the exam results.

Ever since their inception, non-performance related information about schools in the tables has seen very little change. These were, namely, address and telephone, type of school (county school, voluntary aided school, independent, etc.), admissions policy, whether for girls only, boys only or co-ed, and the age range. Overall, it was the classes of information, which related to the performance, that were subject to changes.

2.2. Contextualisation of performance information

Elected in 1997, the Labour Party government (or, New Labour) expressed a strong commitment to make education one of its main priorities. Following in the footsteps of his two Conservative predecessors, Prime Minister Tony Blair supported the league tables. "This was the first signal from Blair", argues Barber, that "in reforming the public services, education included, he would place himself firmly on the side of the consumer rather than the producer" (Barber, 2007, p. 22). The New Labour, in other words, would maintain the British government's old commitment to quasi-market in education. In his White Paper, titled *Excellence in Schools*, presented to parliament two months after the Labour government took office, the Secretary for Education and Employment highlighted an underperformance by UK students, both compared to national expectations and international standards. The document also emphasised the significant inequality within the English educational system, in which excellence at the

¹²⁴ Shephard, G. (1994) Foreword of the Secretary of State for Education. *National Pupil Absence Tables 1994*.

top was not matched with high standards for the majority of English children.

Schools' education standards were thus once again at the centre of the educational policy, albeit with a new emphasis on more egalitarian standards of performance, an ideal arguably as strong as accountability in its normative weight (also rooted in Layer 1), and that would be reflected in the evolution of the RTP. To support higher levels of standards, New Labour defended and maintained the publication of the performance tables, and expanded the number and nature of the information disclosed.¹²⁵ Amongst an ambitious list of goals to be reached by 2002, the White Paper on Education asserted that "School performance tables will be more useful, showing the rate of progress pupils have made as well as their absolute levels of achievement" and "Better information will be provided for parents". During New Labour's first term in government, "standards matter more than structures" (Barber, 2007, p. 23) was the prevailing philosophy for the education area.

The public discourse of New Labour concerning the benefits of the tables just partially broadened that of the previous government. While the use of tables for school choice was supported and recommended, parents were also encouraged to engage directly with schools in order to support their progress and that of their own children. However, the performance tables were unlikely to serve as an instrument for debate about education in England, given the possibility of choice together with the comparative information published. Hirschman suggested that the presence of ready alternatives to a badly performing service makes it less, rather than more, likely that the weakness of the services will be fought rather than indulged. "The presence of a ready and satisfactory substitute for the services public enterprise offers merely deprives it of a precious feedback mechanism that operates at its best when the customers are securely locked in" (Hirschman, 1970, pp. 44). Not even when citizens are locked in with a provider, however, is voice guaranteed, as other variables influence voice (James and Moseley, 2014, pp. 504-505). This would especially be the case if teachers were feeling overloaded with tests to mark and classes to prepare.

In the case of New Labour and the performance tables, parents' channels for voice were not linked to the tables nor were parents ensured that their complaints and considerations about how their children's school worked would be used for schools to improve their outcomes. New Labour's practice prioritised choice, including developing guidance for choice advisers.¹²⁶ While up to 1994 New Labour attacked the national

¹²⁵ The tables were maintained in spite of alleged demoralisation of schools working in disadvantaged areas appearing at the bottom of rankings time and again.

¹²⁶ See for ex., *The Schools White Paper: Higher Standards, Better Schools for All*, Volume I.

curriculum as a tool to command what ought to be taught, the slimming down of the curriculum after the 1993 boycotts had served as a political agreement about the kind of knowledge every student was entitled to have (Tomlinson, 2001, pp. 82-83). New Labour increased the regulation of schools and teachers, linking their promotion to performance indicators, which were related to student performances (Perryman et al., 2011).

The government's first attempt to contextualise the comparative raw performance information came with the publication of the yearly progress of school performances in 1997. Instead of simply providing information on school performances for that one year, the government published these along with the performance of the previous three years, both in tables and, for the first time, in charts. The idea was to highlight schools' individual progress instead of just raw comparative performance with other schools, which the government argued was dependent on a number of factors not yet introduced into the tables, notably the students' socio-economic status. Moreover, the intention was to rate schools on the progress made by students between their Key Stage 3 National Curriculum Tests at age 14 and their GCSE examinations two years later. Along with the progress of each school's performance, information on the progress of performance of Local Education Authority and for England (in charts) were also presented.¹²⁷ The initial design of the proposed indicator had to be amended to take on board criticism from head teachers that it was unfair to ignore the progress schools had made on students below age 14.

Though motivated by considerations of fairness, the practical impact and utility of the new indicator on parents' decision making process remained open to debate. For one, the media hardly picked up on the new indicator, continuing to report mainly the raw comparative data across schools, gradually making society grow accustomed to these numbers, whether intentionally or not. Secondly, numerous studies have concluded that, while benchmarking the performance of an organisation against its own past does add valuable perspective on the progress achieved, comparative benchmarking against the performance of other organisations ultimately creates greater impact on and utility for decision-making (Ammons and Edwards, 2008; Charbonneau and Van Ryzin, 2015). Therefore, as the government added contextual information without stopping the publication raw performance information, it could be expected that usage of raw information would still be stronger than that of the newly disclosed data.

¹²⁷ In 1997, the results of 'GCSE short courses' were introduced to the tables for the first time. These had the same academic standard as a full GCSE, but half its content.

During the same period, the government introduced another measure to compare school performances: the average GCSE performance of schools. Some scholars of education considered the new indicator more preferable to the existing measure that highlighted the percentage of students that scored high grades, because the former considered achievements of all students and could theoretically keep teachers from selectively focusing on students at the threshold of achieving high grades, at the expense of those above or below. Once again, however, the media largely ignored the new indicator, not giving it the platform to become widely advertised and popularised, while at the same time reinforcing the initial trajectory of the RTP. In fact, a report of the National Audit Office found that much of the national attention on school performances, including judgements of the Ofsted, were based on students' raw exams results and pointed to the need for contextualisation to accurately reflect the performance of schools (National Audit Office, 2003).

While there is no comprehensive study available from 1998 to illustrate how each of the prominent British newspapers covered the performance of secondary schools, Maw (1999, p. 6) showed that the same type of information disclosure for primary schools had led to renewed emphasis on reporting based on raw results of exams. The *Daily Mail* presented the raw scores for English, mathematics and science without contextualisation. The *Times School Report* presented the schools' performance based on exams, including a list of best and worst performing schools. It also presented complementary information on improvement in English in each LEA, showing that some of the low performing LEA had made significant progress. The *Independent* published the performance information by local authorities and facilitated ranking of schools, whereas *The Guardian* and *The Times Educational Supplement* opted for an alphabetical order following articles expressing the newspapers' reservations regarding the methodological soundness of the measures and potentially negative effects of the tables.

2.3. Internalisation of Concerns About Fairness

In his first term in office, Prime Minister Tony Blair embraced school performance tables with a similar vigour with which his Conservative predecessors had created them. Blair's second term proved no different. The type of changes promoted by the government to ensure their sustainability were reflections of the changes made in the national curriculum, evolutions towards value added and fairer measurement for schools' performances, adjustments in response to unintended consequences, and editions and exceptions to support other aspects of the government's educational agenda. An example of the last point is an adjustment made to the tables in year 2000 linked to the government's agenda of "social inclusion". In order not to discourage

applications from overseas pupils with little or no English, pupils that had been admitted in schools in the previous two years from a country where English was not the first language could be excluded from the tables, even though these students were still part of the national assessment process. The initiative stemmed from the concern that these students could drag schools down on the performance tables, and therefore reduce the enrolment rate of foreigners.¹²⁸

For the first time in 2000 value added information was published for a small sample of schools being piloted, in an attempt to accommodate criticisms to the raw measure. The pilot measured and presented the test results of KS3 (English, Math and Science) exams and the value added from Key Stage 2 (KS2) to Key Stage 3 (KS3) and from KS3 to GCSE/GNVQ of all schools that volunteered to participate. The measurement had been proposed by the School Curriculum and Assessment Authority (SCAA), which had “found that the best predictor of future performance was a pupil's previous attainment regardless of other factors” and, thus, uniquely used students’ performance data to calculate the performance indicators that parents should look into for deciding where to enrol their children.¹²⁹ Value added in the pilot exercise was calculated as the difference between pupils’ GCSE/GNVQ (General National Vocational Qualification) total point score and the median GCSE/GNVQ point score for all pupils with a similar average Key Stage 3 score.

In the White Paper *Schools Achieving Success*, published in 2001, the government defined floor targets for secondary education in England. According to these, all schools were expected to have at least 20% of their students achieving five or more A*—C grade GCSEs by 2004 and at least 25% by 2006. These marks were references for the government to identify and take measures to support schools facing challenging circumstances to achieve such targets. Similar to the previous Conservative government, these targets were not reflected on the performance tables, in which the references were made to the progress measures of the schools (showing the percentage of 15 year olds who achieved five or more A*-C grades and no A*-G grade passes in the targeted year and the three previous ones), compared to others in the LEA and England. Though New Labour edited the measures used in school performance tables and the information published in the tables in order to avoid unintended consequences that could disrupt its policies on the educational sector, it preserved the use of the tables to inform choice and to regulate teaching. As suggested by Perryman et al. (2011, p. 182), since 2000

¹²⁸ Another example is the introduction of a science indicator in the tables in 2007, presenting the percentage of students in each school at the end of KS4, in support of the government’s agenda in innovation and development.

¹²⁹ Note of the DfE for the 1998 School performance tables.

Teaching is framed and driven by the National Curriculum and a performance framework that is backed up by performance management, pay and target-setting. Evidence about performance is based on pupil outcomes, classroom observation and personal statements. Pupils become objects and targets and the headteacher and senior management team are publicly accountable. 'Each move makes the next thinkable, feasible and acceptable'.

Reflecting the market-oriented approach to education, teachers were eligible for performance-related pay, and they could be assessed based on their students' exam results; schools were eligible for Ofsted's light touch regulation, performance management for head teachers, and teachers' applications for Advanced Skills Teacher status (Mansell, 2011, p. 295).

Government might have been open to publishing more information to clarify the value added of schools, but not to scrap the tables. After Northern Ireland and Wales scrapped their own school performance tables in 2001, the National Association of Head Teachers (NAHT) issued a statement arguing that "It is time that the Government saw sense and got rid of league tables, which are flawed and which simply do not present a fair picture to parents or to the general public".¹³⁰ Likewise, the head of the NUT told *The Telegraph* that "with new pay and conditions and a 35-hour working week in Scotland and with performance tables removed in Northern Ireland and Wales, increasingly it will appear that teachers in England are being screwed down". Not bowing to pressure and pretty much closing the subject, a spokesperson for the Department for Education announced that the tables would be continued in England, adding that "Ministers here are fully committed to the continued publication of performance tables which provide valuable information for parents on performance, which is an essential part of our standards agenda".¹³¹ The moves against the tables in Northern Island and Wales were results of consultations that did not provide evidence of overall support for the tables, and immediately led English teachers' unions to call for abandonment of the tables in England. A decade on, Wales reintroduced a system of schools' performance disclosure, "to drive up performance in all schools" (Welsh Government, 2011).

Two years after the publication of New Labour's major innovation – the value added measure – to the performance tables, the government published a KS4 Contextual

¹³⁰ Lightfoot, L. (2001) Wales scraps 'unfair' school league tables. *The Telegraph*, 21 July.

¹³¹ Thornton, K. (2001) Northern Ireland scraps 'divisive' league tables. *TES Newspaper*, 12 January.

Value Added (CVA) Pilot. In this contextual version, the measure considered, besides prior attainment, gender, mobility and levels of deprivation, factors identified as influencing pupil performances outside the schools' own control. In theory this measure could be more relevant for parents to choose their children's schools (Allen and Burgess, 2011). These were in large part in response to criticisms of the value added measure.¹³²

Similar to the value-added measure, however, a number of studies showed serious problems with CVA and its use as a tool of choice to predict future performance and to compare individual schools. Moreover, at least one research showed that although comparing schools with others of similar contextual performance was fairer to schools, the non-contextual comparison still seemed to be of more interest to parents and citizens (Charbonneau and Van Ryzin, 2015, p. 300). Despite the government's statement that the "value added measure gives the best indication [...] of schools' overall effectiveness" the media continued publishing their school league tables based on schools' GCSE data, often highlighting the best and worst schools in England based on such indicator. If on the one hand the media put in check the new measures designed by the government to inform choice, on the other hand they helped the public to grow accustomed to the idea of an 'accountability system' based on students' performance. Moreover, the argument for continuation of publication of raw performance data also came from inside the government, including from its Delivery Unit:

This is why I never accepted the idea put forward by many in education that, once we have a measure of value added or progress, this should replace the raw data. I have always advocated the publication of both indicators. The value added figures show what contribution individual schools are making, which is important; the raw figures reveal where the biggest challenges are in achieving universal high standards and focus the system on those challenges, which is even more important. By laying bare the problems, league tables drive action. (Barber, 2007, p. 96)

New Labour had a clear aim of advancing some of the core aspects of the previous government's quasi-market model in the educational sector. The maintenance and strengthening of the disclosure of performance tables for the purpose of choice and performance regulation was a significant part of it. Research conducted by Perryman et al. (2011) in four English secondary schools conveyed the views of English and

¹³² Goldstein (2003), for example, suggested three problems with the value added measure. First, the input score used for the calculation of the indicator required further adjustment. Second, for small school cohorts the confidence intervals needed to be emphasised. Last, the first value-added measure took no account of pupils' mobility, which affected their performance and that of schools.

mathematics teachers after these two subjects became part of the GCSE statistics for five 'good' passes at the GCSE. The authors reported statements that the schools' time management and course planning was determined on the basis of the indicators published by the Department for Education and Skills. "I think government knows what it wants," one teacher said, "it says English and maths because that's fundamental to learning so we, as a school, we're sort of being pushed in that direction."¹³³

By 2010, when New Labour left government, schools' performance had become an important information in parents' exercise of their assumed right to know, meaning that besides the offer of performance information there was also demand for it. According to the 2010 British Social Attitudes research, 72% of British parents supported the basic right to choose their children's school, 61% of parents with children aged 16 or under believed children should be enrolled in "the nearest state school", and 41% of parents felt it was acceptable to avoid enrolment in the nearest state school where this school's exam performance was weaker than in a school elsewhere. Though the right to choose did not automatically legitimise the existence of performance tables, it did reinforce one of the tables' main *raisons d'être*.

2.4. Open data and Ofsted's Effectiveness Ratings

Assuming office in 2010, the Conservative–Liberal Democrat Coalition government placed the publication of school performance tables as a pillar of the education system, emphasising its potential to make teaching more responsive to pupils' progress. Even though already by this time a long list of adjustments, changes and mismatches had marked the life of the performance tables, and studies provided evidence of their unintended effects, the link between disclosure and schools performance remained tight (Burgess et al., 2009; Allen, Burgess, and McKenna, 2014).

Having advocated overhauling the performance tables in the run up to the election, the 2010 Education White Paper dedicated a full section to the debate (Department for Education, 2010). The proposals included making more data public, publishing information on expenditures, reforming tables to set high expectations for pupil performances, establishing a new 'floor standard' for primary and secondary schools, and making it easier for schools to learn from one another through disclosure of data of

¹³³ Some of the other declarations were; "You know, Maths, English and science, there's a huge pressure on them because, obviously, being core subjects, you know, if they don't get their- the seventy percent A to C then it has a big impact on the school's results overall."; "Naturally English and maths have to; I think they feel that they need to be a bit- or they are more accountable for the results and so on, so they do do more because that's, obviously, what the government measure the results on." (Perryman et al., 2011).

schools in similar conditions.

The performance tables published for 2011 followed the Coalition government's agenda of Open Government, supporting the publication of a series of the Department of Education's existing sources of data to the public. Alongside publishing larger sets of information on education, the same performance data published by the New Labour government was made available, with some modifications. From 2011 onwards, the government introduced new performance indicators to the tables, such as Ofsted's overall effectiveness ratings for each school, and encouraged parents to refer to the tables when making their decisions.¹³⁴ A research commissioned by the National Foundation for Educational Research had identified that Ofsted information had become more relevant for parents than the performance tables themselves. The Ofsted reports were based on expert evaluations of schools, whereas the traditional performance tables were based on schools' attainment information, which by 2011 had become a continuously amended indicator.

The use of Ofsted reports to inform parents' choice also seemed to outweigh the use of school performance tables. In a research conducted for the NASUWT, when parents were asked the five most important qualities they looked for in a school, the school's standing in the performance tables was mentioned in only 21% of the answers.¹³⁵ Featuring more prominently were the existence of supportive staff (54%), a good inspection report (39%), a track record of dealing with bad behaviour and bullying (38%), and good buildings and facilities (36%). Similarly, in a research conducted by NfER (2015), the most important factors for parents when choosing a school were, in the order of importance, (a) "school that most suits my child"; (b) location; (c) discipline / behaviour that promotes effective learning; (d) Ofsted inspection rating; (e) well qualified teachers; (f) examination results; (g) inclusive ethos where all pupils are valued; (h) effectiveness of schools' senior leader team; (i) reputation for taking parents' view into account; (j) links with the local community; (l) freedom to make decision about taught curriculum.

Ofsted had been publishing its inspection results on its own page since 2000, with the frequency of inspections varying over time.¹³⁶ Between 2005 and 2009, Ofsted

¹³⁴ In 2011, schools' effectiveness was categorised in four levels in Ofsted reports, i.e. grade 1 (outstanding), grade 2 (good), grade 3 (satisfactory / requires improvement), grade 4 (inadequate). In 2012, given changes in Ofsted's regulation, 'outstanding' level was only given to schools with 'outstanding' teaching.

¹³⁵ Burns, J. (2015) 'Few parents check league tables when choosing schools'. *BBC*, 9 January.

¹³⁶ Ofsted (2015) Freedom of Information Request 340668 [Document in possession of the author]

inspected all schools at least once. Subsequently, a risk assessment process was introduced and inspections in schools previously judged good or outstanding were extended. Schools' performance informed the inspections; the national curriculum and the design of the performance tables informed schools' performance. Until 2012, schools were categorised based on the results of the inspections as outstanding, good, satisfactory or inadequate.¹³⁷ This information was widely shared, including via housing search websites, such as Watchsted and Zoopla, and distributed by estate agents when showing houses and apartments to clients (Ouston, Fidler, and Earley, 1997; Shaw, Newton and Aitkin, 2003; Rosenthal, 2004). Remarkably, unlike the school performance tables, the contents of Ofsted's inspection results had only changed twice since the time of John Major's Conservative government, although the conduct of inspections had changed more often.

Similar to the early days of New Labour, the Coalition government made a series of modifications to the performance tables. The nature of the changes was the same as those presented by the previous government. One of the changes aimed at discouraging "gaming behaviour", wherein secondary schools were "changing the curriculum to embrace equivalent qualifications which count heavily in performance tables" (Department for Education, 2010a). Other changes aimed at reviewing indicators to further the government's education goals. This was, for example, the reason for revisions to the publication of progress reports of disadvantaged pupils. According to the DfE White Paper 2010, schools should be "fully held to account for using the Pupil Premium to raise the achievement of eligible children". This meant that although the education gap of students with disadvantaged backgrounds was to be actively narrowed, students from economically disadvantaged backgrounds should not be expected to make less progress from the starting point compared to other pupils.¹³⁸ Thus, pupils' attainment information was not contextualised and displayed based on students' exam results. This was achieved through a query entitled 'Narrowing the Gap', providing comparisons of a range of attainment measures of disadvantaged and advantaged pupils, and in the Value Added (VA) data, which provided a measure of the evolution of pupils' progress from KS2 to KS4.¹³⁹

Notably, the Coalition government added a control perspective to the tables, by

¹³⁷ Ofsted's effectiveness judgement for schools went through changes in its scale in 2012, in which 'satisfactory' was replaced by 'requires improvement'.

¹³⁸ The government's pupil premium policy aimed at providing extra resources for pupils with disadvantaged backgrounds.

¹³⁹ For 2011, the KS4 average point score and value added measures were calculated using students' best eight exam results, highlighting bonuses for English and mathematics.

complementing it with information about government spending per pupil and school workforce. Spending per pupil included comparative (over time and for the school, local authority median, greater area local authority median, and national median) information about grant funding, self-generated income, total income, ICT learning resources, catering, and energy. School workforce information was detailed, including headcounts of all teachers and teaching assistants in a school, pupil–teacher ratio and mean gross salary of full-time teachers. Disclosure of financial information was suggested by the government’s 2010 White Paper to promote greater transparency of schools and to derive better value for money. Increase in the financial transparency of schools was prompted at a moment of review of school funding, in which the focus was on increased control and value for money. Government also started comparing and highlighting schools that could do more and better with similar student intakes, which in many cases also meant similar budgets.

A few specific changes in the tables were also done to add a new layer of regulation to questions of interest to the government and indirectly related to the performance measures. For example, the Secretary of State for Education decided to retract from publishing information on authorised and unauthorised absence, making space instead for information of overall absence per school and the percentage of pupils who were persistently absent, meaning those that were absent from, no longer 20%, but 15%+ of available sessions. The decision to retract followed two ideas put forward in the ‘Improving Attendance at School’ Report: first, that all absence is negative for children’s education and, second, that “... focus on unauthorised absence deflects attention away from the most important issue [of how bad overall absence is]”.¹⁴⁰

2.5. Gaming, Changes and Choice

In the summer of 2012, the publication of GCSE results on the tables caused immediate concerns over the GCSE English qualifications, given a national decline of 1,5% (from 65.4% in 2011 to 63.9% in 2012) and a significant variability in results at school levels in comparison to previous years and to expected results. These results triggered a national debate about the national exams and their disclosure.¹⁴¹ In its first review of the case, the Office of Qualifications and Examinations Regulation (Ofqual), the

¹⁴⁰ The report was commissioned to Charlie Taylor, the Government’s Expert Adviser on Behaviour, exclusively to review the issue of pupils’ attendance to school, that was considered important enough

¹⁴¹ Many schools received unexpected results for the GCSE English results, especially around the grade C/D borderline. Grade C or above in English is highly important for educational and employment purposes.

independent body responsible for regulating exams and qualifications, found that the issue laid with the January 2012 grade boundaries, based on a much smaller cohort of students, whose grades were allegedly marked optimistically by teachers, damaging the introduction of “comparable outcomes” as had been decided by Ofqual in 2010 for the 2012 English exams. In November 2012, more than 45,000 pupils re-sat the exams. The Association of School and College Leaders called this move a “smokescreen” to detract attention from allegations that Ofqual had put pressure on exam boards to make sure that the results from the GCSE English exams aligned with expectations.¹⁴² In response, the regulator claimed that the problem was with the marking and not with the introduction of its new methods to grade the exams.

A week before Ofqual published its final report on the case, an alliance of six professional bodies launched a legal challenge against the Assessment and Qualifications Alliance (AQA), Edexcel (a multinational education and examinations body) and Ofqual, calling for a regrading of the June results for GCSE English, and arguing that the decision to raise grade boundaries “by an unprecedented margin” between January and June 2012 had left 10 thousand pupils missing out a grade C as a result of changes. The judicial review was concluded in early 2013 in favour of the examining bodies and Ofqual. In 2 November, Ofqual restated that despite “unpalatable consequences”, examining and awarding had worked as expected and flaws in the design of the GCSE English qualifications were to blame for high variations in results. In the occasion, Ofqual “pointed to evidence of over-marking by teachers on controlled assessment units” and placed the fault for the incident in four features of the assessment process, namely, “the modular structure with a high degree of flexibility, the high proportion of controlled assessment and generous standard marking tolerances, all combined with significant pressures from the school accountability system” (Education Committee, 2013).¹⁴³

¹⁴² An exchange of letters between Ofqual and Edexcel, one of the examination boards, leaked to the media, showing that Ofqual had put pressure on the latter to produce results that were closer to expectations, as had been the case with other awarding bodies. See, for example: The Guardian (2012) Exam board 'pressed by Ofqual to alter GCSE grades'. *The Guardian*, 11 September.

¹⁴³ In Glenys Stacey’s participation in the oral evidence taken before the Education Committee of the House of Commons in March 2013, the Chief Executive of Ofqual, Glenys Stacey, also stated “I think one of the key lessons from GCSE English is that decisions about the design of the qualification and the detailed design of assessment need to be made in the real world, with a recognition of not simply what is regarded as best assessment practice but how that might play out in the real world of schools. This is why we are so keenly interested in the government’s current proposals for accountability. For example, if the threshold grade measure is still to remain central to accountability in mathematics and in English, we will have to take that into account in the design rules for the qualifications”.

Following the scandals, in September 2012 the government announced a plan to scrap the GCSEs in favour of a new English Baccalaureate (EBacc) for 16 year olds, in which only one examining board would grade each subject. In order to stop the “race to the bottom”, as put by the Secretary for Education in reference to exam boards being tempted to offer easier qualifications, the government intended to introduce an exam which would be more demanding than the GCSEs. The plan was vocally criticised by a diverse range of interest groups, among them exam boards, teachers’ unions, arts groups (given the lack of arts subjects in the core EBacc curriculum), Ofqual, a number of MPs and, most importantly, the Liberal Democrats, i.e. criticisms from within the coalition.

With the result of exam data and the performance tables being tied to one another since inception, then chief of Ofqual, Glenys Stacey, warned the Secretary of Education of the problems that would potentially arise when using data provided by the English Baccalaureate. Stacey suggested that the revised English GCSEs in the previous summer showed “how school acceptance of outcomes can be damaged when unexpected variations occur”. She also argued that the new exam would lead to more limited teaching and was not “ideally suited to forming the sole basis for accountability measurement”.¹⁴⁴ In practice, the EBacc would have made it very difficult for any school to demonstrate any improvement. The government’s plan was scrapped in early 2013. Fiona Millar, an English education campaigner and journalist, suggested that the government’s U-turn was somehow “related to the accountability process” and “the impact that the results would have had on the perceptions of the public for some schools”.¹⁴⁵

The retreat of the GCSEs did not mean the end of reforms for the examination system and for performance tables. On the contrary, both underwent new changes as the government abandoned the idea of the EBacc. For schools’ “accountability system” two new measures were adopted: the percentage of pupils in each school reaching an attainment threshold in the vital core subjects of English and mathematics, and an average point score showing how much progress every student had made between Key Stage 2 and Key Stage 4 across a range of subjects. The regulatory focus of the government was stable.

The Department for Education initiated a consultation process about the ‘Secondary School Accountability’ in 2013, mostly in anticipation of changes that would be made to reflect the modifications in the qualifications taught from 2015 and exams

¹⁴⁴ Walker, P. (2012) Michael Gove warned by exams watchdog to rethink EBacc. *The Guardian*. 5 December.

¹⁴⁵ Millar, F. (2015) *Interview on 15 December 2015*. [Recording in possession of author]

taken from 2017 onwards (Department for Education, 2013). Acknowledging that “the accountability system has too many perverse incentives and can distort teaching and narrow the curriculum”, the DfE consultation document proposed the publication of more data from the National Pupil Database, the creation of a new School Performance Data Portal with all the information about schools, and preservation of measures of progress (changed to show how pupils had performed compared to expectations at the end of Key Stage 4 considering their starting point), including the performance gap between advantaged and disadvantaged pupils, and expectations about schools’ performance, based on a new ‘average point score 8’ measure.¹⁴⁶

After the consultation process the DfE dropped the idea of publishing a threshold attainment measure showing the percentage of pupils achieving a C grade in English and mathematics, due to a significant number of concerns raised by respondents, including by Ofqual and other assessment experts. The criticism was that this would continue to incentivise “schools to target teaching resources towards a small number of pupils close to a ‘borderline’ in English and mathematics” (Department for Education, 2013a). They suggested adopting the renewed accountability system from 2016 onwards, as reforming the system earlier would distort results, with pupils having already made their curriculum choices leading to the 2015 exams.

The two years in between the decision and implementation of the tables’ proposed reforms were dedicated to the implementation of the previous government decisions to the tables. One of them, in 2013, was a measure of ‘similar schools’, comparing each school’s performance with 55 other schools where the government divided information for pupils with similar prior attainment, and showing the school’s relative performance. Comparison among schools of the same group is a visual way to contextualise schools, except that instead of adding a new variable to an indicator it excludes pairs that are in practice different. In practice, this initiative resembled the Contextual Value Added initiative adopted by New Labour.

In 2014, in a retrenchment to the New Labour expansion of vocational qualifications considered in the performance tables, the government supported the perspective voiced earlier by Professor Alison Wolf, a public policy expert, that England needed “a single list of good qualifications, which all have the same key structural

¹⁴⁶ To avoid excessive focus on English and mathematics, the average point score 8 measure would reflect one slot each for English and mathematics; and three slots reserved for other EBacc subjects: sciences, computer science, geography, history and languages. The remaining three slots could be taken up by further qualifications from the range of EBacc subjects, or any other high value arts, academic, or vocational qualifications (as set out on the Department’s list of vocational qualifications approved for inclusion in performance tables).

characteristics, but cover a wide range of content. They need to be stretching, standardised, and to fit easily into a typical pupil's programme and into a school's overall timetable".¹⁴⁷ Wolf's review of vocational education estimated that from 2004 to 2010 non-GCSE and GNVQ achieved at the end of KS4 in all schools had risen from around 15 to 809 thousand. Disregarding criticisms from groups that no longer had their activities counted for the performance tables, such as the Religious Education Council of England and Wales, the government reduced the number of qualifications reflected on the tables from 3,175 to 125, with vocational and academic qualifications displayed separately, thereby reclaiming regulatory powers over the vocational qualifications.

The Coalition government gave way to a Conservative government following the general election of 2015. Through the course of that year, new and unexpected changes made on the performance tables led to renewed criticisms that continuous changes in metrics displayed on the tables did not allow the education community to properly monitor the performance of schools. In a new push towards the Coalition government's agenda on education performance, the DfE phased in toughened GCSEs and disregarded old ones in the league tables. This was done against the wishes of many schools, which had run three-year GCSE programmes (starting in Year 9, with some exams being taken in Year 10 and others in Year 11) and expected that upcoming GCSEs to cover unreformed older courses. According to the National Union of Teachers, the government's move made "yesterday's success story [...] today's failure" without improving the quality of a single school.¹⁴⁸ Despite criticisms, continued uncertainties and constant changes, the tables maintained their place at the core of the education system, supporting the daily adoption of a standardised curriculum and the yearly choice of parents.

Conclusion

School performance tables were inaugurated in England with a lot of protest from their targets, and they remain controversial more than twenty years later. Since their adoption, the tables went through a significant number of changes, only the most relevant of them being included in this chapter. As described, these changes were of different natures. Variations included the internalisation of different perspectives of what indicators better reflected schools' performance (value added, contextual value

¹⁴⁷ Richardson, H. (2012) Most GCSE equivalents axed from school league tables. *BBC*, 31 January.

¹⁴⁸ Richardson, H.; Sellgren, K. (2015) School league tables branded a 'nonsense' amid changes. *BBC*, 29 January.

added, or raw indicators presented in a set of schools with similar context), the support to some of the government's initiatives (display of prizes' symbols given by the central government for high performing units, or increasing control over schools' budgets), and the decrease of gaming (by publishing information on the average performance of schools instead of the number of students, for example), to name a few. However, the publication of raw data about the exams have remained stable, with complementary data being disclosed.

These variations were not random, instead they reflect the high intensity of central government (driver) towards regulation through transparency, as well as that of schools, head teachers and teachers (targets) in contesting the specific design of the RTP. Because RTPs in the performance logic can increase the ability of central governments to regulate the outcome pursued by decentralised policy units, the driver has a high stake in ensuring the continued publication of the tables, often adjusted to reflect what is considered a priority at a given time. As seen in this chapter, the extent to which governments can move forward with proposals that strengthen or expand school performance tables and assessments depends on their net intensity in favour of change over the targets' ability or willingness to resist the proposed changes. For instance, in the earlier years of the publication of performance tables, when school teachers viewed regulatory proposals as extreme and unacceptable, they organised themselves to boycott exams or to voice their dissatisfaction strongly with government plans, often pushing the government to either drop or amend the proposed changes.

Despite their considerable resistance, however, the targets of disclosure have not been able to gather enough support to have the performance tables scrapped altogether. Over time, resistance to the tables turned into contestation of its contents. An important reason for this seems to be the consolidation over time of the idea that parents (i.e. the beneficiaries of disclosure) have a right to know in order to choose their children's schools. As suggested by Fiona Millar (2015), everyone accepted that some accountability system was necessary. The real matter was how such system was designed.

In the aftermath of the publication of the tables in 2015, for instance, Shadow Education Secretary Tristram Hunt, stated that parents "deserve to know exactly how their child's school is performing - but under this Tory-led government, all they've got is confusion surrounding school results year on year."¹⁴⁹ With parents using information from the RTP and with support to the principle that it furthers, the trajectory of this

¹⁴⁹ Richardson, H.; Sellgren, K. School league tables branded a 'nonsense' amid changes. *BBC*, 29 January.

policy is very likely to be continually contested, although it seems unlikely that it will retrench easily. The challenge for expansion or stagnation seems to be due to the difficulty to create an indicator that concomitantly measures with fairness the performance of schools (to guarantee support from schools), can inform parents about where it is best to enrol their children (to ensure use by beneficiaries), and can regulate schools based on performance (to ensure support from government).

Comparative Analysis: The Brazilian and the UK cases in the logic of performance

The performance logic of regulatory transparency refers to the publication of indicators that reflect the performance of decentralised public service units, according to specific metrics. As shown in Chapters 4 and 5, such metrics are initially developed by central governments (drivers of these RTPs) often with little or no input from the decentralised policy units (the targets) that they aim to regulate, as well as from citizens, experts and organised civil society (beneficiaries and intermediaries). Unlike in some cases in the logic of control, the targets in the performance logic have no or limited legislative ability to oppose disclosure, although they do have the ability to expand it. This imbalance of power associated with the type of information that is disclosed marks the defining feature that informs the trajectory of RTPs in the performance logic.

As shown in the cases covered in Chapter 4 and 5, central governments have adopted the transparency of performance indicators as one of the core mechanisms of their education policies aimed at increasing the performance of secondary schools. In the body of the thesis I referred to Hirschmann's (1970) theory of voice and exit to explain the two ways by which governments can push decentralised policy units to increase their performance through RTPs. First, as we have seen in the examples of Prova Brasil and Ideb in Brazil, the government tries to increase the 'voice' of beneficiaries (parents and students) and intermediaries (organised civil society, media, experts and society) to pressure or guide schools in improving their performance, based on the goals and standards reflected on the performance tables. Second, as in the case of the UK, the government creates a quasi-market, where parents can choose which school to enrol their kids in, therefore pressuring schools to increase their performance to attract more (and potentially better) students, as well as other benefits, including financial ones.

However, what the case studies have demonstrated is that, while the level of engagement from beneficiaries in both countries were varied, schools did not seem to wait for the signals from the beneficiaries or the intermediaries to try complying with the publicly available performance indicators. "The receptors of public service

organisations”, noted Meijer in relation to a similar case in the Netherlands, “do not react to signals from stakeholders, but pick up transparency as a sign” (2007, p. 181). From matters of reputation and school directors’ career risks to additional incentives offered by governments to schools that demonstrated improved performance, schools had many other reasons to comply with the performance indicators made available for public scrutiny.

Resistance to performance indicators among targets was observable in the case studies in the two countries, particularly in England. But in neither case were the tables scrapped and schools seemed to have continued to pursue compliance with the metrics indicated through the tables for the reasons referred to above. It might also be said that, over time, the paradigm of accountability (rooted in Layer 1 of culturally embedded norms) and the idea that transparency furthers it, became more widely accepted by the education community. Examples of strong resistance like the case of 1993 boycotts in England, for instance, were not repeated during the periods covered for both cases.

While the targets may have resisted the performance indicators less on the grounds of accountability, they consistently challenged or sought to contribute to their design, definition and contextualisation (or lack thereof), precisely because of the high stakes in their impact. Both cases demonstrated high levels of contestation about the government’s publication of the performance indicators, with central governments continuously updating performance indicators, supplemented by other data that provided further contextualisation, in response to demands from the targets or intermediaries (civil society organisations). In this scenario, RTPs have been internalised as a norm and have evolved in a state of continuous contestation.

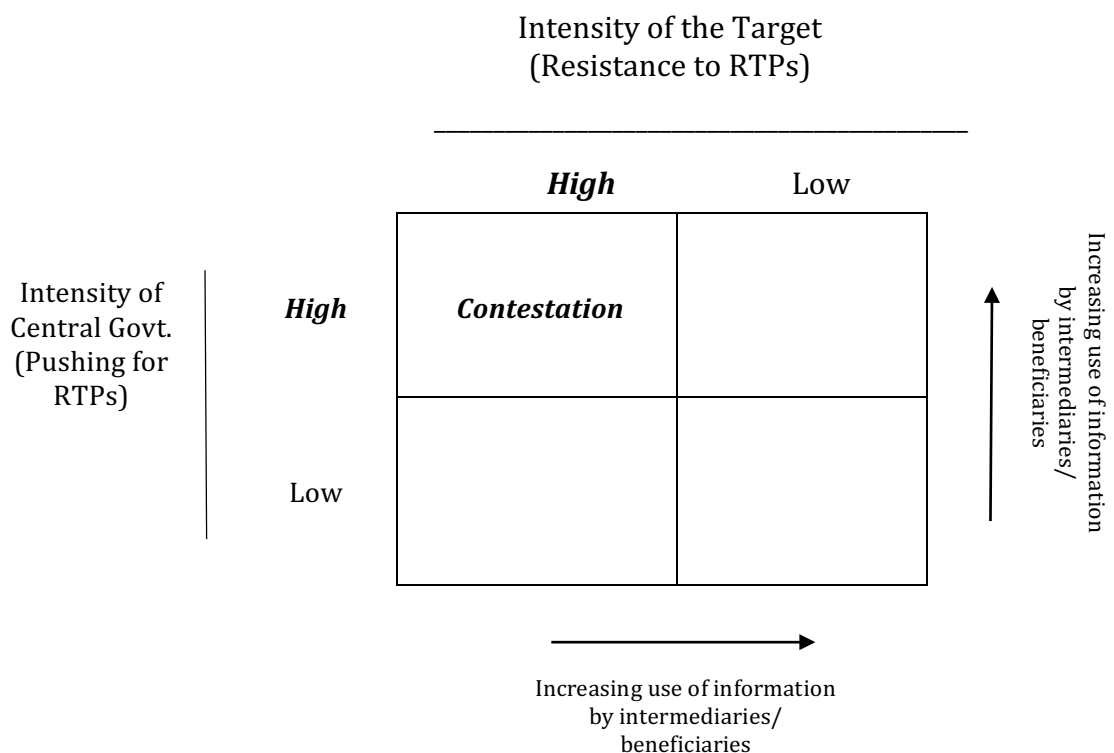
Moving from this observation, we can propose that the most prominent trajectory for RTPs in the performance logic is that of contestation (Table 8.4) with evolution characterised by multiple incremental changes. As a comparison of the three logics analysed in this thesis will demonstrate, the trajectories of the RTPs in the performance logic are the most consistently contested ones throughout time among the three logics. Unlike in the UK MPs’ expenses case in the logic of control, for example, where there was an external body to determine the path of the RTP after an intense but limited period of contestation, as seen in both the Brazilian and the English cases of education, contestation can be the defining feature of the trajectory of an RTP in the performance logic.

Contestation is rooted in the controversial nature of publishing performance assessments – or, in the cases covered, the results of student attainments as an indicator for school performances – for at least two reasons. First, because governments define measures on the basis of their understanding for the need of achievement, which

frequently proves to be unpopular with the targets or the education community. This was, for instance, the case with the English Bacculaureate, which caused significant resistance among a range of actors, and with the targets of Ideb, for which the government proposals are still criticised by some education experts.

Secondly, given that a number of other variables influence the performance of schools and the ability of teachers and school directors to influence the performance of students, questions of fairness have gained importance in the debate of policy units' performance and of their respective transparency systems. The internalisation of variables that influence school performances, such as considerations of the socio-economic background and prior attainments, however, raise new questions about what performance to expect from schools, meaning that the raw results of tests are still published. What both case studies showed in this regard is that the solution to this dilemma has been to offer beneficiaries with additional contextual, historical and progress data, without scrapping the performance data composed of students' attainments.

Table II.1. Trajectory of RTPs in the Performance Logic



It is important to underline the role played by intermediaries – civil society organisations and experts of the education sector, and the media – in contesting the government’s performance tables or in reinforcing their trajectory. Particularly in the case of Brazil, the intensity of the intermediaries in contesting the government’s performance indicators often surpassed that of the targets themselves. Organised civil society vocally challenged aspects of Ideb at the federal level, even where targets complied with it, or when they pushed to expand it, such as in the cases of the municipality of Rio de Janeiro and the states of Goiás and Minas Gerais. Additionally, private initiatives like QEdu, launched by the Lemann Foundation, which were developed to supplement Ideb, also challenged the government’s monopoly on defining the metrics by which the public perceived the schools. It was also by interacting with civil society organisations that INEP included socio-economic contextualisation in the disclosure of Ideb. Therefore, it is not possible to suggest that the intermediaries are always part of a coalition with either the drivers or the targets. Intermediaries can impact the trajectories of the RTPs from a different position altogether, which the proposed actors’ table, which assumes that beneficiaries and intermediaries always push for increased transparency, admittedly is not able to fully reflect.

As an intermediary, the media has also reinforced the initial disclosure of the RTPs in the UK by prioritising news reports using raw results of students’ attainments, even after governments introduced changes, and have not, in most cases, contributed to the debate about performance of education in Brazil, as news report tend to focus on the schools that performed best or worst. This underlines that complex nature of the evolution of RTPs in the performance logic and the importance of mobilising resources (both institutional and of voice) to influence their trajectories.

PART III.

THE LOGIC OF TRANSACTION

The basic policy assumption of any transparency mechanism is the existence of information asymmetry in given contexts. One of these contexts is the economic market, in which the levels of information about products and services, and of their production processes, tend to differ significantly between sellers and buyers. This imbalance of information is the core aspect of a series of transactional problems. As suggested by Akerlof, in the 70s, in a competitive market with information asymmetry, providing free access to information has the power to reduce the chance of 'lemon choices' by informing consumers about the relevant characteristics of a product or firm. Regulatory transparency policies in this logic can be adopted both to increase the level of information available in a certain market and to fix problems caused by obfuscation of information for consumers to make more adequate choices.

The two chapters analysed in this part cover narratives of selected regulatory transparency policies adopted in the Brazilian and in the British retail account sectors. The cases describe the adoption and trajectories of policies to support various objectives in the sector, such as increasing competition, reducing information asymmetry between the private sector and consumers, promoting consumer rights, and advancing initiatives of financial education. In Chapter 6 I argue that the strengthening of consumer rights has strongly influenced the creation and evolution of the RTPs. In Chapter 7 I highlight how a change in the paradigm of rationality could affect the trajectory of RTPs in the transaction logic, while suggesting that both may in fact co-exist. In both chapters I argue that regulatory transparency policies are instruments currently used to foster financial education in the two countries. In the conclusion to this Part, I compare the case studies and debate the determinants of the RTPs' trajectories in the logic of transaction.

CHAPTER 6: INFORMING FINANCIAL CONSUMERS IN BRAZIL

Regulation, competition and transparency are essential requirements to ensure the efficiency of any sector in a modern economy. The financial system should be open to interact with society. In other words, it should be submitted to free competition, in which well-informed citizens freely choose the services that suits best their interest. (Central Bank President Alexandre Tombini, 2013)¹⁵⁰

We need clear rules, promoting transparency and comparability of tariffs that give the client comfort in knowing how much they are paying. These were the guidelines with which we worked. (Deputy Director at Febraban Ademiro Vian, 2015)¹⁵¹

This chapter traces the creation and trajectories of regulatory transparency policies enacted in the Brazilian banking sector over a period of approximately one decade. I focus in particular on policies designed for general consumers of current accounts, namely the disclosure of data on complaints about banks, transparency of bank tariffs and on the financial education of citizens by the Central Bank. I show that while the RTPs on complaints data had an expansionary trajectory, the RTP on bank tariffs has mostly stagnated. The chapter also shows that the creation of regulatory transparency policies in the transaction logic in the Brazilian current accounts sector is very much associated with strengthening the rights of financial service consumers, the beneficiaries of the policies analysed in this chapter.

The sequences of events in which the drivers of RTPs and their targets are engaged, however, vary. In the case of the publication of information on complaints, the Central Bank could reduce the potential intensity of targets (against the RTP) based on the practice of Brazilian consumer protection authorities. The main case of regulatory transparency policy analysed in this chapter, that of the standardisation and transparency of banks tariffs, was adopted after a contested process in which consumer

¹⁵⁰ Tombini, A. (2013) Speech at the Brazilian Federation of Banks. 17 November.

¹⁵¹ Vian, A. (2015) *Interview on 23 June 2015*. [My translation; recording in my possession.]

rights organisations, both public authorities and private bodies, mobilised intensely for the adoption of the RTP. The chapter traces the trajectory of these cases, before describing some RTPs adopted by the Central Bank, with very little resistance from the target actors, in order to strengthen the Bank's role of educating consumers for the financial world.¹⁵²

1. Socio-Political and Institutional Context

In Brazil, economic openness began to be promoted in the early 1990s, followed by the stabilisation of inflation promoted by the Real Plan (Plano Real), and by regulatory reforms during the last part of that decade. Until 1994 Brazil's long history of hyperinflation posed severe difficulties to the consolidation of a sound banking system, despite the existence of the Financial Monetary System, established in 1964, and two other important laws, which defined a framework for organising the banking system.¹⁵³ In December 1990, accumulated yearly inflation reached 1,621.00%, according to the Price Index for the General Consumer (Índice de Preço ao Consumidor Amplo), measured by Fundação Getúlio Vargas. In 1994, immediately before the adoption of the Real Plan, it measured 916.4%. Two years later it went down to single digit level and only crossed the line of two digits twice: in 2002, when it reached 12.5% (due to a crisis of confidence, appreciation of the US dollar and increase in the prices of gas and foods), and in 2015, when it reached 10.7% (mainly due to the increase in the prices of electricity, water, and gas).

Newfound macroeconomic stability brought with it the opportunity and the challenge of reviewing the regulatory framework for banks, previously based on inflationary gains, deficiency in the control of risks and limited competitiveness. Reforms meant an abrupt shift from a long period of uninterrupted state intervention in the economy to a less intensely regulated economy, in line with the dominant international paradigm of market liberalisation and globalisation (Layer 2). From 1995 onwards, reforms were carried out aimed at strengthening the banking system through processes of rescue and privatisation, improvement of prudential regulation to reach international standards, revision of norms of access to the financial sector, expansion of access to bank services and products, and improvement of competition in the financial

¹⁵² Due to the research design, for the purpose of this chapter I looked into the existing regulatory transparency policies' provision of current bank accounts for individuals.

¹⁵³ Respectively by Law 4,595/1964, Law 6,024/1974, and Decree-Law 2,321/1987.

market. Before the financial crisis of 2007-2008, Brazil had accumulated a significant foreign reserve cushion, reduced its external public debt and improved its debt profile. During the first decade of the 2000s, the number of municipalities with ten bank agencies or bank correspondents per 10,000 inhabitants increased to 63%, while the percentage of municipalities with less than five bank representations per 10,000 inhabitants was reduced from 82% to 6%. The number of clients with credit operations of above R\$1,200.00 expanded from approximately five to thirty million.¹⁵⁴

As services, including banking, were increasingly being transferred to the private sector and consumption grew, consumer rights bodies and initiatives gained growing relevance and space in the public agenda. This space was formally recognised in the 1988 Federal Constitution, which obliged the adoption of a code establishing consumer rights.¹⁵⁵ In September 1990, the Consumer Protection Code (Código de Defesa do Consumidor – CDC, hereafter the Code) was created. The Code, which came in effect in March 1991, established the responsibilities of producers and sellers in promoting competition, defined consumer rights, created special courts and prosecutorial bodies dedicated to enforcing consumer rights and defined sanctions for breaches of the regulation. The Code also set up a number of clauses obliging corporations to increase transparency to inform consumer choice, protecting consumers from fake advertisement and warning about risks to their health and safety.¹⁵⁶ Similar clauses were also adopted for the banking sector.

Since its creation in 1964, the Brazilian Central Bank (Banco Central do Brasil – BCB) has been responsible for regulating and overseeing banks and financial institutions, besides handling the monetary and exchange rate policies.¹⁵⁷ For some time, the BCB has obliged banks to disclose information to consumers, in diverse ways

¹⁵⁴ All the conversion rates in this chapter are from the Brazilian Central Bank on 1 January 2015.

¹⁵⁵ The debate involving the consumer rights agenda dated back to the 1970s. The first Association for Consumer Protection was created in Porto Alegre in 1975, and the first body to support the Judiciary to solve consumer conflicts was created in São Paulo (the Program for Protection and Consumers Defence - Procon), in 1976. In 1977, for example, Congressman Nina Ribeiro introduced a bill of a Code for Consumer Protection. The CDC was approved in 1990 through Law 8,078/90.

¹⁵⁶ Article 31 of the Code defined the characteristics and type of such information: “[C]orrect, clear, precise and public information, in Portuguese, about the characteristics, quality, quantity, composition, price, warranty, expire date, and, origin of the product, among other data, as well as the risks that the product may present to health and safety of consumers”.

¹⁵⁷ It also serves as the Executive Secretariat for the National Monetary Commission (Conselho Monetário Nacional – CMN), responsible to safeguard the liquidity and solvency of financial institutions. The CMN is composed by the Minister of Finance (CMN President), the President of the BCB and the Minister for Planning, Budget and Management.

until starting to adopt regulatory transparency measures as analysed in this thesis. Before major regulatory reforms started in the Brazilian banking sector in 1994, a Central Bank norm obliged financial institutions to make available in their dependencies, in a venue of easy access and visibility to the public, a board with the services provided and their respective fares.¹⁵⁸ The institutions could only charge clients for services made public in accordance with the rule.

In another example, as an attempt to reduce information asymmetry about bank tariffs to the public and to safeguard consumers from the potential unilateral decisions by banks, the Central Bank enacted a norm in 1996 obliging banks to publish, alongside their services and tariffs, the periodicity with which these were reviewed. Banks were also obliged to announce the creation of new tariffs or changes to existing ones at least 30 days in advance of the change.¹⁵⁹ The information had to be submitted to the BCB every three months for monitoring purposes. Financial institutions could be fined over £6,000 in case of non-compliance. An extensive number of contractual clauses were also adopted in years 2000 and 2001, partially in response to consumer complaints at the Central Bank and at Procons, to inform retail banking clients about further clarifications regarding tariffs and bank statements, upon the clients' request.¹⁶⁰ These included, among others, making available information about fares and expenses charged for starting a credit operation (including the periodicity of the fare, interest rate and amount debited each month); providing clarity and format that allowed clients to easily identify payment deadlines, amount of money invested, interest rates, administration fees; sanctions for using unpaid checks; informing all tariffs adopted by the bank.¹⁶¹

Although the Central Bank did oblige banks to disclose information to consumers, as is shown in this chapter, as pro-consumer institutions gained strength in Brazil and

¹⁵⁸ Central Bank Circular 1,734/1990

¹⁵⁹ Resolution 2,303/1996

¹⁶⁰ Central Bank Resolutions 2,808/2000, 2,835/2001 and Resolution 2,878/2001

¹⁶¹ While pro-consumer organisations provided guidance and advice on consumer rights related to the use of bank statements, the impact and effectiveness of information disclosure on bank statements in improving customers' understanding of their finances remains uncertain – not least due to the lack of available research analysing this impact for Brazil. However, the experience of other countries may give us some insight. Looking at the US, Shahar and Schneider (2014), two critics of regulatory disclosures, underline the technicalities and the difficulties involved in making sense of such disclosures. They cite US Senator Elizabeth Warren, former special advisor for the US Consumer Financial Protection Bureau, who said of credit card disclosures: "I teach contract law at Harvard, and I can't understand half of what it says" (Shahar and Schneider, 2014, p. 8). It is possible that the impact of disclosure was also limited for the same reasons in the case of bank statements in Brazil, although this cannot be proven in the absence of empirical research.

as the means for publication of information became more accessible through technological innovation, so did regulatory transparency policies in the banking sector.

2. The Disclosure of Complaints by the Central Bank

The disclosure of bank complaints by the Central Bank was adopted in the early 2000s following high intensity of the driver, the Central Bank, and low levels of opposition from the targets at the time of its creation, due to two reasons. First, at that point the complaints information provided by consumers to the Central Bank did not have significant impact on the supervision and oversight work conducted by the Bank. Second, existing policies of the pro-consumer authorities to disclose information about complaints against firms were already in place and received more complaints than the Central Bank itself. In 1997, for example, the National System of Consumer Rights (Sistema Nacional de Defesa do Consumidor – SNDC) was created, composed of the Ministry of Justice and all the other bodies of the federal, state and municipal administrations, as well as civil society institutions that promoted consumer rights.¹⁶² One of the most important and best known institutions of the SNDC is the Foundations Program for Protection and Defence of Consumers (Programa para Proteção e Defesa do Consumidor – Procon), which functions in several states and municipalities with the aim of resolving conflicts between consumers and providers before a case is taken to court. According to the legislation that created the SNDC, each Procon should set its own Suppliers' Registry or Justified Complaint Registry (Cadastro de Fornecedores or Cadastro de Reclamações Fundamentadas, hereafter Registry), which displayed statistics about the number of complaints received by Procons.

The Registry was a regulatory transparency measure to deal with complaints against suppliers within each Procon in the country. Published annually and updated constantly, the Registries served as a repository of complaints and as essential instruments for consumer choice in Brazil. Not long after the creation of the SNDC, it was agreed among its members that in order to further ensure consumer rights and strengthen consumer protection it would be necessary to provide the Department of Consumer Rights and Protection (Departamento de Proteção e Defesa do Consumidor - DPDC), the body responsible for the coordination of SNDC, with aggregate and strategic information about consumer complaints nationally, while keeping the various subnational Procons in charge of resolving complaints. The National Informational System of Consumer Protection (Sistema Nacional de Informação de Defesa do

¹⁶² They integrate the SNDC and are auxiliary bodies to the Judiciary, present in 842 subnational units in Brazil by May 2015 (including all States and the Federal District).

Consumidor – Sindec) was designed and implemented at the SNDC in 2004 to all activities carried out by Procons, while also allowing for an annual integrated publication of the Registry.¹⁶³

In the early 2000s, the number of complaints made to consumer protection organisations about bank services increased significantly. In São Paulo, for example, the number of complaints received by Procon increased by 61% in 2002 in relation to the previous year, with unfair tariffs topping the complaints list.¹⁶⁴ In response, the Central Bank increased the level of mandatory information to be provided by banks to their clients especially through contracts. As the public body responsible for regulation of banks, the Central Bank also had the mandate to receive complaints about regulated institutions. In line with the experience and practice of Procons and of the SNDC, in 2002 the Central Bank started publishing in a monthly ranking system the number of complaints it received and considered applicable for analysis of the Bank, i.e. related to legislation adopted by the Central Bank or the National Monetary Council. For the purpose of the ranking, the Central Bank considered complaints that were received due to merit, i.e. those related to regulation adopted by the Central Bank or the National Monetary Council, and solved. Being the regulator of the financial system, the publication of complaints statistics was a matter of transparency, and of reputation, for the Central Bank itself, as the SNDC published data with similar content.

The publication tool was improved incrementally, as the rising volume of complaints or the regulation of bank services with impact on consumers made certain changes necessary. In the following year, for example, the Central Bank published the rankings in groups of similar financial institutions, separating larger ones from smaller institutions (in terms of the number of clients) in order to increase the comparability to the rankings. It also started publishing statistics based only on those complaints that were finalised in the month of the publication of the ranking, instead of the ones received that month.¹⁶⁵

Some of the most important changes to the Complaints Ranking at the Central Bank, however, were not related to its format, content or periodicity, but to the use of the information by the regulator itself. From 2009, the Central Bank strengthened the

¹⁶³ “Integrated Procon” is used for the Procons that opted to join SINDEC. By the end of 2008, 88 Procons had been integrated to Sindec; by the end of 2012, 249; and by the end of 2014, 360, including all the main Procons in the country, according to the coordinator of Senacon. Silva, J. P. S. (2015) *Interview on 13 March 2015*. [Recording in possession of the author]

¹⁶⁴ Estadão (2002) Procon: reclamações contra bancos crescem 61,24%. *Estadão*, 17 April.

¹⁶⁵ The number of complaints that were not granted by the Central Bank were still published, but not considered for the ranking.

use of the information as a source of information for its activities of conduct oversight. As the Bank gave the ranking more attention, so did the industry and the media, which started publishing news reports highlighting the banks on the extremes of the ranking, especially the ones that underperformed. The importance of the Registry was strengthened even further in 2012, when the Department of Conduct was created within the Central Bank to oversee the conduct, specifically, of banks.¹⁶⁶ With a unit dedicated to the supervision of conduct, the use of the ranking better fulfilled its objective.¹⁶⁷

Evidenced by the data that the Central Bank provided upon a FoI request I placed during this research, the complaints rankings were not used on a mass scale, at least not as a monitoring mechanism by consumers.¹⁶⁸ In 2014, there were a total of 160 thousand visits to the section of the Central Bank website featuring the rankings. In comparison, the ranking of complaints about telecommunication service providers at the Brazilian Telecommunication Agency received an average of 500 thousand visits only in the first three months of 2015, i.e. approximately 12.5 times more than that of the Central Bank rankings.

Regardless of the number of accesses and immediate use of the information by consumers, however, the media published about the rankings extensively and banks and financial institutions did respond to the disclosure policy by adopting measures to go down in the ranking or not be featured in it.¹⁶⁹ This points to the mixed character of the transparency logic in play in this case. Like the disclosures promoted by the SNDC, the Central Bank started disclosing complaints information primarily for its transaction logic – i.e. to inform consumer choice – as well as a display of the Bank’s commitment to its own internal transparency. However, by anticipating the action of consumers who consulted the list or of the Central Bank through its supervision of conduct, banks felt pressured to improve their performance by taking action to address the complaints. This movement increased further as the Central Bank strengthened its internal use of the ranking.

¹⁶⁶ Bittencourt, A. (2012) BC lança Supervisão de Conduta. *Valor Econômico*, October 22.

¹⁶⁷ Abecip (2016) BC aperta a fiscalização dos bancos. *Abecip*, October 16.

¹⁶⁸ Central Bank (2015) Freedom of information request protocolled under number 18600000817201579 [Request and response in possession of the author].

¹⁶⁹ See, for example: O Globo (2016) BMG passa ao topo do ranking de reclamações contra bancos em janeiro. *O Globo*, February 15.

3. Regulatory Transparency of Bank Tariffs

3.1. Creation and Trajectory of the Disclosure of Current Account Tariffs

In December 2001, the National Confederation of the Financial System (Confederação Nacional do Sistema Financeiro – Consif) filed a Request for Declaration of Unconstitutionality (Ação Direta de Inconstitucionalidade - ADI) at the Supreme Court.¹⁷⁰ Consif claimed that Article 3 § 2º of the 1990 Brazilian Code of Consumer Protection was against the Constitution, since the latter defined that supplementary law would regulate the National Financial System and the CDC had been enacted by ordinary law. As argued by Consif’s lawyers in the ADI, the Code mistakenly imposed new obligations and responsibilities for financial institutions, which due to their nature of intermediaries should not be obliged to provide all the products and services offered in advertisements for every consumer, as credit analyses needed to be individually assessed.

While the ADI was still being debated, in 2002, the Central Bank went on to start publishing online statistical information about bank complaints, as already discussed, and bank tariffs themselves. Additionally, multiple factors increased the intensity of the BCB to inaugurate disclosure of bank tariffs; i.e. the rising number of complaints about bank charges of tariffs, the perceived need to improve competition in this regard, and the increasing ease with which information could be published on the internet. At this point, tariffs were not standardised and were published without a structured format that would increase the ability of consumers to read and understand the information disclosed. Instead, the existing structure resembled the early versions of MS-DOS and MS Excel tables. At best, users were able to identify whether tariffs were legal, which in a newly privatised system could constitute valuable information. Although the policy’s design resembled that of an RTP, it aimed at furthering the transparency of the regulator’s work and lacked the structured information that would allow for comparisons associated with the transaction logic.

After a long judicial process and appeals from Consif on one side, and from organisations responsible for promoting consumer rights on the other, the Supreme Court denied the ADI in last instance, ruling that the Consumer Protection Code (CDC) applied to the structure and organisation of the Financial System, and that ordinary legislation, including the Code, was applicable to all bank products, services and operations. The decision also clarified that the Brazilian Central Bank, besides regulating

¹⁷⁰ ADI 2591. Consif is an entity that puts together all the unions of financial institutions and alike from all the Brazilian territory.

banks, had the right and the mandate to oversee financial institutions and to control eventual abuses, excessive burdens or other distortions in the contractual clauses of interest rates. From 2007 onwards, a series of transparency measures were adopted in this direction. This was not solely in connection to the decision of the Supreme Court, but in response to converging initiatives to protect consumers.

The Consumer Protection Commission at the Chamber of Deputies was conducting a comprehensive work to debate the regulation of tariffs, which at that point was the major topic of complaints by bank clients. According to the Deputy Director for Products and Financing at the Federation of Brazilian Banks (Federação Brasileira de Bancos – Febraban) the six major banks in Brazil collectively had more than 700 tariffs in 2007 (Vian, 2015):

There was no parameter [for bank tariffs]. The result of this was the creation, by institutions of the financial system, of an extraordinarily large amount of tariffs. This led to complaints from consumer protection bodies. Clients were also complaining about the cost and the amount of tariffs. There was no standardisation of tariffs; a client with accounts in two separate banks could have the same tariff under two different names. It was not possible for clients to compare tariffs in different banks, or know the effective cost of the same service provided by different banks. This prevented clients from understanding the system for bank tariffs. A lot of complaints reached Procons, with consumers complaining about the prices, the ways of charging tariffs. Each bank had its own way of charging consumers, some charged monthly, others three times per month, yet others every fifteen days [...] There was no standardisation, in general, in the names, the way of charging, the way to increase the value of tariffs; a bit chaotic for consumers. (author's translation)

This was mostly due to the fact that tariffs were not regulated, except in relation to specific portfolios such as that of rural credit and of development banks.¹⁷¹ As an example of the freedom used by banks to charge tariffs, some banks were charging clients who wanted to pay their financed credits before due time, arguing that advance payments represented a breach of contract.¹⁷² Sometimes the fee for advance payments would be so high that it would become more expensive than paying the debt itself.

The Commission, which worked in cooperation with the Ministry of Finance, the BCB, members of the Public Prosecutors Office and the DPDC (at the Ministry of Justice), and with the participation of Febraban, aimed to address the ambiguities between

¹⁷¹ Vian, 2015

¹⁷² Proteste (2007) Fim da taxa de liquidação antecipada de débitos. *Proteste*, 17 September.

interest rates and tariffs that made it very difficult for consumers to understand what constituted only tariffs and what were interest rates. Additionally, the extensive amount of acronyms and names created by banks to refer to similar, if not identical, products and services caught the attention of consumer protection organisations.¹⁷³ Parallel to the work of the Commission, the Public Prosecutors Office started two procedures to investigate the legality and the application of tariffs and the actions taken by the Monetary Council, of which the Central Bank is a part, in relation to the subject.

Based on the discussions it spearheaded, the Consumer Protection Commission proposed increased transparency of bank service charges, the standardisation of bank tariffs, and limiting the services that could be tariffed. According to Vian (2015), at the time of the debate in the National Congress, a number of bills were introduced to regulate bank tariffs, most of them establishing and limiting the number of types of tariffs. The Central Bank also took measures in relation to the topic, but before it moved towards the regulation of tariffs, Febraban assessed the issue with banks and identified groups of tariffs and the associated client dissatisfaction. In preparing the information for regulation, Febraban would have a chance to clarify the tariffs that were charged justifiably.

In order to propose a strategy to give transparency to tariffs, Febraban requested the six largest banks in Brazil that provided current accounts for individuals, where around 90% of individual consumers had their accounts, to share with the Federation all the tariffs they charged in current accounts. It concluded that the tariffs were close to impossible to understand and compare. Having had access to all tariffs charged by banks as well as to the justifications for the charges associated with each of them, Febraban arbitrated the name and categorisation of diverse tariffs, which were then presented and approved by its member banks. As a result, in September 2007 Febraban published the System for Disclosure of Bank Fares (Sistema de Divulgação de Tarifas – STAR).¹⁷⁴

At the time of its launch, STAR was the most comprehensive and easy-to-use publicly available website for comparing the fares charged by banks for a total of 32 tariffs, still a large number for user comprehension. To facilitate understanding, Febraban created three groups of bank accounts, the first of which included products used by about 90% of the population. Information could be compared per fares, per bank, per service packages and the relation between them. Banks agreed with Febraban

¹⁷³ Câmara dos Deputados (2009) Consultoria Legislativa. Tarifas Bancárias após as Novas Regras. Câmara dos Deputados.

¹⁷⁴ Available at <http://www.febraban-star.org.br/>

that all the data about tariffs shared with the Central Bank would also be sent electronically to STAR, which would create the necessary filters for publication. According to Febraban, intensive advertisement was made about STAR when it was first launched. Since its first months, the average monthly visits to STAR has been around 400 thousand. The Federation has also been updating STAR in relation to the newest applicable legislation about bank fares and packages ever since.

The debates and recommendations of the Consumer Protection Commission at the Chamber of Deputies informed the regulation of tariffs by the Central Bank for standardising the packages of tariffs.¹⁷⁵ The new legislation aimed at facilitating consumer understanding and comparability of current account products and services. The norm expanded its scope in 2010, when it included information about credit cards, in response to its growing usage by the population and, therefore, to an also increasing number of complaints from consumers at Procons, reflected on the SNDC Registry.¹⁷⁶ The resulting norm created four categories of bank services to consumers: essential, priority, special and differentiated. Publication of information about the 'essential' and 'priority' accounts was standardised in order to facilitate comparison. For their regulatory purposes, as important as their publication was the standardisation of the packages. The 'essential package' was free of charge, and the 'priority package' was similar to the essential with an increased number of financial services included.¹⁷⁷ The 'special' and 'differentiated' packages were also defined in terms of the events and costs per number of events. The format of publication of the packages was also standardised, displaying name, acronym, reasons for which they could be charged, and the channels through which they could be delivered. Disclosed information also included the individual charge per service, the number of events admitted in each service included, and the price for the package.

In the same context, the Central Bank regulated the Total Effective Cost (Custo Efetivo Total – CET).¹⁷⁸ CET was defined as the instrument for clients to understand all onuses and expenses in a credit or leasing operation, i.e. final price of a service after tariffs and interest rates were incorporated in the price.¹⁷⁹ According to the regulation,

¹⁷⁵ Resolution 3,518/2007

¹⁷⁶ Resolution 3,919/2010

¹⁷⁷ For example, the essential services package allows four withdrawals per month free of charge while the standard priority package provides eight withdrawals, as mentioned in the beginning of this section

¹⁷⁸ Resolution 3,517/2007

¹⁷⁹ CET was initially calculated and made available to individuals and to small and micro-enterprises, as the Central Bank regulators believed that medium and large corporations had the capacity to calculate and negotiate tariffs. The obligation was extended to micro and small

banks had to provide information about the percentage of each CET component. The novelty about CET was that it facilitated clients' reading and understanding of the final value of a product or service they were purchasing, by reducing the cost of comparability.

The Central Bank requested banks to provide the Total Effective Cost to their clients whenever required and published it in all advertisements of banks products and services. Additionally, banks were obliged to make CET available to the Central Bank for monitoring and transparency purposes. In 2013, banks were obliged to provide clients with not only the percentage of each component of CET, but also a customised chart demonstrating the value and the percentage of each component.¹⁸⁰ The Central Bank informed that although it did not define a mechanism to monitor the impact of CET on consumer protection and the competition of bank services, it defined an overseeing procedure to ensure that banks and other financial institutions were complying with the norms.

One of the challenges for the success of the regulatory transparency mechanisms was to ensure that, before purchasing a financial service, clients would compare the information standardised by the Central Bank, such as, the tariffs adopted by diverse banks for the standard package, the products and services offered by the essential and standards packages, and the fares charged for annual registry renewal, in order to identify if the essential package was a more appropriate option. Facilitating comparisons, alongside the one promoted by the Central Bank, were a number of initiatives created by private parties. One of them was, for example, *ComparaOnline*, a website that focused on the comparison of financial services, including credit cards. A similar tool for comparison was developed by a widely known news website, *Terra*, which also reported on other initiatives that allowed for tariff comparisons.¹⁸¹ Such initiatives were important, since for budgetary reasons the public sector had limited possibilities to engage in awareness raising campaigns about the transparency it promoted.

enterprises in 2010, through Resolution 3,909/2010. The recommendation to extend it to micro and small enterprises had been done in a Technical Note by the Consultancy of the Chamber of Deputies in the previous year.

¹⁸⁰ Resolution 4,197/2013

¹⁸¹ Terra was the 12th most accessed website in Brazil in 2013, according to the Alexa Index. Silva, J. A. L. (2013) *Os 50 sites mais acessados do Brasil, segundo o site Alexa*. InfoMoney, 13 September.

3.2. Creation and Trajectory of Total Effective Value

Continuing its engagement with consumer organisations, and with a series of major international events to be hosted by Brazil approaching, such as the Pope's visit to celebrate World Youth Day's and the FIFA Confederation Cup in 2013, the BCB adopted an RTP for tariffs of foreign currencies. The Brazilian Central Bank did not regulate minimum and maximum values for the tariffs charged by banks and financial institutions for currency exchange, but standardised the tariffs included in the purchase of a foreign currency. The first problem that the Total Effective Value (Valor Efetivo Total – VET) tried to address was to reduce information asymmetry of consumers about the final price that they had to pay for currency exchange (regardless of whether it meant paying more for tariffs and less for the conversion rate, or vice versa) and the confusion created due to the fact that some exchange rate agencies included taxes in the final value and others did not. It also supplemented the regulatory transparency of bank tariffs. The creation of VET dated back to 2011, when banks and financial institutions were obliged to inform clients of VETs values in exchange operations. It was in 2013 that banks and financial institutions were also obliged to inform VET tariffs of operations up to US\$100,000.00 to the Central Bank for the purpose of regulatory transparency.¹⁸²

Three months after the Central Bank started receiving information about VET it published a table for search and consultation of VET average prices and a ranking with institution names and prices charged, in support of consumer information. The prices presented were not the ones used by the financial institutions at the time of consultation, but those used in the previous month. In other words, the tool created by the Central Bank was not one to guarantee the price of currency, but to serve as a reference for consumers about institutions that charged lower prices. The ranking presented the average monthly VET of the banks and financial institutions, calculated based on the average of the individual operations adopted by these institutions, considering operations with similar characteristics, such as transactions to sell international currencies of up to US\$200.00 or to buy international currencies in a range of US\$1,000 to US\$3,000.

VET ranking was also made available as an app for mobile phones, which also provided users with tools for finding the closest exchange office, conversion of currencies, BCB daily exchange rates, and a manual with clarification of the rules applied for exchanging currencies in Brazil and what needed to be informed to the Revenues Department before travelling. As the intensity of the Central Bank to adopt the measure was very high, given the engagement of all federal public bodies in preparing for a

¹⁸² VET was regulated respectively through Resolution 4,021/2011 and Resolution 4,198/2013

number of major events until the Olympics in 2016, the tool was developed without resistance from the regulated currency exchange offices. As the Brazilian economic crisis intensified in 2015 and 2016, the VET ranking was advertised as one of the tools at the consumers' disposal to save money when purchasing foreign currencies.¹⁸³

3.3. The Limits of the Transaction Logic of Bank Tariffs

As a mechanism to inform consumer choice, standardising and promoting RTPs in relation to bank tariffs and packages of priority services addressed an important issue, i.e. the wide difference in the price of various bank tariffs (up to 563% differences in some tariff prices in mid-2014, and 447.50% in 2016).¹⁸⁴ Standardisation limited the scope of possible illegal charges placed on consumers and RTPs increased the incentives for banks to adjust the price of tariffs.

The success of an RTP in the transaction logic, however, should also be gauged by its proper use by beneficiaries (in this case, consumers of bank services), i.e. whether or not consumers are aware of their purchase needs and can conduct comparisons taking these needs into consideration. For instance, if a customer signs up to a bank service based on a comparison of the different packages on offer without comparing the packages with their realistic personal needs they may end up making suboptimal decisions (Veiga, 2009). Consumers, in other words, need to be aware of their purchase patterns to be able to benefit from the disclosed information. In short, the creation of the RTP did not guarantee its full effectiveness.

As some studies suggest, neither did the behaviour of banks always advance the positive effect of the standardisation of tariffs nor were transparency policies enough to inform consumers' choices. In 2009, IDEC suggested that banks did not comply with their duty to inform clients of their rights in terms of tariffs. When clients changed their account to the essential package, IDEC's research suggested, most banks did not provide clients with a document confirming the change and some banks continued to charge for previous tariffs, which illustrated that clients were still not fully aware of their rights (IDEC, 2009). Additionally, according to Senacon, some of the leading banks in Brazil did not comply with the standardisation norms and still tried to hide tariffs in their websites in order to make comparisons harder for consumers.

¹⁸³ For example: Yazbek, P. (2015) Onde é mais barato comprar dólar, segundo o Banco Central. *Exame*, 11 May.

¹⁸⁴ G1 (2014) Valor das tarifas bancárias tem diferença de até 563%, diz Procon-SP. *G1*, 2 July; Brasil Econômico (2016) Tarifas bancárias: diferenças de valor podem chegar a 447,50%, revela Procon-SP. *Brasil Econômico*, June 30.

As a mechanism to promote competition and reduce the price of tariffs and packages for customers, IDEC suggested that the standardisation and comparative publication of tariffs had limited effectiveness. Between March 2008 and March 2011 the price of fictional service packages created by IDEC for research purposes increased on an average of 30%, while inflation was around 18%. In October 2012, the Institute confirmed the same trend, i.e. tariffs for certain packages kept increasing and banks still promoted a significant amount of changes to tariffs and service packages, causing confusion among consumers.¹⁸⁵ Standardisation of tariffs and packages did not prohibit the increase of fees. Therefore, even though consumers could now make better comparisons, they continuously had to pay higher prices for services.¹⁸⁶

Limitations of transparency and standardisation went beyond the fact that banks continuously increased tariffs. The most important factor determining individuals' choice of banks in Brazil was geographical location (42.5%), followed by perceptions of reputation and robustness (28%), and the ease of making transactions online (26%).¹⁸⁷ One of the reasons individuals considered banks' geographical location was the expectation of encountering a problem with the bank at some point.¹⁸⁸ Another research showed that Brazilians with revenue above £966.00 chose their banks according to their perception of bank stability, followed by geographic proximity, and only then by tariffs.¹⁸⁹ In other words, what consumers were looking for and the information offered to them through RTPs did not directly or sufficiently match. To tackle these problems and increase financial consumers' ability to make the best decision for themselves, the Central Bank created initiatives of financial education, within the framework of which other RTPs were developed.

¹⁸⁵ Idec (2012) Enquanto juros caem pouco, tarifa de serviços compensam ganho dos bancos. *Idec*, 18 October.

¹⁸⁶ In the context of the decline in credit operations due to the economic crisis that Brazil was going through at the time of writing, banks were alleged to increase tariffs in order to avoid a drop in revenues. See, for example, Neto, J. S.; Scrivano, R. (2016) Com menor demanda por crédito, bancos aumentam taxas. *O Globo*, 26 April.

¹⁸⁷ Veronesi, L. B. (2013) Brasileiros escolhem bancos por localização da agência, diz pesquisa. *InfoMoney*, 15 July.

¹⁸⁸ *Ibid.*

¹⁸⁹ Other criteria, as they matter to consumers, were: speed of customer service; empathy with the brand; tailored services; quality of customer service; presence of agencies in the national territory; *interest rates; rate tape*. *Research results available at Accessed on May 28th 2015.*

4. RTPs and financial education of citizens

From 2008, a year after the decision that the CDC was applicable for consumers of financial services, the Central Bank published in its website a specific section entitled “citizens”, aimed at supporting citizens and consumers in dealing with financial subjects. Following that decision and the national policies on consumer rights, the focus on citizen rights as financial consumers expanded and consolidated within the structure of the Central Bank.¹⁹⁰ In 2010 the financial inclusion theme was established as one of the strategic goals of the Central Bank, together with promoting the efficiency of the national financial system. The idea was that with millions of Brazilians excluded from access to products and services offered by the financial system, it was difficult to claim that such system was efficient (BCB, 2010). In the words of BCB Director Luis Edison Feltrim:

Sometimes the citizen does not know what the difference between a common bank account, a simplified account, or a wage account is. [...] We understood that financial inclusion and financial education are instruments to provide protection to consumers; not in the sense of creating a bubble for the consumer of financial products, but to empower citizens so that they know how to use, in an adequate and correct manner, all financial products and services in the area of savings or credit. [...] These three instruments, i.e. financial inclusion, education and protection, are pillars of financial stability. (Feltrim, 2015) (author’s translation)

By 2016 the “citizens” section of the Brazilian Central Bank’s website offered a number of information tools for consumers, such as calculation of interest rates, future values of capital, calculation of credit card charges after interest rates, and data about exchange rates. Two specific areas of the website allowed consumers to compare banks or bank services.

The initiatives of financial education at the Central Bank, among which was a number of smaller transparency measures, were strengthened and designed in a more comprehensive fashion after 2010, though isolated initiatives had been developed long before then.¹⁹¹ The basis for initiatives of financial education in Brazil was aligned with

¹⁹⁰ The emphasis of government on consumer rights led to the creation of the ‘National Plan of Consumption and Citizenship’ (Plano Nacional de Consumo e Cidadania – Plandec), in 2014, aiming to strengthen consumer rights by defining it as state policy. Politically, the Plan was associated with the expansion of the purchasing power of Brazilian society, following a decade of real increase of the minimum wage, reflected, for example, in the campaign slogan used by the federal government to launch the Plan: “Now that we have more rights to consume, we want to consume with more rights”.

¹⁹¹ In mid 1990s, the Central Bank started studies to assess the access of the lower income population to financial services, as well as evaluating alternatives for financial inclusion. The

those adopted around the world, related to the liberalisation of the financial system and the increased transference of responsibility of financial decisions to consumers. But two other factors pushed for financial inclusion and financial education in Brazil, both of which supported awareness and the stability of regulatory transparency initiatives. One was the notion that due to a history of high inflation, Brazilians had developed a strong tendency towards consumption (Savoia, Saito, and Santana, 2007). Secondly, a large number of Brazilians did not have access to the financial system. Together with the goals of social inclusion of the federal government, the Central Bank was responsible for ensuring financial inclusion.¹⁹² Macroeconomic stabilisation allowed for the possibility of medium to long term planning, and among a range of other tools one way to pursue that goal was by providing more structured information about products to citizens.

In 2012, the Central Bank created the Directorate of Institutional Relation and Citizenship (Diretoria de Relacionamento Institucional e Cidadania). The Departments of Communication, Institutional Relations and of Financial Education were all part of the Directorate, which had as its mandate all the communication made between the BCB and citizens, consumers and the media, including therefore campaigns to raise awareness of how to make financial choices and information available to support their financial decision making processes. According to the then Director of the Department, its creation was in response to the idea that an institutional area focused on financial education should support the increasing financial inclusion.

Today, the President [of the Central Bank] put two challenges for us. One of them is to consolidate the agenda of financial inclusion, including by adopting financial education as a tool. Another challenge is the line of interaction of financial services being offered through technology; [...] which financial institutions can use to benefit consumers, if they know how to use the instruments that are regulated and that have a process of oversight. (Feltrim, 2015)

'citizen calculator', previously mentioned, was an initiative to support citizens in calculating some financial services which had been created in 1999, although its practical access was more strongly fostered in the scope of the financial education initiatives in 2010. In 2003, the Central Bank created its first permanent initiative on financial education, the Financial Education Programme. Until 2005, the relationship of the bank with citizens was carried out by the Executive Secretariat, an office of support to the president of the Bank, and from 2005 until 2012 by the oversight areas, to receive consumers' complaints.

¹⁹² "There is a certainty that the search for mechanisms of financial inclusion is fundamental for reducing social inequality and for an increased economic development, considering the elements of a virtuous circle: the adequate expansion of financial inclusion allows access to the formal economy, contributing to increased economic development, which facilitates access of more individuals to the economy and the financial system, mobilising savings and investment for the growth of the productive sector" (BCB, 2010, p. 7).

Additionally, there was a clear need for transparency of rules applicable to bank services and for providing information for consumers, as it was concluded from the Central Bank's work with Public Prosecutors, Chamber of Deputies and Senacon.¹⁹³

While this thesis was being concluded, the Brazilian Central Bank continued to reduce the information asymmetry of consumers in relation to products and services, including many that are outside the scope of this research. In some cases, the Bank followed the strategy to standardise information in order to tackle abuse, facilitate understanding, support consumer choice and increase competition through disclosure. Research on how behavioural aspects of financial consumers in Brazil, and elsewhere, influence their choices in the financial market suggests that the impact of regulatory transparency could be more limited than assumed. However, evidence also shows that it may be immature to write off consumers' rationality altogether (e.g. Cruz, Kimura and Krauter, 2003; Rogers et al. 2007; Rogers, Favato, and Securato, 2008; Yoshinaga and Ramalho, 2014). Financial education, therefore, still plays an important role in the transaction logic.

Conclusion

This chapter has surveyed the creation and the evolution of RTPs in the Brazilian financial services regulation for a period of over a decade. In the three main areas of disclosure covered in the chapter – i.e. those of complaints about firms, bank tariffs and account packages, and financial education – none of the RTPs in question experienced retrenchment. The larger story narrated here shows a consistent increase since the early 1990s in measures and policies aimed at the protection of financial service consumers and the use of RTPs to regulate a sector that was lightly regulated in the 1990s. The increasing presence of the Central Bank, which, as of 2012, has as one of its formal mandates the financial education of citizens, as a formal regulatory body supporting further disclosure is an important factor in explaining the growth of these policies. Another factor is the presence of high intensity intermediaries – i.e. organised pro-consumer groups – as drivers of RTPs.

The expansion of the disclosure of complaints on firms is closely related to the Central Bank's willingness and ability to disclose the information, which is strengthened

¹⁹³ Feltrim, L. E. (2015) *Interview on 13 March 2015*. [Recording in possession of the author]

in relation to that of targets by the existing practice of complaints' transparency, carried out by Senacon, and, most importantly, by the fact that it supports its mandate as the Brazilian Conduct Authority for Banks. Therefore, the possibility of expansion of this RTP is high. In fact, at the time of writing, in August 2016, the complaints list was being expanded yet again, this time to include information of complaints by credit holders related to credit transactions of more than R\$200.00 (£47.00), instead of R\$1,000.00 (£235.00), as was the case previously.

The RTP of standardisation of bank tariffs and accounts' packages displayed a trajectory of stagnation. It was pushed primarily by a group of pro-consumer organisations with high intensity for disclosure (drivers of the RTP). It was negotiated among a number of actors, including the Consumer Protection Commission at the Chamber of Deputies, with the participation of the targets of the policy, alongside the Ministry of Finance, the Central Bank, members of the Public Prosecutors Office and the DPDC, pro-consumer organisations and the Federation of Brazilian Banks (Febraban). Following its adoption, the RTP was expanded one more time by the Central Bank, but its main path since has been one of stability, i.e. stagnation.

Finally, as noted above, the adoption of transparency as a regulatory tool in supporting the financial education of citizens in the complex world of modern-day finance is among the formal mandates of the Central Bank. In theory, it is expected that financial education will both support citizens in exercising their right of choice and also help consolidate a desired rationality in the economic market. As such, both from a formal mandate perspective and from the perspective of principle, RTPs for the purpose of financial education are likely to continue expanding, especially when the information disclosed is not of a controversial, nor of an exclusive nature, against which targets do not have high intensity to resist.

CHAPTER 7:

TRANSPARENCY IN THE UK RETAIL BANKING

Consumers might be shocked to learn that they cannot access full information about airline safety records, for example, or clinical trials that have gone wrong. They cannot find out what our regulatory institutions already know about how broadband providers compare on performance, which financial firms fail to respond to consumer complaints within the statutory time period, the names of the most complained-about solicitor firms, or details of builders formally warned by trading standards about their conduct. (Member of the Legal Services Consumer Panel Steve Brooker, 2006)

We don't agree with those who say complexity of financial services means consumers will never drive effective competition. That is a counsel of despair, but what our behavioural work is showing time and time again that it is a case of the right information at the right time that prompts really effective engagement. (Director of Strategy and Competition at the FCA Christopher Woolard, 2015)¹⁹⁴

This chapter focuses on the regulatory transparency of retail banking services in the United Kingdom, notably core and secondary services to personal current accounts (PCA).¹⁹⁵ The UK banking system is one of the world's largest and it has expanded dramatically in the past four decades, with total assets rising from 100% of the country's GDP in 1975 to a staggering 450% in 2013 (Bush and Knott, 2014). In 2015, the retail banking divisions of financial institutions constituted around 60% of their total revenues.¹⁹⁶ In this context, creating competition in the financial market, including in

¹⁹⁴ Woolard, C. (2015) New Priorities for banking reform. Speech by Christopher Woolard, Director of Strategy & Competition, FCA, delivered at the Warwick Business School Westminster Forum. *FCA*, 17 June.

¹⁹⁵ As defined by the Office of Fair Trading (OFT), core banking services are "personal and business current accounts, overdrafts and savings products traditionally associated with banks" and secondary banking services are "unsecured and secured loans to personal and SME customers, including credit cards and mortgages" (House of Commons, 2011).

¹⁹⁶ Data is valid for the five largest UK banks in 2015 (Barclays, HSBC, LGB, RBS, Santander UK). There is not a standardised definition of 'retail banking division', thus the figure of 60% is based on an approximation of services offered by banks mostly to personal and SME (start-up) accounts. Competition and Markets Authority (2015) *Retail banking market investigation: Retail banking financial performance*.

the provision of financial services for holders of personal accounts, has been the focus of a number of independent bodies and consumer protection organisations and independent reports. As further debated in this Chapter, one of the renowned mechanisms to increase competition is by reducing barriers of information asymmetries so that consumers can shop around for different products and services.

In this chapter I narrate and analyse the creation and trajectory of three regulatory transparency policies. I argue that one of these RTPs, the FSA Comparative Tables, which was created by the Financial Services Authority (FSA), was adopted within the framework of 'light touch regulation' practiced under the New Labour government as a mechanism to foster competition by increasing consumer access to structured information so that they would shop around. While the FSA was one of the main drivers of this RTP, external actors (such as the Cruickshank's recommendations and consumer protection organisations) supported the publication of the Comparative Tables, without which the Tables would likely have had significant difficulty being adopted. To support this claim, I show how financial institutions (the targets of the RTP) could resist to it in two ways: first by collectively opposing to it during consultations, and, second, by not submitting information for subsequent disclosure. In spite of strong support for creation of the Tables, I explain how they were scrapped, and question whether technology based innovations are the future substitutes for RTPs.

The two other sets of RTPs analysed in this chapter are primarily adopted in the logic of transaction (given the main objective of disclosure), but also produce results associated with the logic of performance (considering the sets of information disclosed and the impact they cause). I explain how and why the targets, i.e. financial institutions, were able to oppose and obstruct their creation at one point, but lost this battle at a later stage, after which their trajectory became expansive. Before concluding, I explain how the financial education agenda advances the creation and evolution of RTPs.

1. Socio-Political and Institutional Context

Following the victory of New Labour in 1997 the government conducted a review of financial services, including those of banking, aimed at replacing the patchwork of multiple and self-regulatory bodies of the UK financial sector that had failed to prevent a series of scandals in the 1990s. Until then, banks were for the most part self-regulating. Although banks maintained much of their self-regulatory capacity under New Labour, the promoted changes also increased the institutional power of the financial regulator.

By virtue of the Bank of England Act 1998, the Bank of England transferred its

banking supervisory function to the Financial Services Authority, created as an independent non-governmental body accountable to Treasury Ministers and financed by the financial industry. Followed by consultations during two parliamentary sessions, the Financial Services and Markets Act 2000 (FSMA 2000) came into force on November 2001, consolidating the competencies of the FSA, which were to promote market confidence, public awareness, consumer protection, and the reduction of financial crime. Two consultation arrangements, namely the Practitioners Panel and the Consumers Panel, were created within the structure of the FSA.¹⁹⁷

Four other bodies were also involved in the oversight of financial services. The Office of Fair Trading (OFT) was responsible for promoting consumer protection and competition law.¹⁹⁸ The Competition Commission had at the core of its mandate the conduction of in-depth inquiries of mergers and the regulation of competition of industries in the UK. The Financial Ombudsman Service (FOS), also established as a consequence of the adoption of the FSMA 2000, had the mandate to settle disputes between customers of financial services and the firms, including banks. Decisions by the Financial Ombudsman were based on laws and regulations, regulatory guidance and standards, codes of conduct, and relevant practices of the sector.¹⁹⁹ The Banking Code Standards Board monitored and enforced compliance of the Banking Code, a self-regulatory instrument applicable to retail banking products, which set standards of good banking practice for banks and building societies to follow when dealing with personal customers in the United Kingdom (The Banking Code, 2001).

While debates about the FSMA bill were ongoing, the FSA published a Consultation Paper entitled 'Comparative Information for Financial Services' (Financial Services Authority, 1999). The paper debated the adoption of tables that would publicly provide consumers with comparative information about specific financial products. The work of Consultation Paper 28 was based on five products: personal pensions, investment bonds, unit-trust individual savings accounts (ISAs), savings endowments, and mortgage endowments. The Paper suggested that consumers needed to have access to accurate, easy to understand and available information about the price and quality of competing products in order to make the right choice, and that information in the financial sector at the time did not comply with such standards. According to the Paper, the informational problems in relation to current accounts, and the financial market in

¹⁹⁷ FSMA 2000, Part I, 8.

¹⁹⁸ In 2002, as a result of the entry into force of the Enterprise Act 2002, the OFT's mandate was expanded and the body became formally independent from the government.

¹⁹⁹ Before assessing a complaint, the Financial Ombudsman Service required the consumer to first try to solve the problem with the bank or other financial service provider.

general, not only posed a threat to consumer protection, but also to market competition.

The 'Cruickshank Report' (hereafter the Report), which reviewed competition in the UK banking industry, also described a series of problems with consumers' understanding of the financial products that led to reduced levels of competition (Cruickshank, 2000). The document, published in year 2000 and welcomed by the government, the FSA, and consumer associations, highlighted that consumers were neither able to understand the terms of products they held nor to make informed comparisons with products of other providers. Adding to this, in terms of switching financial products, the Report highlighted that consumers did not shop around, often relied on their current account provider for the sale of other financial products, perceived switching as time consuming and troublesome, and alleged the existence of severe information problems in the process.

According to the Report, as a consequence of the information imbalance between financial services providers and consumers, as well as of problematic exit options, competition in the retail financial market was limited. The Report put consumer awareness and information disclosure in the centre of the regulatory approach to retail banking products. To curb persistent problems with bank services, the Report made a number of suggestions to empower consumers with information so that they would not only be informed about the products they could purchase, but could also strengthen competition by shopping around.²⁰⁰

This [low level of competition] may suggest that radical intervention is required, particularly to address the problems in the supply of current accounts. However, the Review judges that a more hands off approach is called for. [...] Detailed product or behavioural regulation is unlikely to provide the best outcome for consumers. Such regulation imposes higher costs for the industry, which then feed through to higher prices for consumers. It stifles innovation and blunts incentives to compete. [...] Knowledgeable consumers provide the best incentive to effective competition. With the right information, consumers can take responsibility for their own financial wellbeing, shop around and exert the pressures in suppliers which drive a competitive and innovative market.

The view that, when given the right level and type of information, consumers could take the responsibility for their own financial wellbeing and that the FSA should be the body responsible to publish such information meant a shift from the previous exclusive

²⁰⁰ It suggested, *ipsis literis*, establishing effective consumer representation and redress, introducing benchmark products, providing comparative information, and developing consumer education.

corporate self-regulation, but also away from a regulatory approach driven exclusively by regulators through command and control techniques. This new approach held that consumers should be the main players to steer retail banking providers. In this context, facilitating comparison of products' features and prices to reduce information asymmetry in the market meant more than protecting consumers from market failures; it was shifting part of the regulatory responsibility from banks and regulators to consumers.

The regulatory proposals for retail banking were, however, aligned to the regulatory approach adopted in other parts of the financial market. 'Light touch' regulation was an approach in which regulators did not intervene aggressively, responding to crucial needs of intervention in a limited fashion.²⁰¹ Light touch was supported within and outside government for a number of reasons. Most importantly, the 1990s was seen as a period of success of free-market capitalism, notably in the sector of finance, which was consolidating as a central element in the UK economy. Concomitantly, and as a corollary, the regulatory framework adopted was expected to support the rise of the City of London as a global financial centre, along with New York and Tokyo. Finally, the previous Conservative governments had already noticeably changed the economic and institutional landscape of regulation and of public service delivery, which compelled New Labour, at that moment, to adopt and negotiate more business friendly measures. In such a context, a more intrusive regulatory approach was regarded as a threat to global banks, which could lead them to seek out other countries where regulation was less strict.

If in the financial market transparency supported light touch regulation, the measure was not at all foreign to the British regulatory framework. Increased disclosure and transparency were regulatory measures fostered in other policy areas in the same period. The transition from the Conservative government to New Labour saw a switch in the regulatory approach from 'deregulation' to 'better regulation' (e.g. Baldwin, 2006). Better regulation as a regulatory approach implied the adoption of informal and low-intervention strategies, as opposed to command and control methods (Baldwin, 2010; Better Regulation Task Force, 2003). The *Better Regulation Task Force* (BRTF) adopted five principles of good regulation, i.e. proportionality, accountability, consistency, transparency, and targeting ("focus on problem, and minimise side effects") (Better Regulation Task Force, 2003). The BRTF highlighted three available alternatives to prescriptive regulation, all of them relevant to understanding the context under which regulatory transparency was adopted by the FSA. 'Do nothing' was a call for regulators

²⁰¹ Neligan, M. (2009) UK's FSA to propose overhaul of global bank regulation. *Reuters*. 17 March.

to measure whether intervention was at all necessary and would not produce costly unintended consequences. 'Advertising campaigns and education' and 'Using the market', the other two alternatives, both carried important informational aspects. Whereas the first aimed at influencing the behaviour of individuals and firms through information, advice and persuasion, the second argued that markets could work well if consumers were better informed in their decision processes. It was in this socio-political and institutional-regulatory environment that the FSA Comparative Tables were introduced.

2. Creation and Trajectory of the FSA Comparative Tables

2.1. The Creation of the FSA Comparative Tables

In the United Kingdom, whereas banks were regulated and had to go through an authorisation process to operate, financial services did not need to be approved by regulators. The consequence was that financial products had a range of different features, not all products were priced or standardised, and comparisons were not necessarily easy. In spite of this and of the fact that the Comparative Tables would be adopted in a voluntary fashion, in its Consultation Paper, organisations representing practitioners and financial institutions manifested a cautious reaction to the proposal. In *Response to Consultation Paper 28*, the Small Business Practitioner Panel, for example, "expressed 'strong reservations' feeling that 'the provision of this information would go beyond what the FSA should reasonably be expected to do.'"

Moreover, the FSA itself had expressed concerns that if it were to publish comparative information under its own name it could be implied the FSA was endorsing the products; this was one of the main reasons why the FSA had postponed the publication of the Tables. Regardless of the FSA's concern, the Cruickshank Report supported the FSA in advancing the policy as the benefits of this RTP would outweigh any of its eventual risks. Additionally, pro-consumer and competition organisations had also strongly pushed for the adoption of the initiative. In the end, with two of the FSA's four mandates being public awareness and consumer protection, aligned with a less interventionist regulatory approach, the Comparative Tables were introduced. In justifying the creation of the Tables, the FSA stated that the policy was "...appropriate where the intended readership [was] a mass retail one, and the intended purpose requires a standardised format and presentation". This implied that where the market

had the ability to promote credible and sound comparisons and interpretations of products' characteristics, the FSA would not advance competition nor consumers' protection through transparency.²⁰²

The first set of the phased implementation of the FSA Comparative Tables included a list of standardised information about annuities, unit-trust ISAs, savings endowments and mortgage endowments. For each financial product, consumers were able to compare prices, flexibility, channels for purchase (and changes in price in each channel, if applicable), range of funds, minimum payments, and markers. A series of decisions in terms of what metrics to use for publication were taken during consultations. In terms of price, for example, the FSA adopted the Reduction in Yield (RIY), for being the one used in banks' disclosure regime, and model consumers, given price variation depending on the specific circumstances of individual clients.

After a long process of debates, the FSA's decision to promote the comparison and publish the information itself was justified in order to ensure impartiality, accuracy and a need for standardised and careful publication (in relation to format and presentation), notably because of the mass readership of consumers from retail banking.²⁰³ The FSA suggested that the Tables should be tailored by itself while the market did not promote such comparisons in an adequate manner. In *Response to Consultation Paper 28*, the FSA stated that

The market is clearly not delivering an appropriate level of information at present, and information asymmetry in retail markets is one of the main reasons why regulatory intervention is necessary. If this situation changes, perhaps through the development of more consumer-orientated financial services websites, then the FSA will reconsider its position.

The FSA Comparative Tables was voluntary, meaning that banks and financial institutions were not obliged to submit data to the FSA. But the industry had at least two reasons to have its products featured in the Comparative Tables. First, the initial work of the Tables was to standardise classes of information to be published. Products are easier to compare when they are expressed in terms of common standards. Research shows that for this reason consumers will prioritise products that are easily comparable,

²⁰² FSA (2008) Transparency as a regulatory tool. *FSA Discussion Paper 08/3*. FSA.

²⁰³ "[T]hough the information in the comparative tables concerns 'commercial' rather than regulatory matters, we felt it appropriate to directly brand and house those tables, in order to: make them readily available to consumers (and for free); give consumers confidence in the data; and ensure the information and its presentation is standardised and genuinely comparable." FSA (2008). *Transparency as a regulatory tool*. FSA.

and firms that do not adapt to standardisation are likely to lose market share (e.g. Gabaix and Laibson, 2006; Gaudeul and Sugden, 2012). Second, names of institutions that were asked to cooperate and did not submit their data were publicly shamed by the FSA.

Although the Tables aimed at placing on consumers the main drive for competition in retail banking – and “For every product group considered, the [Cruickshank] Review has identified central elements which consumers do not appear adequately to understand” – response from consumers were unknown. The FSA acknowledged that price was not necessarily the main characteristic that an individual or an SME considered when purchasing a financial product or keeping one, but being an information that consumers “should consider” and would foster competition, it was included in the Tables.²⁰⁴ Price information was expected to influence the switching behaviour of personal banking consumers, which, as I mentioned before, was considered significantly low. Compared to six other products, including mortgages, the least number of people had switched providers of current accounts, with only six per cent (Waterson, 2001). Similarly, an investigation conducted by the Competition Commission in 2002 identified that in the case of SMEs only 10% of respondents said that price factors were the most important when choosing a bank.²⁰⁵ For the same research, when asked which characteristics were important in a bank, 24% of SMEs mentioned quality of relationship with a manager, 23% said reasonable charges, fees or rates of interest, 22% efficiency, and 16% location.

Even though the relationship with banks and the quality of the service provided seemed very central for retail consumers, the FSA ruled out the possibility of publishing information about complaints. Although this was strongly advocated by pro-consumer associations, the Financial Services Authority, with the support of the Financial Ombudsman Service, argued that it was technically difficult to provide useful comparative data in that regard, due to the very different types of complaints made against firms, and its lack of categorisation by the regulator. At the heart of the decision was the need for the FSA to assure the industry that, contrary to their fear, not every

²⁰⁴ In its *Response to Consultation Paper 28*, the FSA argued: “On the benefits side, individual consumers who use the Tables should get some direct benefits, but there may also be more general benefits to consumers due to the increased transparency that the Tables should bring to the market. If our assumptions about market transparency are correct, we should expect prices to fall and the quality, or appropriateness, of products to improve as a result of introducing the Tables.”

²⁰⁵ Competition Commission (2002)

information they shared with the FSA or FOS would be shared with consumers.²⁰⁶

Another set of information that the FSA decided not to publish, and caused considerable unease notably among investment advisers and managers, was past investment performances. Whereas investment managers argued that price was not as important as performance, the FSA argued that there was no evidence of “any correlation between any measure of the past performance of a particular fund and the future returns of that fund” (FSA, 2000). The subject became the centre of a three year debate between the FSA, supported by consumer associations, and investment managers, as well as an investigation by the FSA.²⁰⁷ After being pressured by the industry to include past performance in its online comparative tables of investment products, the FSA not only denied the changes, but it also regulated the use of past performance information by fund managers in advertisement, in line with an FSA investigation showing that past performance was not a good guidance for the future.²⁰⁸ It was a victory for consumer associations, and in that regard for the FSA, which persistently argued that past performance was no good indicator of future performance. However, the lack of consensus between the FSA and the industry in this regard became one of the reasons why a number of investment managers declined to provide figures to the FSA while supplying them to other financial advisers. “We feel that the Tables are potentially misleading because there’s too much stress on charges and consumers don’t make decisions purely on cost”, justified the representative for Investment Manager Skandia.²⁰⁹ Although the Tables aimed at supporting consumers to make better informed choices and increase competition in the market, their voluntary nature put into doubt their sustainability as a policy solution.

²⁰⁶ Firms were obliged to provide consumers with details about their complaint handling procedures, and it was voluntary to inform that the financial service provider was covered by FOS.

²⁰⁷ For example: FSA (2000) FSA research confirms that past investment performance provides no guide to future performance. *FSA*, 14 August; The Observer (2002) Give past performance another chance. *The Guardian*, 20 October.

²⁰⁸ From June 2004, advertisements that referred to the past performance of investments were obliged to include a standardised table showing the annual returns for the fund for the previous five years, expressed in terms of percentage in order to give consumers a better understanding of the volatility of the investment. Other obligations, such as reducing the emphasis on past performance in their advertising, were also adopted.

²⁰⁹ Wallis, V. (2003) Have the tables turned on the FSA? *The Guardian*, 19 October.

2.2. *The Trajectory of the FSA Comparative Tables*

In terms of expanding the Tables to include more products, the FSA followed six criteria, a mix of propositions coming from the Cruickshank Report and from the consultations conducted by the FSA: the product needed to be currently in the market; it should be, or had the potential to be, mass market; products for which greater assistance was needed should be prioritised; prioritisation should also be given to products for which the consequences of an ‘uninformed’ decision were highest; products for which there were significant variations in the market; relevant, understandable and objective indicators could be achieved (FSA, 1999). However, while still in their infancy, in 2003 the Financial Services Consumers Panel alleged a major reason for failure of the Tables as a transparency initiative, i.e. the majority of consumers did not know that they existed.²¹⁰ Another limitation of the Tables was the fact that they were mainly an online tool, this being one of the reasons that consumers who needed them the most were the least likely to have access to them (Cartwright, 2004). Until the 2007-08 crisis, the Comparative Tables seemed fairly stable. Change came in the aftermath of the financial turmoil.

The unrest triggered by the 2007-08 financial crisis and the recent approval of the FoIA by the United Kingdom altered the norms institutionalised in Layer 2 and strengthened the position of consumer associations against financial institutions in relation to disclosure of complaints.²¹¹ Concomitantly and coordinated with the debates and disclosure of data about complaints by the Financial Ombudsman Service (FOS), the proposal of the FSA to give transparency to complaints and complaints-handling by firms to inform consumer choice, ruled out in 2000, gained renewed strength (Financial Services Authority, 2008).²¹² Unlike the statistics published by the Financial Ombudsman Service, the FSA proposal was the publication of firm-specific complaints and of complaint-handling (of data sent to the FSA by the industry, and not the complaints made at the FOS).²¹³ Consistent with the FSA Handbook, firms had to submit to the FSA data about complaints they had received and their complaints handling every six months. Complaints of all firms were published in a structured form, in order to provide consumers with information about the quality of firms’ consumer services and compliance with good practices of treating consumers fairly.

²¹⁰ Ibid.

²¹¹ This shift in Layer 2 will be discussed further on section 3 of this Chapter.

²¹² Financial Services Authority (2008) Discussion Paper 08/3. FSA.

²¹³ Before making a complaint to the Financial Ombudsman Service, consumers were obliged to complain and try to solve the problem with the financial service provider. Only in the case that the provider could not solve the problem, the consumer could refer to the FOS.

Whereas representatives from consumer associations justified that transparency of complaints to firms was important for being an additional source of information for consumers, company representatives argued that complaints data may not help customers make good purchasing decisions, and highlighted the potential confidence damage it could generate in the financial services industry. Exactly as argued by larger firms in relation to the publication of complaints by FOS, if the FSA published the absolute number of complaints, without taking into account how much business a firm did, they alleged it would be unfair on these firms. Firm representatives also raised concerns regarding the FSA breach with the European Markets in Financial Instruments Directive (Directive 2004/39/EC), which limited transparency of firms' data by the regulator. Some firms fought for specific types of contextualisation of the information, but agreed it was difficult to argue against the principle of disclosure.²¹⁴ Others suggested that the FSA continued using "its existing powers, including thematic reviews and enforcement processes, instead of transparency". But the financial crisis had made clear the need for more regulation of financial service providers.

Complaints data started being published by the FSA in August 2009. Published data covered two areas: volume of complaints received according to product, type of firm and cause of the complaint, and complaints-handling.²¹⁵ In 2010 the FSA required firms to also publish their data every six months in case they reported 500 or more opened complaints within the reporting period (FSA Handbook DISP 1.10). In many of its statements, it was clear that the FSA disclosed complaints information as a tool to support both the performance and the transactional logics of regulatory transparency. In a review of the complaints disclosure data in 2012, the FSA identified that from the firms' side 76% used complaints data to compare their performance against their peers, 59% to review their own performance, and only 6% thought consumers complained more due to the disclosure scheme.²¹⁶ From the perspective of consumers, 22% of respondents were aware of complaints data, 38% of whom claimed having used the data when choosing a financial service provider. Both bodies were convinced of the benefits of disclosure and did not plan to restrain the disclosures in any regard. However, with the beginning of the Conservative – Liberal Democrat Coalition government in 2010, a sequence of changes was introduced in the approach to transparency as a regulatory tool, in the framework of which not only the FSA Comparative Tables but also the FSA

²¹⁴ Fitzsimons, J. (2008) FSA league tables meet cool reception from intermediaries. *Mortgage Solutions*, 2 June.

²¹⁵ Firms reported the volumes of complaints according to 36 different product categories, divided in five groups.

²¹⁶ This was one of firms' concerns in response to the FSA consultation in 2008.

itself would soon cease to exist.

2.3. The Scrapping of the Comparative Tables

The financial crisis of 2007-08 had revealed that some of the financial risks were often disclosed, but the market lacked, as the Coalition government argued, the understanding of what was happening due to a mix of cognitive bias, bounded rationality and the complexity of financial products.

On the organisational structure of the financial market, the British model of concentrating in one single body the mandates of prudential regulation, oversight of consumer protection and market conduct lost support. Instead, the ‘twin peaks’ model of financial regulation, which divides the responsibilities of prudential regulation and financial conduct regulation into separate regulatory bodies, became stronger, not only in the United Kingdom, but also internationally (Ferran, 2011). The Turner Review suggested that combining prudential and conduct of business regulation and supervision created the danger of lacking specialist focus on either, and that a focus on conduct could come at the expense of prudential regulation (Turner, 2009, pp. 92).²¹⁷ The theoretical incompatibility of mandates heavily supported at that moment, together with the ‘failed experience’ of the FSA prior to the financial crisis, strengthened the political support for the twin peak model, bringing significant changes to the organisational framework to protect consumers and foster competition, and in that regard to regulatory transparency (Taylor, 2009).

In the area of consumer protection, assessments about the efficacy of the FSA prior to the crisis were mixed. Among its harshest criticisms were being captured and failing to protect consumers, not solving the issue of mis-selling of retail financial products, and being insufficiently robust in supervising certain consumer-oriented practices from the industry (Parliamentary and Health Ombudsman, 2008; Financial Services Consumer Panel, 2009; Ferran, 2011). On the positive side, it had imposed substantial sanctions against firms that had not complied with negotiated decisions related to retail consumers, it had sufficiently addressed financial capability, among others (Jackson, 2008; Financial Services Authority, 2009; Ferran, 2011).

Reforms of the financial market still took on board a great deal of transparency requirements, which were then often complementary to command and control regulation and informed by the notion that disclosure needed to “work under actual (not hypothetical) market conditions” (Avgouleas, 2009). But the crisis put in check the FSA

²¹⁷ See, also, the speech of Mervyn King at the Bank of England on 16 June 2010.

Comparative Tables. The Coalition government aimed at adopting a behavioural approach to many of its policies. According to this approach, if all consumers were rational, the availability and quality of information would sufficiently influence consumer choices. However, as theories of bounded rationality demonstrated, individuals were unable to maximise their benefit, as they tended to lack access to all the information they would need to make a rational decision, and indeed even if they *did* have access to all this information, their decision would still have biases (e.g. Simon, 1972; Paredes, 2003; Barberis and Thaler, 2002).

In 2008 the Tables were published on the scope of the ‘Money Made Clear’, the initiative of the FSA with the Treasury to help consumers have a better understanding and command of dealing with money and finances. With the creation of the Consumer Financial Education Body in 2010, Money Made Clear was relocated to the new body, rebranded as Money Advice Services (MAS) in 2011. In its first year as MAS, it removed the FSA Comparative Tables and provided links to alternative price comparison websites and guidance on how best to use them. The Tables were scrapped without much concern around the issue of credibility, independence and ability of third parties to provide the information; one of the very reasons that had led the FSA to create and publish the Tables in the first place. According to Dominic Lindley, a member of the Financial Services Consumer Panel at the time of research and a prior member of Which? (a social enterprise for consumer rights), not a lot of people knew about the Tables and, therefore, it was easy to scrap them and switch to another policy solution.²¹⁸

The decision to transfer the responsibility to provide comparative information about financial products to third parties was aligned with the MAS’s understanding that “people do not always act in their ‘rational best interest’”. The real need, according to this view, was to guide and advise consumers about the characteristics of products and what to consider when getting them, and to do so in a way that took into consideration consumers’ behaviours (Money Advice Service, 2011). In terms of publishing comparative information about features of products and services of regulated firms, the government justified it should only be fostered in case the market did not play such role, which was at some level aligned with what the FSA itself claimed when the Tables were created.

In some cases, there may be a further role for Government. There may be markets where intermediaries and tools such as price comparison sites do not develop, or where they do not meet the needs of vulnerable consumers. In these cases, there may a role for Government to provide funding, backing

²¹⁸ Lindley, D. (2016) *Interview on 26 February 2016*. [Recording in my possession.]

or investment in intermediaries or tools (Department for Business, Innovation and Skills, 2011).

This idea was shared by Sue Lewis (2016), a member of the Financial Services Consumer Panel at the time of this research, who pointed out, however, that it was also due to pressure from banks:

I think the logic at that time was that the industry publishes comparison tables, so there is no need for the Money Advice Service to do it, if it is already out there. [...] Industry-owned comparison sites are not impartial, but the industry put great pressure on the government to stop the Money Advice Services from publishing impartial comparisons.²¹⁹

In agreement with Lewis, Dominic Lindley (2016) suggested that comparison websites managed by private third parties, though not impartial, put a lot of effort in the initiatives as they operated with a business rationale. He also highlighted the existence of not for profit and impartial initiatives that aimed at informing consumers:

The thing about the private sector bodies is that they have gotten a big incentive for them to promote their comparison tables very effectively, and also monitor what people do when they get the information. Because this is how they [private sector bodies] get paid. So for every person that clicks on them and goes on to buy a product, they will get a commission from the provider. [...] But there were also consumer organisations; so you had Which? offering information on its website that it might tell you, for example, the top five best buys in savings accounts, or something like that.

The concerns voiced by Sue Lewis and Dominic Lindley were recently corroborated by a consultation led by the Competition and Markets Authority (CMA) on 'Digital Comparison Tools' (DCTs). According to the Report, although most people had positive views and experiences of DCTs, several had concerns of what they may do with their personal data and that they have "led to the hollowing out of products, that is, a decrease in quality (e.g. worse insurance cover) because of an undue focus on price". Moreover, the CMA raised strong concerns about the contracts between DCTs and suppliers of services, "which prevent suppliers from offering better prices on one DCT than on another (so-called wide price parity/Most Favoured Nation clauses) and can reduce competition between DCTs."

The FOS and FSA initiatives to disclose complaints information were, however,

²¹⁹ Lewis, S. (2016) *Interview on 23 February 2016*. [Recording in my possession.]

maintained, as these were sets of data that private agents did not have access to in order to allow publication in third parties websites. Additionally, disclosure of complaints was a mixed category with the performance logic. Publishing sets of information that fostered such logic of regulatory transparency was part of the 'Better Choices, Better Deals' initiative of the Department for Business, Innovation and Skills, under the objective of 'Opening up regulatory data'. Designed to foster competition, advocated by the government to be in the heart of a dynamic economy, 'Better Choices, Better Deals' was a strategy created in 2011 to shape consumer behaviour in a way promised to improve the UK economy, making it more competitive and innovative without the necessity for the introduction of a wide range of new regulations (Department for Business, Innovation and Skills, 2011a). The main objective of the initiative was to provide consumers with information that would not only increase the amount of data available, but would take into consideration their behaviour when making specific choices and steer people towards better decisions (according to the government, decisions that would make people enjoy healthier, wealthier and happier lives).

The Financial Services Act of 2012 abolished the FSA and created three separate bodies to regulate the financial market. Of these three, the Financial Conduct Authority (FCA) was the main substitute of the FSA, taking over the FSA mandate of protecting consumers. Besides being responsible for ensuring the integrity of the market and for regulating financial firms to provide consumers a fair deal, the FCA became responsible for guaranteeing competition of the financial market.²²⁰ In both mandates, to protect consumers and promote competition, the FCA worked heavily in ensuring that consumers had access to information that they could understand and respond to. Not all of this information was offered by the FCA as an RTP, rather it was provided in an equally structured and comparative, but individualised fashion. Moreover, instead of RTPs, independent bodies, such as the Competition and Markets Authority, now supported individualised access to financial information, in order to boost competition.

In the section below I briefly look into this relatively new format of information sharing with consumers to question if and to what extent these new initiatives reflected the internationally consolidating ideas of bounded rationality and nudging and can be considered policy substitutes to RTPs in the transaction logic and may, therefore, influence their trajectory currently in the United Kingdom and elsewhere.

2.4. Any future for the transaction logic in retail banking?

Instead of replacing the scrapped Tables with another RTP, the Coalition government

²²⁰ The other two bodies, operating within the Bank of England, were the Prudential Regulation Authority (PRA) and the Financial Policy Committee (FPC).

launched an initiative for current accounts, known as Midata, that was based on data and individualised information disclosure, but not on transparency of standardised and comparative information to the public.²²¹ This new initiative supplemented others aimed at increasing market competition and consumers' chance of exit, such as a Current Account Switching Service and account number portability, but also by reducing consumers' information asymmetry in relation to the banking sector. Midata was adopted as an initiative with voluntary adhesion by banks to provide their "customers' data available in a safe, simple, standardised format that can be easily fed into comparison sites to give the customer more clear and accurate options when they shop around" (Davies et al., 2015).

The thrust for the creation of the initiative was that in order to make better and more informed decisions, consumers first needed to be aware of their consumption habits. This is also true for RTPs, although disclosure alone does not explain individual consumption patterns. Even though consumers already had the right to access their own data held by businesses before the creation of Midata, this right was unknown to most consumers. Summarising the design goals of Midata, Lindley (2016) explained that, besides fostering competition by providing consumers with information:

One of the other purposes [of Midata] is helping consumers to manage their money, helping them to use their existing products in better ways. And the third purpose is prompting them to think of what else might be available out there, to help them compare and contrast so that they understand how much they are paying at the moment and helping them get a better deal.

The new comparison tool was published by the private website Gocompare.com and allowed comparisons between the UK's six largest current account providers. The website also allowed customers of these providers to upload a statement with up to 12 months of transactions and, based on the customers' specific needs and past spending habits, suggested the most suitable current account available.

The initiative was aligned with disclosure policies in other areas of the government and was supported and promoted by the Information Commissioner:

I strongly support initiatives to promote greater openness and to increase the control citizens have over their own personal data. The 'mydata' concept

²²¹ Before being launched as Midata, the initiative was referred to as 'mydata' at the design stage.

is compatible with the requirements of the Data Protection Act. The Consumer Empowerment Strategy rightly points out that the privacy and security dimension will need to be properly managed if both compliance and public confidence are to be maintained.

Instead of providing a structured set of information for consumers to interpret based on their perceived needs, Midata reduced the chance that bank account customers misinterpreted their pattern of financial services purchase, and allowed for provision of a customised electronic comparison, diminishing the likelihood of biases in their own data analysis. Tailor made access to information was the core idea of Midata. “A key part of the government’s long term economic plan is to boost competition and transparency in banking so that customers can get the best possible deal. Addressing the balance of power between banks and their customers is at the heart of this” (HM Treasury, 2015).

At the time of writing, the government was working with a new large comparison website to increase consumers’ use of Midata. But results and the future of Midata were still inconclusive. A review of Midata found that the numbers of reported downloads of data were a small fraction of downloaded pdf.s of statements, and customers that had used the tool disapproved of the government working with third party websites, due to data security concerns (Department for Business, Innovation and Skills, 2014). Another issue was that a number of personal current account holders did not have the technological knowledge to download and share data online.²²² Unlike RTPs, initiatives of the nature of Midata created problems with issues of security and secrecy. The issue of concentrating on information disclosed on the Internet, however, was a common problem with both strategies.

In its 2016 review of banking services, the Competition and Markets Authority (CMA), once again recognised that, still dominated by a small number of high street banks, markets were not competitive enough. The Review proposed a package of remedies, mainly building on technological ideas similar to Midata (Competition and Markets Authority, 2016). Open Banking, the first recommendation from CMA, aimed at providing consumers with reliable and personalised financial advice through defining open API standard for banking. The second recommendation was again related to transparency and required banks to publish indicators of service quality based on customers’ willingness to recommend their banks. Another recommendation was to encourage consumers to review and switch their bank arrangements more frequently. In the era of obfuscation, maybe the most important on CMA’s list of recommendations were the standardisation requirements. But it was still unclear whether the tool would

²²² Peachey, K. (2016) Getting the most from your current account. *BBC*, 3 March.

improve individuals' financial decision making ability.

In the meantime, the Financial Services Consumer Panel pressured the FCA to adopt regulatory transparency policies related to firms' reputation and conduct to inform consumers about what to expect of a firm after financial services were purchased, suggesting that there was still space for the adoption of RTPs, regardless of the emerging paradigm of bounded rationality and nudging.

Ultimately, providing consumer-focused information in this way may help to frame the FCA's supervisory and enforcement activity in a more relevant way than is currently the case. As such, it has the potential to reduce the information asymmetry, which currently exists in the financial services sector, empowering consumers to 'co-regulate' the market by making more informed choices about which providers they use.

In addition to having a direct consumer benefit, respondents in this research feel that there may also be some influence exerted on providers to improve practices as a result of such information being available. This indicates the potential for this type of intervention to increase the effectiveness of the FCA's work (Collaborate Research, 2015, p. 26).

Lastly, what the creation of Midata has shown so far is that citizens value ideals such as security of their private data and may be reluctant to partake in initiatives where they have to share this with third parties. In this regard, and given the promises of regulatory transparency, it seems that initiatives of the two natures may after all continue to co-exist, rather than the first taking over the latter. This is the case currently, which can be illustrated by the maintenance of transparency of bank complaints information, discussed below.

3. Creation and Trajectory of Complaints Information Transparency

As previously suggested, the aftermath of the 2007-08 financial crisis affected the banking sector in the United Kingdom in many regards, from increased concentration of its retail banking divisions to its regulatory approach and organisations' mandate. The general change in the regulatory regime was significant. The Turner Review, commissioned by the Chancellor of the Exchequer, on how the United Kingdom should respond to the world financial crisis, stated that the FSA's regulatory approach prior to the crisis was based on beliefs that markets are in general self-correcting, that it was the responsibility of senior management and boards of individual firms to primarily manage risks, and that consumer protection was "best ensured not by product regulation or

direct intervention in markets, but by ensuring that wholesale markets are as unfettered and transparent as possible” (Turner, 2009). Some of the changes adopted in the regulatory apparatus of banking were significant. Four years after the crisis had shaken the City of London, the *Economist* reported that

Before the financial crisis Britain’s Financial Services’ Authority (FSA) did, indeed, try to impose the lowest possible burden and cost on a prizes industry. But bank supervision has since become almost unrecognisably tougher.²²³

In the turmoil of the crisis, the Hunt Review on the Financial Ombudsman Office’s accessibility and transparency policies was published, highlighting an extreme polarisation of views in terms of publication of the complaints data, with consumer associations calling for full disclosure and the industry heavily opposing to it (Hunt, 2008). “The reputational risk of being perceived to be withholding data”, suggested the Lead Ombudsman at the FOS, “would exceed any danger of possible misinterpretation in the short-term”.²²⁴

Reducing reputational risk was highly relevant for the FOS, but the body also had a number of other reasons to move forward with the disclosure of complaints information. One of these reasons, the Lead Ombudsman at the FOS said, was the entry into force of the Freedom of Information Act (Mitchell, 2015). Other reasons were the international trend, strong and constant pressure from consumer associations, such as the National Consumer Council (NCC), which “encouraged ombudsmen to publish details of complaints upheld, in order to use the influence of business reputation on consumer choice to change market practices” (National Consumer Council, 2008), and the fact that the courts, when dealing with similar cases, published their decisions, already making part of the information available. Lastly, since 2008 the FOS had registered a significant increase of complaints about some banking services in comparison to previous years, which could be decisive for customers when they were choosing financial service providers.²²⁵

²²³ The Economist (2012) Light touch no more. *The Economist*, 1 December.

²²⁴ Mitchell, C. (2015) *Interview on 24 November 2015*. [Recording in my possession].

²²⁵ In 2007-08 complaints were mostly driven by heavy volumes of complaints about unauthorised overdraft charges. In 2008-09, “default charges” of card credits increased and became a big issue. In the following two years the Ombudsman Financial Service received a great amount of complaints related to clients’ financial hardship, and in the period of 2012-2013 there was an increase in relation to section 75 of the Consumer Credit Act 1974, under which a credit-card provider could be jointly liable with the supplier of the goods or services, where a consumer had a valid claim for misrepresentation or breach of contract. The

The FOS started to disclose complaints data periodically (every six months), showing the number and outcome of the cases handled in alphabetical order. In order to facilitate comparisons, including for the purpose of choice, the media created rankings and news reports with firms and financial products topping the list every time that it was published.²²⁶ In late 2016, when this chapter was being finalised, firms still called for overhauling FOS complaints reporting, alleging that the Ombudsman provided raw data on complaints, and did not consider, for example, the number of clients that firms had when publishing the data.²²⁷ Despite these criticisms, however, the regulatory transparency policy has been maintained.

Moreover, the FOS suggested that, besides informing consumers' choice, one of the most important outcomes of the disclosure reports were the comparisons that they allowed the industry to make in relation to their peers as well as to learn about their most serious complaints problems in order to solve them internally. The publication of the complaints reports was also quickly picked up by media organisations, which went on to create rankings to highlight best and worst performing firms. This put significant pressure on the banks, which continued both to criticise the publication of reports and attempted to improve their position in the rankings. That the firms were pushed to make improvements in their consumer relations attributes to the disclosure of this set of information mixed characteristics of the performance logic.

4. RTPs and financial education of citizens

For the transaction logic to reach its intended objective, consumers need to know what information is available and how to navigate the financial market. The policy agenda that

outstanding complaints in the following two years were also due to mistreatment of consumers when they were facing difficulties with their financial situation, similar to those from 2010 to 2012.

²²⁶ For example: Robins, W. (2016) Sesame tops FOS complaint list. *CityWire*, 6 September; Peachey, K. (2016) Banks face up to old and new complaints. *BBC*, 23 February; Collinson, P. (2016) Financial Ombudsman still receiving thousands of PPI complaints, *The Guardian*, 6 September.

²²⁷ The number of clients mattered, the argument went, because the more clients a firm had, higher the net number of complaints it would likely receive. Marriner, K. (2016) Adviser call for overhaul of FOS complaints reporting. *Money Marketing*, 14 September.

currently pushes for the engagement of consumers' learning is financial education, which is an area that is also highly relevant for RTPs in the transaction logic. In the UK, as with many countries around the world, regulatory disclosure in the financial market is also being advanced in response and in supplement to the agenda of financial education. The creation and rise of financial education is based on the view that financial decision making has become increasingly more technical and complicated and that the absence of financial knowledge may lead individuals to be in worse financial situations than they could be. According to the OECD, financial education is

The process by which financial consumers/investors improve their understanding of financial products, concepts and risks and, through information, instruction and/or objective advice, develop the skills and confidence to become more aware of financial risks and opportunities, to make informed decisions, to know where to go for help, and to take other effective actions to improve their financial well-being (OECD, 2005).

Financial education is therefore directly related to the capacity of consumers to process financial information (Garcia, 2013, p. 303). It fosters the idea that information for financially educated individuals will enable them to make optimal saving and investment decisions (Clark et al., 2006; Hilgert, Hogarth, and Beverly, 2003; Hira and Zorn, 2001; Mastrobuoni, 2009; Staten, Elliehausen, and Linn, 2002). Marron (2014) suggested that "financial capability" became a part of the UK financial regulatory framework in the past decade, associated with the growing importance of the financial sector for the British economy, making it a pressing objective to increase consumer understanding of financial products. More capable consumers could both ensure their wellbeing in the modern world and empower consumers to hold the financial industry to account, including through fostering competition by searching for better deals. Together with the debate on information provision and behavioural economics, a body of literature has also opened discussion about the odds of financial education and financial behaviour (Bernheim, Garret, and Maki, 2001; Bernheim and Garret, 2000; Cole and Shastry, 2009; Duflo and Saez, 2003; Duflo and Saez, 2004).

In the fall of 2003, the FSA and a series of organisations (in the government, the financial services industry, employers, trade unions, and educational and voluntary sectors) created the 'National Strategy for Financial Capability' to consult and create policies to increase public understanding of the financial system, one of its regulatory objectives. A product of this partnership was the Financial Capability Survey, which interviewed a total of 5,328 people and identified that people took risks and did not shop around to get a better deal; a significant number of UK bank users did not save enough; and, those under 40 years of age dealt with a great amount of bank interactions, even

though they could not afford mistakes (Financial Service Authority, 2006). Some of these actions had been institutionalised previously and were brought to the scope of the Strategy for a more comprehensive approach to financial education.

Complementary to the measures to increase financial education and awareness, in 2003 the FSA expanded the use of RTPs to further financial inclusion and published tables with comparative information for basic bank accounts, i.e. accounts for adults who could be refused by traditional current account facilities due to credit scoring.²²⁸ The action was adopted in response to the commitment of increasing the number of people with at least a basic bank account as defined in the ‘New Commitment to Neighbourhood Renewal’, an action plan by New Labour against exclusion of people based on where they lived in the UK.²²⁹ It was discontinued in the same context of the end of the FSA Comparative Tables, even though the public of this regulatory policy would have, in theory, more difficulties to be users of initiatives such as Midata.

In the aftermath of the financial crisis, with the Financial Services Act 2010 emphasised the FSA’s objective of “contributing to the protection and enhancement of the stability of the UK financial system”, and obliged it to establish the ‘Consumer Financial Education Body’ (CFEB). Among many of its functions, the CFEB had to promote awareness of the benefits and risks associated with different kinds of financial dealing and to provide information and advice to members of the public.²³⁰ The approach of the CFEB was based on the conviction that better informed consumers could take greater responsibility for their financial affairs. The subsequent Financial Capability Strategy for the UK was approved in 2015, after a series of consultations and research. One research showed an alarmingly low level of financial literacy in Britain, with 41% of adults not knowing their current account balance, one in six people being over indebted, 22% of bank clients not being able to read the balance of a bank

²²⁸ In 2004, The Treasury estimated that around 8% of households in Britain still not have a bank account. Towards the end of 2004 the government’s goal was to open 1.4 million new bank accounts within two years, (according to the British Bank Association 1.64 million basic bank accounts were opened from 2003 to 2006). The basic banking accounts could be either operated through branches and ATMs or through post-office counters; being the last the one used by the Treasury to monitor progress towards the financial inclusion goal.

²²⁹ The initiative of the leaflet was adopted fostering a number of previous policies to expand access to the basic bank accounts. In 2002, for example, besides requesting high street banks to offer basic bank accounts, the government started to pay its benefits direct into people’s bank accounts, pushing for people who did not have a bank or savings account to open one, and for banks to improve develop their services.

²³⁰ The FSMA 2010 defined that before preparing or varying an annual plan, the consumer financial education body needed to consult (a) the Treasury, (b) the Secretary of State, (c) the Office of Fair Trading, (d) the Practitioner Panel, (e) the Consumer Panel; and any other body it deemed necessary or profitable.

statement, 40% of the people not understanding the impact of inflation on the real value of money, and a large number of people without a financial strategy for the future (Money Advice Service, 2015, p. 14).

The Strategy focused on developing people's financial skills and knowledge, and their attitudes and motivation, in order to improve their ability to manage money well day to day, prepare for and manage life events, and deal with financial information and difficulties (Money Advice Service, 2015, p. 15). The 2015 version of the Strategy also had an "Evidence and Evaluation Priority", to grow evidence about the policy impact of financial capability.

Conclusion

This chapter has surveyed the creation, the expansion and (in one case) the retrenchment of RTPs in the retail banking sector in the United Kingdom. The FSA Comparative Tables were not adopted to disclose only new information to the market, but also to present existing information in a structured and impartial form to consumers, in order to prevent 'obfuscation' in the market and guide consumers in their decision-making processes. Created by the FSA as part of its mandate, and within the framework of the New Labour government's 'light touch' regulation, it was also strongly supported by pro-consumer organisations. Hence, its initial trajectory was towards further expansion, with new sets of information being added every year.

The Tables were, however, scrapped in the aftermath of the 2007-2008 financial crisis, which brought changes and ultimately the end of the FSA. It also followed the change of government in 2010, which brought with it the beginning of a paradigm shift from regulatory transparency-based solutions towards behavioural approaches, taking into account the bounded rationality of consumers. The end of the Tables, however, was not officially justified in relation to this paradigm shift, but for the fact that third parties had started to publish online similar comparative information. The retrenchment of the RTP was not resisted by the pro-consumer organisations that had pushed for it earlier. The apparent low usage of the Tables by beneficiaries appeared to have contributed to this lack of resistance. Also explaining this lack of resistance was the fact that a great deal of the information disclosed was not exclusive and was already available elsewhere.

In contrast, the trajectory of the disclosure of bank complaints data was one of contestation (by its targets), followed by stagnation. Its creation took place when the FOS and the FSA (the drivers of the RTPs) received support from external bodies and pro-consumer groups for disclosing the complaints data they held. The RTP, which embodied elements of performance logic as well as transaction logic, was initially

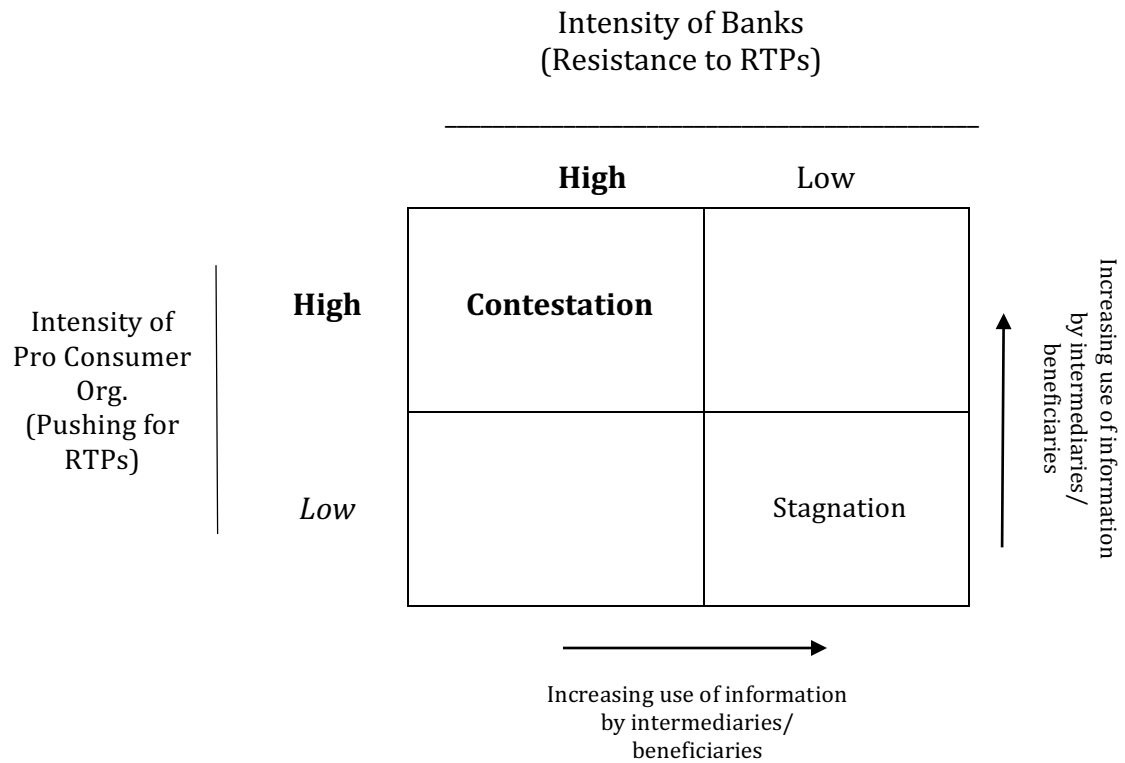
resisted by firms, shortly for the underlying principle of transparency and afterwards for the design of the disclosure. Instead of scrapping the RTP, the firms demanded better contextualisation of the data disclosed on grounds of fairness. Indeed, both the FSA and the FOS continued publishing the information as they believed data on complaints were highly important for consumers to decide with which firm they could transact. Moreover, disclosure could lead to improvements in the firms' treatment of customers. Unlike the FSA Comparative Tables, the information on complaints continued to be published beyond the lifetime of the FSA. As I showed in the narrative of the case, this was due to the high intensity of the FCA to give transparency to information not freely available in the market and, by doing so, support the fair treatment of consumers by firms.

Comparative Analysis: The Brazilian and the UK cases in the logic of transaction

The transaction logic of regulatory transparency refers to the publication of information to support the decision making processes of consumers by means of promoting the transparency of features of products or services. The nature of the creation of RTPs observed in the transaction logic were mostly contested, except for a few cases addressed in Brazil. The trajectories of the policies, on the other hand were varied: many experienced very slow expansion, some stagnated and a couple, in the United Kingdom, retrenched, mainly in response to pressure from interest groups or due to external changes (such as the financial crisis of 2007-2008 or a change of government, as in the UK in 2010). The targets of RTPs in the transaction logic are private parties and the drivers are interest groups or regulatory agencies with a mandate that can be fulfilled also through regulatory transparency. Unsurprisingly, by the power balance of the drivers and targets, the presence of a formal regulatory agency that maintains the periodic disclosure of data seems crucial for the RTP's expansion or stability after its creation.

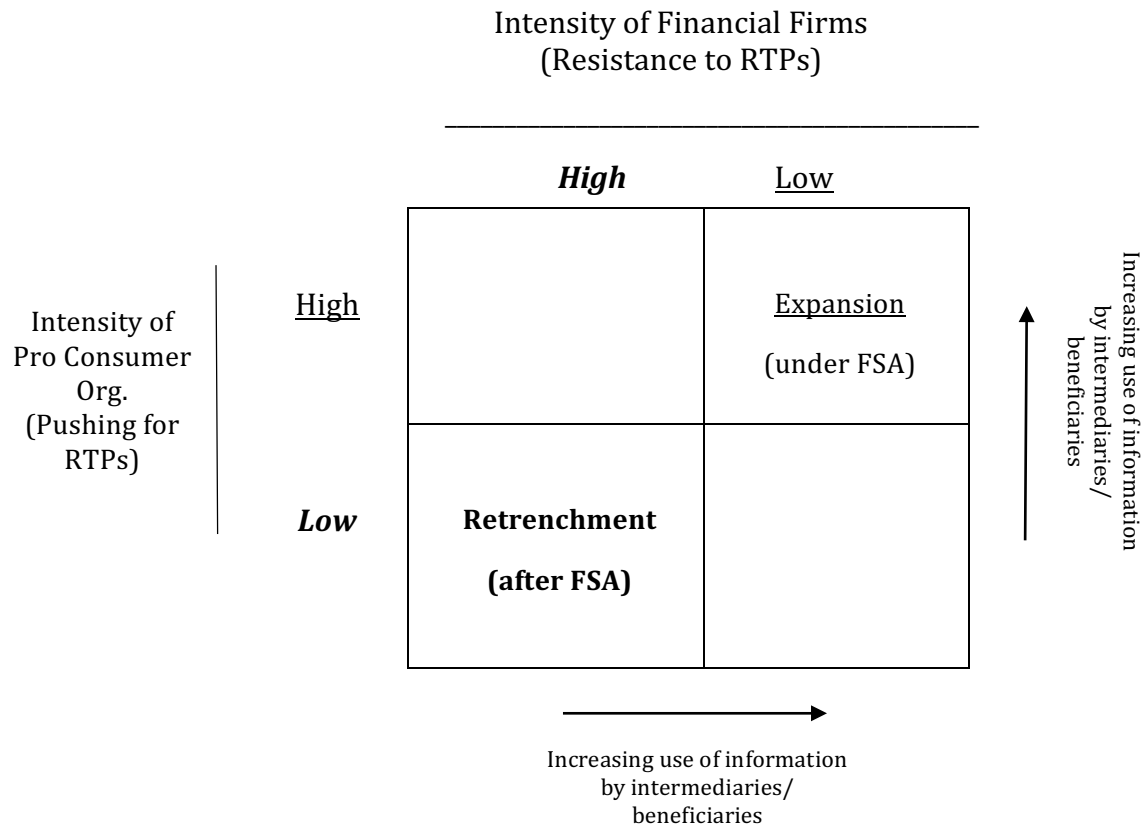
As discussed in Chapter 6 in relation to the creation and disclosure of the standardisation and publication of bank tariffs in Brazil, when both the driver and the target have high intensity in opposite directions in relation to an RTP, any of the two sides can mobilise resources to strengthen their position, resembling Wilson's interest group politics. What we observe is that following the end of the contestation, the RTP tends to stagnate. In the case of the transparency of standardised tariffs, years after their creation, the Central Bank and Febraban still published the information and pro-consumer organisations monitored whether banks complied with their obligation to publish the same information through appropriate channels. The RTP has had a couple of changes to adjust their design, but have not seen any notable expansion since then until the time of writing (Table III.1).

Table III.1. Trajectory of RTPs in Transaction Logic (Brazil)



Contrary to the Brazilian case, where pro-consumer groups were the main drivers that first enlisted the involvement of the Central Bank in the RTP process related to the standardisation and publication of bank tariffs in Brazil, in the UK Comparative Tables case, a regulatory body (the FSA) was the main driver of expansion of the RTP. Despite support from consumer organisations being crucial for the adoption of the FSA Comparative Tables, it was the FSA that created, published and determined the pace of expansion of the Tables. With the abolition of the FSA following the financial crisis of 2007-2008, and without a norm that institutionalised the disclosure of the comparative information by the regulator itself, the Tables were scrapped without opposition from pro-consumer organisations (Table III.2).

Table III.2. Trajectory of RTPs in Transaction Logic (UK)



Consumer rights groups did not resist the retrenchment of the Tables for two reasons: first, the perceived low use of information by beneficiaries and the pressure from the industry against Tables. This reason points to the fact that in those moments when scrapping an RTP is considered, the level of the beneficiaries' engagement with the RTP can play a decisive role. The second reason was that the information was already available in public (i.e. most of it was not exclusively owned by the regulator, but organised and made more clear by the FSA) and it was believed that financial information would continue to be published by private parties and intermediaries (such as the website Gocompare.com), especially because other bodies were being created to oversee consumer rights.

This second reason leads to a general observation about the trajectory of an RTP and the type of information it discloses in the transaction logic. On the basis of the evidence presented in the cases, we can argue that when information is not exclusive or controversial, there will be low actor mobilisation either to support the RTP or to resist it. This comes across as a key characteristic determining the trajectory of RTPs in the transaction logic, supporting one of the initial expectations of this research. In contrast

to the FSA Comparative Tables, for example, the FSA's complaints data continued to be disclosed under the newly established FCA, which assumed the mandate of its predecessor. Unlike the Tables, the complaints data was exclusive information held by the regulator and consumers would not have access to it otherwise, which arguably was a factor in its maintenance.

The Brazilian financial sector regulation case also revealed one type of regulatory transparency policy that expanded without significant resistance or contestation. These were the RTPs adopted by regulatory bodies for purposes related to financial education. What can explain the high intensity of drivers in this case is the regulators' mandate to promote the financial education of citizens. And what explains the low resistance from the targets is the fact that the information published was often not new or original; it existed in less organised forms in the market. In these cases, the role played by the Brazilian Central Bank was similar to that of a dedicated intermediary.

CONCLUSION

In the Introduction to this thesis, I proposed categorising regulatory transparency policies in three logics, i.e. the control logic, the performance logic and the transaction logic. In the Theoretical Framework, I put forward a ‘scholarly pluralistic approach’ to studying institutional change in transparency policies. On the basis of this approach, I further argued that a) RTPs are self-reinforcing processes, i.e. they are likely to follow the original path they were intended for; b) their trajectories on this path are determined by the relative intensity of those actors that push for disclosure against those who resist or contest it; and c) examining the logic (or the underlying rationale) of an RTP can give us insights into its trajectory based on the type of information disclosed and the distribution of actor intensities. In Parts I to III, I narrated cases from Brazil and the United Kingdom and analysed the creation and the trajectories of various RTPs in all three logics. At the end of each part, in the comparative analysis sections, I provided across-case comparisons and drew conclusions about the specific logic under scrutiny. In this Conclusion, I return to the arguments put forward at the beginning of this thesis and evaluate them on the basis of the empirical evidence from the case studies.

Across the cases covered in this thesis, RTPs’ trajectories evolved in different ways. Shaped by political institutions (Layer 2), which are established upon culturally embedded norms and dominant paradigms (Layer 1), the different logics of regulatory transparency organised actor relations in specific ways and played a key role in these changes. In light of the main empirical findings of this thesis (summarised in Table 8.1 below), I will discuss each of the abovementioned hypotheses to draw final conclusions for the thesis. In the end, I will turn to wider debate regarding institutional change and transparency to evaluate the societal and academic relevance of this research, and attempt to formulate an agenda for future research.

Logic of Control		Logic of Performance		Logic of Transaction	
Brazil	UK	Brazil	UK	Brazil	UK
Layer 1		Layer 1		Layer 1	
Transparency as a tool for anti-corruption, democratisation, and better governance		Economic liberalisation paradigm		Liberalism, Rationalism, Consumer Choice	Paradigm shift to Bounded rationality
Layer 2		Layer 2		Layer 2	
Fiscal Transparency CGU	FoIA IPSA	New Public Administration		Consumer Protection Institutions	Creation of a Nudge Unit
Layer 3		Layer 3		Layer 3	
Transparency Portal	Allowance & Expense Registry	IDEB	School Performance Tables	Transparency of Bank Tariffs	FSA Comparative Tables
T: Public Officials & Politicians D: CGU B: Citizens, Executive I: Media & Civil Society Creation CGU's Mandate Trajectory Incremental Expansion (existence of CGU)	T: MPs D: Journalists + IPSA B: Citizens I: NGOs Creation FoIA request & Leaks Trajectory Pre-IPSA: Punctuated Exp. After IPSA: Incremental Exp. Register of Members Interests T: MPs D: MPs B: Citizens I: (ngos) Creation Self-Regulation of MPs Trajectory Incremental expansion (transparency as preferred tool (Proportionality))	T: Schools (subnat govts) D: Central govt + INEP B: Students, parents + Cent govt I: NGOs Creation Gov Education Reform Trajectory Contested expansion (Contestation by intermediari	T: Secondary Schools D: Central govt B: Students, parents + cent govt I: Education startups Creation Central Gov's Policy Trajectory Contested expansion (Contestation by teachers)	T: Banks D: Regulator + Cons Protec Inst B: Consumers I: Comparison websites Creation Contest from Cons Protec Inst. Trajectory Mostly Stagnation Bank Complaints T: Banks D: Central Bank B: Consumers I: Media Creation Central Bank Mandate Trajectory Incremental expansion	T: Banks D: FSA B: Consumers I: Comparison websites Creation FSA & Independent Bodies Trajectory Incremental expansion Retrenchement Bank Complaints T: Banks D: FSO + FCA B: Consumers I: Media Creation Contested & FSA & FOS Trajectory Incremental Expansion

Table 8.1. Summary of findings

1. RTPs as Self-Reinforcing Processes

In Chapter 1, I argued that RTPs are self-reinforcing, i.e. once an RTP is created, it is likely to continue on the path it started from due to increasing returns processes. The cases that are analysed in this research largely confirm this claim. All of the RTPs examined across two countries and three logics pursued their primary purpose of creation throughout their lifespans. This suggests that even though RTPs can and do retrench, a series of factors make it more likely that they will either stagnate or expand. As evidenced by the case studies, the discussion of regulatory transparency policies as self-reinforcing processes requires us to consider creation and the later trajectory as distinct phases in the life of an RTP. In other words, there appears to be different dynamics at work (and a different analytical focus to examine them) at the moment of creation of an RTP. The three-layered approach to institutional change provides a useful tool for this distinction.

1.1. *The Moment of Creation*

In the moment of creation of an RTP, culturally embedded norms and powerful political institutions in Layers 1 and 2 have been seen to play an important role, providing compelling arguments and institutional support to actors that push for – or accept – the disclosure of information. In the cases of regulating the actions and behaviours of politicians in the control logic, analysed in Part I, the relevant ideals were those of openness, accountability, public oversight and fiscal discipline of government, and the belief or hope that transparency would further these ideals. In the Brazilian case of the Transparency Portal, for example, these norms have been institutionalised, among others, in the 2000 Law of Fiscal Responsibility, the 2012 Freedom of Information Act, as well as in the creation and mandate of the Office of the Comptroller General (CGU) which was the architect of the RTP. Similarly, it was a FoIA obligation to disclose information pro-actively and a FoIA request by a journalist, which together with media leaks, triggered the MPs' expenses scandal in the UK. In both cases, the prevailing norms increased the costs for politicians who resisted the RTPs to openly argue against the principle of transparency.

That transparency has been also increasingly accepted as a solution to issues ranging from improving the performance of subnational units to increasing market efficiency has arguably meant that the targets, for the most part, failed to prevent the creation of the RTPs in these logics. This does not mean resistance did not take place; as

discussed below, for instance, the type of information disclosed in the performance logic has lent to public debates about fairness. However, the resistance by targets in the cases of performance and transaction logics analysed in Parts II and III was ultimately insufficient to prevent the creation of these policies altogether, whether by trying to promote debates related to the scope, format and contents of disclosure, or opposing the very idea of transparency per se.

Whether it's the assumption that disclosure of information will change behaviours, the hope that it will quell a public outcry, or the calculation that the politician or the CEO under pressure will appear to be *doing* something (Birchall, 2014, p. 77), the existence of transparency as a paradigm has supported the emergence of RTPs. In other words, it could be said that drivers of disclosure generally seem to have had history on their side. As such, the socio-political and institutional context supporting the enactment of transparency policies significantly shape the willingness and ability of drivers and targets, as well as intermediaries and beneficiaries, to push or resist an RTP at its moment of creation. Although the number of cases analysed in this research does not allow me to make generalisable conclusions, the adoption of regulatory transparency policies, in its three logics and as conceptualised here, does not seem to relate to specific political parties, to the fragmentation of cabinets, or to politicians' uncertainty of future control, as is the case with the adoption of FoIA. Because RTPs are mostly enacted as secondary legislation, to understand the dynamics of their creation it is necessary to refer to the socio-political and institutional context and, consequently and most importantly, to actors' intensities.

The institutional power of the drivers of RTPs vary both across and, to a lesser extent, within logics. The cases analysed in the control logic are particularly illuminative of how institutional powers are important in the creation of RTPs. In the case of the Brazilian Transparency Portal, provision of more transparency by SIAFI, the accounting and financial reporting system of the federal government, was a promise in a political campaign. After elections, the publication of financial expenditure information was negotiated between the CGU, which had the institutional power to promote transparency, and the Treasury Secretariat, which managed SIAFI. Following a technical procedure to create an RTP that would display detailed information of the government's financial execution to prevent corruption, the government complied without no resistance from the targets. While it could be alleged that the Portal had multiple targets, neither in its creation nor during the expansion of the policy did targets significantly mobilise against it. In the MPs' expense case, the House of Commons also had the institutional power to decide on the level of information disclosed pro-actively in relation to its expenditures. However, when a journalist requested a higher and more

detailed level of transparency, MPs used their institutional power to oppose the request. Publication of the information petitioned by the journalist was only promoted after the media and MPs, the targets of disclosure, had exhausted all the available means of appeal and leaks of the information revealed a number of publicly compromising privileges that were granted to MPs.

The comparison between these two cases in the control logic also sheds light on the importance of actors' willingness to support the creation of RTPs. Actors' interest to mobilise resources and to collectively organise in favour or against the creation of an RTP is noticeably different in both cases, although the principles and norms mobilised – such as the belief that disclosure of financial expenditures is an effective anti-corruption measure – are for the most part similar.

The role played by actors influencing the creation of RTPs is further emphasised in the case of English secondary schools, where the targets (school teachers and administrators) resisted the publication of performance tables and contested their lack of contextualisation at the moment of creation. Taking place in 1993, a boycott was organised and, in consequence, the government had to revisit the performance tables and address some of the concerns of teachers, such as introducing external marking (in order to reduce their workload). This picture had already changed by 1997, when the New Labour government came to power and decided to continue the school tables, allegedly to better inform parents of their choices. Other boycotts still took place, but they became more sparse and isolated.²³¹ The tables were published and maintained, although frequent changes in its format and contents created additional difficulties for educators in adjusting and maintaining long-term teaching plans and strategies or parents in following the evolution of a school's performance. As will be discussed below, once an RTP is created, actors' interaction take place in a newly established institutional framework, where powers have been redistributed and a new context has been set.

1.2. *The Evolution of RTPs*

The socio-political and institutional context supports the creation of RTPs but what happens afterwards? Fung et al. (2007) suggested that “the political imbalance” of transparency policies – concentrating costs on small and organised groups while distributing benefits to dispersed users – make them difficult to sustain after creation. In other words, transparency policies were self-undermining by default. Based on the cases examined in this thesis, however, I suggest that RTPs are self-reinforcing, i.e. they

²³¹ See, for example: Lipsett, A. (2008) Top private schools to boycott tables. *The Guardian*, April 28.

tend to follow the original purpose they were created for. This divergence may be partly a result of differences in expectations: In this thesis, I considered stagnation as a sign of sustainability, not degeneration. Put differently, an RTP does not need to expand continuously and disclose new types of information in order to be considered sustainable; it simply should not retract, formally and in producing its regulatory objective.

A key factor that contributes to the sustainability of RTPs is the redistributive effect that disclosing information has on existing power arrangements. Once information about them is publicised, politicians, decentralised units or financial institutions transfer some of their power to the drivers as well as the beneficiaries and intermediaries. RTPs often empower new actors who could then have an increased interest in the maintenance of the policy. In the case of the performance tables in the English secondary schools, for example, I noted how the notion of the ‘right to know’, once advocated by Prime Minister John Major, has been gradually internalised by the media and a seemingly increasing number of parents, who make use of the disclosed information and may be unwilling to have this ‘right’ taken away from them. Another example would be local administrators in Brazil who, despite being targets of the RTP, also benefit from the Transparency Portal as it improves their ability to monitor the transfer of funds from the federal government to their municipalities. It is difficult to prove this point due to the absence of cases in which there was an attempt to remove an RTP that was popular with beneficiaries and intermediaries; on the other hand, perhaps this absence should be considered an argument for the sustainability of RTPs.

The role of the socio-political and institutional layers, which ascribe “a quasi-religious significance in debate over governance and institutional design” (Hood, 2006, p. 3) to transparency, is also influential in the sustainability of RTPs after creation. Indeed, in both countries and across the three logics examined, regulatory transparency policies continued to persist under the period of study despite frequent changes in government. In the performance and transaction logics, successive governments in Brazil and the UK endorsed transparency as a tool to enhance control over both subnational units and the financial sector. As noted in Chapter 4, increasing the performance of secondary schools was a campaign promise of the Lula administration in Brazil, who chose regulatory transparency as one of the means to reach this goal. And as the cases of financial sector regulation in the UK demonstrate, regulatory transparency served as a desired approach for governments to maintain or increase control over the financial sectors, which were lightly regulated during the 1980s and the 1990s. These observations support the view in the literature that points to the role

of international discourse and organisations as promoters of transparency across diverse policy areas (Erkkilä, 2012; Ruijer and Meijer 2016).

The evidence presented in this thesis suggests that high levels of engagement by beneficiaries and intermediaries do support the sustainability of RTPs, although further dedicated research would be helpful in corroborating this finding. One example is the push for the RTP in the MPs' expenses case during periods of high media scrutiny and public attention. On the other hand, low engagement can make resistance to an RTP more effective, such as in the case of the FSA Comparative Tables. Low engagement, however, does not on its own guarantee its retrenchment, as there may be other factors, such as political goals or institutional mandates, as discussed above, that continue to support the goals of transparency even in the absence of high beneficiary use or public attention. Unsurprisingly, what seems to be more effective here than the use of an RTP by individuals is engagement with it by organised groups, such as the media or civil society organisations.

A final factor that is relevant in the discussion of RTPs as self-reinforcing processes, and for which this research only allows me to draw partial conclusions, is related to the costs involved in the creation and evolution of the policies. As I argued in Chapter 1, the creation of a mechanism for extraction and publication of data is a costly process. However, once created, the costs decrease. Numerous examples from the cases support this point; for instance the internal procedures that were established for the publication and framing of information in the Brazilian anti-corruption case. In the former, the CGU conducted negotiations with the National Treasury to devise a strategy to open up SIAFI to the larger public. The two bodies finally agreed on the creation of a new format for disclosure using a new and much simplified language, leading to the creation of the Transparency Portal. While abandoning the Portal may not be financially costly for the government, replacing it with a different regulatory solution to increase the CGU's oversight ability would require considerable investment, both political and financial.

These findings support the hypothesis that RTPs are self-reinforcing processes. However, as also argued in this thesis, even if their foundational purpose remains the same, the trajectory of RTPs can undergo frequent changes. These trajectories are a function of the specific logic of an RTP through the actor dynamics that they shape and by the type of information they disclose.

2. Type of Information and Actors' Intensity

In this part, I first draw conclusions from the case studies that support the argument that the knowledge about the type of information disclosed gives insights into the possible trajectory of the RTPs. Secondly, I discuss the role played by the actors involved in the evolution of the RTPs and comment on how their intensities, i.e. ability and willingness, shape the trajectory of regulatory transparency policies.

2.1. *Type of Information Disclosed*

The type of information disclosed informs the trajectory of regulatory transparency policies by determining actors' rationale vis-à-vis disclosure. In the logic of control, for example, the type of information disclosed is factual, i.e. it reviews, fully or partially, the facts about a specific circumstance, practice or behaviour. But since it is often difficult to establish how much transparency is necessary and how much can be 'too much', the targets of disclosure can contest the design of an RTP on the basis of its perceived capacity to foster the objectives envisaged. Instances of this were the cases of MPs' expenses and the Brazilian shadow case of the BNDES, in which the drive for financial disclosure was opposed to by targets due to allegations of excessive transparency to reach set purposes. Additionally, in the cases of the Brazilian Transparency Portal and of the UK MPs' Register of Interests, I demonstrated the possibility for the drivers of transparency to reveal detailed information incrementally. Incrementalism, though expected, may also be a consequence of selective openness through limited or aggregate disclosure, which often limits the access of intermediaries and beneficiaries to relevant conducts only identifiable through detailed information. Therefore, in such cases, the targets who oppose disclosure tend to be in the difficult position of having to challenge the normative ideal of transparency per se.

In contrast, the type of information displayed through the performance logic entails the development of a metric that will be used to measure and give transparency to what has been defined as performance. "Governance by targets and measured performance indicators", Beer argues, "is a form of indirect control necessary for the governance of any complex system" (1966, apud Bevan and Hood, 2006, p. 518). As Desrosières (1998) suggests, statistical systems were essential for the development of the modern state, as they allowed wider knowledge about society, institutions and individuals, in indicators and measures that provided states with understandable views of society. "Knowing society, however, as the development of nomenclatures and taxonomies reflects, requires a simplification of society – society has to be legible" (Van

de Walle and Roberts, 2008, p.12). How simple or simplistic depends significantly on the indicators chosen to reflect a reality, and this is the focus of many opponents in the logic of performance, which, therefore, opens space for debates about fairness, accuracy, and adequacy, for example, without necessarily having to challenge the normative value of transparency.

Finally, the information disclosed in the transaction logic reveals specific aspects of products or services, to reduce the imbalance of information between their sellers and consumers. In order to do so, regulators request firms to disclose specific information for regulators themselves, to share detailed contractual information with clients, and to publish defined sets of information about themselves or their products to the general public. This, as economic theory has suggested, allows consumers to gather information or use that which is interpreted by intermediaries, compare products and make the best available choice, informed as they are by what matters in their purchase. Similar to the type of information disclosed in the control logic, here the information published is also factual in the sense that it is the price, quality or other features of a certain product or service that is displayed. The act of disclosing information in the transaction logic implies that information is comparable. Therefore, actors that support or oppose disclosure try to influence the policies by shaping the rules that lead to the comparability of products and services, and therefore their future publication.

2.2. Actors' Intensities

In Chapter 1, I suggested that the intensity of actors should be understood as the ability (institutional and political power) and the willingness (interest calculation, whereby actors consider their perceived costs and benefits to decide how much of their ability to invest in favour or against an RTP) of an actor or a group of actors to push or oppose a particular RTP. As discussed above, this thesis has demonstrated that actor intensities can differ during the moment of creation and afterwards. In this subsection, I draw further conclusions about actors' intensities during the lifespan of RTPs after creation.

As demonstrated by three case studies in the logics of control and transaction (the MPs' expenses, disclosure of tariffs in Brazil, and the FSA Comparative Tables) the opposition of targets to RTPs tends to drop after creation, even though during inaugural moments of these policies they may have had high intensity to resist disclosure. This is because once a specific regulatory transparency policy is adopted, it shapes the behaviour of targets specifically in relation to the information disclosed and redistributes powers to new actors that will, as drivers or beneficiaries hope, monitor such behaviours. Because actors avoid misbehaving (at least publicly) or change their

strategy in response to the disclosure of information, the intensity of the targets reduce throughout the lifespan of RTPs. This does not mean that the targets' intensity becomes null, but attempts to scrap RTPs become less frequent.

Intermediaries play an important role in this regard, as they are expected to make use of the information and reduce the intensity of the targets to mobilise against transparency. The powerful role by the traditional media as an intermediary in pushing the RTPs in the path that they were created is widely noted. Journalists often pay close attention to disclosure of new information published by governments and regulators, and media organisations possess the means and the channels to reach and influence large numbers of citizens and consumers with their analyses and interpretation of the data and information disclosed. In Chapter 3, for example, journalists were the driving actors in breaking the story and getting the public engaged in the behaviour of politicians, including after the initial storm caused by the breaking story had winded down.

The intensities of actors remained high throughout the lives of the RTPs in the other cases examined: across all the cases in the performance logic (to which we can also include the cases of the disclosure of complaints against banks in the transaction logic, because of their mixed character), in the case of the Brazilian Transparency Portal, and in the MPs' Register of Interest. In the latter two cases, the maintenance of high levels of intensity is related to the imbalance of power between the driver and the targets (and intermediaries). In both cases, the drivers have the ability to push for transparency as a result of their mandate and institutional powers, and do so when their willingness increases.

Out of the three logics, performance stands out as the one in which actor intensities remain high throughout the life of an RTP. Several factors might explain this: First, because power is redistributed among actors at inaugural moments, dissatisfaction with the RTP by third parties may, parallel to expansion of the policy, create new levels of opposition that may impact the intensity of drivers. This is the case, for example, of not-for-profit education organisations in the Brazilian education case. Whereas several directors of schools approved the publication of the results of Prova Brasil and Ideb, a number of civil society organisations still advocated for contextualisation or statistical improvement of the measure. Secondly, as is shown in the case of the UK School Performance Tables, every time that information is published, schools are presented with new performance results about themselves, in comparison to other schools, and have to explain what measures were or are being taken to increase their performance. Though 'accountability' is one of the alleged objectives of the RTP, schools and teachers routinely have to provide information about their performance,

often on the basis of exams which enforce a certain education system with which they may not agree. Moreover, it is not guaranteed that, even if they planned, that schools would find a space for dialogue in society. In this regard, the media as an independent actor has its own preferences and priorities that affect the way they interpret information, which may, intentionally or not, support a specific trajectory of the RTPs.

One tendency that is particularly notable in the media is the ‘sensationalisation’ of the data disclosed, with news reports featuring rankings and stories that focus on extreme cases, without necessarily providing more nuanced analysis of what the data means. Another tendency is the use of old measures even when an RTP is updated, such as in the case of the Performance Tables. Indeed, sensationalist reporting of the disclosed information was present across the case studies: in the control logic, the focus of the media was on the most striking payments made by MPs on accommodation, travel and other administrative expenses. In the cases of the performance logic, newspapers published school rankings by sensationalising the best and the worst performing ones. Finally, in the transaction logic, what mainly caught the attention of the journalists was the banks with the highest number of complaints. The effect of such funnelling of information can imply unintended consequences for the RTP’s trajectory and its effect, due to media’s intensity, limiting or reinforcing the expansionary potential of the policy.

3. The Logics of RTPs as Determinants of Their Trajectories

The limited number of case studies and the variations observed within the chapters make it imprudent to offer definitive generalisations about the logics of RTPs as the determinant of their trajectory. Nonetheless, the cases offer important insights into how RTPs can evolve under different conditions within given different logics of transparency, which can be refined and scrutinised in further studies of RTPs. The key observations that come through from the case studies and in light of the discussion above are as follows:

In the **control logic of transparency**, a defining condition seems to be the presence or absence of a formal regulatory body with a mandate to push for disclosure, or what Lindstedt and Naurin (2010, p. 316) refer to agent controlled transparency (implemented by the agent herself) versus non-agent controlled transparency (pursued by a third party, such as a free press). When adopted in response to self-regulation, expansion is more likely to occur in a punctuated way, as a result of external interventions. In the presence of such a body, RTPs can be expected to expand in a gradual and incremental manner and facing less resistance. This finding supports the

argument by Fung et. al (2007) that “producing groups of disclosers that expect transparency to further their interests” can alter what they refer to as the political imbalance of transparency and encourage sustainability.

In the **performance logic of transparency**, contestation is the main and stable characteristic of an RTP’s trajectory. After inauguration, contestation in the logic of performance tends to be over the definition or design of disclosure, rather than over disclosure itself, as it is often difficult to challenge the principles in the Layer that supported the inauguration of disclosure. As a result, changes often happen as the driver adds new metrics to the indicator in order to ‘contextualise’ the existing data in response to pressure from the targets or intermediaries. Furthermore, RTPs that are developed to inform consumers’ choice and provide *exit* option, but also disclose performance information when doing so, tend to evolve like RTPs in the performance logic. It is not surprising that this is , as the transaction logic opens space for exit. “The chances for voice to function effectively as a recuperation mechanism”, argues Hirschman (1970, p. 82), “are appreciably strengthened if voice is backed up by the threat of exit”.

In the **transaction logic of transparency**, a key factor that emerged from the cases is the type of information that is being disclosed. If the information is novel and exclusive to the discloser, there may be higher intensity from the side of the drivers or the intermediaries to maintain it. If the information already exists in the market, and is therefore not novel or controversial, it can retrench, especially in the absence of a regulatory body with a mandate to produce it, or high use of the data by the beneficiaries.

4. Reflections on the ‘pluralistic approach’ and ideas for further research

The conceptual framework of this thesis was based on the idea, shared by an increasing number of prominent scholars of institutional change, that a ‘pluralistic approach’ combining aspects of different traditions may be necessary to understanding how and why institutions change (Williamson, 2000; Grief and Laitin, 2004; Streeck and Thelen, 2005; Hall, 2010). In this vein, I took the stance that the two main traditions in this field – historical institutionalism and rational-choice – were best viewed as asking questions, developing concepts and proposing methodological approaches to address the trajectories of regulatory transparency policies.

While expressions of approval and support for a pluralistic approach have become increasingly common in the literature, works that actually attempt to formulate a theory of scholarly pluralism, or at least develop and test pluralistic hypotheses, are still quite rare. It could be argued that staying within the boundaries of an established tradition is a less risky decision than exploring the more uncharted waters of scholarly pluralism. However, for what it's worth, it is a risk that this thesis has taken in its theoretical framework.

I developed the three-layer approach to institutional change in an attempt to combine and operationalise the analytical tools, focus and concepts of historical institutional and rational-choice traditions, recognising that they both had valuable insights to contribute to each other. Historical institutionalism, as I pointed out in Chapter 1, is highly effective in highlighting the role of history, past decisions and social and cultural norms in the study of institutional change, especially in the medium to long term. On the other hand, as a number of works have recognised (Grief and Laitin, 2004; Streek and Thelen, 2005; Aoki, 2007; Mahoney and Thelen, 2010), its focus on critical junctures and the grand narratives of history can make it difficult to detect continuous actor interactions and changing power relations during periods of apparent stability on a path. This is a strength of the rational-choice approach, which focuses on the balance of powers and negotiation of interests among actors. For its part, the rational-choice tradition could benefit from the wider perspective of historical institutionalism, especially in setting the structural basis on which actors interact.

While admittedly not a perfect model, and could benefit from further operationalisation with a larger number of cases across more varied national settings and diverse sectors, the three-layer approach nonetheless offers a multi-dimensional way of thinking about institutional change that tries to take into account both the slow-changing (macro) structural factors and the fast-moving (micro) actor dynamics. Consequently, the model also attempts to account for both the instances of punctured/exogenous change and processes of incremental/endogenous change.

Like any “quasi-religious” concept, transparency is both a powerful norm, shaping institutions and in turn actor behaviours, and a political tool, utilised by various actors for purposes that can vary from benign to Machiavellian from a democratic standpoint. The pluralistic approach employed here recognises the symbiotic relationship between ideas, institutions and interests. The influence of norms and overarching institutions in creating and sustaining RTPs have been noted throughout this thesis and in this Conclusion. It is these ideas and institutions, represented in Layers 1 and 2 of the three-layered approach, that play an important role in distributing the initial intensities of actors as they set out to push for or resist the creation of an RTP.

However, although constrained and shaped by them, individuals are not simple recipients of culturally embedded norms and political institutions. They have their own strategic interests, political calculations or conceptions of fairness (Streeck, 1997; Hall, 2010) that determine in which direction they mobilise these norms and institutions and how they situate themselves vis-à-vis other actors. At the level of policymaking, this means that understanding the trajectories of RTPs requires a careful examination of the different and often fluid motivations behind actors' intensity in support of or opposition to the disclosure of certain types of information.

On the basis of these reflections, it is possible to suggest a number of issues and areas that might be of interest for further research. One particularly urgent question involves the impact of recent challenges and setbacks experienced by liberal democratic norms and institutions on the creation and trajectories of transparency policies. Anti-liberal nationalist movements have quickly become a powerful societal, and increasingly political, force in large parts of the world, including in established liberal democracies. Although it is premature to declare the end of the liberal democratic paradigm, it appears under more serious attack both from above ("unfettered globalisation") and below (populism) than ever before. How is this affecting the ability of drivers of disclosure to mobilise the ideas of openness, publicity and accountability in pushing for and justifying transparency policies? Admittedly, this investigation also requires a critical review of the actual role of existing transparency policies and regimes in furthering good governance, improving democracy, strengthening trust in government and serving the public's interests (O'Neill, 2002; Meijer, 2009; Roberts, 2012).

Consequently, one important subsection for further research in this area should look at the alleged conflict between what Erkkilä (2012) calls "the new economic - and performance-driven understanding of transparency" and its old interpretation as a tool for improving democratic accountability. In this endeavour, the dynamics of different logics (i.e. underlying rationale or purpose) of transparency as proposed in this dissertation can serve as a useful guide in examining the ideological/institutional background, as well as actor interests and intensities that drive both the old and the new interpretations. At the same time, further research motivated by Erkkilä's differentiation could help us further our understanding of the logics themselves, as well as their relationship with and impact on each other and on the normative discourse of transparency in general.

Another area for further research featuring a less dramatic instance of a paradigm shift involves the impact of the rising importance of behavioural economics on the use of transparency as a regulatory tool. The thesis has already demonstrated, in

the case of the FSA Comparative Tables in the UK, the move away towards the idea of 'nudging' as a way to shape consumer behaviour. As I was writing the final words of this thesis, the Nobel Prize for economics in 2017 was awarded to US scholar Richard Thaler for his pioneering work on behavioural economics. This was just another sign of the growing importance and recognition of the field, which has challenged age-old notion of rationality, in which the justification for transparency in general, and regulatory transparency in particular, is rooted. Further research could investigate how this process is shaping transparency policies, and what it means for the future of RTPs in terms of adaptation or policy scrap.

In terms of research design, a potential criticism for this work could be that it has attempted to analyse a large number of variables (layers, logics, trajectories, interactions) in a small number of cases. While this design choice provides a richer account for each of the cases, it naturally limits the number of generalisable conclusions that the thesis can draw from the empirical findings. Further research could decrease the number of variables analysed and increase the number of cases to test the observations and conclusions presented in this thesis. In this vein, future research can analyse variations in the creation and evolution of RTPs in a wider range of countries with similar and diverse freedom of information levels. Another potential area of research could include the impact of political variables, e.g. the size and composition of cabinets, in the creation and evolution of RTPs.

APPENDICES

Appendix I. Evolution of main query options on the Transparency Portal

Category	Queries
Direct Federal Expenditures	<p>Transfers of Federal Money [2004]</p> <ul style="list-style-type: none"> - by State/Municipality - by Program - by Action - by Beneficiary <p>Direct Expenditure [2005]</p> <ul style="list-style-type: none"> - by Type of Expense - by Federal Body which Executes the Expenditure - by Program - by Action - by Beneficiary <p>Search by Budgetary Function</p> <ul style="list-style-type: none"> - by Function (Area) - by Sub-function (Objective) <p>Per Diems</p> <p>Corporate Credit Cards [2005]</p> <ul style="list-style-type: none"> - by Federal Body - by User [2008]
Revenues [2010]	<ul style="list-style-type: none"> - by Federal Public Body - by type of Revenue
Agreements [2004: Money Transfers 2006: Agreement Information]	<ul style="list-style-type: none"> - All Agreements - by State/Municipality - by signatory Federal Body - by Transfers <ul style="list-style-type: none"> o In the Week o In the Month
Sanctions	<ul style="list-style-type: none"> - Registry of Non-Reputable or Suspended Companies [2008] - Barred Private Non Lucrative Entities [2012] - List of Officials Expelled from the Federal Administration [2012]
Federal Officials	<p>Civil and Military Federal Officials</p> <ul style="list-style-type: none"> - by Name or National ID - by Working Body

[2012: Wage]	<ul style="list-style-type: none"> - by Body of Assignment - by Post or Function of Trust and Federal Body - by Post or Function of Trust <p>List of Officials Expelled from the Federal Administration [2012]</p>
Federal Executive Apartments [2012]	<ul style="list-style-type: none"> - by Apartment - by User
Federal Expenditure with Intern. Games [2010]	<ul style="list-style-type: none"> - Fifa World Cup 2014 - Olympic Games Rio 2016
Diverse:	<ul style="list-style-type: none"> - Download of Data [2010] - Portal in Graphs [2010] - International Technical Assistance [2013]

Source: Transparency Portal Bulletins and OECD Integrity Review of Brazil

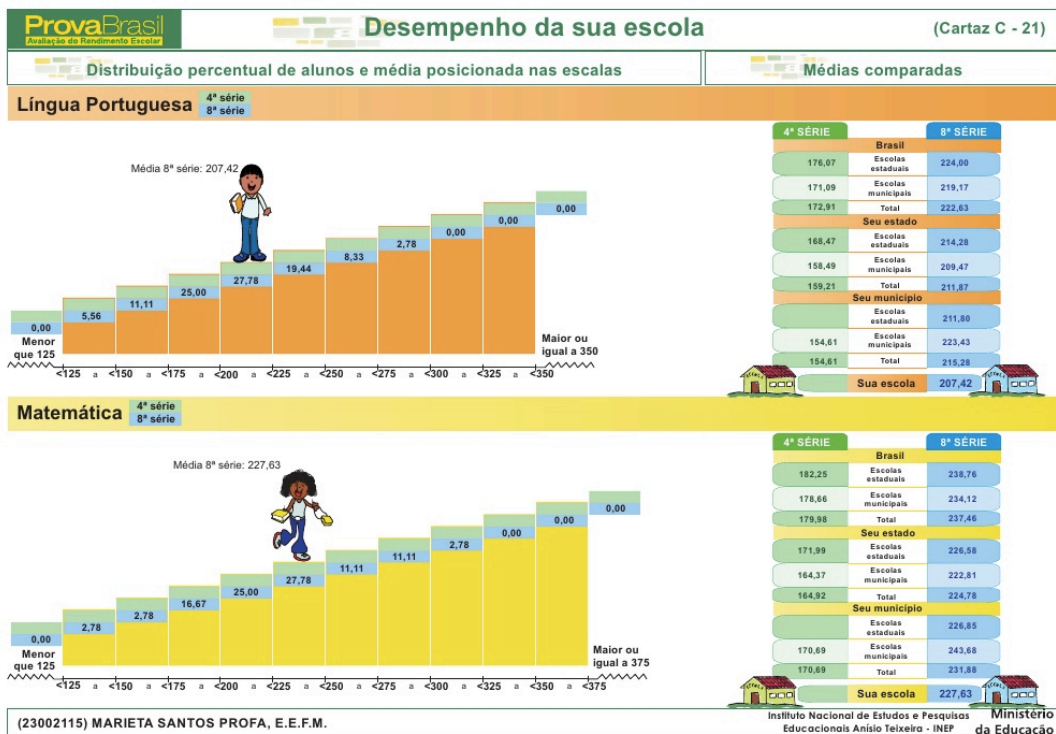
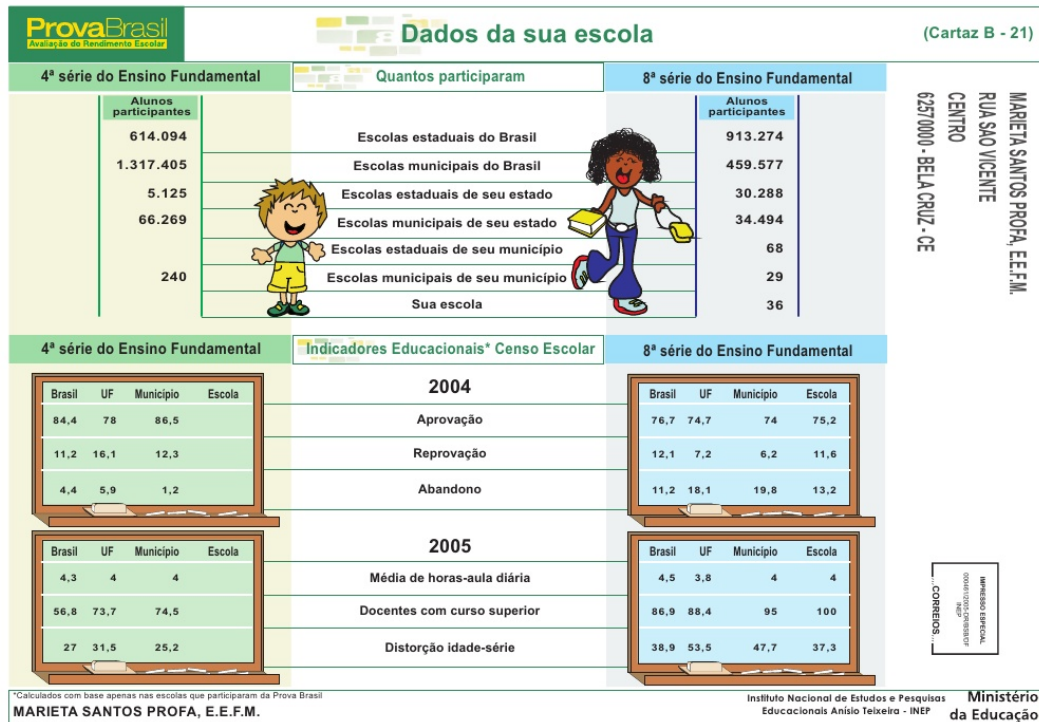
Appendix II. Summary of the evolution of the Brazilian assessment system for primary and secondary education

Year	Objectives
1990	To develop and deepen the evaluative capacity of the management units of the education system (MEC, state departments and municipal agencies); and, to regionalize the operationalization of the evaluative process, creating links and incentives to development of infrastructure research and education evaluation (Brazil/MEC/INEP, no number)
1993	Provide information to support the definition, reformulation and monitoring of policies to improve the quality of education (Brazil/MEC/INEP, 1995); to increase, decentralize and devolve the technical and methodological capacity in the area of education assessment (Brazil/UNDP, 1992)
1995	To inform the policies aimed at improving the quality, efficiency and equity of education in Brazil (Brazil/MEC/INEP, 1995)
1997 - 2003	To collect and organise information about the quality, efficiency and equity of education in Brazil, in order to allow for their monitoring ²³²
2005	To collect and organize information about the quality, efficiency and equity of education in Brazil, which together with the National Evaluation of Performance of Education (Avaliação Nacional do Rendimento Escolar - Prova Brasil) constitute the Evaluative System of Basic Education (Sistema de Avaliação da Educação Básica); Prova Brasil will evaluate public schools of fundamental and high school education ²³³

²³² INEP (2002) Saeb 2001 – Novas perspectivas. *Mimeo*.

²³³ MEC (2005) Portaria MEC 931, 21 March

Appendix III. Example of report for the performance of individual school in Prova Brasil 2005



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LIST OF INTERVIEWS

Recordings of all interviews are in the author's possession.

Quotes from interviews conducted in Portuguese have been translated by the author.

CHAPTER 2

Erica Bezerra Queiroz Ribeiro and Fernanda Montenegro Calado, Advisors to the Brazilian Ombudsman General of the Union. Joint interview on 25 February 2015.

Jorge Hage Sobrinho, Former Minister at the Brazilian Office of the Comptroller General. Interview on 26 June 2015.

Vagner Diniz, Head of W3C Brazil. Interview on 12 March 2015.

CHAPTER 3

Oliver Buckley, Head of the International Team of Government Transparency, Cabinet Office. Interview on 12 December 2013.

Steve Goodrich, Senior Research Officer at Transparency International UK. Interview on 29 February 2016.

CHAPTER 4

Alejandra Meraz Valesco, Coordinator of Movement All for Education. Interview on 21 July 2015.

Erick Jacques, Former Director at the Secretariat for Education in the state of Goiás. Interview on 28 January 2016.

Ernesto Martins Faria, Former Coordinator of QEduc. Interview on 19 May 2015.

Maria do Pilar Lacerda, Former Head of the Secretariat for Basic Education at the Federal Government of Brazil. Interview on 8 July 2015.

Reynaldo Fernandes, Former President of the National Institute of Studies and Research for Education. Interview on 10 July 2015.

CHAPTER 5

Fiona Millar, Journalist and Campaigner on Education. Interview on 15 December 2015.

Liam Murphy, Policy Adviser on the Open Data Team (Education) at the UK Cabinet Office. Interview on 20 November 2015.

Tom Shirley and Briony Phillips, Members of Skills Route (a startup that professionally use schools' performance data). Joint interview on 4 December 2015.

CHAPTER 6

Ademiro Vian, Deputy Director of Business and Operations at the Brazilian Federation of Banks. Interview on 23 June 2015.

Anselmo Pereira Araujo Neto and Edêlnio Cardoso, Advisor and Consultant for the Director at the Department of Norms at the Central Bank. Interview on 4 March 2015.

Beatriz Simas Silvas, Former Analyst at the Department of Norms at the Central Bank. Interview on 3 March 2015.

Juliana Pereira, Head of the National System for Consumer Protection. Interview on 13 March 2015.

Lorena Tavares, General Coordinator of Sindec at the Brazilian Ministry of Justice. Interview on 9 March 2015.

Luiz Feltrim, Former Director for Consumers and Citizens at the Brazilian Central Bank. Interview on 13 March 2015.

Marcel Mascarenhas dos Santos, Ombudsman at the Brazilian Central Bank. Interview on 6 March 2015.

Marcos Antônio Köhler, Adviser for Economic Policy in the Brazilian Senate. Interview on 6 February 2015.

Tiago Alves de Gouveia Lins Dutra, Head of the Department for External Control of the National Treasury at the Court of Accounts. Interview on 11 March 2015.

CHAPTER 7

Caroline Mitchell, Lead Ombudsman at the Financial Ombudsman Service. Interview on 24 November 2015.

Dominic Lindley, Member of the Financial Services Consumer Panel and former Analyst at Which?. Interview on 26 February 2016.

Jake Eliot, Senior Policy Manager at Money Advice Service. Interview on 7 December 2015.

Sue Lewis, Chair of the Financial Services Consumer Panel. Interview on 23 February 2016.