



Maastricht University

Matt Bucholski, Konrad Duffy, Caro Gröne,
Maxime Hensels, Magdalena König, Christophe Leclerc,
Jonas Quicker, Pia Sombetzki, Jasmijn van der Most,
Viktor Werner, Jakob Zeijl

I spy with my little eye

Surveillance, transparency and the power of information

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Supervision: Nico Randeraad

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3 Introduction

"Scientia potentia est" – knowledge is power. Many people seem to read this phrase, attributed to Francis Bacon, as a mission statement. If knowledge is power, then it is easy to understand why people demand more transparency and why at the same time surveillance increases. Transparency and surveillance are means to acquire knowledge and information. For centuries, governments have been surveilling their people to ensure that they behave according to their wishes. Similarly, the people are demanding more transparency with regard to the activities of their governments in order to hold their governments accountable for their actions. According to Vogelgesang & Lester (2009), receiving information through surveillance or transparency measures can have an empowering effect, because receivers or recipients of information are then better able to understand the position of the information provider, as well as their motives. They can begin to anticipate the behaviour of the information provider and are consequently in the position to make an optimal decision on whether they should support or object to the behaviour of the information provider, whereas they would not have been able to do so had they no information at all. Trust is also fostered between the two parties, every time the anticipated behaviour is realised. This may even lead to the information receiver also being willing to share certain information (Welch, Hinnant & Jae Moon, 2004).

However, it needs to be understood that the argument that transparency only empowers people and automatically leads to societal betterment is amounting to mere oversimplification. Potential shifts in power relations depend on the sort of power, as well as on its direction and magnitude. Therefore, power in this joint volume needs to be understood as a very flexible term with many contingent forms. Each form of power and of power relations needs to be seen in the individual and divergent context of each contribution.

Who can be empowered or disempowered by transparency depends on the direction of the gaze, and on who is observing. Heald (2006) categorises these different directions into a comprehensible model. On the vertical dimension there are transparency upwards and transparency downwards. The former can be observed when "the hierarchical superior/principal can observe the conduct, behavior and or 'results' of the hierarchical subordinate/agent" (p. 27). This is for example the case when a government surveils its citizens by gathering information about them. In contrast, transparency downwards can be identified when "the 'ruled' can observe the conduct, behaviour and/or 'results' of their 'rulers'" (ibid.). In this case, it would be the citizens who are able to see and understand what the government does. On the horizontal dimension, there are two additional forms of transparency. The first is transparency outwards which occurs when "the hierarchical subordinate or agent can observe what is happening outside the organisation" (p. 28), and is applicable, for instance, to competing companies. The second is transparency inwards, according to which "those outside can observe what is going on inside the organisation" (ibid.). This can be relevant, for example, for citizens who want to donate money to an aid organisation. Adding to these unidirectional forms of transparency, Mayes (2010) brings forward the concept of omnidirectional transparency. In this situation, everyone is able to observe everyone. This form of transparency is becoming ever-more present, especially with the rapid ascent of social media.

Surveillance, or transparency upwards, can be understood as a form of observation which involves some sort of technique or technology containing three elements: observation, documentation, and the spreading of the collected information (Bendrath, 2014, pp. 20–21). With technological advances and innovations, this process has become largely automated, contributing to the increasingly impersonal and anonymous character of surveillance (Bessire, 2005, p. 427). Historically speaking,

techniques of power and knowledge were often used by administrators to manage their institutional populations through means of visibility. They organised these populations so that they could be seen, known, surveilled, and thus controlled. According to Foucault (1995), this visibility is of two kinds: synoptic and individualising. Synoptic visibility is premised on architectural and organisational innovations, which provide an intelligible overview of the population and of the relations among its elements. This is exemplified in the design of 18th century prisons, inspired by Bentham's Panopticon; in the separation of hospital patients according to their diseases; and in the arrangement of students in a classroom space articulated according to rank and ability (Hansen, Christensen & Flyverbom, 2015). Individualising visibility, in contrast, is aimed at exhaustive, detailed observation of individuals, their habits and histories. Foucault claims that this visibility succeeds in constituting the individual for the first time as a case, simultaneously a new object of inquiry and a new target of power.

Both kinds of gaze, synoptic and individualising, are micro-practices linking new processes of knowledge production with new kinds of power. They combine scientific observation of population and individuals – and hence a new "science of man" – with surveillance. This link depends upon the asymmetrical character of the gaze; it is unidirectional: the scientist or warden sees the inmate but not vice versa. This is most striking in the case of the Panopticon in which the unidirectionality of visibility denied the inmate's knowledge of when and whether they were actually being watched. This asymmetry of information seems to reinforce the power that the prison has over its inmates and has the potential to make the inmates internalise the gaze, and in effect make them surveil themselves. In other words, vision has become "supervision" (Flynn, 1993).

To explore the means through which surveillance is exercised, we return to Foucault's theory of power, the "panoptic principle", which focuses on how the few are able to see and regulate the many. Through

the inculcation of self-regulative practices, contemporary society is characterised by a "synoptic principle", whose foundation is the spread and accessibility of electronic media that enable the many to watch the few, primarily those in power (Thompson, 2005). Foucault's theory of disciplinary power, of course, was not only referring to observation per se, but to the potential for observation and its implied (self-)disciplinary effects. Such effects relied on reshaping individual subjectivities through the promise and reality of omniscient observation, with individual and social implications. According to James C. Scott (1998), the issue of visibility is taken to a different level of complexity. More specifically, Scott offers an account of how social programmes emanating from central state powers of various sorts throughout modern history, have been based on "schematic visions", such as numerical systems and standards, which reduce complex social relationships to abstract ones, simply to make these relationships governable at a distance (Porter, 1995; Rose, 1999). In similar vein, Michael Power's (1997) *The Audit Society: Rituals of Verification* addresses the rapidly expanding use of auditing techniques such as financial audits, medical audits, value for money audits, environmental audits and quality audits to assess, control and evaluate contemporary organisations. While many of these audits are based on visual documentation, they are etymologically grounded in various forms of observation that aim at restoring confidence in public sector organisations, i.e. by making them more transparent and accountable. At the same time, such techniques presuppose a mentality of mistrust in organisations and professions. Accordingly, applied techniques themselves may nurture and even intensify amounts of data. This data can be mobilised by economic and political actors for a variety of purposes while the process of generating the knowledge is largely opaque, if not hidden or secret.

While surveillance seems to empower the ones that are already in power by providing them with information about the governed,

transparency downwards has the potential to empower the governed. By enhancing information sharing by the government or other institutions (e.g. hospitals), people can make better-informed choices. Transparency can thus be said to be one of the most vital elements of a functioning representative democracy. Transparency transmits information and this information is crucial to empower a democracy's citizens.

In terms of power, transparency points to a set of processes and instruments, as well as to the necessity of particular kinds of relations between the producers of information and the audience for whom information is intended (Grossman, Luque & Muniesa, 2008). Transparency creates the kind of persons and institutions that are in a position to monitor, use, and assess the credibility of any information that is published. The operation of transparency, thus, is expected to have not only effect on the production of information, but also on the identities, conduct, and relations between persons and organisations. It is, in short, a device intended to articulate actions, to act or to make others act (Hansen, Christensen & Flyverbom, 2015).

Even when transparency practices are able to achieve some of their noble objectives (Fung et al., 2007), they often produce unintended side-effects, like growing uncertainty or suspicion vis-à-vis institutions and the people working for them (Strathern, 2000). Increasing openness and rendering something visible may, for example, undermine trust (Tsoukas, 1997; Eisenberg, 2007). Simultaneously, it may distort organisational performance, and bring about new types of closure, self-censorship and anxiety (Christensen and Langer, 2009). Thus, transparency may be described as a "theatre" that hides more than it reveals (Power, 1997, 2007; Strathern, 2000) and perhaps even weakens the effectiveness of accountability it pursues (Roberts, 2009). In fact, the more literally we believe in the axiom, "To see is to know", the more haunted we are by what hovers beyond the edges of the visible. Concerns about such complexities and their unintended consequences have been largely absent

in normative approaches to transparency (Hansen, Christensen & Flyverbom, 2015).

With the ascent of the Internet and especially social media, the direction of transparency is becoming less clear-cut. Scholars such as Mayes (2010) argue that transparency is becoming omnidirectional. Nowadays, it is common for governments, public institutions, companies, organisations and even individuals to put information about themselves on websites or their social media pages. Because of this, it is becoming possible for everybody to observe and monitor everybody, and the asymmetry of information that exists in the case of unidirectional transparency is diminished. Moreover, we are evermore aware that we are being observed, sometimes even putting the information out there for this specific purpose.

When looking at the definitions of transparency and surveillance, it appears that they are two pervasive concepts that have been extensively discussed in the field of social and political sciences. Dominique Bessire (2005) claims that when looking back at transparency and surveillance from a historical perspective, the two notions are often depicted as two sides of the same coin. They converge on many aspects and often fulfill similar functions, such as discipline, normalisation and market efficiency.

In our modern society, transparency and surveillance also tend to coincide. Drucker and Gumpert (2007) argue that the recent development of new technologies and new means of communication have intertwined the two concepts as strong as never before. The Internet created an increasingly open space which allowed and facilitated the continuous flow of information, but also rendered the circulation of data increasingly unfiltered and uncontrolled. It becomes highly complex for the average citizen to draw a clear line between who watches and who is being watched.

Facebook and other types of social media can be seen as perfect examples of this situation. As argued by Taddicken (2013), social network users are experiencing what she defines as a "privacy paradox". Although social media users are to a large extent concerned about privacy issues, they are more inclined to share private information on their social media page, in most cases not realising that this information will remain online for an indefinite amount of time. Consequently, while they may think that they openly share their information to a closed group of digital friends, they actually disclose private data to an enormously large community they know nothing about. Thus, they are tremendously facilitating the possibilities of being watched. Public figures of different kinds are also today the victims of this need for more transparency. New means of communication, investigation and media have facilitated the revelation of an important amount of information about the private life of many politicians, film and music stars. Although one may argue that people have in certain cases the right to know, and that certain information is in the public realm, it is highly complex to discern if this behaviour falls under the scope of transparency or surveillance.

This volume focuses on the extent to which and the ways in which transparency and surveillance influence power relations between various actors in society. Each contribution in this volume assesses different surveillance and transparency mechanisms in order to shed light on their empowering or disempowering effects. It is shown that with the emergence of ever-more technology the transparency gaze can be turned in different directions, providing the potential to empower an increasing number of people. While the traditional form of transparency upwards – surveillance – remains present and increases power of government over its people by innovations in surveillance techniques, the emergence of the Internet and social media have offered the possibility for people to turn their gaze on its public and private institutions and even on each other.

This volume starts out by discussing revolutionary views on transparency, taking the hierarchical structure of gazes within society as point of focus. The study promises to unravel deeply rooted power relations within surveillance. Making these relations visual and tracing them back to their societal root, qualifies it to bring about potential change to power exertion.

It is then concerned with the shift in surveillance, which occurred inside the West German intelligence services in the 1970s, changes in the way how security concerns were prioritised in relation to citizens' rights are investigated. Through this, consequently power relations of state and citizenry are diverting in such a scenario.

In the context of EU surveillance systems, the exertion of power of the EU's Member States over migrants via the usage of surveillance tools is studied. Questioning the proportionality of these tools necessarily means questioning the magnitude of power exertion that is desirable at the EU's external borders.

The volume then focuses more on transparency. The increasing social demands for accountability and press scrutiny since the 1970s had a strong impact on power relations between people and their heads of state, whether they are prime ministers, presidents or kings. In the Netherlands, it was increasingly evident that the monarch's legitimacy became more dependent on public evaluation than on the institutional performance of the monarchy as such. The eventuality of increased public scrutiny places the monarchs under the condition of surveillance.

For the case of patients and doctors and other health service providers, an increase in transparency makes changes of power relations between these groups possible. By increasingly empowering patients to take informed healthcare choices, the underlying principal-agent dilemma is expected to lose its acuteness.

When it comes to the area of national and EU politics, issues of political participation and accountability have emerged, to which transparency offers a solution in the form of more open government arrangements. Transparency can possibly revitalise accountability and the electorate's readiness for participation. Within increasingly open government structures, new/social media is often seen as powerful route to empower citizens. Empowerment in this context could thereby also mean surveillance of the elected representatives, reshaping current power relations.

By discussing the role that Facebook plays in the surveillance of its users, we are allegedly dealing with classical top down surveillance, and, accordingly, with top-down power exertion. In this sense, social networking is seen as a Panopticon. However, it is suggested that Facebook can also be used as a means for bottom-up surveillance, namely as a tool for "sousveillance". If effective, this would lead to a re-directioning of power and the empowerment of Facebook users. It is, therefore, examined whether Facebook can be more adequately perceived through the lense of panoptic surveillance or "catoptic" sousveillance.

In the individual contributions the potential for a change of power relations is outlined. Nevertheless, we remain skeptic as to whether the promised shifts have taken place or will be visible in the near future. This skeptical assessment of the potential/manifested impacts of changes in transparency and/or surveillance patterns on power constellations unites our projects.

4 Visions of vision: governments, companies, activists and how they deal with visibility, transparency and surveillance – Jakob Zeijl

4.1 Introduction

Seeing is knowing. But seeing is not just seeing. Throughout the ages, humanity has constructed vision in many different ways. Therefore, it is imperative to take a closer look at the construction of vision, especially in the digital age, which greatly expanded our abilities to see and, particularly, oversee. Foucault (1995) argued that seeing is cleaning; through increased visibility the Jacobins tried to sanitize the dark spaces of royal privilege and religious superstition. Their ideas, however, became vampirized and were turned into governmental systems of control, observation and regulation. Echoing the Jacobins, we demand transparency to extend our control over business and politics. To prevent us from making the same mistakes again, we should examine how vision was constructed, how it can be constructed, and what possible dangers might arise.

The term *surveillance* derives from the Latin word *super*, meaning "over" or "above", and *vigilare*, meaning "to watch" or "to be vigilant". It generally describes watching over a person or a group. *Transparency* is of Latin origin and denotes perviousness to light (Hood, & Heald, 2006, p. 4). It is a composite of the words *trans*, translated as "through" or "across", and *parere*, meaning "to appear", "to come in sight". Making something transparent is to move it from the realm of opacity into light, to make it visible. What is more, the preposition *trans* suggests that more than mere appearance is made visible; light is passed through appearance and renders the core, the essence visible. Therefore, transparency is seen as a precondition for a free and unaltered glimpse at

reality (Landkammer, 2010, p. 239). Both terms gained prominence in recent years, especially the demand for transparency has acquired widespread support. Transparency is demanded because it is implicitly believed that something visible can offer no resistance and can easily be changed (Nietzsche, 1881/2007, §444). In that sense, transparency and surveillance share certain characteristics: both are attempts at changing behavior by increasing the visibility of persons and/or companies.

This paper studies various ways of conceptualizing and dealing with visibility, especially concerning transparency and surveillance. To put it differently, the overall research question is to find out how activists, politicians and companies construct transparency. By answering that question this paper intends to show that there are structural differences in approaches towards transparency between on the one hand artists and activists and on the other hand companies and politicians. However, also activists differ from each other in how they approach transparency. This is important to realize because transparency is more often invoked than defined. Therefore, it is worthwhile to investigate possible frameworks of transparency, their advantages and their disadvantages. Moreover, since transparency and surveillance have a similar aim, there is an overlap between them that needs to be scrutinized. The method employed is a qualitative content analysis of literature.

Firstly, this paper elaborates on the logic of surveillance. Secondly, sustainability reports and the framing of transparency in the current Obama administration are used as case studies of transparency in economics and politics. Thirdly, the way transparency is enacted by WikiLeaks is investigated. Special attention is paid to WikiLeaks' decentralized, inclusive and non-hierarchical structure. Fourthly, this paper shows how WikiLeaks' concept of non-hierarchical, decentralized and inclusive transparency could be adopted in everyday life by referring to Steve Mann's concept of "sousveillance". However, the decentralization resulting from both, Wikileaks and Mann, is criticized by many. This paper

focuses on two outspoken critics of enhanced transparency, Han and Bessire, and elaborates on their arguments. Fifthly, the anarchist *Camover* intervention is assessed and linked to Han's and Bessire's argument for more opacity. Lastly, all projects are compared and discussed. It is argued that the examined attempts at transparency enacted by governments and companies reflect and consolidate existing power relations and are therefore not likely to expose misdemeanor or lead to significant changes. WikiLeaks and Mann construct transparency radically different and show potential alternatives that could greatly affect existing power relations. Nevertheless, these alternatives house considerable dangers and do not by default empower us.

4.2 The Mono-Directional Logic of Surveillance

The academic landmark of surveillance is Foucault's account of panopticism. The Utilitarian Bentham developed a prison blueprint that greatly differed from the "old regime" monarchical system of incarceration. Since the judiciary of monarchies could only arrest a derisory proportion of criminals, their punishment was turned into a public spectacle in order to deter others. Theorists of the 18th century argued that "such a form of power was too costly in proportion to its results" (Foucault, 1980, p. 155) and devised a new penal system, the one we know today. Bentham's model of the Panopticon is a central tower placed in the middle of a circular building. From this vantage point, it was possible to observe every cell and every inmate. Since the windows of the central tower were blackened, the inmates did not know whether they were observed at the moment or not. Nevertheless, the fear of possible observation prompts the inmates to adjust their behavior accordingly. Through internalization of the disciplinary gaze, inmates are made to observe themselves, something that Foucault calls "[a] superb formula: power exercised continuously and for what turns out to be a minimal cost" (pp. 155). The tower is the origin of a mono-directional gaze: its

inhabitants administer the gaze and everything is transparent for them, whereas the inmates, the objects of the gaze, cannot gaze back.

Surveillance, already by its etymological meaning, can only be practiced by the superior, by those in power. Surveillance is the prerogative of official institutions and indicative of a power- and an information asymmetry. Ganascia (2009) argues that "surveillance characterizes situations where a watcher is positioned above the watched" (p. 2). In this context, *above* refers to a positional as well as a social viewpoint. The watcher is able to collect and use information whereas the watched often do not know who watches them and are consequently dominated by the watchers. Furthermore, Ganascia points out that the logic of surveillance is not only limited to information access but also to information dissemination which is controlled by a central organization imposing censure (p. 2). Mechanisms of surveillance are inherently undemocratic, according to Mann (2013a). He argues that "surveillance is the veillance [sic] of centralized data repository" (18:40), meaning that only one party is allowed to gather information and access these. Surveillance is mono-directional, meaning that not only the overseeing gaze but also information dissemination is a one-way road. The empowered overseer administers the gaze and decides which information is disseminated, whereas the disempowered seen cannot gaze back nor can they enter the centralized data repository.

One intuitively thinks transparency to be good, surveillance to be bad and both, therefore, to be miles apart. Interestingly enough, the logic of surveillance can be found in many attempts to establish transparency, as the next section argues.

4.3 The Hyperreality of Transparency

Companies increasingly publish sustainability reports that should inform about their social, economic and environmental impact. This is done for purely altruistic motives, such as managing change towards a sustainable global economy, but it is also a practical necessity to disclose reliable data in order to attract potential shareholders and to enhance trust of the already existing ones. The Global Reporting Initiative (GRI) is an international, non-profit organization that aims at making sustainability reporting a standard procedure for all companies and organizations. The GRI has developed and introduced a standardized Sustainability Reporting Framework that is used around the world. Their declared vision is "[a] sustainable global economy where organizations manage their economic, environmental, social and governance performance and impacts responsibly, and report transparently" (GRI, 2011, p. 2). The GRI assesses sustainability reports according to its standardized framework and grades them.

Boiral (2013) analyzed 23 sustainability reports from the energy and mining sector from the year 2007 which received top grades from the GRI (A or A+) in order to find out whether the disclosed information are correct and reliable. He concluded that the sustainability reports were severely disconnected "from the realities of the negative impacts of business activities, due to a lack of transparency in reporting" (p. 1051). While the GRI states that "[a] sustainability report is the key platform for communicating sustainability performance and impacts – *whether positive or negative*" (GRI, no date, 'What is Sustainability Reporting?', my italics), 90 per cent of significant negative events "were either omitted from the sustainability report or addressed in a very incomplete and non-transparent fashion" (Boiral, 2013, p. 1051). The use of a standardized framework has undoubtedly increased the rigor of sustainability reporting. Nevertheless, their reliability and transparency is a matter of debate. While many authors have criticized their often superficial nature and their

reflection of business interests, rather than a genuine interest in accountability and transparency (Gray, 1992; Unerman, Bebbington, & O'Dwyer, 2007; Moneva, Archel, & Correa, 2006), Boiral even goes so far to argue that these sustainability reports are mere "simulacra".

Simulacrum is a term of Baudrillard's media philosophy concerned with the relationship between signs of the real and the real. According to Baudrillard, our representations of reality are completely disconnected to reality itself. Deprived of reality, there are only simulacra that precede and determine the real. The artificial is not real but constitutes reality; reality has given way to hyperreality (Baudrillard, 1994). This not only calls into question the transparency in sustainability reporting, it also confirms "that sustainability reports can be viewed as simulacra that camouflage real sustainable-development problems, presenting an idealized version of company situations" (Boiral, 2013, p. 1061).

Boiral's analysis indicates how the logic of surveillance penetrates attempts to establish transparency. The companies greatly benefit from an information asymmetry since they are free to decide what to disclose and what to censor. They are the guardians of a centralized data repository and they provide an unequal access to it. Governments, stakeholders and environmentalists are placed at the receiving end of the one-way road of information dissemination and have to trust in the information they are given.

Many attempts at transparency are characterized by the logic of surveillance, that is, transparency in which the hierarchy of gazes remains intact: the empowered seer decides what the disempowered seen gets to see. Institutions whose transparency is demanded are asked to disclose information themselves. In the case of sensitive information, this is akin to asking a criminal to help investigating his own crimes. For example, thousands of documents that recorded shameful acts in the last years of the British Empire have been destroyed or kept in a secret British Foreign Office Archive in clear breach of legal obligations to disclose them in order

to prevent them from "falling into the hands of post-independence governments" (Cobain, Bowcott, & Norton-Taylor, 2012, paragraph 1). And while this might be an extreme example, it is nevertheless indicative of panoptic transparency. The seer decides what is made transparent, how it is made transparent, indeed, the seer is even defining the very term "transparency". Investigating the framing of transparency in the current Obama administration, Herrmann points out that WikiLeaks is solely referred to as "disclosure" rather than "transparency". She further hints that

[a]n explanation would be that the administration has appropriated the term 'transparency' for itself and seems to have clear conceptions of transparency and its positive correlation with accountability, trust and good governance . . . WikiLeaks is definitely not seen in the light of transparency and the service of the good; it is criminalized and depicted as a threat to national security (Herrmann, 2013, p. 139).

And while Obama stated in a memorandum that "[m]y Administration is committed to creating an unprecedented level of openness in Government. We will work together to ensure public trust and establish a system of transparency" (Obama, 2009, paragraph 1), the reality looks different. An analysis by Associated Press, investigating the accessibility of information under the Freedom Of Information Act in 2014, showed that on the one hand public demand for information is at a record high. On the other hand, however, government secrecy is as well. More often than ever before did the Obama administration censor government files or deny access completely. Moreover, the analysis highlighted that "in about a third of instances, the government conceded that initial decisions to withhold or censor documents were 'improper under the law – but only when it was challenged'" (Wemple, 2012, paragraph 3).

The logic of surveillance is one of hierarchy, of exclusivity, and of unequal information access and dissemination. This logic spilled over into

the construction of transparency. Shaped by the logic of surveillance, transparency becomes the site for the reproduction of the logic of surveillance. This, however, is not the only way vision and transparency can be constructed. In recent years, an increasing number of activists engaged with the issue of surveillance and transparency. All of them have dealt with visibility in a different way and all of them have constructed vision differently.

4.4 WikiLeaks: The New Framing of Transparency and the Intricacies of Dating

Whether Wikileaks has been successful or not, remains open. Fenster (2012) analyzed the effects of WikiLeaks and concludes that neither was a political movement of any significant size formed, nor was there a "significant or even discernible movement to change existing military engagements or foreign policy in the period following the WikiLeaks disclosures" (p. 801). Nevertheless, WikiLeaks aroused a considerable amount of controversy: Flanagan, the former advisor to the Canadian Prime Minister Harper, Kuhner, a Washington Times Columnist, Liddy, a former White House Advisor, and many more demanded Assange to be assassinated (WikiLeaks, 2012). Mao famously said that being attacked by the enemy is a good thing, because it shows that one has drawn a clear line of demarcation between oneself and the enemy. While Mao is a questionable authority in political matters, the fact that politicians responded so violently to WikiLeaks indicates the amount of threat it poses. In a panel discussion with Žižek and Goodman, Assange argues that censorship is a good sign because it shows that society is not yet totally "fiscalised". Power in a totally hegemonic position is silent and as responsive as a human who accidentally steps on an ant (Žižek, Assange, & Goodman, 2012, 37:06). If WikiLeaks' impact was negligible, how are

the extremely harsh and hostile reactions of politicians, companies and even activists to be explained?

Firstly, WikiLeaks stands in stark contrast to panoptic transparency and explicitly disregards the official framing of transparency. According to Žižek, it is the ultimate show of power of a ruling ideology to allow for criticism. Referring to the abundance of anti-capitalist sentiment, he goes on to criticize that "there is a catch: what isn't questioned in these critiques is the democratic-liberal framing of the fight against these excesses [corrupt bankers, sweatshops]" (Žižek, 2011, p. 2). Criticism is allowed because it is framed by its own object. WikiLeaks' gaze was directed at big companies and politics which is not anything new or surprising but *how* it staged the gaze marks its difference to traditional agents of transparency. Giri (2010) states that WikiLeaks carries a tremendous radical political charge because "they challenged power by challenging the normal channels of challenging power" (paragraph 6). In liberal regimes –or regimes that want to appear so- there is a certain way, legitimized by the authorities, which one is allowed to go about challenging it. For example, if one would like to access data held by a federal organization one can invoke the *Freedom Of Information Act* or even go to court if the government insists on non-disclosure. These ways, however, are governmentally prescribed acts of resistance. In the very act of resisting, one sticks to, and in certain way reinforces, the authority one wants to challenge. By disrespecting the usual channels of information flow, such as governments, courts, civil bodies, and (initially) corporate media, WikiLeaks has changed the rules of the game.

Secondly, in a short talk experimental psychologist and linguist Pinker (2011) solves the puzzle of why humans prefer to use innuendos rather than direct overtures; for example asking whether one would like to come up for a cup of coffee rather than directly asking for sex. Pinker introduces a concept that economists and logicians call Mutual Knowledge. Its opposite is Individual Knowledge and refers to a situation in which A

knows X and B knows X. Mutual Knowledge denotes a situation in which A knows X, B knows X, A knows that B knows X, B knows that A knows X, A knows that B knows that A knows X, B knows that A knows that B knows X, *ad infinitum*. Using innuendos avoids the creation of Mutual Knowledge and can avert embarrassment. Mutual Knowledge not only has profound consequences for dating but also for politics. Pinker claims that revolutions are often triggered as direct result of Mutual Knowledge. Being home alone and despising a dictator, one feels insecure and one does not know whether one's own grudge is held by others. When, however, a crowd gathers in a square "everyone knows that everyone else knows that everyone else knows that the dictator is loathed" (8:37), which gives them the collective power to challenge her/him.

WikiLeaks can be seen in that light as well. Even though WikiLeaks' disclosures might have not revealed anything surprisingly new (Žižek, 2011, p. 3; Fenster, 2012, p. 777), it has given irrefutable evidence of misdemeanor and has therefore changed our status of knowledge from Individual Knowledge to Mutual Knowledge. Accusations that previously had only circulated in specific milieus, that had been shunned and kept quiet, became Mutual Knowledge. And albeit Mutual Knowledge is not a sufficient condition for change, it is a necessary one.

Thirdly, challenging the frame advances participation. McLuhan remarked that "connected spaces and situations exclude participation whereas discontinuity affords room for involvement" (McLuhan, & Zingrone, 1997, p. 341). WikiLeaks does not present a neat-cut narrative and formal harmony. The leaks disclose information from different countries and deal with different topics. WikiLeaks is constantly disclosing new documents, the whole page is in constant flux. And it is this state of *becoming* that invites participation. WikiLeaks is an open-end project and although people know that a state of perfect transparency will never be reached, they still aim for it. Anyone can add documents without fearing to destroy the meaning of the whole. This discontinuous and fragmented

way of disclosing data is contrasted by the publication of sustainability reports. These reports present a straight and continuous narrative of a company's impact on everyday life. This narrative is meant to present harmony, at the expense of real problems. Therefore, data-selection is selective and information that will not contribute to a positive company image is omitted. Including that information in a sustainability report could upset its balance. The company decides what is published and contributions of outsiders, such as environmentalists, are not taken into consideration.

Fourthly, also the creation of Mutual Knowledge advances participation because more and more people on both sides get involved. Unfounded assumptions hardly lead to consequences. Facts, however, act like stones thrown into a sea: they create circles far bigger than the stone itself. After the release of the State Department cables in 2010, several web services stopped collaborating with WikiLeaks. And while Roberts might be correct in claiming that this was due to economic considerations rather than direct political pressure (Roberts, 2012, p. 7), it is indicative of something else, namely of spillover effects and internal dynamics. The leaks caused a reaction from economic companies which in turn caused a reaction from the hacker collective Anonymous. People who previously had nothing to do with WikiLeaks were drawn into the struggle around it.

The fundamental inequality between observer and observed, exemplified in the sustainability reports, is at least partially challenged by WikiLeaks. Making incidents in Iraq, Guantanamo Bay or Kenya transparent, is moving towards more equality since every regular citizen has the ability to observe the powerful. While this does not erase existing power relations and neither exalts the citizen from her/his role as object of the gaze, it gives the citizen a tool to return the gaze and become a master of the gaze, too. The traditional demand for transparency relies on the dissemination of information through privileged and powerful institutions. The flow of information is therefore mono-directional: only

approved information is released. WikiLeaks' decentralized way of spreading information presents something entirely different, something that relies to a great extent on the new possibilities the Internet offers. And while Roberts (2012) and Fenster (2012) are certainly correct in their analysis that the Internet alone will not be enough to establish transparency and induce change, WikiLeaks has made an important point. The interconnectedness of the Internet allows easy bulk data sharing and a reversal of the roles of seer and seen. Most attempts at transparency that rely on the Internet adopt the traditional centralized structure; they try to do with the new what already did not work with the old. While sustainability reports and e-government initiatives rely on the Internet to disseminate information, the origin of that information is a centralized entity which has the possibility to impose censorship. Thus, the revolutionary potential of WikiLeaks lies in its structure rather than in the content of the leaks themselves. WikiLeaks has made the frame apparent under which transparency is allowed to be pursued. WikiLeaks' transparency stands in stark contrast to the panoptic transparency of governments and companies.

While WikiLeaks was called drastic by many, its concept of decentralized, non-hierarchical and inclusive transparency has been put to the extreme by others, most notably by Canadian inventor and researcher Steve Mann. The next part describes how the logic of Wikileaks can be - and already is - applied on a day to day basis by elaborating on Mann's ideas.

4.5 Equiveillance and its Dangers

Steve Mann is an outspoken opponent of surveillance whose suggestion for challenging surveillance is diametrically opposed to logic of surveillance. He believes the solution is to be found in wearable, wireless computers. In our modern technological society, anyone can take pictures

or record persons and events, and distribute the information all over the world. Mann has coined the term "sousveillance", which denotes a state of affairs in which everyone is watching everyone and everyone has equal access to information about others. Whereas surveillance denotes a situation in which watch is kept from above, sousveillance refers to watch kept from below. As prime example of sousveillance, Mann (2003) refers to the videotape showing police officers beating Rodney King (p. 333). He points out that there is a fundamental inequality in surveillance, namely that ordinary citizens are not allowed to take pictures, for example in governmental buildings and shops whereas surveillance cameras are installed everywhere in these premises. These asymmetric photography/video policies reflect the unbalanced power relationship of the Panopticon. Mann pioneered inventions like the Eye Glass, glasses that can record and display video material. His Eye Glass constantly records and Mann even uploaded a live stream to the Internet (Mann, 2013b, paragraph 9). These inventions, Mann argues, will have a dual effect. Firstly, they will alter the nature of surveillance. Surveillance cameras are placed at vantage points and are therefore more privacy invasive than the Eye Glass, which is placed on eye-level. Secondly, these inventions impact on the hierarchy of surveillance. Whereas so far surveillance was a restricted praxis of authorities, wearable computing devices allow the large scale implementation of sousveillance. Taken together, these two changes are supposed to bring down "the camera or other means of observation to a human level" (Mann, 2012, paragraph 15).

In a talk, Mann highlights the benefits of sousveillance by comparing two stories. In 2005, policemen shot and killed an alleged terrorist in the London Underground. It turned out that the police had made a mistake and that they had killed an electrician. This incident was recorded by four individual CCTV systems, which the police seized and claimed to be blank. However, some of the Underground's employees had

a look at the tapes before the seizure and stated that there was content on them. In Canada in 2013, a boy was found standing in an empty streetcar with a knife. Police surrounded the boy remaining at a safe distance and urged him to drop the knife. The boy did not move, so an officer shot him three times. The boy fell to the ground and the officer shot him another six times. While the British officers were acquitted, the Canadian officer was accused of murder. Mann argues that the fundamental difference between the two cases resulting in the different legal treatment is to be found in the presence of *sousveillance* in the latter case. The incident was not only recorded by the CCTV cameras in the streetcar and by the police, but also by several bystanders. Mann argues that the bystanders made the difference: were the incident recorded only by the police and the streetcar CCTV, the police might have seized the CCTV tapes and maintained their monopoly on information. The possible result of that can be found in the London case. However, the public filming that incident was practicing *sousveillance* and its open nature and crowd-sourcing tactics brought the matter to public (and later jurisdictional) attention. Thus, *sousveillance* is the complementary side of surveillance. It can counter the inherent asymmetry in surveillance and establish an equality of vision (Mann, 2013a), an "equiveillance" (Ganascia, 2009, p. 1).

Mann advocates the abolishment of the monopoly on information acquisition and dissemination that official institutions have had until now. He aims at an eradication of the information asymmetry by making himself and everything around him completely transparent. Through a radical decentralization of the official channels of information, Mann wants to challenge the mono-directionality of information. Moreover, he argues, *sousveillance* is a non-hierarchical system, since everyone has the right to record and access the recordings. It is, however, exactly this decentralization and poly-centricity, which has received harsh criticism.

Most critics of decentralized transparency are united in their belief that there is no difference between surveillance and transparency. According to them, it is more appropriate to speak of a surveillance/transparency complex. They fear that a world of multilateral visibility will greatly expand the Panopticon. In his book *Transparency Society*, the cultural theorist and philosopher Byung-Chul Han argues that we are witnessing the emergence of a new Panopticon. This new Panopticon is "aperspectival", because there is no center of surveillance. "The distinction between center and periphery, constitutive of Bentham's Panopticon, disappears completely" (Han, 2012, pp. 74, all quotes are by Zeijl). According to Han, aperspectival surveillance is much more efficient than perspectival surveillance, for it is now possible to be screened not only from every direction but also from everybody (p. 75). While inmates of Bentham's Panopticon are aware of the presence of an authority, inmates of the new Panopticon think to be free and voluntarily surveil and expose themselves. The emergence of a total Panopticon is accompanied by a waning of trust and morality, as Han argues. Since the call for transparency is echoed most often at times of disappearing trust, the "transparency society is a society of distrust and suspicion which relies on transparency due to disappearing trust" (p. 79). Instead of morality and trust, transparency becomes the new social imperative and the distinction between public and private sphere which governed our lives for roughly 300 years is obliterated.

This line of argumentation is echoed by Bessire, who investigates what the discourse on transparency hides and elaborates on the common assumption that information asymmetries lead to adverse selection and moral hazards. Transparency, used in this context, is supposed to prevent agents from adopting opportunistic behavior. Therefore, transparency is merely a different but positively connoted term for panopticism. Whereas her essay focusses on elaborating solutions for the world of business, her main argument against transparency is so broad that it relates to any

other aspect of life in connection with transparency. Bessire's argument can be summarized as follows:

1. Economic interest, or any form of self interest, is tamed by surveillance mechanisms, which are being presented as enhancements of transparency.
2. Surveillance mechanisms reduce individuals to inmates of a virtual prison and render them unfree.
3. Without freedom, there is neither responsibility nor ethics, and one yields to determinism.

Therefore,

4. Transparency will not lead to a moralization of (business) life but to its opposite, generalized amorality (Bessire, 2005, pp. 430).

Bessire's argument is valid, that is, the conclusion is a logical and necessary inference of its premises. A convincing argument, however, not only has to be valid but also sound, that is, being valid and having premises that are *actually* true - and Bessire's premises are not without flaws.

Premise 2, for example, is a rather determinist reading of Foucault, which trivializes the original argument. Foucault acknowledges that disciplinary power controls and defines the human subject, but it never fully achieves what it sets out to do. The internalization of disciplinary power is highly individualized and can have adverse effects. Instead of producing docile bodies, prisons can work as criminal factories for they convince inmates that they are indeed all the things the system tells them to be, such as deviant, lazy and/or evil. "In this respect, power is successful in 'writing' people, but the effects are not what was intended" (Danaher, Schirato, & Webb, 2000, p. 80).

Concerning premise 3, it seems that Bessire's own ethical bias from which her criticism is launched is not without contradiction. She claims

that a loss of freedom inevitably results in determinism. Thus, Bessire drives a wedge between freedom and determinism, claiming both to be diametrically opposed and incompatible. However, as Kurtulmuş points out, there is a problem with that view: suppose some of our actions were not determined by character, education or, for that matter, biopower. These undetermined actions would be merely random events rather than free actions of free individuals. Or, to put it differently: in how far can an action that is undetermined by your character, desires or beliefs be said to be truly yours (Kurtulmuş, 2014, p. 2)¹? Thus, there seems to be a dilemma: if determinism is true, our actions are unfree but if Bessire's conception of freedom is true, our actions are random events and therefore not free either.

In summary, it might be true that the current discussion on transparency indeed shares similarities with Foucault's panopticism. However, Bessire's rather negative evaluation misses the point. A transparent society does not by default abolish the freedom of its individuals because disciplinary power, in and of itself, is not constitutive of subjectivity and resistance is always possible. Secondly, a Manichean distinction between freedom and determinism is an oversimplification. Bessire understands "free" to mean "uncaused". However, an uncaused action is merely random and hardly counts as a conscious, reasoned action. In that case, it does not make much sense to speak of them as free actions.

Han's book *Transparency Society* is a pamphlet and has therefore to be enjoyed with care. His style of writing resembles Nietzsche's in his use of aphorisms, short and suggestive sentences, and eloquent style. Han, however, proves to be more hammer than philosopher, since he occasionally is oblivious to the reality of our world. Criticizing Rousseau's

¹It is not within the scope of this paper to try to solve this dilemma. Interested readers find a discussion of Compatibilism in Rachels and Rachels (2012) which offers a way out. Nevertheless, this way is disputed.

dislike of theatre as place of deception, disguise and mere appearance, Han advocates a return to 18th century's opacity and theatre. "The world of the 18th century was still a theatre. It was full of scenes, masques and figures . . . There was no crucial difference between streetwear and theatrical costumes" (Han, 2012, p. 70). The infatuation with theatre was so big that people started playing with appearances and scenic illusions by dressing up extravagantly. Han seems to be oblivious to the fact that only the minority of affluent citizens could afford to stylize their clothes according to theatrical conventions; the majority could not even afford a theatre ticket. Moreover, the claim that everything is screened is a rather bold assertion: while persons on welfare benefit in Germany have their online activity screened four times a year for undeclared additional revenues, such as eBay sales (Gebert, 2014, paragraph 2), the *Bundestag* administration refuses to disclose to which pressure groups roughly 1000 entrance passes to the *Bundestag* have been issued *via* a legal loophole which was unknown to the public until *Abgeordnetenwatch* discovered and reported about it (Reyer, 2015). Nevertheless, Han asks the right questions but answers them too cursory. That does not do them justice but they are justified.

4.6 Firefighters and Anarchists: On the Inadequacy of Altruism

Han is not the only one who advocates a return to opacity. Diametrically opposed to Mann's idea of challenging surveillance is the *Camover* game, initiated by German activists. After several incidents in Germany in 2013 that sparked a discussion about an increase in the use of surveillance cameras, a mobilization video appeared (Camover, 2013) in which several masked men walk around streets, subways, and subway stations and destroy CCTV cameras. This video was the starting shot to the reality-game *Camover*, initiated by a loose affiliation of activists. In order to protest against increasing surveillance, activists invited people to form groups, destroy surveillance cameras and post the number of demolished

cameras on well-known leftist forums. The group with the largest number of destroyed cameras was awarded a place in the first line of a demonstration against the European Police Congress. In an interview with *The Guardian*, one of the organizers stated that they chose to portray it as a game for they hoped to be able to mobilize otherwise inactive people (Stallwood, 2013, paragraph 6). Apparently, this tactic worked out since their call was echoed in many German cities, but it eventually also spread to America, Finland and Belgium. Moreover, their intervention received international press attention.

Criticism of this intervention was abound; the police initiated criminal investigation procedures concerning public incitement to commit penal offences, and victims complained about the injury of private property. Hülsmann, a member of the German Working Group on Data Retention, has pointed out that such forms of protest result in the self-criminalization of opponents of surveillance and might lead to an increase in CCTV cameras (Wrusch, 2013, paragraph 9). This intervention is symptomatic of another way in which activists and philosophers deal with vision. The *Camover* activists constructed vision in purely negative terms. They believe vision to be inherently dangerous since it is a governmental mechanism of repression. Therefore and according to this logic, it is imperative to reestablish opacity by blinding the state. However, just like CCTV cameras are an *ex post facto solution*, so is their destruction. Oscar Wilde, discussing the problem of poverty, famously remarked that

[t]he emotions of man are stirred more quickly than man's intelligence . . . it is much more easy to have sympathy with suffering than it is to have sympathy with thought . . . they [the majority of the people] very seriously and very sentimentally set themselves to the task of remedying the evils that they see. But their remedies do not cure the disease: they merely prolong it. Indeed, their remedies are part of the disease (Wilde, 1891/1966, p. 1079).

Concerning poverty, this boils down to the insight that it is immoral to use private property to alleviate problems caused by the existence of private property. Instead, one should rather try to reconstruct society on such a basis that poverty will be impossible. The *Camover* intervention is exemplary of Wilde's critique. Just like firefighters, activists rushed to cameras whenever they saw one. Since it spread to other countries, it might have been a good PR stunt and it could be argued that it expressed a widely shared wish for less surveillance. However, it was bound to remain a PR stunt. The activists were combatting the symptoms of surveillance, rather than its roots. The information asymmetry will not be changed by a few missing CCTV cameras nor will the hierarchy of gazes.

4.7 Discussion

The sustainability reports and the general drift in the Obama administration exemplify a conception of transparency closely modeled on the Panopticon. Information is disseminated from a clear vantage point. The empowered overseer decides what is made transparent, how it is made transparent, and is even defining the very term transparency (Herrmann, 2013, p. 139). It is a form of transparency that leaves the information asymmetry and therefore also the power asymmetry untouched. While politicians and companies often evoke transparency, they do so on their own terms. As a result, shaped by the logic of surveillance, transparency becomes the site for the reproduction of the logic of surveillance. Boiral developed a convincing argument and pointed out that the sustainability reports are mere simulacra, that is, information without a real referent in objective reality. The Associated Press analysis indicates that Obama's commitment to transparency is mere lip service. Thus, in order to prevent transparency from sliding into the realm of hyperreality, it needs to be constructed differently.

Surveillance and transparency have the same aim, to restrict immoral behavior by exposing it to increased visibility. Bessire convincingly argued that the current discourse on transparency shares many similarities to Foucault's panopticism, even though her negative evaluation oversimplifies matters. Mann's idea of challenging surveillance by establishing total transparency in the form of *sousveillance* is certainly compelling but nevertheless utopic. Utopic, because it does not require a mental change but relies solely on the use of modern technologies. He declares the Internet and the grassroots culture to be good by nature and shunts evil onto artificiality. However, the transformative power of the Internet and of grassroots culture to change society for the better cannot be taken for granted. The presence of *sousveillance* can be used for slander and calumny as well as for emancipatory ends. Moreover, the architecture of surveillance could impose itself on *sousveillance*. Official institutions and authorities can use information gathered *via* *sousveillance* and use it for their own ends. The Belarus author and researcher Morozov is highly critical of what he calls Technological Solutionism, that is, the belief that any problem can be fixed by technology. In a short talk, he claims that we often confuse the intended use of technology with its actual use. Technology can be helpful in solving problems but it can also be detrimental. For example, social networks helped organizing democratic protests during the Arab Spring. However, they were also used as a repressive tool of the government for the subsequent arrest of protestors by uploading pictures of protestors and asking the public to identify them (Morozov, 2011).

While WikiLeaks exhibits many features that also characterize Mann's idea, such as a reversal of the mono-directionality of information dissemination, there is one major difference. Mann indiscriminately records and disseminates data whereas WikiLeaks' *modus operandi* is more selective. Assange's aim is to throttle conspiratorial regimes by attacking their communication and therefore rendering them less effective

(Fenster, 2012, pp. 774-781). While it can be argued that the disclosure of state department cables is akin to firing indiscriminately, it is a logical move according to Assange's rationale. Moreover, not all documents sent to WikiLeaks are actually published. Next to going through procedures establishing their veracity, they also have to be relevant enough to be published. Thus, WikiLeaks has specific aims and selects its material accordingly.

Assange and Mann think the world to be too opaque and try to remedy this with increased transparency whereas Han, Bessire and the *Camover* activists think the world to be too transparent and advocate a return to opacity. Although deciding who is right would exceed the scope of this chapter, a preliminary answer can be given.

The *Camover* intervention highlighted the difficulty of finding a way back to opacity. In a world of ever-increasing visibility, transparency is not anymore restricted to politics or economics but has become a societal phenomenon ranging from architecture to televised reality shows. A return to opacity can therefore not be focused exclusively on politics and economy. Moreover, the structure of that return is an unsolved issue, just like its feasibility and desirability. WikiLeaks' disclosures represent a completely new way of transparency: they radicalize the meaning as well as the extent of transparency. The heated reactions show that it not only violated long established boundaries but also that it was successful and that WikiLeaks was perceived as a considerable threat. If knowledge creates power, making everything public erases established information asymmetries and therefore power relations, yet new power relations can impose themselves.

Surveillance is inherently asymmetrical because only some people are allowed to watch and record and only some have access to the centralized data repository. Trying to contain surveillance, as the *Camover* activists did, is only a pacifier since surveillance information is

collected and exchanged by agents over which individuals have very little control (Mann, 2003, p. 333).

WikiLeaks organizes individual entities, the whistleblowers and the interested public, around a single platform. However, this centralization of grassroots movements is not inherently good. A Thai parliamentary committee set up a website called protecttheking.net. In order to show their loyalty to the king, Thais are asked to inform on anyone who criticizes or insults the king. Since penalties for *lèse-majesté* are draconic in Thailand, this website is a powerful tool to crush down protest. In its first 24 hours of operation, 4814 websites criticizing the political system have been shut down by the government, as the *BBC* reports ("Thai Website", 2009, paragraph 8). Rather than disclosing information that is harmful for governments, whistleblowers disclose information that is beneficial for the government – and harmful for its critics. Thus, platforms like WikiLeaks do not by default challenge surveillance. Sometimes, they establish transparency just to widen the net of surveillance.

4.8 Conclusion

This paper shed light on the interplay of surveillance and transparency and pointed out possible dangers. While each activist constructs vision and visibility in a different way, they are united in their inclusive approach. Whereas panoptic transparency reduces the individual to a passive receiver of information, all other interventions included participation of the general public. A concomitant of that inclusive nature is an increasing decentralization of vision and visibility and a rejection of mono-directionality. This decentralization was greatly helped by the Internet. Nevertheless, a too deterministic reading of the positive impact of modern technology on the process of democratization is an oversimplification.

Interestingly enough, companies, governments and the anarchist *Camover* activists have one thing in common: the rejection of increased visibility and a negative concept of vision; all three apparently prefer opacity. The activists are united in their inclusive construction (or destruction) of vision, but this is as far as their common features go. The *Camover* activists want to decrease their own visibility whereas Mann pushes his own visibility to the maximum and indiscriminately discloses information. WikiLeaks takes a different approach and tries to increase governmental visibility by selectively leaking classified documents. While WikiLeaks and Mann have highlighted ways to challenge surveillance and expand transparency, they house considerable dangers. Transparency is more often evoked than defined, and even less well defined are its potential benefits, aside from generalizations, such as market efficiency and accountability.

Before one accepts these dangers as necessary evil, a closer investigation of the benefits of transparency is needed. Rather than outright endorsement or outright rejection, research into what actually makes vision so dangerous is needed. And only if that is known can a substantiated discussion be held about transparency, surveillance, the construction of vision and its artifacts. Moreover, due to the increased digitalization, surveillance has taken different forms compared to Foucault's Panopticon. Therefore, research into post-modern forms of surveillance and coercion is needed in order to study in how far the construction of vision by activists is different or similar to governmental surveillance. At any rate, the German TV show *Die Anstalt* was quite right in pointing out that as long as we still use Facebook rather than Diaspora, Apple rather than Linux, and Google rather than Startpage, complaining about surveillance is hypocrisy (Die Anstalt, 2015).

5 A test for a young democracy: How the RAF challenged the German Rechtsstaat – Caroline Gröne and Konrad Duffy

5.1 Introduction

When Edward Snowden revealed to which extent modern surveillance systems control the world, this provoked a massive outcry among politicians and citizens. The National Security Agency's (NSA) programme, exposed by Snowden, is probably one of the biggest programmes collecting data of foreign and domestic citizens in the world. However, as terrorism has already existed before the 21st century, also counter-terrorist measures have a long tradition (Bigo, D., 2006). The method of collecting data by using computerized systems has its beginnings in the second half of the 20th century. This new "computational security" is widely regarded as the beginning of "new surveillance" (Baumgärtel, 2013; Lyon, 2006, p.3; Marx, 2002, p.9; Katzenstein, 1993, p.162). One of the countries which first made use of new surveillance methods was West-Germany (in the following only referred to as "Germany"), having to deal with left-wing extremism in the 1970s and 80s. It is, therefore, of particular interest to investigate to what extent Germany could cope with the new challenges and keep its democratic legitimacy as a Rechtsstaat, in particular in view of its fragility as a young and politically divided democracy. The Rechtsstaat is here defined as "a state in which the rule of law prevails" (Heun, 2011, p.36).

This paper examines to what extent the new surveillance and security methods, introduced by the German government against the RAF, led to a transformation of the understanding of the Rechtsstaat. To elaborate on this question, the first part touches upon the evolvement of the RAF. Furthermore, it introduces the criminologist Horst Herold, the

main "hunter" of the RAF in more detail, and the creation of dragnet investigation. The second part outlines the concept of new surveillance using literature by Gary Marx and David Lyon, and examines to what extent "new surveillance" theory can be linked to the events in Germany. The third part explores the workings of the legislative and executive powers of the time by illustrating how they were threatening to undermine the Rechtsstaat in the attempt to establish security. The paper concludes by arguing that to counter the radical left-wing movement of the 1970s and the RAF, the German government implemented a number of policies and new processes, which challenged some of the basic principles of the Rechtsstaat, and thereby jeopardized the political and judicial foundations of this young democracy (Frohman, 2015).

In terms of methodology this chapter is based on a qualitative analysis of primary sources, such as the German constitution and its subsequent interpretation, newspaper interviews with contemporary witnesses, and written pieces by important actors. Numerous secondary sources supplement the study with additional information on counter-measures and consequences for the Rechtsstaat. Gary Marx (2002) and David Lyon (2006, 2007) are two renowned surveillance scholars whose theories guide this chapter in its analysis and lay the foundation for the argument that security and surveillance methods pose a threat to the principles of the Rechtsstaat.

In regard to the literature on left-wing terrorism in the 1970s in Germany, judicial, political, sociological and autobiographical works predominate the field (Weinhauer, 2004). Beatrice de Graaf (2011), for example, analyses the effectiveness of counter terrorism measures by governments and generally argues that these measures do more harm to "law and order" than good. Wolfgang Kraushaar (2006) looks in particular at paragraph 34 StGB (state of emergency) in the context of the Stammheim trials and the Schleyer kidnapping in 1977. Even though there has been much written about certain parts of the 1970s and its

effects on society, there has not yet been an analysis focusing on the impact surveillance and security measures had on the Rechtsstaat.

Our angle to approach the anti-terrorism measures in Germany marks a novelty in this field as it pays particular attention to Marx's "new surveillance" theory. Furthermore, the perspective of "surveillance and security" studies has not yet been applied to this historical period. The aim of this paper is to combine a historical perspective with the theoretical framework set out by Marx and Lyon and to investigate whether there is a concrete link between the newly implemented surveillance methods, such as dragnet investigation, and the rethinking of the Rechtsstaat. To understand the full impact of "new surveillance" it is of vital importance to analyse and understand the origins of these methods, as this will help understand the overall development of surveillance practices. Therefore, Germany in the 1970s is an ideal case for this analysis.

The struggle between the German state and left-wing terrorism presents an interesting example of power struggles in Western democracies in post Second World War politics. While the young democracy resorted to the instruments at hand, such as law enforcement, the RAF continuously tried to challenge the Rechtsstaat with increasingly violent and deadly attacks on institutions as well as on political and economic representatives. The government mobilised all police forces by centralizing them under the BKA and significantly increased the independence of a few leading figures of law enforcement. These measures stretched the limits of the Rechtsstaat to the extent that they started to face strong criticism and even constitutional court interference from the late 1970s onwards.

5.2 Red Army Faction (RAF)

The following section shortly describes the roots of the RAF and their motives to provide the substantial context of their actions. The origin of the militant left-wing movement lies in the frustration with the not very effective protest movement of the 1960s. The RAF founders came directly from the environment of the 1968 protest movement. Today, the group is considered as a result of the quick disintegration and change of the protest movement after the implementation of stronger police action against protesters (Kraushaar, 2006). The RAF's politically motivated struggle with the German Rechtsstaat focused particularly on the fight against capitalism and imperialism embedded in the, according to their view, German political system that had not successfully distanced itself from fascist tendencies (Bauer, 2011). In this regard, it is important to place the emergence of the RAF in its contemporary socio-political context.

An important role in this context is played by the difficulties of Germany's postwar generations to come to terms with the NS-past of their parents. In addition to that, the Vietnam War resulted in a general crisis of credibility of democratic regimes, which also affected Germany (ibid.). In one of their first publications the RAF considered itself as an "urban guerrilla" (Hoffmann, 1997, p. 40), and, hence, violence was regarded as a necessary means to, on the one hand, demonstrate emancipation and, on the other hand, counter the violence employed by the state. The left-wing journalist Ulrike Meinhof quickly became the main spokesperson and author of the group's publications, in which they declared war on the Federal Republic and its institutions. They wanted to provoke the German state to act against its own laws and, thus, expose the authoritarian state it was accused to be. The state lacked a concrete legal basis to counter the RAF's actions and was, therefore, not properly prepared to face such a challenge (Klink, 2011). With its revolutionary approach to attack the political, economic and legal structures of the

state, the organization tried to overthrow the state, overturn society and establish a communist regime. Furthermore, it questioned the monopoly of the state as to the use of force and the legitimisation of the Rechtsstaat (Kraushaar, 2006). The most violent year constitutes 1977, with the assassination of state's attorney Buback, Deutsche Bank financier Ponto and the President of the German Employers Association Schleyer. The eventual break up of the group took place in 1998 after years of reduced or no attacks at all (Schleicher, 2011).

5.3 Dragnet investigation

The following section introduces Horst Herold and his initiated police reform, which coincided with new developments in the way prevention in social, environmental and criminal domains of the state was understood (Frohman, 2015). One of the results of his technology-oriented research and criminological studies is the method of dragnet investigation². Herold's vision of reforming police work with the usage of the newest technology and, hence, new surveillance instruments for crime prevention helps to understand the subsequent responses of the government.

5.3.1 Horst Herold's vision

In the early 1960s in West Germany, thoughts concerning the change of the functioning of the police in society had often been expressed. At that time, the visionary federal prosecutor Horst Herold from Nurnberg recognized the potential of computers in regard to police work. Data is more useful the more it has the characteristic of facts and the less it is based on subjective observation such as witness reports, according to his opinion. This should help to strengthen transparency and objectivity in

²In original language: Rasterfahndung

court, in form of clear and incontestable evidence. Herold recognized the weak points of police work before many others did (Albrecht, 1988).

The basic reasoning behind data processing was to include developments of society and, therefore, crime was considered as predictable and with the correct instrument even calculable. Herold was particularly influenced by the Marxist doctrine of the fixed and recognizable development of society. He aimed at structuring complex aspects of a case based on analytical thinking in order to apply rational measures. Herold believed that with the storage of criminologically important data a preventive and repressive evaluation of data would be possible. For him, prevention could be defined as the police initiated effort of all state bodies and of science to prevent crime (Albrecht, 1988).

Criminal geography, for example, investigates the relation between regions and crimes. Collecting electronic data about these connections would allow new research and, eventually, successful crime prevention. With the possibility of recognizing regularities in the offender's choice of object and crime scene, patterns could be noticed and, thus, enable the police to identify areas that posed a higher risk of crimes than others. The constant analytical and prognostic evaluation of data made it possible to recognize the changes and developments of different types of crime. Thus, highly effective and selective police operations were thought to be possible. This provided new opportunities for the uniformed police, which could to some extent be transformed into a crime prevention police.

5.3.2 Background and origins of dragnet investigation

Herold's aim was to develop and reorganise the Bundeskriminalamt (BKA) and move it to the center of the German police with the help of electronic data processing. In his ten years at the BKA, he is said to have built it up to the best police in the world next to the FBI (Prantl, 2013). In his opinion, the police could benefit more from the already collected data by

using computers and, thus, making German police bureaucracy transparent and allow every policeman to access the same information. The introduction of the database INPOL – a federal information system for all German Federal Land Police departments – enabled the central storage of information about criminals. Other governmental and non-governmental crime-related databases were added which allowed them to conduct research on how to prevent crimes effectively. This served as the basis for the development of dragnet investigation in the following years. Herold differentiated between "positive" and "negative" search criteria in dragnet investigation. The former describes filtered criteria by the police such as hair colour, height and figure of the presumed offender. The latter involves the erasure of all persons in the police investigation portfolio who are not considered to be potential offenders. It is called negative dragnet investigation since the method searches for criteria that the suspect cannot fulfil. For example, persons with fake names cannot apply for financial support by the state, be listed in police records, receive child support and own a vehicle (Hentschel & Pötzl, 1986). Most famously, this method was applied in the case of the Schleyer kidnapping. The law enforcement agencies had found out that all the apartments used by RAF members shared similar characteristics. They deduced certain personal traits from this, which they handed out to every police station in Germany. Based on this picture of typical terrorist behaviour, the BKA created an algorithm that looked for addresses with good transport connections to highways, high-rise buildings that offer anonymity, and payment details of electricity bills that were paid in cash and under false name since the terrorists could not open a bank account (Canos Panos, 2003). The BKA applied this search pattern on a radius of 15 km around the crime scene. Filtered apartments were checked with customer details of electricity plants and this information was compared with names in civil registers and insurance data in order to select suspects (Biermann, 2013).

5.4 New Surveillance, security and its beginnings in West Germany

It is generally accepted that a fundamental change in surveillance occurred in the second half of the 20th century. In 1988 Marx (2002) was the first to describe "new surveillance" (p.9). The unresolved question remained however, what innovative features characterize this "new surveillance" and why they constitute a fundamental change in comparison to previous forms of surveillance? Did new technologies also change practices? Marx (2002) argues that this is not the case, meanwhile Lyon (2006) emphasises that "while surveillance practices are as old as human history, they took some rather specific forms in the modern world, becoming routine and systematic, based especially on individuation and on bureaucratic organization" (p. 3). In the same way Didier Bigo (2006) states that "surveillance technologies, as well as attitudes towards constant monitoring of activities, have shifted and greatly expanded to become routines of everyday life" (p.46).

Marx (2005) distinguishes between traditional and new surveillance. Traditional surveillance can be defined as "close observation, especially of a suspected person" (ibid.). For contemporary forms of surveillance, starting in the second half of the 20th century, this definition is no longer applicable. Marx holds that the nature of the verb "observe" in the old definition has fundamentally changed, as modern surveillance methods heavily rely on technical means, which go beyond traditional forms of keeping an eye on a suspect. He defines "new surveillance" as "scrutiny through the use of technical means to extract or create personal or group data, whether from individuals or contexts" (ibid.). An obvious important new element in the definition is the emphasis on "technical means". Additionally, the new definition dropped the verb "observe" and replaced it by "extract or create" data, thereby referring to the collection of mass data. The last part of the definition also gives insight into the changes of

surveillance methods. Data can now be extracted or created from "individuals or contexts".

Contemporary forms of surveillance can transcend "natural and constructed barriers" (Marx, 2002, p.9). By natural and constructed barriers Marx means distance or darkness (natural) and walls or fences (constructed). He argues that new forms of surveillance, in most cases, do not target a specific person anymore. Surveillance methods are used categorically and in different contexts. Specifically, various geographical places, particular time periods, and targeted categories of people are being subjected to surveillance (ibid., p.10). The old distinction between an agent observing a target, therefore, does not hold in times of mass data collection. With the help of new technological means agencies can go "beyond unaided senses" (ibid., p.15). In other words, with the help of microphones or cameras agencies can record conversations or people, which they could not have done without new forms of technology. Technology has had a logical impact that caused drastic changes in the very form surveillance is being approached. In contrast to targeting a specific suspect as starting point of an investigation, surveillance has become a means to find a suspect among a much larger group in the population. Especially, the method of "profiling" gained popularity among security agencies (Bigo, 2006, p.49; Lyon, 2007, p.161). Even though Marx already examined these new surveillance methods in the 1980s, he never combined his research with an analysis of Germany in the 1970s. A gap in academia this chapter fills.

When Horst Herold took office in 1971 he started implementing "new surveillance" methods in the BKA. The controversial implementation of the dragnet investigation is a prime example of the beginnings of "new surveillance". Interestingly, Baumgärtel (2013) argues that contemporary methods used by the American National Security Agency (NSA) and British Government Communication Headquarters (GCHQ) are based on Horst Herold's ideas. When Herold set out to centralise the German

policing system he made use of the newest technology at hand. By computerizing all information he started the process of collecting mass data. For our chapter it is important to ask whether Herold's new methods fit in with the definition of "new surveillance" mentioned above. On the one hand, the police had developed an idea as to who the suspects were. On the other, the newly implemented methods comply with other elements in Marx' definition. Firstly, it stipulates the use of "technical means" in order to overcome limitations of the "unaided senses" (Marx, 2002, p.12). Dragnet investigations are not conceivable without "technical means" as computers crawling through mass data to find particular people, such as those who paid their rent in cash. Secondly, the new methods intended to extract data by computer profiling and also created data, by deciding which characteristics the computers were to be looking for. All the information concerning the RAF first had to be compiled from scratch, i.e. specific criteria had to be established. Renting a flat under a false name, paying bills in cash, short distance between flats and highways, young, single, no car, receiving little mail and other criteria were established. In this way a terrorist profile was created, which – of course – also fit ordinary citizens. By definition the dragnet investigation included a lot of "bycatch".

The counter-terrorist measures caused a "generalized state of exception", as Bigo (2006) calls it, which demanded huge resources (p.49). It has been calculated that in the 1970s, of all criminal acts, "terrorist attacks and violent demonstrations accounted for 1% of all recorded criminal acts" (Katzenstein, 1993, p.161). The police force involved in counter terrorist investigations, constituted up to 10 percent of the whole police force (ibid.). The 1970s also witnessed a quantitative expansion of the police force as a whole. These developments contributed to blurring the line between normality and emergency (p.162). The generalized state of exception has also been intensively examined in the aftermaths of 9/11, which in this perspective was hardly an

"unprecedented event" (Bigo, p. 50). Hijacking planes or bombings of specific locations or buildings have happened before, for example in West Germany (ibid.). The feeling of unease can lead to panoptic surveillance of and by everyone which can lead to a "generalized state of exception" and new methods of finding criminals or terrorists, which is an important aspect of "new surveillance" (ibid.).

Therefore, many scholars (Bigo, Ball & Haggerty, 2012; Feldman, 2011) argue, the line between security studies and surveillance studies is blurring, as each may start at different points but in essence deals with the same issues. Both academic fields tried to focus on the newly implemented counter-terrorist measures erupting in Europe and other countries (p.278). The most crucial link between the two academic fields, which again shows their interconnectedness, is the "obsession with the preventive dimension" (p.283). It is the aim to counter future attacks on the state and this has led to the belief that using computers and databases, can actually monitor and control future activities, as exemplified by Herold's own visions. The development of "new surveillance", as described by Lyon (2006), Marx (2005) and Bigo (2006), must be seen in relation to the newly developed field of security studies as both are deeply interlinked, as will also be shown in this chapter.

5.5 The RAF's impact on the German state and society

5.5.1 Counter-measures taken to combat terror threat

In order to present an overview of the scope and nature of responses by police and government in the 1970s, this section outlines general counter-terrorism measures that contributed to the fight against the RAF. The German government took a number of measures to restore order and guarantee internal security. This led to a general restructuring of the security architecture and assignment of competences (Hanshew, 2010).

With the emphasis on geographical-criminal areas, the BKA aimed at arresting suspects to prevent future crimes and attacks. When Herold became the head of the BKA, regional investigations and special search groups were organized as well as the general introduction of more technological tools. The establishment of the department for data processing (today: information technology) laid the basis for criminological evaluation of information (BKA Historie, n.d.). The BKA steered the regional special committees' activities and evaluated the information they gathered. Soon the amount of data became so extensive that Herold began to store it on central computers, which also speeded up the process of evaluating the data. The outcome would then be transferred back to the regional stations. The new BKA-law of 1973 extended the competencies of the Federal Police by positioning the office as the information and communication centre of German police (BKA Historie, n.d.). These technological developments introduced a new phase in police work that enabled the police to process more information and analyse it more effectively.

One of the most controversial actions taken by the government was the implementation of the Decree of Radicals (Radikalenerlass) in 1972. It served to make sure that newly recruited civil servants shared the government's democratic values and did not come from a radicalised environment. Hence, the Federal Office investigated every applicant for his or her adherence to the Constitution. The Schleyer kidnapping generated even more severe measures (Hanshew, 2010). Firstly, the Contact Ban Law allowed federal and state justice ministers to forbid prisoners to communicate between each other and the outside world in case a "present danger of life, limb or liberty" was strongly presumed (Sobieck, 1990, p. 55). Secondly, the crisis management group, which was created during the hostage-taking of the German embassy in Stockholm, was reinstated to deal with the Schleyer case. Already in 1975, in the aftermath of the hostage-taking of Stockholm, chancellor

Schmidt had stated that "if you want to reliably protect the Rechtsstaat, you yourself have to be ready to push the Rechtsstaat to its limits"³ (Historische Debatten (8): Kontaktsperregesetz, n.d.). For 44 days, the crisis management group executed the governmental power of the nation. Thirdly, a news blackout was introduced for the whole duration of the Schleyer kidnapping. This self-censorship of the media was based on an agreement between the media (newspaper, radio and tv) to not publish any information on the status of police investigation without consulting the BKA beforehand (Kraushaar, 2007a).

The German Autumn of 1977 highlighted the RAF's capabilities and challenged German security authorities to an even larger extent than before. Hunger strikes, hostage-taking to release prisoners in return and the politicisation of criminal proceedings put a lot of pressure on the authorities. As a response, the BKA intensified the manhunt for the sixteen top RAF terrorists with a new special committee. The focus shifted more towards terrorists who had gone underground and to tracing their logistical bases. The search was enlarged to Western Europe and made use of the dragnet investigation method (Schleicher, 2011). In the following parts of the paper these policies are discussed in greater detail, emphasizing its implication for the workings of the Rechtsstaat [or summarize the main aim of the section in another way].

5.5.2 Political actions and their consequences for the Rechtsstaat

The constitutional debates in 1948-1949 between Social Democrats and conservatives show how the SPD pictured the role of the state and balance of power. They advanced the view that true democracy is only possible with active citizens. Thus, in case of a severe crisis, no measure

³ Original quote: "Wer den Rechtsstaat zuverlässig schützen will, der muss innerlich auch bereit sein, bis an die Grenzen dessen zu gehen, was im Rechtstaat erlaubt ist".

by the government could protect democracy if its citizens had already given up on it. The party concluded that it was necessary to provide protection from the government as well as from the population within the legal framework. The authors of the constitution expected most danger to democracy to emerge at the local level. The state, however, presented a neutral instrument depending on who held its power. Therefore, providing security would be only possible with the regulation of institutions in the democratic state (Hanshew, 2010; Born, 2011).

Between 1949 and the late 1960s, the country was governed by conservatives and strongly shaped by the policies of Konrad Adenauer (in office from 1949 to 1963). He paved the way for remilitarization and NATO membership. At the same time, an extra-parliamentary left-wing movement had emerged and attracted popular support. From 1969 onwards, Willy Brandt's administration (SPD) focused on a program of inner reform promoting new forms of democratization. The government gave the extra-parliamentary opposition regulated legal room in order to channel the emerging protest generation's concern with the Vietnam War. In addition, with the introduction of new management techniques and computer technologies, the government hoped to remove inefficient working processes at the local and regional government level. In general, technology was considered as an efficient and economic instrument that could only positively impact decision-making (Hanshew, 2010).

As the RAF grew stronger the need for a modernization and centralization of the federal police increased. Herold, himself a social democrat, was generally supported by the SPD. Advanced technology was seen as an instrument to prevent abuse of power (Hanshew, 2010). However, the government was soon pushed to widen the boundaries they had set earlier to prevent an abuse of power (ibid.).

Rasterfahndung

As long as the measures following from dragnet investigation were successful, Herold and his staff did not meet much criticism. Yet, this changed in 1977 (Weinhauer, 2004). Since there was no real legal basis for dragnet investigation, police and government referred to extra-statutory necessity as they did with other police methods that could be considered as constitutionally questionable (Gusy, 2007). Even though Herold had brought most of the first generation of the RAF behind bars, his method faced growing concern over the surveillance of innocent people's private lives, in particular in the aftermath of the Schleyer kidnapping. The power of the police had significantly grown since Herold took office and increased the budget as well as staff numbers. These vast state expenditures were the result of pressure on the government to prove that the state is better prepared to guarantee order and security than its predecessor of Weimar.

The German Autumn constitutes the beginning of a change of political and societal tendency. Until then the constant extension of surveillance, control and data collection methods did not face much resistance although it was often undertaken without political approval (Weinhauer, 2004). In 1978, a different political direction was chosen with the new Interior Minister Baum who started to limit the scope of data processing and the BKA's wide reaching competencies. This can be placed in the context of emerging criticism towards the BKA in the aftermath of the Schleyer kidnapping because of mistakes that were made during the search. The media started to analyse domestic politics more sceptical and, thus, intensified growing public criticism. In the early 1980s, people feared the development of a surveillance state as described by Orwell. Rising critical awareness of problems and limits of electronic data processing can be observed in surveys showing that in 1975 up to 69% of interviewees accepted restrictions in civil liberties in the name of combatting terrorism. However, in 1978 this had already decreased to 53% (ibid., p. 239). Thus, data protection had become a popular topic in

politics which was increasingly considered as an important task performed by the state. In general, the fear of misuse of personal information rose slowly but surely. Terrorism and its countermeasures had become more tangible for the population in form of local policemen in neighbourhoods, traffic control due to the search for suspects and the political background check in the context of the employment in the civil service (Weinhauer, 2004).

Electronic eavesdropping and the Decree of Radicals

An additional method of the police involved wiretapping operations, most famously the scandal concerning nuclear scientist Klaus Traube which eventually led to the resignation of Interior Minister Werner Maihofer (Kraushaar, 2007a). Another example presents the case when legal defender of the RAF member Gudrun Ensslin accused the Federal Office for the Protection of the Constitution of listening to conversations between the defender and his clients. These accusations proved to be true and resulted in another political scandal. Der Spiegel investigated the Stammheimer Lauschangriffe (Stammheim's wiretapping operations) and concluded that security institutions conducted wiretapping operations on a grand scale to combat terrorism. For example, telephone conversations of attorneys and doctors of RAF terrorists were tapped in the hope to receive clues on their location. Here, Marx's definition of "new surveillance" applies since electronic eavesdropping enables security authorities to observe persons of interest without being physically present and, therefore, overcome natural and constructed barriers.

The highly discussed Decree of Radicals serves as another illustration. The thorough background check and investigation of potential civil servants on the basis of their political suitability was supposed to prevent members of the German Communist Party, among others, to enter public service. However, the majority of the protest generation

complained to be affected by this occupational ban, as its critics called it. Until the late 1980s, 3.5 million applicants for civil service were investigated and 10.000 named ineligible. Therefore, a debate on the decree's constitutionality was initiated. Yet, it took several years for the decree to be annulled (Hofmann, 2013).

Blitzgesetze

The legislature contributed significantly to the state's ability to quick decision-making and effective counter-measures when facing the danger of instability and immediate terrorist threats.

Since the Republic experienced certain situations caused by the RAF for the first time, such as the politicisation of trials, legal gaps confronted the Rechtsstaat with challenges. Hence, the government passed several bills in a short time to address these loopholes in the law which were called Blitzgesetze. Arguably, they represent the strongest indication for the state of emergency at that time. Within four years, six new laws with 27 restrictions on the rights of the defendants were passed, often just within days. Furthermore, these laws mostly presented facilitation for the work of prosecutors. In the preparations for the Stammheim trials in 1975, several amendments were passed, such as the prohibition of the right to multiple defence and the possibility to proceed with a trial without the presence of the defendant (Wesel, 2007). The peak of suspiciousness was reached with more and more decrees against defenders on the basis of safeguarding the reputation of the legal profession. It became public that the conversations between defenders and their clients were tapped and these recordings were transferred to security authorities. In the case of the Contact Ban Law, such a quick passing of the bill was only possible because it was introduced as an inter-factional bill. Otherwise it would have taken more than just a couple of days to pass the bill (Historische Debatten (8): Kontaktsperregesetz, n.d.). Overall, these new provisions

demonstrated the repressive tendency of the state and its unreadiness for political and constitutional challenges in regard to terrorism (Wesel, 2007).

Eventually, the generalisation of the not officially proclaimed state of emergency that served as a legitimate basis for all kinds of surveillance methods was caused by terrorism. Examples can be found in the surveillance of suspected RAF members, attorneys and doctors of known RAF terrorists as well as the listening to private conversations within the prison. An even broader scope of innocent citizens was affected by nationwide measures as for instance dragnet investigation which involved a significant amount of personal information of millions of citizens. A strong link between the need for security and surveillance becomes apparent starting in the early 1970s (Bigo, 2006; Feldman, 2011). In the beginning of the implementation of restrictive counter-measures, people accepted the restrictions of their individual rights in exchange for order and stability as the RAF was successful in spreading fear with its violent actions. During this time, certain surveillance measures became a routine for citizens such as the checking of personal information in the context of dragnet investigations. This clearly illustrates the blurring between normality and state of emergency in the German Rechtsstaat. As long as the measures could be clearly linked to the search for wanted terrorists, it seemed that citizens tended to accept these circumstances. Yet, measures such as the Decree of Radicals which asked for a thorough political background check of each civil servant applicant met severe outrage among citizens. At the latest in the period following the German Autumn, a break with previously accepted measures can be recognized. The government increasingly came under pressure to explain its actions and failures.

5.6 Conclusion

In this chapter we have shown what impact the actions of the RAF in the 1970s had on Germany's Rechtsstaat. Whether one sees the political measures and reactions as a success (Mückl, 2007; Miller, 2010) or as a failure (Kraushaar, 2007a; De Graaf, 2011; Katzenstein, 1993), we argue that this period put the young democracy to a comprehensive test. Our claim is that the implementation of new surveillance and security methods, introduced to counter the RAF, markedly undermined the Rechtsstaat. This is exemplified by the authorities making extensive use of the "state of emergency", changing political processes and curtailing fundamental liberties. Some of these changes were permanent, other policies were abandoned again, such as the Decree of Radicals. Many of the changes, whether permanent or temporary, were of questionable legality.

The paper began by providing a background to the history of the RAF and introducing the inventor of the dragnet investigation, Horst Herold, who can be seen as one of the pioneers of "new surveillance". In his view, profiling and computer based surveillance was necessary to protect the wider public and the foundations of the state. His ideas fit in with the ruling by the federal constitutional court of 1968, in which it clearly positioned itself as supporting the concept of a "wehrhafte Demokratie" (Miller, 2010). Herold was the head of the German police for ten years and modernised it to such a degree that it was regarded the best police department next to the FBI. However, many regard Herold's policing methods as the beginning of computer profiling, which led to thousands, if not millions, of innocent citizens to be included in large databases. The aim of the RAF was to unmask the Federal Republic of Germany for what it, in their view, really was, a fascist and imperialist system. Motivated by the failure of the 1968 movements the RAF and other left-wing radicals' saw a loss of credibility of democracies. This view

was strengthened by the way the West dealt with the Vietnam War. Here, the RAF saw itself as an "urban guerrilla".

The RAF was a terrorist organization and had to be treated accordingly, however, as De Graaf (2011) has pointed out, most counter-terrorist measures are still in some form active today and, thus, outlived the terrorists that provoked them. Therefore, as this paper has shown, the 1970s have led to a shift in the perception of the Rechtsstaat as the boundaries of what is legally permitted were extended. The RAF, thus, led to an "unmasking" of the German state, however, to a different degree than they had intended. When the actions of the RAF were at their height, the organization had some support among the Germany population, which is an indicator for a general atmosphere of suspicion towards the state.

The debate about the potential clash between individual liberties and security of the state, which dominated the 1970s, has had profound repercussions ever since. Using the ideas of Bigo (2006; 2012) it was shown that the justification and legitimization of new legislation always referred to a necessity in a "state of exception". However, as Bigo has stated, such repetitive usage of arguments concerning a "state of exception" leads to a "general state of exception" (ibid.). This is exactly what happened in West Germany at the time. One of the main aspects of surveillance and security studies is the "preventive dimension" (Bigo, 2012). It is the aim of the state to catch criminals before they commit the crime. However, as it is illegal to detain any citizen for not having done anything illegal, new laws were introduced to ease this process. One of them prohibited mere membership of a terrorist organization, for example. These laws were clearly led by a preventive approach, and thereby fit in with the ideas of surveillance and security studies (Frohman, 2015). The concept of "new surveillance", introduced by Marx (1988) and extended by Lyon (2006) is applicable to the developments of the 1970s. The analytical framework of surveillance and security studies helps to shed light on these events. Particularly, their focus on the compatibility of

the Rechtsstaat and counter-terrorist measures is helpful in this context. This paper has shown an inherent link between surveillance and security measures and the infringement of citizens' liberties. All measurements taken by the German government were subjected to criticism in the aftermath of the events, with many questioning their legality and necessity.

The RAF had set out to challenge the German state and show its true colours. They saw in the majority of the political elite the remains of the fascist state as several important personalities in politics and economy used to be part of higher ranks in the Nazi regime. Questions concerning the right-wing legacy and demands for a proper process in coming to terms with Germany's past were presented by leftist orientated parts of society but should not be fully heard until more recent years. Claims that the republic was blind on its "right eye" found some confirmation with the Oktoberfest bomb attack by a right wing extremist in 1980 and, most notably, with the NSU scandal in 2011. There will always be those challenging and attacking the state's structure. The 1970s in Germany have proven that countering those attacks may be as difficult as fighting the state as a terrorist. Some argue the government and police overstepped the lines drawn by the constitution, others argue the state acted within those lines. The claim of this chapter is that, regardless of the legality of specific laws, many processes, policies and procedural changes were of questionable necessity and legitimacy.

This chapter shows that counter-terrorist measures must be implemented in a very cautious way and that it is important, for the government, to stay within the boundaries set by the Rechtsstaat; otherwise, the claims by the terrorists are supported and strengthened by the state.

The key strength of this chapter constitutes its unique approach to look at Germany's counter-terrorism measures on the basis of Marx's "new surveillance" theory. As a consequence, this chapter adds the

perspective of surveillance and security studies to a topic that is dominated by historical literature. Furthermore, this approach also taps into the broader relevance of our contribution. Whereas the RAF terror threat is to some extent still remembered by a majority of German citizens today, the surveillance methods that were adopted at the time have not been thoroughly discussed and accepted. In the context of the recent NSA scandal, the methods of the 1970s shed an interesting light on the German Rechtsstaat's evolution and raises the question as to whether something has changed since then. The latter would present an interesting angle for further research with a stronger link to current events in matters of national security.

[2] Original language: "Übergesetzlicher Notstand".

6 Transnational border surveillance and social sorting systems in the EU: a changing approach to Europe's borders? – Magdalena Christine König

6.1 Introduction⁴

In recent years, the European Union (EU) has widened its competences considerably in the field of transnational surveillance. The main databases for border movements, Schengen Information System (SIS), Visa Information System (VIS), and Eurodac, are planned to merge increasingly to ensure maximum efficiency in surveillance. These databases are keeping track of movement within the EU and across its borders, mainly for the purpose of controlling migration⁵. This process of harmonising migration surveillance systems is controversial. All three databases entail large-scale surveillance of migrants and travellers thereby turning every recorded individual into a potential suspect. As the European Data Protection Supervisor stated, "all travellers are put under surveillance and are considered *a priori* as potential law breakers" (Bunyan, 2008).

David Lyon (2003), the founder of surveillance studies, assesses that transnational surveillance systems classify individuals according to certain criteria that allow for discriminatory treatment. Thereby, social differences are created and stored, which he labels social sorting. Social sorting, in other words, refers to surveillance systems obtaining data for

⁴ This article forms the basis for a more concise paper published in the *Internet Policy Review*. While the concise version focuses on the impact on power relations that big data can have, this contribution elaborates on social sorting as a modern form of surveillance, see M. König, (2016). The borders, they are a-changin'! The emergence of socio-digital borders in the EU. *Internet Policy Review*, 5(1). DOI: 10.14763/2016.1.403

⁵ Migration refers to any movement of people, either across an international border or within a state (IOM, 2015).

the purpose of classifying people according to specific criteria. Classification occurs according to risk categories such as citizens, migrants or potential criminals. This may lead to establishing or strengthening social differences. Starting out from Lyon's assumption that every form of surveillance entails social sorting, this paper assesses in how far and with what consequences such classification is found in present-day EU surveillance systems. If they display social sorting characteristics to a high degree, this indicates that the traditional function of borders of exclusion and inclusion of migrants is to some extent taken over by the new surveillance systems. The question then arises how this form of social sorting affects the concept of *the border* in the EU. The intended merger of transnational databases will create an increasingly sophisticated information infrastructure that may alter the function of territorial boundaries. If border surveillance is no longer confined to checking documents "on the ground" but is carried out "in the cloud", what does this entail for the concept of the territorial border?

To put it differently, this paper claims that the EU surveillance databases exhibit social sorting, directly affecting the classified individuals. This changes the notion of the European border since the power to divide into in- and outsiders of society is shifted from territorial boundaries towards socio-digital borders that are determined by the emerging digital infrastructure. I argue that, to a certain extent, borders are redrawn along the categories established through social sorting.

This paper starts out from definitions of surveillance provided by different authors to establish the features of modern surveillance. Bendrath (2014) and Jenkins (2012) identify the elements of remote observation, large-scale dataveillance, information sharing and the prediction of events. Lyon (2003) argues that surveillance always classifies the people's collected data and entails some sort of social sorting. Focusing on Northern American surveillance, he does not apply social sorting to the EU context. Brouwer (2008) analyses the European migration surveillance systems but focuses on their legal side. This paper

seeks to fill this gap by analysing the EU surveillance systems SIS, VIS and Eurodac and applying the notion of social sorting to them. It contributes to the field of border studies by analysing the effects of social sorting on the border in Europe. To do so, I firstly conduct a qualitative content analysis of policy documents to assess in how far the EU migration surveillance systems include features of social sorting. Regulations relating to SIS, VIS and Eurodac are examined for references to social sorting. Secondly, I discuss how social sorting leads to a change of the concept of the EU's borders. This discussion sheds light upon what role surveillance systems themselves play in "rebordering" processes (Rumford, 2006, p.157).

This paper firstly gives an overview over the concepts of surveillance and social sorting. It then introduces SIS, VIS and Eurodac and gives concise information on the purpose and the functioning of the systems. Thereafter, I assess the three systems according to the criteria of social sorting identified in section 2. The paper finishes with a discussion of the concepts of territorial and socio-digital borders.

6.2 Theoretical Framework - Surveillance as Social Sorting

Triggered by the revelations about surveillance techniques of secret services, large-scale surveillance has recently become the topic of public debate in Europe, North America and elsewhere (Weidemann, 2014, p.3). Opponents of surveillance argue that the measures target every individual also without any prior suspicion (ibid.). To explain the social problems that surveillance may entail, it is necessary to define the features of modern surveillance. This section aims at introducing social sorting. It operationalises the concept for the purpose of making it applicable to the content analysis. It furthermore introduces the relation of modern surveillance and borders.

Jenkins (2012) identifies three core characteristics of modern surveillance. Firstly, surveillance is not an end in itself but serves specific

purposes (p.162). Secondly, surveillance is one-directional, with the watcher observing a subject that does not have the power to observe the watcher in turn. Thirdly, surveillance is increasingly impersonal and remote. While traditionally being aimed at specific persons, modern surveillance shows a rising tendency of generic watching of the population-at-large (p.163). Bendrath (2014) puts emphasis on the use of surveillance technologies and defines three important elements of them. They all embrace the tasks of observation, documentation and information sharing (p.21). The latter is increasingly important since it enables data to become mobile and less controllable.

Lyon (2007) adds fundamental insights to the notion of surveillance. He spots an increase in routine population surveillance after 9/11 (p.161). Through modern identification technologies such as airport screening, surveillance has become a feature of everyday life (2003, p.13). Additionally, the technological revolution has resulted in an increased reliance of surveillance on searchable databases. Since 9/11, the purpose of collected data has been to predict and prevent threats to security by classifying and assessing the risk of data. Hence, surveillance is increasingly designed to precede the event rather than to be used to assess events in retrospective (p.14). Following these definitions, this paper looks at modern surveillance as being automated, remote, routine, entailing data sharing and being used to prevent threats.

The most fundamental change Lyon perceives in post-9/11 surveillance is that information systems increasingly show patterns of social sorting. Social sorting systems obtain personal and group data to classify people according to specific criteria. To Lyon, modern surveillance always entails a classification of people into risk categories. Data created through digital surveillance needs to be processed, analysed and stored in an efficient way to be suitable for decision-making. Social sorting systems constantly verify identities, assess the risks stemming from individual data, and assign a degree of salience to them. People's data and, thus, the people themselves, are put into social categories according to criteria

set out within the surveillance system. Lyon understands such systems of risk management as a means of creating and reinforcing long-term social differences (Lyon, 2003, pp.22-24).

The phenomenon of social sorting usually gains strength when security arrangements and biometric identification systems are internationally harmonised. The international dimension is important since movements on both sides of the border are monitored which enables a broad scope of border surveillance and increases its efficiency. The introduction of biometric passports represents such a surveillance system that has been harmonised and shows evident patterns of social sorting (Lyon, 2007, pp.162-163). Moreover, the US-Canadian Smart Border programme entails cross-border surveillance and information sharing. This exemplifies the trend of policy-makers towards using interoperable databases to increase border security (p.165).

The classification occurs with the rationale of risk management, i.e. translating the data into risk categories for decision-making. The groups that such systems usually target are, firstly, mobile citizens and travellers, secondly, migrants and asylum seekers and, thirdly, criminals (Lyon, 2007, p.163). Among the most suspicious categories are presumed terrorists and irregular migrants. This distinction and hierarchy of risk categories reflect Foucault's concept of descending individualisation. The groups at the lower end of the social hierarchy are surveilled more than the ones at the upper end (Foucault, 1977, p.193).

The concept of social sorting relies on computer codes central to the systems. Each category and individual is assigned a specific code that becomes more significant the more information is added (Lyon, 2003, p.23). Codes represent a central feature of social sorting since they are the doors that allow or deny access to areas, processes and experiences. Therefore, they can be said to represent the determining factor in surveillance systems that results in differences in people's lives and opportunities (p.13). Hence, data is not innocent. It makes a difference to the classified individuals and reflects specific ethics and politics (p.27).

The example of marketing strategies of US firms, making increasing use of zip codes to classify customers according to their spending patterns, illustrates how social sorting relies on codes. Different neighbourhoods, demarcated through zip codes, are treated differently with respect to special offers and advertisement (p.14). This marketing form exemplifies how codes are key in translating the categories of social sorting systems into the physical world.

Although the initial categories are the result of political decision-making, the classification that surveillance systems produce, give rise to further assessment. The systems subsequently determine who should be target of special treatment, suspicion, inclusion or exclusion (Lyon, 2004, p.20). For the people put in undesirable categories social sorting directly influences the quality of their lives and determines their chances and choices in society (Lyon, 2007, p.162; 2003, p.20). Whether a border surveillance system puts a person in the category of a legitimate traveller or in that of an illegitimate migrant is decisive for one's personal freedom of movement. Such systems thus have a considerable impact on social exclusion and inclusion, and raise concerns about human rights and civil liberties (Lyon, 2007, pp.162-163). Being meant to facilitate decisions on exclusion and inclusion, social sorting systems likewise raise questions about border politics. Dividing into in- and outsiders is traditionally the task of territorial borders. States are becoming increasingly aware of the limits for population control that the place-bound border checkpoints entail. Therefore, social sorting systems are used to create a digital infrastructure that detaches control and classification from the territorial border. Social sorting systems rely on the existence of territorial borders for the registration of outsiders entering the bordered area. However, simultaneously, they exercise an exclusionary power that goes beyond it. As Lyon (2004) puts it, nowadays, "the experience of being counted as an insider or an outsider can be reproduced anywhere" (p.2).

The classical example of social sorting systems relying on large-scale databases are electronic ID cards. As markers of membership they

assign a nationality to each individual. They are intended to classify eligible members of states and to exclude non-citizens (Lyon, 2004, pp.2-3). What is new about these systems is that they rely on modern technologies such as biometrics or large-scale databases. Based on new technologies they have gone through a process of increasing rationalisation and automatisisation making surveillance and social sorting more efficient. Social sorting, in sum, enables digital discrimination and profiling, and facilitates migration control (Ball et al., 2012; Bendrath, 2014; Lyon, 2003; Lyon, 2004).

The development of surveillance systems into systems of social sorting is a relatively recent one. The increase in social sorting databases can be explained only partly with an increase in technological knowledge. It is rather an increase in perceived threats and the reinforced wish of policy-makers for more effective population control that have fostered the emergence and rising interconnectedness of social sorting systems (Lyon, 2003, p.20). However, social classification of human life as such is nothing extraordinary or new. All modern social institutions depend on social differentiation, for example to determine who may vote. In fact, human life depends largely on social categorisation. It is necessary to make sense of personal relations and of one's social environment. This process of social differentiation, however, is increasingly rationalised and dehumanised. The systems' most significant features are that they are automated, remotely operable and extremely versatile, so that they can be routinely used to prevent perceived threats. With modern computers coding the categories, the social power of the gathered and shared information is significantly reinforced (pp.21-22).

To sum up, social sorting relies on large-scale databases, is based on classification and can have dramatic effects. Let us take a closer look at these three elements. Firstly, social sorting tends to grow with the transnational harmonisation of security arrangements, such as border management programmes. These programmes are commonly intended to be interoperable with existing databases to ensure maximum security

control. The system relies on computer codes that target either individuals or a group of people. Furthermore, social sorting systems are usually designed to be systems of risk management, assessing the worth and the risk of the entered data. In addition, they rely on biometric data to make identification more concrete and reliable. Secondly, on the basis of the collected data social sorting systems assign people to different risk categories. This is done according to specific criteria that are based on attributes of identification such as nationality and purpose of travel. Thirdly, categorisation has real social effects on the classified people. The established categories allow for discriminatory treatment. They decide on exclusion or inclusion and thereby create long-term social differences or reinforce already existing unequal patterns. These characteristics are summarised in Table 1 and are applied to the EU migration surveillance systems in the analysis that follows. By taking a closer look at the design of the systems, I intend to find out in how far the characteristics of social sorting described above can be found.

Table 1 - Operationalisation: Characteristics of Social Sorting	
Database	<ul style="list-style-type: none"> ▪ usual occurrence with harmonisation of international security arrangements ▪ increased interoperability ▪ reliance on computer codes: remote and impersonal control ▪ systems of risk management ▪ reliance on biometrics
Classification	<ul style="list-style-type: none"> ▪ spelled-out risk categories ▪ criteria for categories ▪ criteria are based on specific attributes of identification
Social effects	<ul style="list-style-type: none"> ▪ categories allow for discriminatory treatment ▪ creation of long-term social differences (inclusion, exclusion) ▪ or: reinforcement of already existing social differences

(Source: Ball et al., 2012; Lyon, 2003; Lyon, 2004; Lyon, 2007)

6.3 Surveilling Migration Transnationally: SIS, VIS and Eurodac

In order to keep pace with increasing migration, the EU has assigned more importance to the role of transnational surveillance systems for controlling border movements (Aas, 2011, p.333). The Treaty of Amsterdam of 1999 established a European area of freedom, security and justice with the border surveillance systems SIS, VIS and Eurodac constituting important elements of it (p.332). The development of these databases is closely linked to the aspirations of building a Europe without internal border controls (Brouwer, 2008, p.2). With decreasing controls at internal borders, a need was seen to compensate for this loss of control towards third-country nationals entering the Schengen area. The large-scale databases SIS, VIS and Eurodac are meant to combine the policy objectives with regard to immigration and border control. Each database has its own individual functions, however, they are closely linked to one another (ibid.). In 2004, the Council of the EU proposed to the Commission the preparation of possibilities to enhance the interoperability of SIS, VIS and Eurodac with the purpose of fighting terrorism more effectively. Since 2012, all three systems have been operated by the EU agency for large-scale IT systems eu-LISA (European Commission, 2015). The terrorist attacks of 2001 in the USA and of 2004 and 2005 in Madrid and London have triggered an increased linkage of migration and security issues in Europe. Since then, the policy emphasis on border controls in the field of migration policy has been reinforced (Brouwer, 2008, p.31).

The Schengen Information System (SIS) became operational in 1995. Paradoxically, although the Schengen agreements imply freedom of movement for many EU citizens, border controls were simultaneously increased for third-country nationals. Brouwer (2008) therefore assesses that SIS facilitates "keeping the unwanted out" (p.1). SIS is a data-based registration and surveillance system that is made up of one central database in Strasbourg and several national databases that feed information into the central one (eu-LISA, 2014, p.8). Due to the limited

capacities of SIS, a second-generation system, called SIS II, was launched in 2013 to create a technically better system for an enlarged EU. SIS II⁶ has added new functions to the system and has become by far the largest database for public security in the EU (ibid.). Since its launch, most data in SIS concerns third-country nationals being refused entry to the EU.

Being designed similarly, the Visa Information System (VIS) constitutes a crucial complementary counterpart to SIS. VIS, introduced in 2008 to support the already established surveillance systems, has a central database that shares its headquarters with SIS and is supported by various national counterparts. This common identification system for visa data registers all persons entering the Schengen area with a visa. It aims at facilitating the identification of persons that have entered the EU legally with a visa and have stayed irregularly after the visa's date of expiration (Brouwer, 2008, p.85).

The European dactylographic system (Eurodac) was introduced in 2003 to support the implementation of the Dublin Convention on asylum. Through this convention, individual responsibilities of member states concerning asylum applications were regulated. It determined that the responsibility for dealing with an asylum claim lies with the member state having received the respective application. To prevent asylum shopping, that is the simultaneous application for asylum in several member states, Eurodac was introduced to determine whether the same individual has applied more than once. To this end, Eurodac collects all fingerprints of asylum applicants (Brouwer, 2008, p.77). Once a "hit" has been found, that is the correspondence with a stored data set, the asylum applicant may be returned to the member state where the first asylum claim was issued.

Since the three systems are all managed by the EU agency eu-LISA, they exemplify an emerging trend of interoperability of electronic

⁶ In the following, SIS I and SIS II are referred to as SIS.

transnational surveillance systems in the EU (eu-LISA, 2014; Brouwer, 2008, p.73).

6.4 Social Sorting in the EU and its Impact on Borders

6.4.1 Methodology

To answer the question to what extent the EU surveillance systems exhibit features of social sorting, a qualitative content analysis of policy documents is conducted. A series of essential documents and regulations of SIS, VIS and Eurodac are analysed. Since SIS II, VIS and Eurodac were introduced between 2000 and 2013, these years are set as the time frame. The features of social sorting summarised in Table 1 are applied to the databases. In order to answer the question of the effect of social sorting systems on the concept of the border in the EU, a conceptual discussion is held thereafter. Building on secondary literature on border studies, the discussion elaborates the concept of socio-digital borders to define the observed phenomenon and thereby adds new insights to the research field.

6.4.2 Policy Document Analysis: Social Sorting in SIS, VIS and Eurodac

In the following, I conduct a policy document analysis of the founding regulations of the three systems applying the criteria set out in Table 1.

6.4.2.1 The Databases

With respect to the nature of the databases, let us first look at the degree of harmonisation of international security arrangements with the databases. SIS, VIS and Eurodac are part of the EU's aspirations of creating an area of freedom, security and justice and, thus, they are not only designed to control migration but also to combat security threats such as terrorism. The founding documents contain many references to

security-related topics. In the documents concerning SIS, a lot of emphasis is put on the system's aim to contribute to "maintaining a high level of security within the area of freedom, security and justice" (Council of the EU [Council], 2007, Art.1.2). Furthermore, the documents state that harmonisation of provisions relating to migration, asylum and security is a major objective of SIS (European Parliament & Council of the EU [EP & Council], 2006, Art.24.5; p.5; Council, 2007, Art.62.2). Similarly, VIS is explicitly devised to enhance security within the Schengen area. Despite its purpose of regulating migration, it is stated that "VIS data will substantially contribute to the prevention, detection or investigation of terrorist offences and of other serious criminal offences" (EP & Council, 2008, Art.3.1). Eurodac shows an interesting development in this respect. The regulation of 2000 amply refers to migration and asylum, while the revised regulation of 2013 puts a much stronger emphasis on terrorism and international crime. It states that "the information contained in Eurodac is necessary for the purposes of the prevention, detection or investigation of terrorist offences" (EP & Council, 2013, p.2). In other words, Eurodac exemplifies how an instrument for migration control can gradually alter its objective and become a security tool.

The objective of interoperability can be found in all databases. The SIS documents mention that it is aimed to be connected to VIS in the near future (EP & Council, 2006, Art.31.3). VIS mentions that a valid ground for a visa refusal is an alert in SIS (2008, Art.12.2(f)). Finally, Eurodac's regulations recommend the consultation of VIS prior to using Eurodac itself (2013, Art.20(1)).

A further characteristic of social sorting systems is the reliance on computer codes linked to central databases which allow surveillance to be implemented remotely. All three systems are based on individual codes assigned to each personal file entered into the systems. Both SIS and VIS assign each individual an alphanumeric code that enables greater precision in the search for identities (Council, 2007, Art.22(b); EP &

Council, 2008, Art.5.1(a)). Eurodac assigns to each "alien" a personal reference number (Council, 2000, Art.11.1).

To determine whether the databases represent risk management systems, attention is paid to their purpose. Systems of risk management assign worth and risk to the collected data which enables judgement. The analysis reveals that the cases fulfil this criterion to a high degree. SIS uses the collected data primarily for decision-making on border movements. The system interprets issued alerts "for the purpose of refusing entry or stay" (EP & Council, 2006, p.5). The VIS regulations state that the system shall assist in the identification of expired visas and support decisions on renewal, refusal or shortening of visas (2008, Art. 2). The data collected by VIS is used to enable decision-making on visa policy. Similarly, Eurodac is called a "valuable tool" for managing offences related to both security and migration (2013, p.3). Eurodac bases decision-making on collected fingerprints that are then made available to security agencies.

Finally, the use of biometric data can be identified in all systems. They make use of biometric data, especially of fingerprints and biometric photos (EP & Council, 2006, p.5; 2008, p.61; 2013, p.2).

In conclusion, all identified criteria of social sorting with respect to databases can be confirmed when analysing the regulations of the concerned systems. Thus, with respect to these technological aspects, SIS, VIS and Eurodac display characteristics of social sorting to a large extent.

6.4.2.2 Classification

In addition to the criteria for the databases, indicators of classification are found in the examined cases. Firstly, I examine whether the systems exhibit risk categories according to which data is sorted. In general, all three databases seem to make a distinction between citizens and non-citizens, a dichotomy typical for social sorting. Examining the SIS

documents, a clear distinction between third-country nationals and citizens is found. Alerts are only issued on third-country nationals for the purpose of refusing entry or stay. This holds also for third-country nationals that enjoy the right of free movement within the Schengen area (EP & Council, 2006, Art.3(d)). Once citizenship is acquired, all data on the concerned individual is deleted, which implies that "citizen" is not counted as a risk category by the system (Art.30). Furthermore, with respect to SIS' task of enhancing security, data is classified according to the categories "persons wanted for arrest", "missing persons", "persons sought to assist with a judicial procedure" and "persons for discreet or specific checks" (Council, 2007, Chapters V-VIII). Since VIS focuses on the issuance of visas, it does not classify into citizens and non-citizens but distinguishes between tourists and illegitimate visa holders. It is a spelled-out purpose of VIS to protect travellers (European Commission, 2015). Hence, every case not classified as a tourist or a similar category is considered a category of risk. Eurodac establishes three categories of risk according to differing attributes of "aliens". Being concerned with asylum applications, the system distinguishes between "applicants for international protection", "third-country nationals or stateless persons apprehended in connection with the irregular crossing of an external border" and "third-country nationals or stateless persons found illegally staying in a member state" (EP & Council, 2013, Chapters II-IV). It seems thus that different degrees of risk are assigned to regular and irregular applicants of asylum.

Secondly, the criteria for these categories are spelled out less clearly. Analysing the regulations, it does not become entirely clear according to which criteria individuals are classified. Generally speaking, the systems file individuals only above the age of fourteen. Furthermore, they do not seem to keep record of citizens, which constitutes thus an excluding criterion of classification. SIS bases categorisation on a national alert that has been issued by its counterparts in the member states. The ultimate decision to issue an alert on refusal of entry or stay is based on

"individual assessment" (EP & Council, 2006, Art.24.1). The documents leave open what the criteria for this assessment are. VIS differentiates between visa types that are decisive in determining which category data is assigned to (2008, Art.4). Eurodac puts more emphasis on the manner an individual has entered the Schengen area. A difference is made between irregular and regular travel and between refugees, regular aliens and stateless persons (2013, p.3).

The third criterion of classification as social sorting can be confirmed for all three databases. In each of the examined systems, attributes of identification of the individuals and the categories are found. For SIS, these are general characteristics such as sex, origin-related data and place of birth, biometric data or a comment on whether the person is armed or violent (EP & Council, 2006, Art.20). Similarly, VIS stores data on the individual's origin and physical characteristics, in addition to visa- and travel-related information (2008, Art.9). Eurodac stores a limited number of attributes. The only personal information on the individual are sex, state of origin, the reference number and the biometric data gained through the fingerprints (2013, Art.14). Hence, it seems that for all systems, the biometric data and the country of origin plays a crucial role in determining the categories' attributes since these characteristics are spelled out most clearly.

In conclusion, the examined systems all display strong characteristics of classification into different groups with distinguishable characteristics. Although the categories' characteristics are not formulated precisely enough, it can be stated that SIS, VIS and Eurodac exhibit this vital criterion of social sorting to a large extent.

6.4.2.3 The Social Effects of Classification

The final group of criteria concerning the social effects of classification is difficult to determine, since, not surprisingly, the examined policy

documents do not mention the social implications they may have on the categorised individuals. However, the regulations still allow for some statements about these effects.

Firstly, since the identified categories are the result of and form the basis for decision-making, they allow for discriminatory treatment along the lines of the data groups. These decisions concerning every categorised individual can have serious social implications for them. SIS categorises to refuse entry or stay within the Schengen area (EP & Council, 2006, p.5). This implies that the category one is put into has a direct effect on freedom of mobility within the EU. With SIS being also used as a security instrument, Europol and Interpol can be granted access to the system. Hence, members of a risk category are more likely to be persecuted and suspected for criminal offences than non-surveilled persons. The same holds for Eurodac, whose files may also be object of Europol investigations (2013, Art.21). VIS equally indicates possible social implications. Aiming at the prevention of asylum shopping and the regulation of visa applications, the risk category affects the applicants' prospects of success of being granted a visa. In addition, VIS information is linked to the profiles of the travel groups or family members of every individual (2008, Art.8). Hence, if an alert is issued on one member of this "network", other members are automatically controlled, too. Thus, an alert affects more than only the concerned file.

It can be assumed that such discriminatory treatment with respect to freedom of mobility or freedom from suspicion results in long-term social differences. With respect to social differences being maintained in the long term, the systems provide for permanent and repetitive control of the data file. This is done since in particular VIS is not only concerned with the decision on visas but also on the expiration of lawfully acquired visas. To this end, a constant re-checking of the biometric file is done (Broeders, 2007, p.73). Moreover, data on individuals is kept in SIS and Eurodac for ten years and in VIS for five years from the date of registration onwards. This long time span suggests that the systems

indeed exert influence on the concerned individuals for a considerable time. What form this social impact takes on exactly in the individual cases, exceeds the informational value of this analysis and requires further sociological research.

To compensate for the methodological limitation, secondary literature confirms the assumption of a long-term social impact on individuals. Since all systems serve both immigration and criminal law, being reported on can have consequences for one's legal position. A hit in SIS may result in the refusal of entry but, due to SIS' increasing focus on security, also in detention or deportation (Brouwer, 2008, p.3). With security agencies having access to the databases, registered persons are at greater risk of being affected by law enforcement and suspicion (p.514). VIS is used primarily for repressive purposes (p.2). It is predominantly used to track expired visa holders and thereby prevent irregular settlement. Finally, a hit in Eurodac may result in the deportation of the concerned person to another member state (p.3). To prevent the recognition of their fingerprints by Eurodac, in 2008, seventy-eight migrants who had disfigured their finger tips were imprisoned by the Norwegian police for the time of their recuperation. This case shows how biometric surveillance systems can have a serious impact on people's physical well-being and may result in the deprivation of freedom (Aas, 2011, p.342).

A commonality of all systems is the aim of exclusion of migrants from society. SIS, VIS and Eurodac form a digital infrastructure that seeks to control institutions and networks irregular migrants need for their daily life. Through the increasing necessity of identification and registration, the supply of employment or housing becomes more difficult and irregular supporting networks are delegitimised (Broeders, 2007, pp.74-75). Registration and documentation have become prime tools for the "panopticon Europe" to separate the insiders from the outsiders (p.74). These negative implications happen without closer attention of policy-makers to the basic rights and freedoms of these persons which

raises increasing concern among civil rights activists and non-governmental organisations (Brouwer, 2008, p.3).

6.4.3 Conceptual Discussion: Implications for the Concept of the Border in the EU

Assessing in how far SIS, VIS and Eurodac represent systems of social sorting, it becomes apparent that they establish a digital information infrastructure that goes beyond the boundaries of nation-states. Border surveillance is no longer confined to territorial demarcations. The analysis has shown that the EU's transnational migration surveillance systems play a crucial role in establishing social difference and sameness and that they increasingly take decisions on the in- and outsiders of European societies, a traditional function of territorial border agencies. The question arises how social sorting changes the concept of the border in Europe. What does social sorting entail for a "Europe without frontiers" that has evolved since the Schengen acquis (O'Dowd, 2002, p.14)?

To assess this impact of social sorting systems on borders, firstly, the traditional understanding and function of social and territorial borders in Europe and more generally are defined. Borders as such are inherent to human behaviour. Social borders order life, provide protection and reflect the need for sameness and belonging (O'Dowd, 2002, p.14). They strengthen identity and simultaneously perpetuate notions of difference and othering (Newman, 2006, p.143). Borders as social demarcation depend on how insiders define what characteristics the outsiders should have to be part of the bordered society (Kroneberg, 2014, p.9).

The border as a territorial demarcation is a Western European invention of the 19th century, a manifestation that is paradoxically now being challenged the most in Europe through Schengen (O'Dowd, 2002, p.15; Rumford, 2006, p.164). The traditional function of territorial borders can be defined as the demarcation of power over the territory of a state against that of another state (Kleinschmidt, 2014). They serve to

distinguish cultural or political features towards others and enable the assignment of competences and responsibilities. The post-war reconstruction of European states and territorial borders has termed the European understanding of border control involving modern competences such as surveillance or welfare (O'Dowd, 2002, p.15). For instance, the principles of the inclusive welfare state depend on a territorial demarcation defining who is an insider to the welfare system, contributing and benefiting from it (ibid.). In this sense, borders are instruments of both exclusion and inclusion (p.32).

With Europe having less internal border control, a security deficit and loss of control over population flows have been perceived by political elites (Zaiotti, 2011, p.2). These concerns led to the introduction of a rebordering process against non-EU citizens, a phenomenon Rumford (2006) labels "securitised rebordering" (p.157). The Schengen area exemplifies this dilemma and sheds light upon how debordering and rebordering processes accompany each other. SIS, restricting third-country nationals' mobility in the EU, was introduced simultaneously with the Schengen acquis which was committed to open borders and free flow of people. Hence, with "soft borders" within the EU, the "hard border" still exists at the boundaries of the nation-states in form of a "Schengen wall" sustained by security controls and surveillance technologies (p.156). However, being meant to protect society from the external enemy, border surveillance systems are increasingly reaching into society itself. The enemy within has become the logic of borders and modern border systems represent these blurring lines of internal and external security threats. Borders are means of distinguishing the safe from the dangerous and have been enabled to do so beyond the territorial boundary.

This paper claims that the main functions of the territorial border in Europe, that is deciding on exclusion and inclusion and controlling populations, are shifting to a different kind of border that is drawn within society. While the examined systems SIS, VIS and Eurodac draw their data from surveillance at the territorial border and therefore rely on this

territoriality, they simultaneously change this border's nature. All three systems represent social sorting systems and aim at categorising people by assigning risk and worth to them. Based on these categories, decisions are made concerning for instance freedom of mobility or refusal of entry into the Schengen area. Hence, social sorting systems have overtaken the crucial border functions of decision on exclusion or inclusion and population control. If these functions are shifted, it can be argued that a process of rebordering is occurring in Europe with the location of the border being shifted into society itself. With the help of biometrics and digital surveillance technologies, a rebordering process along the lines of the systems' social categories is occurring. It is no longer only the territorial border agency that decides on who is an insider and an outsider but the category individuals are put into and according to which they are treated politically takes this decision. This new kind of border does not stop at the territorial boundaries of states but reaches into society and continues to make a difference there. This is not to say that territorial borders have ceased to matter. They still exist and exert important functions in population control. However, they have become multiplied and extended through social sorting systems to overcome their own limits.

I argue that, in addition to the territorial borders, a new kind of border has emerged which I label "socio-digital border". This term is chosen because it brings together the social purpose of classification and rebordering, and the digital and biometric means by which this is done. The social aspect of the term refers to the lines along which borders are drawn such as the risk category one is put into, one's origin or the purpose of travel. The digital aspect refers to the methods through which social sorting and discriminatory decision-making are facilitated, including biometrics or digital surveillance. It also refers to the non-visibility of the border which is achieved through its digitalisation and which represents a contrast to the visible territorial border.

Other authors have termed this new border differently. Amoore (2006) labels it "biometric border" referring to biometric technology that identifies mobile bodies and can be understood as a frontier that is produced through the specification of sameness and difference (p.344). With the same rationale, Walters (2002) uses the term "biopolitical border" combining the biometric nature of the border with the political power that is exercised through it (p.571). However, this focus on biometrics is not sufficient to describe the phenomenon observed in this study. Although biometrics are important in the rebordering process, it is not the biometric data that determines the border but the criteria that the system has set out to classify. Furthermore, the term biometric neglects the digital and coded character of the surveillance systems. Additionally, it is important to pay equal attention to the social component of the new border that determines the content of the dividing border line. After all, the digital biometric border merely enables the reproduction of social borders. Technology supports the rebordering process but the new border is based on social factors. Therefore, the term "socio-digital border" as a designation of the observed phenomenon is useful as it combines the social aspects of bordering with the digital and invisible nature of the border.

Modern surveillance systems such as SIS, VIS and Eurodac have assumed significant bordering functions. Physical borders are no longer the only place where being counted as an in- or outsider becomes possible. Technology has enabled such borders to be possibly reproduced everywhere. The coding of identities and the thereby possible permanent manifestation of legitimacy results in such an omni-present border (Lyon, 2004, p.2). Wherever biometrically registered and checked bodies can be found, the border is carried into society. As Amoore (2006) puts it, "the border becomes a condition of being that is always in the act of becoming, it is never entirely crossed, but appears instead as a constant demand for proof of status and legitimacy" (p.348). The establishment

and possibility of a verifiable identity at the socio-digital border has, hence, become a condition of being.

6.5 Conclusion

This study of document analysis and conceptual discussion shows that social sorting in EU border and migration surveillance systems impacts the concept of the border in Europe. The study shows how the surveillance systems SIS, VIS and Eurodac exhibit features of social sorting according to the Lyon's definition. The systems do not only provide for categories of citizens, travellers, migrants or terrorists but also set out specific criteria according to which individuals are classified. Moreover, they rely on modern technologies such as biometrics or large-scale databases and therefore have a considerable scope and efficiency. The policy document analysis hence shows that social sorting is found to a large extent in the examined systems.

The analysis suggests that the systems have taken over functions of population control, a task that is traditionally assigned to territorial borders. The conceptual discussion assesses that, therefore, social sorting systems change the notion of the border and shift some crucial functions to new borders that have emerged along the lines of the categories of social sorting systems. Along with population control, these functions include the power of the decision on exclusion and inclusion. The categorisation of people into risk categories divides into in- and outsiders of society. Thereby, social sorting through border surveillance systems reaches out into society itself and continues to make a difference there. Interestingly, social sorting makes use of the concept of the territorial border but simultaneously changes the nature of the border. I establish the term "socio-digital borders" to conceptualise this new form of invisible borders along the lines of the social categories.

The paper adds to the research fields of surveillance and border studies and contributes to the academic literature by combining the two

areas. Additionally, it contributes to the understanding of the effects of surveillance on everyday life. However, the methodology of this paper is not of sociological nature which represents a limitation. The methods of document analysis and conceptual analysis cannot explain in-depth social implications of social sorting on individual lives. To fill this gap, sociological research such as ethnography should be conducted to complement this study. By combining insight from such methods with the findings of this study, light would be shed upon the controversial nature of surveillance methods. Surveillance is especially controversial when being aimed at exclusion of non-citizens. If surveillance has come to serve the goal of "keeping the unwanted out", with the unwanted being the most vulnerable parts of society, more public debate should be conducted about the social and ethical implications of surveillance and border management.

7 European border surveillance systems running a self-fulfilling circle – Pia Sombetzki and Jonas Quicker

7.1 Introduction: The exclusionary politics of asylum

"The background for storing information in the SIS is wide and discretionary, many items of information are evaluative, and 'discreet surveillance' quite clearly opens for political surveillance and surveillance of a wide circle of individuals around the main person." (Mathiesen, 1999, p.6).

As early as 1999 Thomas Mathiesen drew this conclusion based on an analysis of the first generation Schengen Information System (SIS). We intend to take up this line of reasoning, and highlight the exclusionary mechanisms built into the EU's common asylum policy, enforced through the development of a "vast 'panoptical machine'", potentially being "the most repressive political instrument of modernity" (ibid., p.31).

Since 2013 a network of border surveillance systems is in place, grounded on the advanced and interlinked functions of the Second Generation of the internal border surveillance system SIS (SIS II) and the introduction of the external European Border Surveillance System (EUROSUR). Both systems have been designed to monitor the influx of individuals, such as economic migrants and asylum seekers. This has become a highly topical issue, as the dividing line between asylum seekers and "illegal" immigrants has become blurred. Both groups are perceived as threats by a growing segment of the public and by right wing political parties throughout Europe (Aradau, 2004; Huysmans & Squire, 2009). In this line Squire (2009) stresses the emergence of the notion of "asylum-seeker-cum-illegal-immigrant" (p.12). Accordingly, it is suggested that surveillance by EU systems leads to the exclusion of

undocumented asylum seekers that become conflated with illegal immigrants and thereby are depicted as a threat to the Union's security. Against this background, this paper examines the question as to what degree the workings of EU surveillance systems foster this conflation of asylum with "illegal" immigration, in particular through a strengthened interoperability of the EU border surveillance systems, leading to an increasing exclusion of asylum seekers.

In line with the discourse on how transparency and surveillance influence power relations between actors in society, this section of the book explores how the emergence of more sophisticated border surveillance technology enforces an asymmetrical, unidirectional transparency gaze, which disproportionately empowers the observing state bodies in relation to the observed individuals. More precisely, this study investigates the conflation of the notions of asylum seekers and illegal immigrants, and argues that this was enforced through the new operating surveillance infrastructure effective since 2013, which interlinks functions of various EU surveillance databases. Thereby, our chapter goes beyond the theoretical explanations found in the literature for the development of the "asylum-seeker-cum-illegal-immigrant", and shows how the operation of EU surveillance systems leads to an enforcement of the depiction of both illegal immigrants and asylum seekers as threats. We firstly investigate the operation and establishment of the SIS II, which has integrated the European Arrest Warrant (EAW), the Visa Information System (VIS) as well as EURODAC. Secondly, we examine the operation of EUROSUR, which coordinates and extends European surveillance beyond its borders. It is claimed that both SIS II and Eurosur enforce a conflation of asylum with "illegal" immigration and thus foster an exclusion of asylum seekers.

The chapter pursues the argument as follows: Firstly, it sheds light on the development from a *threat-discourse* of asylum towards the emergence of a conflation of asylum with "illegal" immigration in the EU's

asylum and counter-terrorism policies. Secondly, the research elaborates upon the consequences of this conflation for the EU's internal as well as external border surveillance. Lakoff's framing methodology provides an adequate lens through which one can understand how cross-border migration has become securitized and asylum-seekers criminalized in these systems. The second section begins therefore by applying Lakoff's (2004) framing approach to EU policy documents on the establishment and operation of the SIS II and indicates three frames: an (1) illegal frame, a (2) security frame and a (3) conflationary frame which evokes asylum to be directly linked to illegality and in turn, to illegal immigration. Further, the analysis reveals the operation of these frames in the SIS II and unravels the extent to which the new features of the SIS II add to the conflation of asylum seekers with "illegal" immigrants. In the third part we proceed by applying Lakoff's framing method to the EU's external border surveillance system with a focus on EUROSUR. In this context, the framing analysis portrays the existence of Lakoff's three indicated frames in the policy documents on the establishment of EUROSUR and focuses then in greater detail on how these frames operate. Finally, after having established that the framing of policy documents led to a conflation of asylum with "illegal" immigration, the chapter provides evidence as to how the workings of these systems effectively strengthen the framing mechanisms and result into an exclusion of asylum seekers. In other words, we argue that the systems run a "vicious", self-fulfilling prophecy cycle as the frames are included in the daily routine, and thereby reinforce exclusion.

7.2 Literature Review

This study is embedded in the academic literature on EU asylum and migration policies and EU internal and external surveillance systems. Considerable research exists on both the surveillance practices of SIS/II

and EUROSUR and their impact on privacy (Mathiesen, 1999; Bigo, 2000a, b; Huysmans, 2006; Jeandesboz, 2008; Neal, 2009; Hayes & Vermeulen, 2012; Langheinrich, Finn, Coroama, & Wright, 2014; Marin, 2014). Furthermore, a number of scholars covered how a securitisation of EU surveillance has an exclusionary effect on refugees and economic migrants (Guild, 2006; Squire, 2009; Aas, 2011; Bigo, 2014). While these studies are clearly helpful to determine potential effects of increased EU surveillance, it remains so far underexamined how the specific framing of asylum seekers and "illegal" immigrants in EU documents invoked connotations of illegality and criminality. This is not to be underestimated as the EU wide coupling of refugees with illegality through documents related to these matters can have restraining practical policy outcomes that not only lead to a restriction of the inalienable EU right of asylum but also to indirect death sentences. Also it is highly important to investigate how such connotations were taken as a justification for broad-scale EU surveillance systems. Moreover, there is a lack of research on how EU surveillance systems interoperate and thus reinforce the narrative of criminality and subsequently, exclusion. This study attempts to fill this gap.

7.3 From a *threat-discourse* to the conflation of asylum with "illegal" immigration

A combination of different factors caused a gradual construction of asylum as a problem or even a threat that searches for resolution through an intensification of internal controls and border surveillance systems on the Union level. What nurtures and justifies the discourse are three key assumptions: Firstly, an increase in numbers of asylum seekers is directly linked to the idea that a greater influx of people automatically causes severe problems for receiving states. Secondly, loss of privacy resulting from highly integrated surveillance systems and databases is justified by

the idea of abuse of the state's social welfare system by so-called economic migrants. Thirdly, underlying the principles of intensified surveillance at the Union's borders, is the assumption that the problems just mentioned, will actually be resolved by it (Squire, 2009, p.9).

Lewis and Neal (2005) argue that the asylum discourse more and more frequently conflates with issues of immigration (p.436). As asylum policies show, "illegal immigration" is taken as its main target. However, exclusionary politics are widened not only by attempting to control "illegal immigration" but by all kinds of possibly threatening mobile subjects. Especially in political and popular debates, asylum and "illegal" immigration are often put jointly in the focus of attention (Squire, 2009, p.12).

The following section discusses Lakoff's (2004) methodology in greater detail. It underlines the findings of existent literature on the framing of asylum as a threat and on its conflation with illegality, particularly "illegal" immigration.

7.4 Lakoff and the framing of immigration

Lakoff (2004) distinguishes between three different levels of framing: (1) communicative, (2) conceptual and (3) moral framing. He argues that communication itself is embedded in a frame as communication is based upon an exchange of a message, medium or image between a messenger and an audience, all happening in a specific context. Through communicative framing, conceptual and moral frames are evoked and the frames form their own systems.

Lakoff (2006) explains this in an article on the framing of immigration in the US. President, G.W. Bush, presented his proposal for an immigration reform, which introduced the issue-defining notion of an *Immigration Problem Frame*. What is conceptually created through this

term is, according to Lakoff, a set of *problems*, which offers a window of possibility for immediate *solutions* (p.1). With regard to moral framing, it is especially interesting to consider adjectives such as "illegal" or specific terms like "illegal immigrants" and "illegal aliens", defining and thereby framing the immigrants as criminals. In this context he explains that following a line of reasoning based on moral thinking implies that these "illegals" have to be punished or at least to be taken under control so that a system of law and order is restored (p.2).

Lakoff breaks down the framing of immigration to two main frames upon which the language in US policy documents on immigration is based. Namely, the (1) illegal frame and the (2) security frame. These two frames are also identified in the documents that are examined in the following section. Further, in the analysed documents, wording is in a way streamlined, which adds a third (3) *conflationary frame*, underlining a linkage between asylum and "illegal" immigration.

Even though the frames Lakoff identifies are related to the example of the US, the existent literature shows that the *threat* and *illegal* depiction of "illegal" immigrants are also found in a European context. In particular the third frame, is easily applicable to the EU context. The analysis focuses on the EU legislation for the establishment of the surveillance systems such as the SIS II and EUROSUR, as the decisions of policy makers are influenced by the way asylum seekers and immigrants are framed in the documents. If these documents enforce a conflation and subsequently a threat depiction of these groups on a discursive level, it is highly likely that this threat depiction materializes in policy decisions of EU member states and thus reinforces the exclusion of asylum seekers on a practical level.

7.5 The exclusionary focus of EU internal border surveillance systems

The internal border control of the EU has been subject to many crucial changes in recent years. Whereas the first generation of the Schengen Information System only included basic data, a 2007 Council decision incorporated new features such as photographs, fingerprints and type of offense, which resulted in the SIS II also integrating information provided by other systems such as the European Warrant Arrest (EAW) system or the Visa Information System (VIS). The first generation SIS was launched in 1995 based on the Convention on the Implementation of the Schengen Agreement of 1990 (Brouwer, 2008, p.1). Politically justified by the enlargement plans of the EU, the second generation Schengen Information System was introduced as a system also "technical feasible for a larger group of user states" (ibid., p.2).

The following sections aim at linking the advancements of the SIS II with the consequences for the exclusion of asylum seekers through a coupling with "illegal" immigrants. Firstly, the analysis indicates the frames that are evoked in the policy documents which determined the functions and the operation of the system. Secondly, it is investigated in how far new functions affected the consequences for possibly "illegally" entering asylum seekers. Thirdly, the interoperability of the SIS II with other systems such as the EAW as well as the VIS is put in relation.

7.5.1 Indicating conflation of asylum with threat and illegality in SIS II legislation

This section indicates the three types of frames, the (1) illegal frame, the (2) security frame and the (3) conflationary frame in the two main documents, determining the establishment, operation and use of the Second Generation Schengen Information System (II): The proposal for

the Council Decision (COM, 2005, 230 Final, 31.05.2005), and the proposal for the Regulation of the European Parliament and of the Council (COM, 2005, 236 Final, 31.05.2005). Further, the Communication of the Commission to the Council and European Parliament on the *Development of the Schengen Information System II and possible synergies with a future Visa Information System (VIS)* is investigated to provide a first hand at the consequential influence of the interoperability between the SIS II and other systems.

Both documents on the establishment, operation and use of the SIS II ground the proposal on a common objective, namely "maintain[ing] a high level of security within an area without internal border controls" ((COM) 2005, 230/236 Final, p.2). The development of the SIS II thereby uses a language that evidently evokes a (2) security frame. In the section on *specific objectives*, which follows thereafter, we encounter a list describing the enlargement of the functions of the SIS II. Among these we find the integration of the European Arrest Warrant and the objective of "better data quality and improved identification performance" (ibid., p.3). In the context of these objectives, the possibility of an improved identification of individuals through the processing of biometrics and more detailed personal data is displayed. The purpose for these advancements is linked to the abuse of identities (ibid., p.3). Thus, an (1) illegal frame is evoked, linking the justification of a further advanced SIS II to the abuse of identities of EU citizens.

Under Chapter V *alerts on persons to ensure protection or prevent threats* are regulated. Article 23 displays the main objectives of this Chapter V, stating that

"1. Member States shall issue in the SIS II alerts on missing persons or persons who, for their own protection or in order to prevent threats, need to be placed under temporary police protection at the request of the competent administrative or judicial authority." (proposal for Council Decision, p.22).

The consequence of this objective is that asylum seekers who attempt to enter the Schengen Area illegally and thereby become subject to police detention upon detection, are portrayed as in need for protection or even as a subject projecting threat. The linking of the terms that is identified in this objective, evokes a third frame which (3) conflates asylum seeking with illegality.

Subsequently, Chapter VII concerns *alerts on persons and objects for discreet surveillance or specific checks*. Article 31 constitutes that

"at the request of the competent judicial or administrative authority, Member States shall, for the purposes of prosecuting criminal offences and for the prevention of threats to public security, issue in the SIS II alerts on persons or vehicles, boats, aircrafts and containers for the purpose of discreet surveillance or of specific checks." (ibid., p.25).

Asylum seekers that try to reach the Schengen area, for example by boat, according to this Article possibly become subject not only to specific checks but also to discreet surveillance. Effectively, this means a gathering of background information based on the conflation of (1) illegal and (2) security frames, which can be indicated by the wording of this article. That this discreet surveillance is applied without the knowledge of the persons involved needs no further comment.

Finally, the conflation of protection with illegality, e.g. of asylum seekers who are in need of assistance, becomes evident in the documents describing further advancements of the SIS II, such as integration with the Visa Information System. Because of the practical potential for "thousands of end-users, which belong to police authorities, border control and immigration services" ((COM) 2003, 771 Final, p.27), the conflation of asylum seekers that enter the Schengen Area without required documentation with "illegal" immigrants, becomes decisive for the future refugee status of these persons.

In the following sections we first investigate the transition from SIS to SIS II and the design of the latter. Subsequently, we intend to show that the advancements of the SIS II are enforcing the frames just indicated and thereby generally strengthen the exclusionary forces behind the EU's asylum policies.

7.5.2 How do EU internal border surveillance systems embrace exclusionary frames of asylum?

Hayes (2005) describes the SIS generally as an EU-wide version of the UK's Police National Computer (UK PNC) system. Whereas the UK PNC includes data such as criminal records and fingerprints, the first generation of the SIS contained only basic information and worked on a *hit/no hit*-entry level. The development from SIS/SIS+1 to SIS II not only enabled a process towards the general architecture of the Schengen Information System, but also achieved interoperability between SIS II and other EU border control databases, such as the Visa Information System, Eurodac, and finally became an integral part of the work done by Europol and Eurojust.

The following sections aim at discussing to what extent the EU internal border surveillance systems reflect security, illegal, and particularly, conflationary frames as indicated in the conducted frame analysis. In this regard, especially the development from SIS/SIS+1 to SIS II is of great interest as the interoperability of the above mentioned systems and agents arguably contributed to the enforcement of the EU's exclusionary asylum politics, which conflate asylum with illegal immigration.

Development from basic to advanced data categories

In the first generation of the SIS, the registration of personal data was still relatively limited. Under Article 94 (3) of the Schengen Convention, the collection of data has been restricted to six basic fields: (a) name/surname, (b) distinguishing features, (c) initial of second forename, (d) date and place of birth, (e) sex and (f) nationality, whether the person is (g) armed or (h) violent, (i) the reason for the report, (j) the action to be taken.

Article 20 (3) of the Council Decision (2007) on the establishment, operation and use of the second generation Schengen Information System (SIS II) extends the list with six new categories (in numbers only four as initial of second forename was abolished and the armed and violent status has been summarised in one category).

Particularly, the new categories on biometric photographs and fingerprints immensely add to the capacities of the SIS II to identify persons at the European borders but also at the outside, e.g. at embassies. Said categories generally provide a fertile ground for interoperability with other databases such as Eurodac, registering fingerprints of asylum applicants and with the Visa Information System which saves biometric photographs for the purpose of processing Visa applications. The information from the European Arrest Warrant (EAW) system which could formerly be exchanged upon request from the SIRENE bureaux, are automatically included in the second generation of the SIS. The categories held under the EAW significantly add to the categories in place, indicated in the Council Decision on the establishment and operation of the SIS II. The list of categories of the EAW comprise information such as the (a) maiden name (where applicable); (b) residence and/or known address; (c) languages that the person understands; information relating to the warrant, judicial proceedings and type of offence (ten categories); (d) other information relevant to the case; (e) and information on related search and seizure orders. Hayes

(2005) argues that the SIS II following this design, largely resembles the UK Police National Computer, in which historical data allows the police to "keep tabs" on suspects (p.2).

The integration of information from the EAW add to the interoperating character of the SIS II. Wide grounds for categorization and possibly *criminal tabs* that encompass great amounts of randomly registered people, are the result of these developments (Hayes, *ibid.*). Consequently, the conflation of asylum seekers with illegal activity and also illegal immigration becomes highly likely as everyone to be registered in either of the integrated systems becomes easily criminalized.

7.5.3 SIS II – new feature: interlinking alerts

Garside (2006) discusses the interlinking of alerts and identifies this new feature of the SIS II as a function leading to a merging of purposes of informational assistance, executive action and investigative support. She argues that the consequence of an alert entry has to be foreseeable and personal. By the interlinking of alerts, the ability to foresee the consequence of the alert entry is however jeopardized. Further, she claims that it is debatable to what extent the consequences of an alert entry can remain personal. For example she sees a danger for the private or family life of people that might become subject to discreet surveillance due to attention given to them by interlinked alerts (p.5).

The implications of the interlinked alerts can lead to the observation of "family members", "gang members" and "suspected gang members". "Illegal immigrants" to be refused entry (Art.32) could for example be linked to their suspected "traffickers" (Art.36). Further, persons subject to discreet surveillance (Art.36) can be linked to wanted persons (Art.26) and to those to be refused entry (Art.32) (in Council Decision 2007/533/JHA). The results of this new feature are significant as the SIS II can increasingly be used as a tool of investigation. The registration of

crime families or illegal immigration networks makes the association of innocent people with criminals highly likely and thereby fosters incidents in which asylum seekers are subject to a conflation with illegal immigrants (Hayes, 2005, p.5).

7.5.4 SIS II – widened accessibility

Whereas the SIS in its first generation was limited to the workings of the police and immigration checks, the SIS II access is granted to a greater number of agents. Among these are (i) vehicle registration authorities, (ii) *Europol*, the European police Office, (iii) *Eurojust*, the EU prosecution's agency, (iv) national and judicial prosecuting authorities and (v) internal security and external intelligence agencies. Consequently, the SIS II is since 2013 also a host of law enforcement and displays new security functions by the possible interactions between the data stored in the SIS II and specific search enquiries of the listed agents (Hayes, 2005, p.6).

Fassmann et al. (2009) argue that the widened accessibility of information for additional agents displays an attempt to put the EU's *logic of exclusion* into operation. Through the inclusion of more information but also more agents, the identification of "illegal" immigrants is greatly facilitated. In combination with biometric identifiers the system of exclusion becomes as watertight as possible, they claim (p. 267).

7.5.5 Interoperability in the SIS II

In 2004, only one year after the decision to develop the Visa Information System, it was decided that this system would share a "common technical platform" with SIS II (Council Decision, 2004). Even though the EP voted against this proposal, the Council ignored the vote and adopted the Decision in June 2004 (Hayes, 2005, p.7).

The VIS stores all data which is processed in any visa application, no matter whether it is finally successful or rejected. Accordingly, its functions overlap with the ones of the SIS II, containing biometric photos. Further, it contains fingerprints, similar to the EURODAC database, which regulates asylum applications. This overlap of these functions is also displayed as a motivation of the Commission Working Party on SIS II. In February 2003 they noted that the co-development of VIS and SIS II

"provide[s] for one secure location, one Business Continuity System (BCS) and one common platform. Moreover, it could yield a two digit million € saving. The biometrics platform (which is expensive) could be paid for under VIS. Some other synergies might be found at end-user level, planning, maintenance & support, efficient use of systems and networks interoperability." (Council doc. 6387/03, 25 February 2003, [6]).

The Council nevertheless notes that the VIS and the SIS II remain separated, with different set of data and access. However, as the early co-development indicates, interoperability between these surveillance systems is evident. Hayes (2005), echoing Matthiesen's claim, observes a "broad law enforcement access to VIS (including access for the security and intelligence services), providing, in conjunction with SIS II, an EU-wide fingerprint database of wanted persons, suspects and all visa entrants", heavily affecting also the increasingly frequent conflation of asylum applicants with "illegal" immigrants (p.8).

This observation is further enforced by the integration of the EURODAC database in the SIS II. The Commission communicated in 2005 that the "absence of access by internal security authorities to VIS, SIS II and Eurodac represented a serious gap in the identification of suspected perpetrators of a serious crime" (Boswell, 2007, p.603). Generally was the interoperability function between the VIS, SIS II and Eurodac crucially strengthened in the context of the London bombings of 2005 and the

thereafter following the Hague Programme on Operational and Legislative Functions on Justice and Home Affairs (Hobbing, 2005, p.20)

7.6 The exclusionary focus of EU external border surveillance systems

EU surveillance measures do not stop at an internal level. The criminalization of asylum seekers and the consequent depiction as a security threat also necessitated an extension of surveillance to the EU's external borders and beyond. Under the *smart border* initiative the EU established the European Border Surveillance system (EUROSUR), which forms of surveillance exceeds other systems as it constantly observes also a pre-frontier area beyond the EU's borders. Governed by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the EU, commonly known as Frontex, this system uses various, powerful, ambiguous measures of surveillance for the "purpose of [...] contributing to ensuring the protection and saving the lives of migrants" (Recital. 1, Regulation 1052/2013). This part of the research shows that EUROSUR not only falls short of fulfilling this purpose but also fosters the conflation of asylum seekers with "illegal" immigrants. This results in an exclusion of asylum seekers, which, in combination with the aforementioned internal border surveillance systems, feeds into the self-fulfilling prophecy cycle of exclusionary politics of asylum.

7.6.1 Indicating conflation of asylum with threat and illegality in EUROSUR legislation

The language being used in these official documents couples immigrants predominantly with something negative, burdensome and potentially threatening. While there are legitimate reasons to establish a

sophisticated register of migration, it is evident that the paranoia towards "illegal" immigrants is exploited for the justification of extensive surveillance tools. The Commission utters concerns that only 505,000 migrants have been apprehended in 2010 and that this is only a small proportion of the estimate total population of *overstayers*, e.g. persons who reside in a country even though their legal permission to do so has expired. However, even if there are more overstayers, the number of "illegal" immigrants ranges between 1-5% of the total population of the EU. It should raise concern that this number is used to justify Union wide surveillance measures that register fingerprints and face scans of 700 million migrants every year (Regulation 2013/0059).

Council Regulation 2013/1052 on the establishment of EUROSUR frames migrants and asylum seekers to a stronger degree than the preceding ones. The majority of migrants that enter the Union over the Mediterranean are future asylum seekers from Syria, Afghanistan and Eritrea (EUROSTAT, 2015). EUROSUR is presented as working for reducing the loss of life at sea (Regulation 2013/1052). This victimizes the asylum seekers and thus relaxes the perception of asylum seekers as risk factor. However, the regulation puts also a strong emphasis on EUROSUR's aim to "reduce the number of irregular immigrants entering the EU undetected, and to increase internal security by preventing cross-border crimes, such as trafficking human beings and the smuggling of drugs." (Regulation 2013/1052, p. 1). It is evident that this communicative framing of "illegal" immigrants, which are most likely future asylum seekers, evokes negatively connotated conceptions and (3) conflates their asylum seeking status with the threat through illegal entering into the EU. Asylum seekers are thus connected to (1) illegality and stigmatized as individuals who try to circumvent the law by entering the Union undetected. In line with this conception that asylum seekers are connected to these crimes and thus (2) pose a security risk factor, the Regulation shall "apply to the surveillance of land and sea external

borders [...] including measures for monitoring, detection, identification, tracking, prevention and interception of illegal border crossings" (Art. 2, Regulation 2013/1052). Correspondingly, Art. 9(3) stipulates the establishment of so-called national situational pictures, displaying and assessing the situation at the respective country border. These pictures shall consist of certain sub-layers: a) a sub-layer on unauthorized border crossings; b) a sub-layer on cross-border crime; c) a sub-layer on crisis situations; d) a sub-layer on other events, which contains information on suspect vehicles ... and persons. These national situational pictures are meant to attribute an impact level, ranging from *low* to *high* to different regions (Art. 9(4), Regulation 2013/1052). The wording of these articles has more in common with defence strategies than with border monitoring. Every migrant that attempts to cross borders, which includes asylum seekers, is clearly depicted here as an intruding, threatening and disruptive element which merits increased surveillance to prevent an unauthorized breach of the EU's borders. More precisely, in conjunction with the indication of low and high impact levels, asylum seekers are connoted to a threatening attacking force, which necessitates the fortification of the borders at certain regions. Unmistakenly, Lakoff's frames of illegality (1), security (2) and the conflation of asylum seekers with "illegal" immigrants (3) are evident here.

7.6.2 The European Border Surveillance System

EUROSUR relies on the use of various intelligence based surveillance tools to create a situational awareness, more precisely the "ability to monitor, detect, identify, track and understand cross-border activities ... to find reasoned grounds for reaction measures ... and to be better able to reduce loss of lives of migrants" (Art. 3b, Regulation 1052/2013). This is achieved through the collection of information at and beyond the EU's borders and the consequential drawing of situational pictures, presenting

data, information and intelligence (European Commission, 2013). Operational information is shared between Member States and third-countries to improve coordination and establish these situational pictures on a European as well as national level. The drawing of such pictures shall improve detection of small-sized vessels, which are used for human trafficking, irregular migration or the transport of asylum seekers. The system keeps the EU's external borders under surveillance 24 hours, 7 days a week through the use of sensors, infrared cameras and satellites (Hayes & Vermeulen, 2012). EUROSUR however, was only designed to improve detection. The follow-up measure in response to this situation remains the responsibility of the Member States.

Furthermore, EUROSUR uses Unmanned Aerial Vehicles (UAVs – commonly known as drones) to observe and locate vessels and the respective crews and passengers. Against this background, the system further expands the powers of Frontex as it extends border surveillance towards a pre-frontier area, which comprises non-territorial waters and territories of third countries. So far it is stipulated that no private data shall circulate within EUROSUR and between Member States and third countries (Council Regulation 2013/1052). Yet information is shared with various agencies, such as EUROPOL, the European Maritime Safety Agency and the EU Satellite Centre. More importantly, EU Member States maintain their own, bilateral relationships to third countries. It is thus questionable if privacy can be entirely guaranteed. So far, there is clearly a lack of safeguarding measures that effectively prevent the dissemination of collected data to third parties (Hayes & Vermeulen, 2012; Heller & Jones, 2014; Marin, 2014).

7.6.3 EUROSUR's de facto exclusion of asylum seekers

EUROSUR creates an exclusionary effect both on a discursive level and a practical level. On a discursive level, the statuses of "illegal" immigrants

and asylum seekers have converged to the degree that both are perceived as threat and thus legitimize increased surveillance. The tracking and surveillance of migrants through UAVs, infrared cameras and sensors implies that there is a necessity to keep them under surveillance other than for their own good. High financial investment in surveillance tools to track every movement of migrant vessels seems to legitimize the xenophobic claims of right wing parties across EU Member State parliaments which link migrants and asylum seekers to high-risk individuals. In the contemporary political and societal discourse, migration is coupled with crime (Huysmans & Squire, 2009) and thus creates a strong dynamic of social exclusion. The EU strengthens this connotation and exclusion through EUROSUR. Two formerly separated policy areas, one dealing with crime and the other with migration, have become merged. As a result, asylum and migration policies strengthen the dichotomy between "us" and "them" and support the narrative of the border, which demarcates a collective national identity against the outsider. The evident problem here is that such a concept of the border appears outdated in times of globalization.

The exclusion of asylum seekers through EUROSUR occurs on a practical level as well. Through the increased surveillance by drones and sensors at the EU's external borders, asylum seekers embark on more dangerous routes through the Mediterranean. A further form of exclusion by EUROSUR is the *de facto* restriction of the right to asylum. An earlier detection of migrants through the external border surveillance system is supposed to lead to earlier intervention by the authorities. However, as previous cases have shown, earlier intervention is likely to lead to push-back operations. In consequence, refugees are sent back before they can even apply for asylum and are thus denied access to the EU. UAVs and the authorities cannot distinguish between economic migrants and future asylum seekers when a vessel is spotted, and there is evidence that a migrant vessel is rather sent back with all passengers together than that

a vessel is taken to European shores to sort out irregular migrants from asylum seekers (Hayes & Vermeulen, 2012; Shields, 2015; Guild, Carrera, 2009; Gabrielli, 2014). In this respect, the restriction of the right to asylum constitutes a form of structural violence as well, as the collective expulsion of migrants leads to an exposition to the risks associated with human rights violations, discrimination, war and poverty in third-countries.

Through the conflation of asylum seekers with "illegal" immigrants EUROSUR engages in openly exclusionary policies against the illegalized other. This phenomenon shows parallels to what Schinkel (2010) describes as zoepolitics. Schinkel draws on the works of Foucault and Agamben and distinguishes between two forms of social sorting in populations, zoepolitics and biopolitics (which is less relevant for us). Zoepolitics is externally directed towards people outside the state (Schinkel, 2010, p. 156), who are denied the status of a political, social beings and reduced to bare life by separating these "non-citizens" from national citizens and the society. Thus, zoepolitics not only separates society from "outside-society" but also distinguishes citizens from humans. EUROSUR executes a similar form of distinction and can thus be described as a form of zoepolitics as well. Its surveillance targets unwanted individuals who are stigmatized as criminal others and should thus be excluded from European societies. In this respect EUROSUR can be understood as "ban-opticon" (Bigo, 2006, p. 46), which, unlike Foucault's neutral panopticon, adds a negative, exclusionary bias to its surveillance. And just like Foucault's panopticon, the observed asylum-seekers neither know when they are subject to the authoritative gaze of drones and satellites nor can they object to this surveillance. This form of exclusionary surveillance is not only harmful because it heavily breaches the privacy of asylum seekers. It is also detrimental because it directly, effectively causes harm to refugees (ibid.).

The findings above clearly demonstrate that a conflation of asylum seekers with "illegal" immigrants has led to increased practices of surveillance and securitization which in turn have resulted in their exclusion. It is argued in the next section that the interoperability of the EU's surveillance network further enforces a coupling of asylum seekers and illegality, which in turn also strengthens its exclusionary forces.

7.7 Interoperability among EU border surveillance systems and its consequences

The most striking effect of the interoperability of EUROSUR with other surveillance systems such as SIS/II or VIS is the abuse of EUROSUR for law enforcement. SIS/II and VIS have created vast databases in which individuals are categorized and to a certain degree stigmatized. The clustering of refugee identities with illegal immigration networks or crime families can easily lead to increased surveillance, also by EUROSUR. Fassmann et al. (2009) argue that the inclusion of more actors and consequent spread of collected information between databases fosters the EU's *logic of exclusion*. This can provide the basis for what Kenk, Križaj, Štruc & Dobrišek (2013) call "function creep": The misuse of a technology for other purposes than it was designed for. As established above, EUROSUR shares its collected data with national and European authorities, such as EUROPOL or the EU Satellite Centre. Kenk et al. (2013) provide the example of acquired data by EUROSUR in which UAVs can be correlated with information from mobile devices. Subsequently, EUROSUR has the potential to establish a digital record of individuals, which would be certainly of interest for law enforcing agencies. As also internal border surveillance systems indicate that individuals or a group of individuals are suspicious, according to the given categories, it is not guaranteed that law enforcement agencies such as EUROPOL will not misuse the data the different surveillance systems provide.

It can thus be argued that an interoperability of EUROSUR and other EU surveillance systems is not a far cry away from maintaining a securitized, complete surveillance network, which is able to digitally and visually observe every individual who does not match the right categories or is clustered with a crime network. Another point of concern is that UAVs can be hacked (Marin, 2014). If EUROPOL or other national authorities really intend to rely on surveillance techniques of SIS II and EUROSUR, a possibility for misuse is evident. Through the interoperability of the surveillance systems certain groups of "unwanted individuals", that is individuals that are rightly or wrongly assumed to be related to criminal activities, are effectively excluded. As established above, the conflation of "illegal" migrants and asylum seekers can thus result to a stronger form of exclusion of asylum seekers through the interoperability of these systems.

7.8 Conclusion

The research set out to determine to what degree Squire's (2009) claim holds true and to further investigate how EU surveillance systems, on an internal as well as external level, inherit and operate a coupling of asylum seekers with illegality and threat. It not only revealed that these systems foster such a conflation but also foster the exclusionary effects of asylum politics through its operation.

Lakoff's framing methodology helped to indicate such a coupling on the policy level in both cases. Hereby we show that in the case of the SIS II, its surveillance mechanisms and specific checks are justified by a coupling of asylum seekers with security threats and illegality, particularly "illegal" immigrants. In the analyzed documents surveillance is legitimized as soon as asylum seekers enter the Union over irregular ways. Through this wording asylum seekers were linked with illegality and security risks. It resulted in broad categories triggering an alert in the SIS II system and

hence provided the Member States with a certain liberty to register people as illegal aliens and to keep them under increased surveillance. The conflation of asylum seekers with illegality has further led to the inclusion of new categories for registration that considerably extended the surveillance capabilities of SIS II through the collection of biometric photographs and fingerprints. To safeguard the Union from the perceived threat of ostensibly illegal migrants/asylum seekers, SIS II surveillance capabilities were enhanced not only by support of other surveillance systems, such as Eurodac, EAW and VIS, but also by the introduction of interlinking alerts. The analysis showed that these interlinking alerts are able to create illegal immigration networks that link innocent asylum seekers easily with criminals. Subsequently, the new features of SIS II strengthened the conflation of asylum seekers with illegal immigrants and thus widened the grounds of surveillance.

The analysis raised a further point of concern by showing that the widened accessibility of information for a greater number of agents creates a logic of exclusion. This leads to an extensive system of exclusion that applies as soon as an individual does not meet the right criteria. This system is strengthened by the interoperability of other surveillance systems such as the VIS. Thus, the research showed that framing, as it could be indicated in the analyzed policy documents, led to a conflation of asylum seekers with "illegal" immigrants and created a self-reinforcing effect as it is operated in surveillance systems such as the SIS II which introduced more actors and agents. This strengthened surveillance system excludes asylum seekers on an internal EU level, as asylum seekers become coupled with threat and illegality.

Further, we showed that this conflation is also evident in the set-up of the EU's external surveillance system. The application of Lakoff's framing methodology disclosed how policy documents indirectly stigmatized asylum seekers as criminals and security risk factor that necessitate constant sophisticated surveillance at and beyond the EU's

borders. While these documents do not depict asylum seekers directly as threatening, they place a strong emphasis on the illegality of their actions, more precisely, the cross-border movement through irregular ways. For asylum seekers from different regions around Europe, the movement over i.e. the Mediterranean is often the only way to reach the EU. Precisely this movement is highly illegalized and understood as a security threat. Subsequently, asylum seekers are understood as a security threat. As a result of the conflation of asylum with illegality, EUROSUR uses extensive surveillance techniques to prevent irregular cross-border movements. While it is presented as working to protect the life of migrants, it leads to the very opposite. Its effect is an exclusion of asylum seekers, on a discursive level as well as practical level. On a discursive level asylum seekers are stigmatized as high-risk individuals. On a practical level, asylum seekers are pushed towards using more dangerous ways to access the Union, which increases the likelihood of death. This form of structural violence is further strengthened through the interoperability with other surveillance systems and law enforcing agencies. A lack of democratic oversight and safeguarding measures against its abuse raises legitimate concerns that the interoperability of EUROSUR with other surveillance networks may in fact result in Bigo's (2006) "banopticon".

The surveillance network that evolves out of the interoperability of the internal and external EU surveillance systems arguably reinforces the discursive conflation of asylum seekers with "illegal" immigrants. The coupling which was first only embodied in policy is operated through the network of surveillance systems also in practice. To this respect, the operation of the conflation of asylum with threat and illegality in these surveillance systems creates a self-fulfilling prophecy cycle determining the future of EU asylum policy.

The research underlies certain limitations in that it could only focus on a small selection of policy documents. Also it was only able to discuss

SIS II and EUROSUR in detail, while the other surveillance systems would have merited extensive scrutiny as well. Nevertheless, it showed that framing in policy documents has self-reinforcing effects with potentially very damaging consequences. It is thus necessary to disentangle asylum policy and asylum seekers from security concerns and illegality. This is imperative if the EU places any importance on its values and if it seriously attempts to provide shelter for refugees. So far however, asylum seekers still remain victims of a "vast 'panoptical machine'" with the potential of being "the most repressive political instrument of modernity" (Mathiesen. 1999, p.31).

8 The Dutch Royal Family in the spotlight. A framing analysis of newspapers de Volkskrant and Trouw on the quest for transparency regarding the Royal Family – Maxime Hensels

8.1 Introduction

Transparency plays an increasingly important role in present-day democracies. Citizens, interest groups, consumers and media demand further disclosure from authorities and greater openness towards citizens and civil society organizations. Transparency has become the norm of democratic performance. In a recent dissertation of management consultant Erna Scholtes (2012), in which she analysed over 5000 parliamentary documents from the period between 1995 and 2010, the popularity of the use of the term transparency increased drastically.

The desire for an open society does not come out of the blue.

Transparency is generally defined as the principle of enabling the public to gain information about the workings of public (and also private) organizations. Greater openness and wider information-sharing are crucial for making informed (political) decisions (Bovens, 2003). According to Scholtes transparency is a buzzword that hardly ever provokes controversy. It seems that no institution can escape the ever growing demand for transparency.

But does this also apply to the Dutch Royal family? The Royal Family is an interesting case to test the demand for greater openness. On the one hand its constitutional role seems to imply that it has to follow the general tendency towards greater openness; on the other, it has traditionally been a bullwark of secrecy. It is clear that if the current King wants to

maintain his binding public role, he has to come up to the expectations emanating from the public opinion (Van Osta, 1998).

One way for the Royal Family to get closer to its people is to appear positively in the news media. For sure, it is publicity that to a large extent determines the image of monarchy. The monarchy cannot do without media, but at the same time cannot be completely exposed to it. In 1867, the British essayist Walter Bagehot had already pointed out the dangers of a monarchy getting too close to the people and thereby losing its mystical appeal. Dutch historian Jaap van Osta also confirms the importance of reticence in order to keep up the dignity of the institution, especially when it comes to relations with the public. It is, according to him, of the utmost importance to make a distinction between what belongs to the public domain of the head of state and what should remain in the private domain of the Royal Family. He also acknowledges, however, that the line between these two roles is often unclear (Van Osta, 1998, p. 244). The Constitution only helps to a certain extent. According to Art. 42, which states that the King is inviolable and the ministers are responsible, the Prime Minister has to answer to Parliament when public interest is at stake. He is supposed to indicate whether and to what extent the behaviour of the King and his family members falls within the remits of the public interest (Elzinga, 2007). It is conceivable, however, that what at first seems to be a private affair later appears to be a matter of public interest. A good example is Queen Beatrix' ski trip to Lech in 1998. Against the advice of the government, she went on holiday to Austria during the week in which Jörg Haider's party was elected into government. The Queen stated that her holiday was a private affair. Nevertheless, it still remains possible that such a private character wanes (Van Wijnen, 2000).

Other Royal scandals that emerged in the beginning of the 21st century show us that the public has become less tolerant towards the Royal Family. For example, the public dismay stemming from the

construction of a holiday home in Mozambique in 2009 by the then crown prince Willem-Alexander and princess Máxima, show how much the private actions of the Royal Family are scrutinized (Hoedeman& Meijer, 2012.) In this instance, it appeared difficult to draw the line between what is of public or private concern.

Scandals, affairs and other events in which members of the Royal Family were involved have shown that the position of the Royal Family, and the monarchy generally, is not untouchable (Wijfjes, 2007). American sociologist John B. Thompson (2008) states that this does not only say something about societal norms but that it also indicates that there is a quest for transparency. The fact that information has been withheld, or in other words, has never before been published, can turn into a catalyst for the media to turn it into a scandal. It is not merely accidental that this has happened already a number of times since the year 2000.

It often depends on the political or economic climate whether or not an event is deemed to be a scandal. For example, according to historian Harry van Wijnen, the Greet-Hofmans-affair in the 50s was not at all seen as a scandal. It was only in the late 70s when authority was not automatically accepted anymore, that this issue was judged to be scandal (Van Wijnen, 2000). The importance of the societal context has only increased since then. Shortly before the start of the year 2000, Prime Minister Wim Kok announced in a much read weekly that: "there is a structural debate about how kingship should be interpreted during the next century" (Van Wijnen, 2000, p. 188). The changes should, according to him, be characterized by "new norms of openness and transparency". Not much later a debate in the national parliament followed (Van Wijnen, 2000). The statement by the Prime Minister was also picked up by the media. The written press has, by means of "framing", pushed this transparency debate in various different directions during the last fifteen years. Media research has found that media are not only able to influence what we perceive by selecting the issues that are being mediated, but

also how we perceive those issues. They do so by framing news in specific contexts, highlighting certain aspects of an issue and downplaying others. By analysing media content, it can be researched how big events or societal conflicts are received. Every society contains a range of possible frames, often unconsciously, used by people in a particular society. The kind of issues that appear in the media says something about the current societal discourse (Van Gorp, 2006). It is, therefore, important to be aware of the way in which the media frames the quest for a more transparent Royal Family in order to be able to predict the direction in which the debate about a modern Royal Family will go.

8.2 Research question

This chapter aims to analyse how Dutch newspapers *Trouw* and *de Volkskrant* frame the issue of transparency regarding the Dutch Royal Family. This paper conducts an inductive, qualitative content analysis of forty news articles from Dutch newspapers *de Volkskrant* and *Trouw*. More specifically, the research question is:

"Which frames can be perceived in the news articles of *de Volkskrant* and *Trouw* concerning the quest for transparency regarding the Royal Family?"

News articles have been selected on the basis of six events concerning the issue of transparency of the Royal Family between 2000 and 2015. This chapter does not answer the question of whether or not the Dutch Royal Family conforms to the societal norms of transparency, but is solely focused on performing a framing analysis. The objective is to find out which frames have been used by journalists of *de Volkskrant* and *Trouw* in the selected articles concerning the quest of a more transparent Royal Family and especially the future of the monarchy.

8.3 Conceptual and theoretical framework

Framing as a concept originated in the field of social psychology (Bartlett, 1932), but is now applied in many disciplines. In communication science, framing in its broadest sense refers to the manner in which the media and the public represent a particular topic or issue (Reese, 2001).

Within this discipline, namely news articles are analysed. For communication scholars, news is the main source used to analyse what framing is and how it works. Although it can be assumed that a journalist works objectively and autonomously and thus can decide which aspects of a certain event should be highlighted, there are always internal and external factors that influence this process (Shoemaker & Reese, 1991). News thus does not reflect reality, but rather refers to the typical way in which journalists shape the news. This is inevitable, since a journalist functions within a limited frame, both on the individual level as well as at the media organization level (Van Gorp, 2006).

However, from a constructionist perspective, framing is a process that is only partially conscious on the part of the person who creates a message (Van Gorp, 2007). This is because each culture possesses a repertoire of symbols and worldviews that its members can use as a toolkit to attribute meaning to the various events and issues with which they are confronted (Gamson & Modigliani, 1989; Swidler, 1986). When authors frame a message, they connect a topic to notions that are part of this "common ground" within a given culture, such as values, archetypes and shared narratives. Frames are part of a culture and are thus anchored to cultural motives. Within a culture, there is a great diversity of possible frames that can be applied to the public debate. A journalist applies these frames, be it consciously or unconsciously, when writing an article by using devices. Since the receiver is part of this same culture and, therefore, is aware of the same cultural motives, textual elements, such as figurative language and metaphors, are able to activate a cognitive

graph in the head of the receiver which is similar to the applied frame by the sender. This explains why the receiver interprets a text in the way as envisioned by the sender (Van Gorp, 2006, p. 88). However, this research will merely be focused on the reconstruction of frames in news articles as well as the analysis of the messages within the news articles. The emphasis lies on the reconstruction of the frames and how these are established at the side of the sender. This is also called frame-building; the process in which journalists engage in framing and as well as the eventual presence of frame in publications (Scheufele, 1999).

8.3.1 Framing the transparency debate

Framing mainly appears to be relevant for research concerning conflicts or events that can be interpreted in multiple ways, such as political and cultural issues (Scheufele, 2000). Whether or not the Royal Family is transparent or not, or should become more transparent, can be considered as such a political and cultural issue, which can be interpreted in various ways. Before the content of the selected news articles is analysed, it is necessary to clarify the relationship between transparency and the Royal Family.

The concept of transparency comes from Latin and means originally as much as being able to see through something. Oftentimes metaphors speak about transparency. Boer (1998), for example, defines transparency as: "the ability to look clearly through the windows of an institution" and Davis (1998) speaks about "lifting the veil of secrecy".

In the discussion about the rise of the concept of transparency, it is also important to take note of the way in which we can value this concept. Transparency seems to become an increasingly important public value with an almost religious status (Hood, 2006). Moreover, the concept is ever more viewed as an end in itself. Bovens (2013), for example, speaks of transparency as a "right of the citizens". He states: "Every citizen or

every group of citizens has the right to be aware of the process which every transaction, product or service has gone through. Every process of self-regulation, auto control or of interactive policy making that binds third parties should be transparent from the start" (Bovens, 2003, p.126). Besides a right of the citizens, transparency is also seen as an important value in our democratic state, especially when it concerns legal certainty and predictability. This is enabled by the open access to government documents, the open attitude about the type of arguments used and in what cases certain decisions are taken is an important element of democracy. This enables democratic controls (Scholtes, 2012). However, not every public value is a value in itself. Many public values serve as means to meet other ends. Heald (2006) differentiates between the appreciation of transparency as an intrinsic and as an absolute value. Where Brinkshaw (2006) states that transparency is an absolute value, which counts as a "fundamental human right", Heald advocates that transparency should be viewed as an instrumental value. He positions transparency in service of effectivity, accountability, fairness and legitimacy (Heald, 2006). In this chapter, the emphasis lies on transparency in relation to authority, legitimacy and accountability, which in this case concerns ministerial responsibility.

8.3.2 Transparency, authority and legitimacy

The transparency issue is closely connected to the quest for authority of, in this case, the Royal Family, and the question of how this is related to the clarification of the thinking and acting of this institution. It also concerns the possibilities for the offering of criticism. In *Truth and Method* (1989) Gadamer researches both the workings of authority as well as its justification. He, for example, states that authority does not relate so much to obedience but rather to knowledge (Gadamer, 1989, P. 279). Furthermore, he implicitly states that once people have accepted

someone's authority, they will consequently blindly trust this person's statements and decisions. In other words, they neglect their own judgement in favour of the judgement by an institute with authority and do not fully consider an issue anymore. According to Gadamer, it should still remain possible to gain insights into the decision-making process of the authority. In fact, he concludes that the possibility of criticism is crucial for the acceptance of authority. However, when this is not possible, it can lead to the crumbling of both trust and authority. The former of course does not mean that the opening of the Royal Family to all kinds of critique is a good idea. The Royal Family, as an institution, has something "unique" and cannot be compared to other public and political institutions. The King, for example, is neutral and impartial in his judgement, which in some aspects is and on others is not reconcilable with transparency (Elzinga, 2007). What nevertheless is clear is that at least in the theoretical sense there should be sound justifications for the expression of criticism. It is easy to refer back to what Warren calls "the neoconservative thesis"; namely the idea that "authority" is irreducibly damaged by questioning (Warren, 1996, p. 48).

8.3.3 Non-transparency and values of privacy

The popularity of transparency creates the impression that it is today's norm. However, there are many situations in which privacy or non-transparency is valued as important, which is a vital part of the democratic judicial state (Scholtes, 2012, p. 8). A number of special situations have also occurred related to the Royal Family in which the quest for transparency is fundamentally different to that of other institutions. The media code is a good example. Lately, the monarchy has been more in the media spotlight than ever before. The media have the power to both break or make the bond between the people and the Royal Family. To limit the power of the media and thus to safeguard the respect

for the Royal Family, the Rijksvoorlichtingdienst (RVD) has attempted to limit the media content. As a consequence, most of the Dutch media has accepted the media code published by the Rijksvoorlichtingdienst in 2005 (Beschermingpersoonlijkelevenssfeer, n.d.). In order to be present at the organized media moments, organized by the RVD, the media has to agree not to enter into the personal sphere of the members of the Royal Family (Brink, J. van den, & Volgenant, O., 2009). There are, however, discussions about what the extent is of the applicability of the media code as well as what can be considered the line between public and private. The debate about the burdens and desires of the Royal Family is relevant in this respect; where do we find the balance? The media code is controversial and since its introduction criticism has ensued. The discussion is mainly based on the tension between two basic rights; the right of freedom of expression and the right of protection of one's personal sphere (Vaessen, 2003).

8.3.4 The division between private and public

An important aspect of the transparency issue concerning the Royal Family is the division between the public and private domain. The division between a public function and the personal sphere of the same person is an essential part of the Dutch democratic judicial state. People with public functions should ideally not be judged based on their behaviour in their private sphere, but solely on the way they execute their public function (Pot & Elzinga, 2014). Kingship, however, is not merely a normal public function. In contrast to other people in public functions, kingship is allocated by means of birth, and thus this public function has the power to influence the private life of the king. Unlike other people in public functions, the king also cannot postpone decisions about his behaviour in the private sphere until after his term of office. If the behaviour of the king negatively affects the dignity of kingship, in general, this can be

blamed on the king as a person and can lead to negative comments on kingship. Scandals, affairs and issues surrounding a number of members of the Royal Family have shown that, despite the fact that ministerial responsibility exists, the position of the king, kingship as well as the monarchy can be harmed (Wijfjes, 2007). In many cases in which it is unclear whether the behaviour by the king or his family falls within the private domain or not, the Prime Minister will have to answer to the parliament and the public. Although the parliament expects openness, the Prime Minister is often unable to provide this about issues that appear in the media. It merely concerns ministerial responsibility when the public interest is at stake. Only the Prime Minister is to determine whether and to what extent the behaviour of the Royal Family fall within the remits of the public interest. In case he judges it not to be so, he does not only indicate that it concerns a private issue, but also why it is private (Elzinga, 2007). Members of the Parliament and Dutch citizens have no choice but to accept the decision of the Prime Minister if he does not decide to provide openness concerning Royal affairs.

8.3.5 Scandals, affairs and issues

Transparency is sometimes linked with the disclosure of scandals (Scholtes, 2012). The concept "scandal" carries with it a certain sense of humiliation. Despite the fact that the circumstances in which a scandal arises are bound to time and place, it is possible to make general statements about the culture in which these scandals occur (Wijfjes, 2007). In his work *Political scandal: visibility in the media age*, sociologist John B. Thompson states that the rise of political scandals in the media and the scandal culture in the political sphere is characteristic of the changed relation between the private sphere and the public domain. According to him, scandals say something about legitimacy as well. They in a certain sense indicate when a line is being crossed. An important

element of scandals is disclosure (Thompson, 2000). Besides the fact that scandals entail the neglect of norms and values, they do always arise in a context of secrecy when it concerns facts that cannot be exposed. It thus concerns facts which, when they are announced, will be met with disapproval. The public will express their disapproval by publicly condemning the events concerned. The media plays a vital role in creating a scandal (Boersma, 2007). Thompson clarifies that the media do more than merely provide passive reports of the situation. Scandals must therefore not be seen as independent from the media because to a certain extent they become scandals in the first place because of the media. The process of the creation of scandals firstly means that journalists select newsworthy facts. Thus, journalists and editorial offices determine what is made public. All newsworthy events are placed into a context and the story is written from a certain perspective. The process of news production both says something about the creation of scandals as well as the aspects that are eventually published (Thompson, 2000). The Royal Family has been negatively featured in the news multiple times during the last fifteen years. Different from the Hofmans-affair (1956) and the Lockheed scandal (1976) the 21st century was dominated by affairs and issues. It is important to differentiate between scandals, affairs and issues. This depends on the seriousness of the revelation. Unlike an issue, during an affair, there is little room for discussion because the main players are highly criticized. Oftentimes there is also a shared disapproval visible in public opinion. In contrast, when it concerns a scandal there is true societal indignation. The offences or the crossings of norms have heavy consequences for the main players as well as others who are engaged. In his article *Van de Greet Hofmans-affaire tot Margarita-gate* (2007), Historian Huub Wijfjes contextualizes the scandals surrounding the Dutch Royal Family and places them within the changing of the journalistic culture. He compares the relationship between the press and the Royal Family during the last fifty years. He concludes that the distant behaviour of the journalists during the pillarized, i.e. socio-religiously

compartmentalized 50s is completely different from the assertive role that the press was taking in the beginning of the 21st century. According to him, the serious press has taken over many elements from the popular scandal press, while at the same time a political culture has developed in which there is much more interest in scandals surrounding people that appear in the public sphere (Wijfjes, 2007).

8.4 Method

Baldwin van Gorp (2006) assumes that there are a number of ways in which framing can be researched. A couple of researchers choose a qualitative approach, which puts the focus on the interpretation of the data and the frame analyst is supposed to conduct his research with an open mind. It is also possible to perform a quantitative research. According to this approach, the emphasis lies on the classification of data. This research only makes use of the qualitative approach. Moreover, there are two methods that can be employed in order to determine frames in media texts. The inductive method entails that the researcher performs a textual analysis and consequently creates frames according to the findings. This is thus a rather open approach. Issue-specific frames are often employed within this method. These frames focus on a certain topic, which naturally complicates possibilities to generalize (De Vreese, 2003). In the deductive method, the researcher looks for diverse and already existent frames, which are also called generic frames (Van Gorp, 2006). Advantages of this method are its good external validity as well as the fact that this method lends itself for cross-national research. This research conducts a qualitative, inductive content analysis in order to construe a number of dominant frames in the news articles. Since the analysis concerns the Dutch Royal Family and currently no other findings in this area are known it is necessary to work with an open mind.

8.4.1 Corpus

Before the analysis is conducted it is important to highlight the nature of the material. During a qualitative content analysis, it is necessary to collect texts based on strategic grounds because the intention is to gain insights in the frames that dominate a certain debate. Forty news articles from *de Volkskrant* and *Trouw* were selected based on six issues surrounding the transparency of the Royal Family and which occurred between 2000 and 2015. *Trouw* and *de Volkskrant* have been chosen because both newspapers, besides the tabloid press, have become involved in publishing news articles about the Royal Family. During a number of affairs both newspapers have focused on the responsibilities and the possible failures of the government (Wijffjes, 2007). Both *Trouw* and *de Volkskrant* mainly focus on the political side of the monarchy (Mooij, 2001). In the first pool 200 articles have been collected about the following issues: the issues surrounding Mabel Wisse Smit (2003), Margarita (2003), Zorreguieta (2000), former Crown Prince Willem-Alexander's holiday home (2009), the holiday home in Greece (2014) and the budget of the Royal Family (2014). In the second pool, these articles have been reselected with the help of the following key words: open(ness), publicity, criticism, privacy and secrecy. In the first graph, the keywords on which the empirical research is based are presented

Intrinsic value(s)	Instrumental value(s)	Non-transparency
Secrecy	Costs and benefits	Myth and enchantment
Disenchantment	The division between private and public	The division between private and public
Modernisation	Accountability	Vulnerability (of the institution)
Cynicism	Symbolic power	Symbolism and culture
Criticism		
Open society		

Graph 1: Key words empirical research

This selection resulted in forty articles that are supposed to provide insight into the way in which both newspapers have framed the debate surrounding a more transparent Royal Family. The sources have been selected within a period of fifteen years. Firstly, this timeframe offers the possibility to provide insights in the frames which have dominated the debate for a relatively long period. Another guiding aspect for the choice of the timeframe was the possibility to obtain the sources. Both de Volkskrant and Trouw have a digital newspaper archive that only contains articles that are no older than the year 2000. The last and most important reason, however, was the increased attention for the Royal Family in the written press since the year 2000. The political and public noise surrounding the Mabel Wisse Smit affair (2003) and the accession of Maxima Zorreguieta (2000) is the starting point from which this framing analysis about the "quest for a more transparent Royal Family" departs.

8.4.2 The operationalization of the frames

In order to operationalize a frame, the frame analyst needs to be aware of the structures of a particular news article. Gerald Kosicki (1993) differentiates between five structural dimensions which serve as means to frame in the media discourse. The first structure is the syntactical

structure. This refers to the typical structure of the news article. The relationship between the syntactical elements is hierarchical and the heading and the picture are often considered as the most important parts. Even the layout of the text can lead to the devices. The syntactical dimension of a news article crosses other dimensions and serves as a supporting framework for the whole. The script structure refers to the narrative of the news articles. Here, one has to think about the structure of the plot, the standpoint of the narrative and the characters. By indicating which standpoints and characters the journalist represents, the coding process becomes much easier and the moral judgement can be identified faster. The rhetorical structure is perhaps the most important dimension during the coding process. This includes rhetorical devices which have been used in a news article in order to paint pictures for the reader. These are similar to the ten framing devices: metaphors, expressions, examples, descriptions, visual imagery, lexical choices, numbers, symbols, stereotypes and sources. The thematic structure refers to the issue, the theme and the point of view of a news article. It is the intention to link these elements together with the parts of the other structures to the media communicative messages which form the frame. Concretely, this means that the framing devices and the reasoning devices are being mapped out (Van Gorp, 2006).

8.4.3 The analysis of the data

During a qualitative inductive content analysis the coding process, according to Baldwin Van Gorp, takes place in three steps: open coding, axial coding and finally selective coding. During open coding the news articles need to be opened by dividing them into different elements. These elements can then later be compared. It is the intention to systematically go through all collected texts and to create an inventory of the textual elements that could relate to the subject of this research, the

transparency of the Royal Family, and to apply codes to these elements. Here, it concerns choice of words, metaphors, stereotypes, slogans or examples. In the second phase of the coding process, namely axial coding, textual imagery is used. Dimensions that refer to categories from the open coding are allocated around an axis. Commonalities and contrasts between these categories can eventually lead to overarching ideas. Thus, step by step an ever greater distance is created from the primary texts in order to reach a certain level of abstraction. Moreover, it is important to devote attention to reasoning devices: different definitions of the situation, the pinpointing of the causes, the responsibility and solutions and moral statement with regard to the studies thematic. Finally, one has to search for clusters in the devices and has to select the codes which represent best the idea within the collection. The findings, which appear during the open and axial coding, are being rid of further ballast during selective coding. In order to execute this step the coded data has to be transformed into a matrix with the rows indicating the different frames and the columns indicating the devices. In the first instance, this qualitative matrix can be filled out per column. This enables one to look for logical combinations across columns. A guiding line, however, is that the link in the chain needs to be useful. The final goal is to end up with a limited number of frame collections which are mutually exclusive (Van Gorp, 2006).

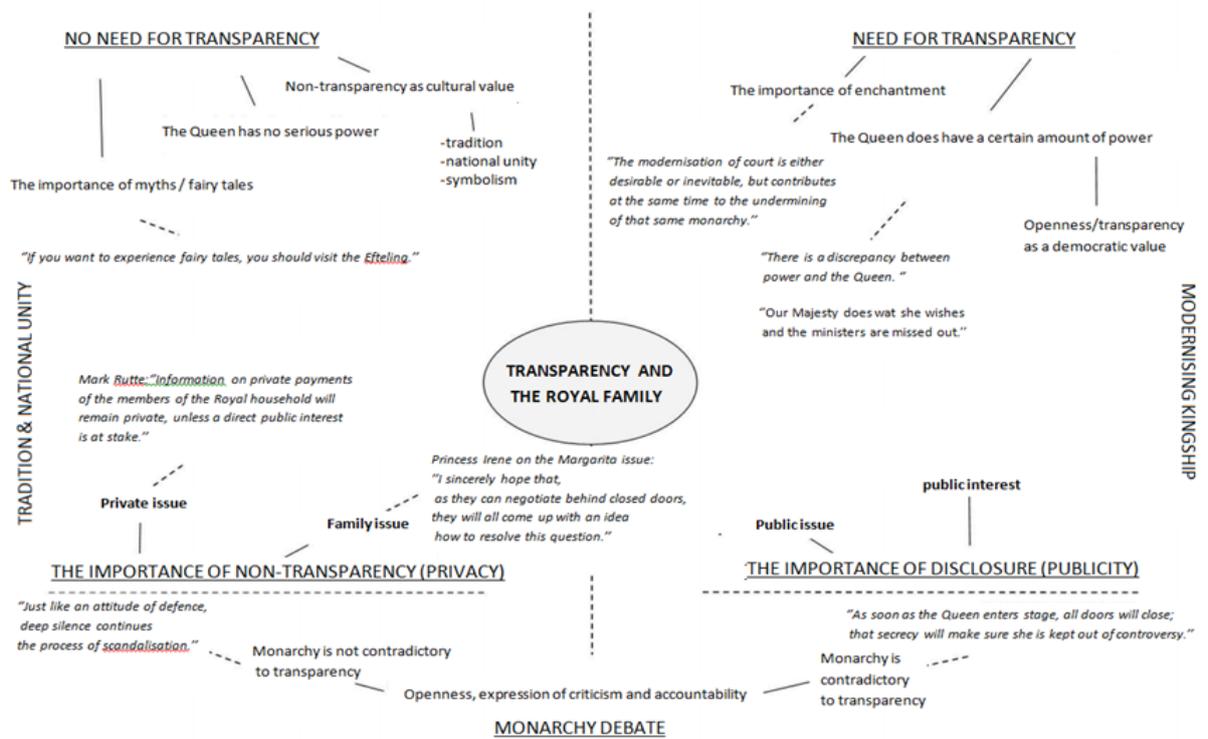
8.5 Empirical data

8.5.1 The coding process

The selected news articles have been systematically analysed by identifying framing and reasoning devices. Firstly, articles have been categorized according to Baldwin van Gorp's dimensions during the open coding phase. The dimensions have been compared and contrasted in

order to find commonalities and differences. Consequently, those textual elements that had to do with the quest for transparency have been coded. Coding is based on the choice of words, metaphors, stereotypes and examples.

Open coding is followed by axial coding (Graph 2). The allocated codes from the open coding phase have been placed in a diagram, which expresses the most striking elements of the various texts. Furthermore, the large amount of data is reduced to a small number of codes. The diagram shows that most attention was dedicated to the line between public and private. Almost every article dealt, either implicitly or explicitly, with this issue. Another overarching issue was the debate about the modernization of the Royal Family as an institution. Finally, the monarchy debate also receives quite some attention. A couple of news articles relate the quest for transparency to the question of whether or not the Netherlands should become a Republic. Moreover, it was questioned whether or not it is necessary to have a monarchy debate and whether or not this debate should have a high priority. By means of axial coding, the dimensions have been coupled to the overarching ideas. This way it is shown in which manner the cognitive graphs, employed by the journalists, are related to the subject that is described by the news article in question.



Graph 2: Axial coding

8.5.2 Frame matrix and frame bundles

After the axial encoding, a matrix has been made in which the rows form the logical clusters of framing and reasoning devices which can be assigned to the same frame. Subsequently, the data transform into frame bundles. Each column summarizes the diversity of one framing characteristic. What is left to do is to discover the logical combinations between the columns. There are three story lines which represent the meta-communicative messages that eventually form the final frames. The first story line emphasizes a conservative approach for which the values of privacy, tradition and culture are important. The logical line clearly visible in the second frame bundle focuses on transparency as an intrinsic value. An open attitude of the Royal Family is considered necessary for the institute to continue existing. The last story element represents a whole different sentiment. The question to what extent the Royal Family needs to adopt an open attitude is connected to the debate about the monarchy on the issue of preference for a monarchy or a republic as a state form in the Netherlands. The underlying message in this story simultaneously emphasizes the banality of the discussion; there are more important issues on the societal agenda and therefore, the discussion about the monarchy is not assigned a very high priority.

8.5.3 The reconstructed frames

The first frame which is reconstructed from the analysis is the "maintenance of the status quo is untenable-frame". In this frame "an open attitude" is considered necessary for the institute to survive. No exception will be made for the Royal Family, regardless of the special position they have in constitutional law. Simultaneously there is opposition to the status quo in the form of arguments that maintain the dignity of the Royal Family and the monarchy and regard "openness" and transparency as a threat for the institute. From the perspective of this frame, one argues from the thought that the citizen has a right to know

about what happens behind the closed doors of the Royal Family, regardless of the fact that they do not play an influential political role in the Dutch society. Another element which is characteristic of the same frame considers the fact that the citizen cannot have knowledge about the amount of influence the King and other members of the Royal family in reality have. Transparency is also considered as necessary for this issue. In graph 3 the used reasoning devices for this frame are presented.

"Maintenance of the status quo is untenable"			
<i>Problem statement</i>	<i>Role of the Royal family</i>	<i>Origin of the problem</i>	<i>Responsibility</i>
I The royal family does not amount to the contemporary norms of transparency	The Royal family should act in accordance with the zeitgeist and adopt itself continuously to the changing societal norms and values	From institutions, organizations and politics transparency is expected. The Royal family cannot escape this demand.	Politics and the Prime Minister especially. Also the media bear the responsibility to give insight into the circumstances of the Royal family. The task assignment for the media, has changed since the Lockheed-affair.
II We have no clue to which extent the power (authority) of the King and the members of Royal family is influential.	Between the king and power there is a discrepancy. Wisdom and power do not bear with each other.	The monarchy is currently being inspected. The closed attitude of the institute, does not fit to an open, democratic society	
<i>Solution</i>	<i>Moral foundation</i>	<i>Emotional foundation</i>	<i>Cultural motive</i>
I The Royal family should be critically evaluated to the democratic standards of the society, just as any other institute.	Arguing from the "Every citizen has the right to know about what happens behind the closed doors of the Royal family as institution"-argument	mistrust, cynicism	Openness as a democratic value
II By assigning the Royal family and the king a mere ceremonial task, the transparency-issue seizes to be applicable.	What does and does not belong to the public interest, is neither to be entrusted to the Royal family or the responsible Prime Minister.		Modernization

Graph 3: Reasoning devices "Maintenance of the status quo is untenable"-frame.

In an article by Anet Bleich, published in de Volkskrant on the 4th of April in 2001, the way in which the former Prime Minister Wim Kok handled some important issues surrounding the Royal Family is being discussed. The selection of the article considers the turmoil about the

entrance of Maxima Zorreguieta to the Royal family. In a cynical tone Bleich states that the Prime Minister acted well. Maxima's charm would have been used to soothe the nation's unrest. Quote: "The only thing to say about the acting of Kok is, just as was the case with Drees at the time, this strange radio silence, which fits more to a duel between regent and monarch than to a modern, open democracy" (Bleich, 2001, translated from Dutch). The important elements within this quotation are the concepts of "radio silence" and "modern, open democracy". The demand for openness is perceived as modern in this frame, in the sense that it fits with the current societal norms of transparency.

The "open democracy" is being opposed to the closed attitude considering the Royal family in this quotation. In another article from de Volkskrant from the 13th of October in 2003, emphasis is put on the relation between the media and persons with a public function. This article was written as a result of the affair Mabel Wisse Smit. The frame that becomes clear here is about the necessity of openness of the members of the Royal family considering issues that are important for the formation of public opinion, especially before the media get informed about the issue. Quotation: "Who tries to shield one's private life in a spastic reflex, awaits a difficult time in public functions" (Korsten, 2003, translation from Dutch). This quotation emphasizes how the separation between the public and private sphere are diffuse in a time where the media landscape changes. The frame is also characterized by several cultural motives, such as values and stereotypes.

In graph 4 the framing devices which belong to this frame are presented. The emotional value of cynicism and distrust is a special element within this frame. A critical stance is being taken here with regard to the tradition and the status quo. The Royal family is being characterized with metaphors like "a medieval institute". These kind of statements show the importance of the Royal family to adapt to the current societal norms of transparency. "Taboo" refers to the fact that a

critical, cynical and mistrusting attitude for a more "open" institute is being dismissed by the supporters of the status quo.

"Maintenance of the status quo is untenable"	
Metaphor/stereotype	Lexical choices
I	doors stay closed, shoving things under the rug
II	The seduction of power asks for opposition. To empty the Royal cesspool.

Graph 4: Framing devices for the "maintenance of the status quo is untenable-frame".

The second dominant frame which is reconstructed from the news concerns the "argument of untouchable value(s)-frame". The demand for transparency is being opposed to the absolute values of privacy and closedness. "Enchantment", myths and cultural values have to be cherished within this frame. Mistrust towards institutions of the state are not being correlated with a "modern", critical stance, as was the case in the previous frame. Moreover, mistrust is a destructive element where both politics, as well as other organizations, suffer from. The "populism" would not only encourage mistrust but could even result in disintegration. In this frame, the advantages and disadvantages are considered, whereby the disadvantages do not only relate to the price tag of the Royal family, but also to the lack of openness and transparency. The advantages, however, are untouchable and incalculable values presented by the Royal family. Culture, tradition and unity should be cherished in times of increasing populism and disenchantment, according to this frame. The used reasoning devices for this frame are shown in graph 5.

"Argument of untouchable value(s)"			
<i>Problem statement</i>	<i>Role of the Royal family</i>	<i>Origin of the problem</i>	<i>Responsibility</i>
I Touchable values are perceived as more important than "untouchable" values. The Royal family's main functions are situated on a cultural level.	is of "untouchable" value for the Dutch society. Symbolical value; national unity and tradition.	The Royal family encounters increased difficulty in acting out its role, when the contemporary media landscape does not express appreciation for cultural values of unity, symbolism and tradition.	...is for the media and notable people who share their opinions publicly who strive for further disenchantment of the society
II The symbolical function and mystical value are lost by allowing more "openness". Openness has a dark side too; an unbalanced idea of the Royal family. Pros and cons have to be balanced out.		The urbanization and modernization contribute to an undervaluation of the monarchy. The king should be above the political sphere and the "closed doors" should protect the king of getting involved in controversies.	
<i>Solution</i>	<i>Moral foundation</i>	<i>Emotional foundation</i>	<i>Cultural motive</i>
I The Royal family is being exposed to too much voyeurism in the current media landscape.	Arguing from "the importance of a strict separation between private and public"-argument		Mysticism and connection are values which are just as important as other rational arguments for or against the Royal family
II The transparency issue does not have a practical, useful goal for the Royal family with their mere symbolical role. Royalty reporting done as gutter journalism; media spectacle		belief in "something higher", something untouchable	Values as closedness, privacy

Graph 5: Reasoning devices for the "argument of untouchable value(s)-frame".

In an article in Trouw from the 10th of October in 2009, the affairs surrounding the Royal family are being related to the changes in the *communis opinio*. The "unnecessary" media turmoil which occurs during times of insecurity, like the economic crisis, results in the monarchy being used as the scapegoat. In this frame "populism" is said to bring unjust damage to the people involved in the Royal family. In times of prosperity, the monarchy is being accredited support of the societal and the political sphere. Quotation: "In times of insecurity, the monarchy is thankfully used as the scapegoat" (Goslinga, 2009, translation from Dutch). In an article from de Volkskrant from the 15th of October 2005, considering the affair between Margarita and Edwin de Roy van Zuydewijn, the element of

strict separation between public and private is emphasized. Quotation: "It is self-evident that there have been conversations within the family circle about the information" (Dijkstra, 2005, translation from Dutch). In this article, a private character is assigned to the Margarita affair. The Prime Minister is the only person who can judge about the strict separation between the private sphere and the public interest.

Besides, it is interesting to note that the frame experiences the separation as "strict" rather than "diffuse". The article *Disenchanted* from de Volkskrant on the 9th of February, 2004 emphasizes mythologization and enchantment (Dijkstra, 2005). The article questions whether it is desirable or even necessary to know everything about the Royal family. The symbolical character of unity and connectivity can only continue to exist when the importance of the myths in society are being acknowledged. Quotation: "If we do not want to abolish mythology, it has to stay that way" (Blokker, 2009, translated from Dutch). This frame is also characterized by several cultural motives, such as values and stereotypes. Tradition and culture are being perceived as important, untouchable and not always rational elements of our culture.

"Argument of untouchable value(s)"	
Metaphor/stereotype	Lexical choices
I Monarchy as the scapegoat/ transparency has a disintegrating effect	The reporting on the Royal family is "gutter journalism"; media hungry for drama
II	The state household is no pure, unspoiled construction

Graph 6: Framing devices for the "argument of untouchable value(s)-frame"

The "it is not of life importance-frame" is the third and last frame. The train of thought for this frame can be summarized as that it does not

make any sense or does not serve any goal to discuss the transparency of the Royal family. The underlying reason for this perspective lies in the fact that the monarchy does not consist of more than "a crown on top of the republic". The king and other members of the Royal family have given away a lot of their initial control over the years. It is merely the symbolism that accredits the institute dignity and a right to exist. The transparency issue is thus not relevant in this frame. Another outstanding element of this frame concerns the way it raises the point of the "monarchy debate". The debate about the monarchy considers the question whether it is either a monarchy or a republic that is desirable for the Netherlands. By correlating the transparency issue with this debate, the focus shifts to a different kind of discussion. At the same time, the monarchy debate, as well as the transparency issue, are being considered as useless and therefore put aside. This is a two-step model in which the focus on the debate on openness and transparency gradually disappears. The used reasoning devices for this frame are presented in graph 7.

"It is not of life importance"			
<i>Problem statement</i>	<i>Role of the Royal family</i>	<i>Origin of the problem</i>	<i>Responsibility</i>
<p>I The monarchy debate and the transparency-issue are of no importance. Moreover the debate is problematically polarized, increased by the issue of populism and political opportunism</p> <hr/> <p>II The combination of populism and a focus on so-called misbehaviour nourishes the mistrust. It is remarkable that the conjunctural movements in the debate do not seldom coincide with personal affairs and circumstances which are fostered by the media.</p>	<p>The Royal family is a mere crown on top of the republic (symbolical value). The king does not have much political influence; moreover, there are more important issues on the contemporary political agenda.</p>	<p>The transparency issue is not highly important on the political agenda. The Royal family is still very popular among the Dutch citizens. There are more important issues. Characteristic for the absence of an intellectual debate about the monarchy, is the fact that the monarchists do not feel responsible to legitimate the constitutional reality with the right arguments because of the popularity of the Royal family. Their opponents however completely disregard the "democratic legitimacy" of the monarchy. They are bothered by the majority of 'supporters of the Royal family, whom they regard as simple or misguided souls, and observe a confirmation of their being right in any riot involving the Royal family. .</p>	<p>is with the notable people who express their opinions publicly and the political decision-makers. The debate about the monarchy is highly polarized and influenced by populism and political opportunism.</p>
<i>Solution</i>	<i>Moral foundation</i>	<i>Emotional foundation</i>	<i>Cultural motive</i>
<p>I As long as the King does not have influential political power and the Dutch citizens support the Royal family, there is no reason to issue the debate about the monarchy and the transparency question.</p>	<p>Arguing from the "the Royal family is nothing more than a crown on top of the republic" - argument</p>	<p>relativism, downplaying: "there are more important issues on the political agenda"</p>	<p>The Royal family has been upholding itself for over 200 years against Republican sentiments. As long as the citizens do not protest, a serious debate is not necessary.</p>

Graph 7: Reasoning devices for the "it is not of life importance-frame".

The most frequently used metaphors, stereotypes and cultural values which are connected to this frame are clarified in graph 8. The emotional basis which lies at the root of this use of metaphors etc., has to do with a feeling of "relativism" and "downplaying".

"Maintenance of the status quo is untenable"	
Metaphor/stereotype	Lexical choices
<p>I Crown on top of the republic, long tradition of "orangism", cultural heritage.</p>	<p>"The king does not possess more power than the politicians allow him"</p>

Graph 8: Framing devices for the "it is not of life importance-frame".

8.5.4 Differences between the frames

The three reconstructed frames exclude each other. The motives which are included in the frames can best be coined in the terms of progressive, conservative and pragmatic. The "maintenance of the status quo is untenable-frame" represents progressive thinking. In this frame, the "truthful government", "democracy" and "progress" are central notions. The idea that the citizen has a right to know what happens backstage connects to the idea of an open and honest government. The open attitude that the Royal family has to develop is being correlated with the open, democratic society. The most important element consists of the idea of progress, which is expressed in the idea that the Royal family "cannot stay behind". Transparency here is being seen as an important phenomenon which serves for the manufacturability of the society. In several articles, the explicit call for "modernization" comes to the fore. The "argument of untouchable value(s)-frame" connects most to a conservative attitude. This attitude is characterized by "respect for the notions that should be cherished, especially in a modern society". The Royal family is being perceived as vulnerable because of the contemporary media landscape and should, therefore, be protected in times of populism. Cultural motives such as tradition and dignity are also highly valued within this frame. Another important idea concerns the aversion towards continuous innovation and progress as a goal in itself. The emotional basis of this frame rests on the protection of the Royal family as cultural heritage. In that sense, the frame strongly contrasts with the "maintenance of the status quo is untenable-frame". The "it is not of life importance-frame" has an underlying pragmatic approach. What is perceived as problematic is related to the "practical means of application". Especially the assumption that the monarchy has a mere symbolical function is not a reason to not change anything on a political level. The transparency issue does not have a practical, useful goal for the Royal family with their mere symbolical role. In other words, not much

will change in practice. The actual goal of this frame is to avoid any clarification of responsibilities or finding a solution.

8.6 Conclusions

This chapter asked which frames are perceivable in the Dutch newspapers *de Volkskrant* and *Trouw* considering the issue of transparency in the news about the Dutch Royal Family. Three dominant frames were reconstructed with the help of the research data, all of which guided the transparency debate in a certain direction. Before the process of decoding, there were no clear arguments in the texts perceivable which explicitly asked for more or less transparency. Even more, the content of the articles focused mostly on the description of the process of the six mentioned issues considering the Dutch Royal Family. Through the systematic process of continuous comparison, it shows that the affairs and issues really form the debate of transparency, albeit in an implicit manner. There are several cultural motives which lie at the root of this mechanism.

Firstly, the maintenance of the status quo shows how transparency should be considered as an unlimited, intrinsic value. Also, the idea of progress and manufacturability form an underlying thought which are determining for the way in which the news comes into being. The kingship and the institute should adapt themselves continuously to the current societal discourse; the unclear separation between the public and private sphere does not change this. The "argument of untouchable value(s)-frame" has a whole different overtone. Within this frame, the Royal Family is seen as one of the few still existing institutions that represent untouchable values of unity, tradition and connection. Even though the two first frames exclude one another and seem to contrast each other sharply, they do share the idea that both transparency and non-transparency are values in themselves. Both frames represent the

extremes of the transparency debate, albeit in an opposed manner. The "it is not of life importance-frame" is the most striking of all the frames. This frame is not characterized by an absolute value, but rather by "pragmatic" and possibly also "opportunistic" attitudes. In this frame, the circumstances are more important than the principles. The Royal Family only receives mere symbolical value as well as the debate surrounding the demand for more transparency. The research question was limited to the mere reconstruction of the frames. The results which appeared determine the reach of the debate to a certain extent. However, about the input of the debate on a larger scale no conclusions can be made on the basis of this chapter alone. Further analysis of the frames on the side of the receiver can offer more clarification. The public opinion simply consists of a combination of the news spread by the media and the individual interpretation of the public.

9 Transparency in care: how can public quality reporting help to empower patients? – Viktor Werner

9.1 Introduction

The central question in this study is whether enhanced transparency allows an increase in the specific knowledge of one particular group and thereby boosts its power. The new knowledge examined in this case study is the access to public quality reporting (PQR) data by Dutch patients confronted with difficult care choices. PQR describes the practice whereby the information that hospitals collect for their internal quality reporting, is made public.

I would like to highlight that the process of making this information public can be regarded as a form of "transparency inward", another central theme of this volume. In my case the inward transparency consists of providing patients with new insights into the quite complex and therefore often in-transparent institution hospital. For a long time hospitals have been collecting data on the quality of their care in order to monitor the performance of their departments (Faber et al., 2009). After the 2001 "landmark report" from the American Institute of Medicine (IOM) policy-makers all over the world wished to increase the transparency of health care systems for patients (Kurtzman & Jennings, 2008, p.349), so that patients could judge the quality of care in hospitals (Faber et al., 2009). This led to the creation of multiple PQR initiatives. However, as patients were reluctant to use them, they remained rather unsuccessful (Faber et al., 2009).

Starting from the observation that PQR incentives have proven so unsuccessful, the main question of this contribution is how (elective surgery) patients can be encouraged to use public reporting systems to take informed hospital choices. Elective surgery in the medical realm

means that the undertaken medical intervention is not performed in a state of emergency and is planned in advance. This project utilizes "targeted transparency" as a lens to review the functioning of PQR systems in a single case study. I pay particular attention to the challenges patients in the Netherlands face when deciding on a hospital to undergo elective surgery. Understanding the current shortcomings is essential before discussing why more targeted transparency is necessary to empower patients to make active care choices. My main research question, therefore, can also be worded differently: which issues make patients reluctant to use public quality reporting data when choosing a hospital for elective surgery? These issues are apparently not a negligible factor, since patients though valuing the provision of PQR data, frequently refrain from using it (Ketelaar et al., 2014; Magee, Davis & Coulter, 2003). Scholars refer to this as the choice-choosing paradox.

The academic importance of this study is twofold. Firstly, it increases our understanding of the reasons why a considerable choice-choosing paradox persists in the Netherlands. Secondly, on a more conceptual level, it aims to avoid the common oversimplification of transparency in medical care. The current practice all too often equates transparency with providing more information, which is believed to lead automatically to better care choices. However, is not necessarily (targeted) transparency. Two theoretical aspects are important in this respect. Firstly, people are in need of information to take optimal decisions (Bessire, 2005), but the information is only useful (in other words, becomes targeted transparency) when it truly helps individuals to act. Secondly, this form of transparency can effectively change the relationship between doctors and patients, and thereby help decreasing existing power asymmetries (Bessire, 2005).

The societal relevance of this study has three main dimensions. Firstly, if public reporting schemes become widely used, they could increase societal welfare. They promise to increase active consumer

choice, which pressures hospitals to strive for higher output quality, which in turn could increase patient satisfaction and safety (Audet et al., 2008). Furthermore, patient satisfaction is markedly higher when doctors are taking care decisions jointly with their patient rather than acting in an authoritarian way (Ong et al, 1995). PQR information could help to make such shared decision-making easier. This in turn could help to reverse the trend of doctors' alienation from their patients, which Shorter (1991) has identified. Secondly, the unintended consequences of the underlying principal agent dilemma could be reduced if patients were empowered with data on the quality of care to make informed care choices. Thirdly, governments invested heavily on PQR schemes and returns have been marginal (Victoor et al., 2012). Understanding and avoiding the persistent difficulties are the keys to unlocking the desired returns on investment.

9.2 Introducing the Dutch PQR Scheme

This section provides background on the Dutch PQR system to familiarize the reader with the case study. In the Dutch context scholars speak of comparative performance information (CPI) given to patients. The availability of CPI data has been greatly enhanced through the Healthcare Market Regulation Act (HMRA) in 2006. This law requires hospitals to provide the necessary data to feed healthcare quality databanks (Ketelaar et al., 2014). The data includes patient conditions related to structure, process, and patient outcomes, and is monitored by the "Nederlandse Zorgautoriteit" (NZa, translated as Netherlands Health Care Authority) (Maarse & Paulus, 2011).

The three concepts (structure, process, and patient outcomes) are part of Donabedian's long established framework to measure the quality of care (Wong, 2002). Care structure refers to basic information on the configuration of a hospital (for instance ratio of doctors per patient). The term process refers to provision of information on the type of treatments

or surgery offered to patients with a specific disposition. Outcome is concerned with what happens to a patient. This can be the occurrence of complications in form of infections. Or it can also concern data on the patient's satisfaction with the hospital (Raleigh & Foot, 2010). The information on structure, process and outcomes in Dutch hospitals is used by external actors to create a ranking of all Dutch hospitals, which are publicly accessible on the internet (Ketelaar et al., 2014). Taking an active choice is facilitated by the fact that most Dutch citizens live in proximity to several hospitals (Centraal Bureau voor de Statistiek, 2014). Two additional factors that often influence the hospital choice of Dutch patients should be mentioned. Firstly, that General Practitioners (GP) are functioning as gatekeepers for care and second that health insurers are required to cover a patient's full hospital cost (Enthoven & van de Ven, 2007).

The main instrument for the implementation of the HMRA are public and private websites aimed at informing patients, as for instance kiesBeter.nl or Independer.nl (Dixon, Robertson & Bal, 2010). Before 2006 comparative quality data was scarce. In the past GPs mostly advised their patients to opt for the hospital they had the closest ties with (Dixon, Robertson & Bal, 2010). Today, the role of GPs is different, as they are meant to empower patients to choose health-care providers according to their quality (Berg et al., 2005) and degree of need satisfaction (Maarse & Paulus, 2011). Empowerment is accomplished when patients do not only actively choose a hospital, but also make this choice based on all necessary information. The term "necessary information" refers to the amount of information enabling patients to take an as rational decision as possible.⁷

⁷ I use the concept of *bounded rationality*, it entails that "even in the presence of seemingly objective information, individuals are prone to a host of cognitive distortion" that leads them to take decisions which are different from what could be expected in a "world of perfect rationality" (Fung, Graham & Weil, 2007, p.33). Therefore empowerment of patients is referring to enabling patients to take *bounded rational* decisions.

9.3 Methodology

The literature on patient choice shows that the persistence of so called "care-path dependency" in many cases means that patients see no opportunity and/or necessity to take an active hospital choice (Victoor et al., 2014)⁸. Ketelaar et al. (2014) introduced an elegant way to surpass the limiting effects of care-path dependency by focusing on elective surgery, since in this case patients are strongly incentivized to take an active choice. This insight of Ketelaar and colleagues was gratefully incorporated into this paper. Therefore, it was decided to focus on PQR information handed to patients undergoing elective surgical intervention.

Gaining insight into the current difficulties of the PQR systems is important to answer the research question. It needs to be asked in what way patients are deterred from actively choosing a hospital, before substantial changes to current systems can be made. In the literature review five countries with highly developed PQR schemes have been identified. The choice for the Netherlands is motivated by three main considerations: Firstly, in the United States, no nationwide PQR scheme exists, and patient choice is often limited through issues with health insurers that have special arrangements with particular hospitals (Audet et al., 2008). Secondly, Canada and Australia have been excluded as both nations are sparsely populated, which often disables active hospital choices (Morris & Zelmer, 2005; O'Connor et al., 2007). Thirdly, the UK has a PQR system that was created in reaction to a medical scandal. The extension of the PQR regime to the entire National Healthcare System (NHS) was only justifiable by policy-makers under the pretext of inducing cost efficiency and waiting time reduction gains through more active

⁸Care-path dependency entails that normally patients remain with the same set of doctors, and do not reconsider their choice once new conditions emerge (Victoor et al., 2014).

patients' choice. Patient empowerment, in other words, was not the focus in the UK (Dixon, Robertson & Bal, 2010).

9.4 Gaps in Existing Research

This section provides a short overview of issues around PQR that have been discussed in previous studies. Thereafter, I explain how this study, by adopting a new perspective on PQR, contributes to the existing literature. So far a number of studies have been concerned with the underlying motivations behind PQR schemes and possible benefits (Duke et al., 2014; Raleigh & Foot, 2010; Colmers, 2007; Fotaki et al., 2008). Additionally, many scholars have described promising ways to design highly functional PQR systems (Chen et al., 2014; Morris & Zelmer, 2005; Faber et al., 2009; Tu & Lauer, 2009). In general (regardless of country) scholars regularly pointed towards the three counts on which PQR schemes are held accountable on: improved quality of care (Marshall & McLoughlin, 2010; Colmers, 2007; Vrangbaek et al., 2012; Kroneman, Maarse, & Van der Zee, 2006; Fung et al., 2008), higher cost efficiency (Ikkersheim & Koolman, 2012; Vrangbaek et al., 2012; Dixon, Robertson & Bal, 2010; Rademakers et al., 2014; Robertson & Burge, 2011) and empowerment of patients (Magee, Davis & Coulter, 2003; Fasolo et al., 2010; Victoor et al., 2012). Although positive side-effects of PQR systems have been discussed, too little attention was given to the empowerment of patients. In contrast to most previous studies, this study focuses on possibilities to empower patients to take active choices, in particular by bringing in the concept of targeted transparency taken from Fung, Graham & Weil's book "Full Disclosure" (2007). Many scholars have invested a lot of time and effort into assessing whether and how patients in the Netherlands are using PQR tools with interviews (Dijis-Elsinga et al., 2010; Damman et al., 2009; de Groot et al., 2010; Marang-van de Mheen et al., 2010; Moser et al., 2010; Ketelaar et al., 2014; Victoor et al.,

2014). However, all of these contributions only provided, if at all, a discussion of their findings in the light of studies from the USA or the UK. Never were the findings of several papers on the Netherlands combined in one study, as attempted here. What is more, placing the flaws of the PQR systems under scrutiny, with targeted transparency functioning as guiding aid, qualifies us to suggest possible improvements to the functioning of PQR regimes.

9.5 Introducing Targeted Transparency to this Study

Fung, Graham & Weil (2007) differentiate between three different types of transparency policy tools. The oldest transparency tool is "right to know legislation" that became prominent in the 1960s. The second generation of transparency policy tools is "targeted transparency" which "requires disclosure of specific factual information [...] by corporations or other private organisations" (Fung, Graham & Weil, 2007, p.xiii). The third generation of transparency tools is "collaborative policies", which entail that the users' feedback on the way they would like to use disclosed data is incorporated into the government's efforts to administer factual information.

The origin of targeted transparency according to Fung, Graham & Weil (2007) lies in the breakdown of two neoclassical economic paradigms. The first was that perfect information prevails on all markets. Policy-makers became aware that information asymmetries prevail, as some groups have more information on the quality of certain products than others. Health professionals for instance possess much more knowledge about the differences in the quality of care than ordinary citizens. In such a situation the risk of moral hazard emerges. Providing additional information promises to overcome this situation. Secondly, policy-makers understood that information is not costless to acquire and not equally accessible to all individuals, therefore no completely rational

decision can exist. They realized that more information does not automatically lead to more rational choice, as floods of information can increase the cost of using information. The provision of information should, therefore, be tailored to the needs of patients so that they can embed it into their decision process. The disclosure of quality indicators could decrease information asymmetries. Thus, information users would be empowered through functioning targeted transparency regimes to take decisions that reduce societal risks and improve the quality of public services. All targeted transparency tools are believed to resolve problems through the same sequence of events summarized in the "action cycle" (Fung, Graham & Weil, 2007, p.6; Chart 1).

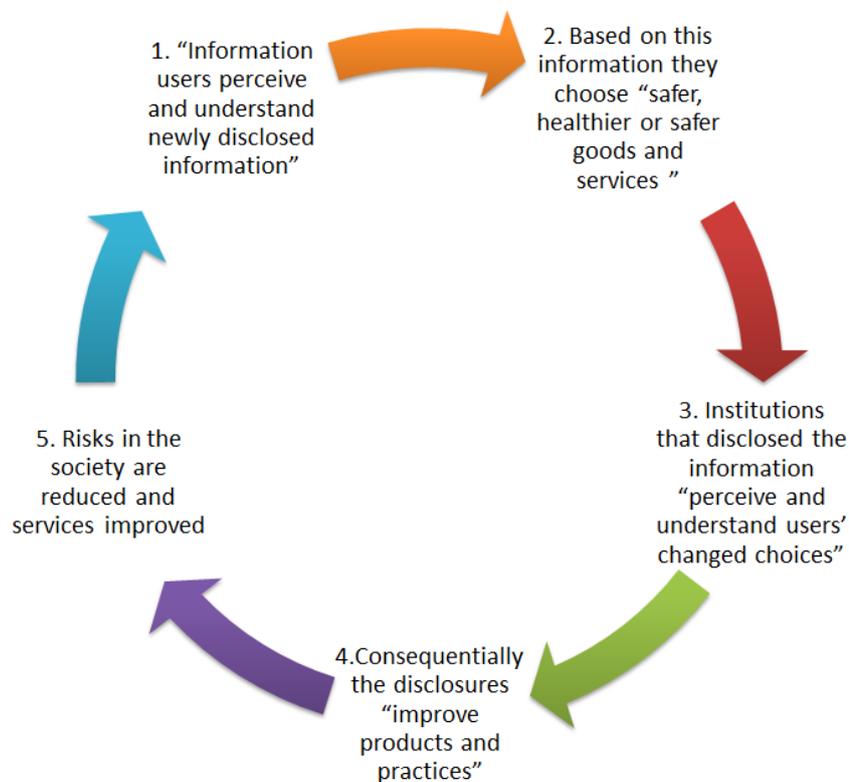


Chart 1: Displaying the "action cycle", visualisation by author.

Fung, Graham & Weil developed a framework to assess how effective targeted transparency policy has been and how identified problems can be resolved. The central question in measuring the effectiveness of the PQR regime in the Netherlands is how successful new information has been embedded into the way the intended audience takes decisions. The targeted transparency perspective offers to heighten understanding of the current flaws of the Dutch CPI system. This analysis can help to improve the current design and could allow to eventually empowering citizens.

9.6 The Dutch Experience: Problems and Challenges with Public Quality Reporting

The PQR scheme of the Netherlands has not been as effective as policy-makers originally hoped (Ketelaar et al., 2014). Recent studies find that less than 15% of elective surgery patients make use of PQR for care choices (de Groot et al., 2010; Ketelaar et al., 2014, Victoor et al., 2014). In this section I try to answer the question: Which factors or problems make patients reluctant to use public quality reporting data when choosing a hospital for elective surgery? I suggest five major reasons why elective surgery patients remain reluctant to use CPI.

Firstly, patients, choosing a certain hospital once, are inclined to choose the same hospital again. Moser et al. (2010) found that patients had chosen a hospital they knew, regardless of the quality indicators. Thus the "ultimate point of reference" for patients appears to remain the experience during previous hospital admissions (Moser et al., 2010, p.368). This in some cases stemmed from mistrust and fear of manipulation of CPI. Most often however, no concrete reason was found (ibid.). The major deterrent of using PQR is previous experiences with the local/nearest hospital (Ketelaar et al., 2014). That patients only considered the local hospital could have many other reasons than just the

previous experience. It may be relevant for some patients to remain close to their home to ease the access for calls (ibid.). Dijs-Elsinga et al. (2010) found that 40% of those patients who reported that they considered using CPI in future did not plan to actively compare hospitals. This large group of patients would like to check PQR data only after they decided on a hospital, as a means of reassurance (Dijs-Elsinga et al., 2010). Victoor et al. (2014) claim that care path dependency remains the main reason for this behavior. Many surgery patients entered a certain hospital with a condition which required no operation, due to a progression of their disease, however, are prompted to undergo surgery (ibid.). The care path dependency in these cases persists, as patients want to continue their treatment at the same hospital with the same doctors.

Secondly, a major obstacle to the success of Dutch PQR systems is that patients highly value their personal networks. The PQR only supplements other streams of information. Moser et al. (2010) found that in case of conflict patients always attach greater value to the information they receive from others. Two main groups function as the prime information sources on surgical hospital options, on the one hand GPs, on the other hand friends and relatives. GPs are consulted by 73.7% of those that desire to seek others advice on the choice they have to make (Dijs-Elsinga et al., 2010). Patients often trust the judgement of their GPs greatly and often delegate the decision as they feel that they lack the expertise to evaluate the situation and the quality indicators (Victoor et al., 2014). De Groot et al. (2011) claim that consulting the GP however cannot be seen as major reason for not using CPI. Regarding the role of relatives and friends Moser et al. (2010) found that choosing a hospital is a very personal issue, which around 1/3 of patients decide to discuss with individuals close to them. These patients attach high value to the recommendations they receive and tend to trust them more than PQR data.

Thirdly, the low awareness for the differences in the quality of care appears to be one of the most central elements when one seeks to understand why patients neglect CPI. Dijs-Elsinga et al. (2010) found that only 2.3% of interviewed patients had used information on the number of patients who had faced adverse effects, whereas after the study 38% of patients seemed willing to use this information for future choices. This could be explained by the fact that patients have to become aware of quality of care differences before they can integrate them into their decision making. Victoor et al. (2014) confirmed that patients remain inactive (70.4%) because they are unaware of differences in the quality of care. Moreover he argues that patients remain inactive as they are satisfied with the prospect being able to switching hospital if deemed necessary. The likelihood to use CPI in general increases vastly with the degree to which patients assume that quality of care differences persist (Ketelaar et al., 2014). Moreover, patients who reported that they had faced adverse effects (compared to those that did not) were most interested in using PQR data in future (Marang-van de Mheen et al., 2010). This suggests that events that make patients question the quality of care can make PQR more salient to their choice. What should be considered however is that adverse effects have been self-reported which invites problems with selection biases. For example patients who are very concerned about their care may be the ones that notice adverse effects and the ones that use CPI at the same time.

Fourthly, that the choice-choosing paradox persists in the Dutch health care sector appears to have two reasons. Firstly, Moser et al. (2010) found that among their interviewees many showed "camouflaged decision" making as they claimed to use PQR data to motivate their choice of hospital, but in reality relied on their personal experience (p.369). The discontinuity between claimed behaviour and practiced behaviour would be a consequence of the wrong perception of the patient's own decisional behaviour. This wrong perception becomes visual in the finding that $\frac{3}{4}$ of

patients who do not compare hospitals claim to have made a deliberate hospital choice (de Groot et al., 2010). Can one really speak of a deliberate choice, if the only thing people appear to have chosen deliberately was not to choose? Secondly, humans only have limited cognitive resources, and thus miss some pieces of information when taking a decision. Patients claim that a vast amount of information and factors are important for their decision process, Yet, Dammann et al. (2009), report that in the end they incorporate only fractions of those factors in their decision making process. The authors suppose that the reason for this is the build-up of the human mind which can only process 6 pieces of information at a time. Consequently, patients merely tend to scan information, as they are looking for "information they want and in the light of questions they already have in mind" (p.2).

Fifthly, the usage of aggregated scores appears to be very limited, which makes PQR websites less attractive to patients. Dijs-Elsinga et al. (2010) report that almost $\frac{1}{5}$ of patients say that they will use PQR systems if they offer one single aggregated measure that helps them to choose a hospital. *Independer.nl* uses aggregated scores in combination with star ratings whereas *kiesBeter.nl* does not. Thus, Damman et al. (2009) state that the websites should reflect the human need better to go from generic to more specific information. Because aggregated scores, with an option of a further itemized presentation of information, are most likely to be helpful to patients. Currently they are easily overwhelmed by the abundance of information on *Independer.nl* and *kiesBeter*. This can make patients reluctant to use these websites and hence neglect PQR data (Damman et al., 2009).

Next to the five points discussed above, I want to highlight three areas where one might assume that patients struggle with PQR databanks, but evidence shows that they did not. Firstly, one might suspect that patients are just not aware of the existence of CPI. This assumption was found to be incorrect as scholars report that between

60% (de Groot et al., 2011) to 89% (Ketelaar et al., 2014) know where they could find CPI. Moreover, it could be a concern that not every Dutch citizen is computer literate enough to use the provided web tools. This fear can be dismissed as very few patients reported this as the reason for not using CPI (Ketelaar et al., 2014). Such information should nevertheless be seen critical as patients may be ashamed to admit. This also applies to Moser et al.'s (2010) finding that the great majority of patients is able to understand CPI, however does not see how it should help in their decision process.

9.6.1 PQR as a Targeted Transparency Tool: Success or Failure?

In the following, I elaborate on the implications of the problems identified in section 9.6.1, for the success of the targeted transparency tool at question. Only if one understands what obstructs the effectiveness of PQR improvements can be made. According to Fung, Graham & Weil (2007), an effective transparency system requires high user-centeredness, which depends on the value potential users attach to information and their capacity to understand the disclosed information. Using Fung, Graham & Weil's (2007) concept of user-centeredness we automatically accept the assumption that patients' decisions are underlying "bounded rationality" (p. 55). Leading us to assume that in reaction to a lack of ability to take optimal decisions, individuals tend towards "good enough decisions" (p. 55). What matters for patients under this assumption is:

1. The perception that the given information has value for achieving their goal
(choosing an as good as possible hospital)
2. The information's compatibility with their decision making routines
3. The comprehensibility of the information

The first problem already emerges with perceiving the value of the information. It was found that most patients are only to a limited extent aware of the differences in care facilities. Consequently, the information provided on *Independer.nl* appears to be less relevant to patients. Moreover, the value of the disclosed information often remains low as many patients find their "ultimate point" of reference in their own experience. (Moser et al., 2010, p.386). Fung, Graham & Weil (2007) came to the same conclusion in their study. They report that the value of newly disclosed information remained low in those cases where people tend to rely on their own agency and networks for taking a decision. The authors argue that disclosed information only is used if individuals see a "substantial immediate long-term gain" (p. 56). This could explain the drastic increase Dijs-Elsinga et al. (2010) found after their interviews for the readiness to use information on adverse effects. Furthermore, the value of disclosed information also depends on the cost of attaining it. Patients are currently overwhelmed by the abundance of information on *Independer.nl* and *kiesBeter* (Damman et al., 2009), making it burdensome to attain desired information.

The choice-choosing paradox makes one question the information's value for patients. Does the paradox imply that patients greatly value the idea of receiving CPI, however, tend to not use it to actively compare hospitals? When one recalls that patients tend to look at the PQR data only for the hospital they have already chosen (Dijs-Elsinga et al., 2010), this could indicate that patients value the disclosed information not for enabling them to take an active choice, but to affirm the correctness of their choice. Using disclosed information to affirm own perceptions than helps to satisfy patients' desire for seemingly rational choice. The value of CPI tends to vary between different patient groups, as patients for example see PQR data slightly different depending on whether or not they faced adverse effects in the past (Marang-van de Mheen et al., 2010). However, all studies discussed find that the majority of patients do not

use the data although they know that it exists. Therefore, I concluded that the value of PQR data to Dutch patients remains rather low, when it comes to actively taking a hospital choice. Consequently, the goal of the targeted transparency policy remains unattained.

Secondly, the compatibility with the decision making process is another essential aspect of the effectiveness of targeted transparency policies. Embedding new factual information is only possible when it fits decision routines of patients. Fung, Graham & Weil (2007) line out that the two most important elements for compatibility are: "format and the time and place of availability". The used format is providing quality of care websites with PQR data. As discussed above we can refute the assumption that a lack of computer literacy is a major explanatory factor for the reluctance to use PQR information (Ketelaar et al., 2014). Nevertheless using the format of websites, could be problematic as patients need to make an effort to visit them. Yet it should be noted that Fung, Graham & Weil (2007) consider web based transparency tools as the most flexible, which makes it suitable to very diverse audiences. Moreover, patient's value aggregated measures (Dijks-Elsinga et al., 2010), which means that the current format of *Indepeder.nl* that provides star ratings is commendable. Fung, Graham & Weil (2007) agree that star ratings are one essential factor for the most successful transparency policies. These aggregated measures are in most cases difficult trade-offs between data complexity and simple normative description. Being transparent about possible inaccuracies, in most cases is sufficient to maintain necessary trust of users though (Fung, Graham & Weil, 2007). The majority of patients seem to trust CPI websites, because they offer precise explanations on the methods of data collection (Moser et al., 2010). These findings show that most patients trust the provided web services, which is a good prerequisite for positive developments in future.

Despite patients' acceptance of the offered web tools, the compatibility with their decision-making practice remains limited.

Consequently, patients are only theoretically empowered to make more informed care choices. In reality, patients show little awareness of quality differences in care, trust their own information sources more (family, friends or own experience), struggle with information overload on the offered web pages and often only use CPI to confirm their prejudice. Moreover, the decision making behaviour is consistent with constructed preference theory (Moser et al., 2010). The theory entails that individuals' preference are not pre-given or steady and only form during the decision process. Thus in each specific situation this process is going to evolve differently. This makes preferences difficult to predict (ibid.). Therefore, compatibility strongly varies from case to case. In conclusion this means that the compatibility between the most patient's decision path and CPI is to be considered only moderate.

Thirdly, in the discussion of the value and the compatibility of disclosed information I already touched up on those aspects relevant to the comprehension aspect (being overwhelmed with the data provided on the websites and difficulty of creating aggregated measures). In general, the insights from section 9.6.1 gives little reason to conclude that the comprehensibility is the most problematic aspect of CPI. Nevertheless, it is advisable to question to which extent patients are actually able to understand the data. Maybe the reason why many Dutch patients do not feel willing to use PQR is based on a under- or unreported fear of not being able to understand the data. Recalling that patients always desire to take the best possible decision they may avoid looking at PQR data to avoid possible confusion. They probably fear confusion as it could be linked to the feeling of not having chosen rational. Overall however, I see no reasons to suggest that the Dutch PQR data is not comprehensible. Most patients appear able to understand CPI on hospitals (Moser et al., 2010). Consequentially comprehensibility is judged to be moderate/good.

The table below summarises the discussion on the embeddedness of the PQR data.

Relevance of Information	Low [-]: Ultimate point of reference remains personal experience of the patient, his relatives or friends.
Format of Information	Moderate [~]: Some aggregated scores and more specific information. Web tools with some flexibility. Unfortunately, no alternatives offered to the website.
Timeliness of Information	Timely [+]: Updated regularly by <u>NZa</u> . Available and accessible to all patients before choosing a hospital for surgery.
Location of Information	Fully Public (Internet) [+]: Accessible to great majority in the Netherlands.
Comprehensibility of Information	Low/Moderate [~]: No major reports of comprehension difficulties, although comprehension is difficult to measure due to camouflaged decisions. Many users got lost in the amount of information.
Cost of Information Access for Users	Low/Moderate [~]: Low cost to attain data, however, considerably higher cost to process the information.
Overall User Embeddedness	Low/Moderate [~]: Problems with the value to users disable good/full embeddedness.

The difficulties in the Netherlands to embed PQR into the decision making process, keeps patients from perceiving the disclosed information and they remain reluctant to use it. This suggests that the studied targeted transparency policy is not enabling many patients to take better informed care choices. From this follows, that the action cycle is not functioning as intended. Consequently, the second stage of the action cycle is rarely reached with the current policy design. Seen from the perspective of Fung, Graham & Weil's targeted transparency model, the policy is a failure. In the word of Fung, Graham & Weil (2007): "To be effective...the information they [disclosers] provide must become an intrinsic part in the routines of users" (p.90). One cannot argue that the

newly disclosed information is anywhere near of being an intrinsic part of patient's decision strategy, when only a minority of patients is using CPI.

9.7 Improving the performance of the Dutch PQR System

In this section I develop some tentative recommendations on how the current PQR system in the Netherlands could be optimized. Three main recommendations increasing the embeddedness are presented: Firstly, changing the role GPs are playing; Secondly, finding alternative ways of distributing PQR data; Thirdly, optimizing the design of the CPI websites.

Fung, Graham & Weil (2007) claim that in situations where "users tend to underconsume disclosed data", it often is beneficial to bring in intermediaries. These intermediaries can help to disseminate and interpret the data. When it comes to the Dutch patient's decision process they all have to consult their GP before being referred to the hospital. Therefore, GPs could function as intermediaries. I show in section 9.6.1 that GPs play a key role in advising patients on their care choices. However, de Groot et al. (2010) and Victoor et al. (2014) warn that too much reliance on the GP could have a contrary effect, as many patients probably would start delegating the decision to their GP entirely. This would not lead to more but maybe even less usage of CPI. De Groot et al. (2010) propose that doctors could receive special training on helping patients to access CPI, without encouraging prejudiced decisions towards their favoured hospital. It could, however, be very difficult for GPs if they had to play two roles at a time. On the one hand they are the authority that has to decide whether or not a patient needs surgery, which means they require the patient's full trust. On the other hand they would have to encourage patients to take an active choice and refrain from extensively intervening into the patient's decision path. This could confuse patients, on the one hand they are expected to trust their GP to the fullest regarding the decision if and if yes what surgery to undergo, on the other

hand are not to entrust their GP with choosing a hospital for them. This conflict could be very problematic as it has the potential to undermine a GPs authority.

It would possibly be much more realistic to only motivate GPs to address the issue of care quality differences between hospitals in the personal consultation. As discussed above, scholars have pointed out that the lack of awareness of care differences is among the prime reasons for the neglect of CPI databanks (Ketelaar et al., 2014; de Groot, 2010; Victoor et al., 2014). A discussion between elective surgery patients and their GPs (about differences in hospitals quality of care) promises that patients may ask for certain indicators to use when choosing a hospital. This qualifies patients to approach CPI data very differently as they already have questions they wish to answer. In the context of humans tending towards merely scanning information based on pre-existing questions (Damman et al., 2009), this approach could optimize the decision path of patients. They are more likely to experience CPI databanks as valuable if they wish to see specific questions answered. Therefore, we recommend that GPs should be encouraged to address the potential differences in quality, as this offers patients to reach awareness that they have a choice to make, one with far reaching consequences. According to Fung, Graham & Weil (2007) the perceived value of information by users depends on the awareness of potential long term effects. I recommend that doctors start bringing quality of care differences onto the patient's agenda, however, should refrain from taking the choice for their patient.

Using GPs as intermediaries could also allow improvements in the relationship with their patients. In the recent past, as a consequence of increasingly high expectations from scientific medicine a fear of alienation of doctors and their patients emerged (Shorter, 1991). These high expectations poison the doctor patient relationship, and thus lead to a fear among doctors to lose control in patient interviews (Fortin et al.,

2012). Doctors could be trained to understand patient interviews more as an opportunity for "shared decision making" than an obligation of having to take the optimal choice on their own (Stiggelbout, 2012). The implementation of shared decision making will require a long time, as it requires changes to training guidelines and conflicts with socialisation of doctors, which is quite paternalistic (ibid.). Establishing shared decision making is nevertheless not utopian. We find that among doctors the most important motivation for staying on the job is "the hope of making a real difference in the patient's life" (Smith et al. 2009). Aziz (2009) argues that being fully appreciated by patients requires two things from doctors: high skills and knowledge as a professional and the ability to help the patients' decision making. Alienation appears to be the consequence of an overvaluation of the necessity of the doctor's high skills as professional. Becoming an intermediary of CPI, in contrast, could help GPs to rebalance the role they play again, so that their influence becomes truly appreciated again.

Depending on the amount of resources for a reform of the PQR regime in the Netherlands, policy-makers should assess if other intermediaries need to be established. Unfortunately, no study dealing with PQR for surgery patients addressed alternative routes than the PQR websites. We, therefore, recommend that more research is tailored towards identifying alternative routes of confronting patients with CPI.

Overall, we do not consider this the most important issue for policy-makers. The primary focus should be placed on increasing the direct value of CPI for patients. Most promising for a possible extension of the PQR regime appears to be the improvement of web services offering CPI. Four aspects could be redesigned to increase the value for surgery patients. Firstly, Moser et al. (2010) proposed that the information disclosed on the websites could be supplemented with much more information on patient outcomes that patient report themselves. The rationale behind their proposal was that patients greatly value the information they received

from others in their personal network. To them this also explains why patients trust CPI on *Independer.nl* as it also includes experience reports of other patients. Through these reports patients can extend their network to all other patients that underwent a certain surgery (Moser et al. 2010). Moser et al. seem to have overlooked two major obstacles that limit the usefulness of patient experience reports. Firstly, patients reports can become problematic if they are incomplete or even incorrect. Patients are probably not able to offer a complete account of the medical outcomes they faced. They maybe do not understand some of the complex processes within their own care path. For example a patient who experience a wound infection after surgery and remission could give negative feedback to a hospital or surgeon although the reason for the infection was not following the surgeon's instructions carefully. Secondly, Moser et al. (2010) give an ill-suited example when they argue that just as reviews on electronics help customers, patient report could as well. In contrast to the purchase of a new smartphone patient outcomes can be a very private matter. Many patients could possibly refrain from sharing their experience on delicate details of their treatment.

In defense of Moser et al.'s (2010) proposal it is worthy to note that Fung, Graham & Weil (2007) also speak out in favour of more user ratings. They report that in their experience with targeted transparency policies they clearly find that users value websites that offer opportunities for public participation. Fung, Graham & Weil (2007) argue that incorporating performance based user-ratings strengthens the trust of users. This increase in trust often allows higher embeddedness of information and hereby increases the value to users. I would nevertheless be careful with patient experience reports for the reasons discussed above. Maybe a standardized format would be most suitable, where patients fill in an experience report together with their GP.

Finally, also customizing CPI data on the quality of care websites could increase their value for patients. Fung, Graham & Weil (2007) claim

that the design process of any new web-based tool should start with "analyzing what information users want and their decision making habits" (p.134). In the case of CPI this means that it would be recommendable to incorporate the factors that influence patients' interest in specific PQR items. I recommend that information on: whether or not a patient has been in a certain hospital before, if he already underwent surgery, his personal mobility and the information on possible experiences of adverse effects in the past, are included as possible filters in the search engines of PQR websites. In the studied academic contributions, all these factors have been identified as influential on what sort of information patients desire. These changes should not be implemented without securing that they do not increase the cost of obtaining information on hospitals. An increase in the time patients use to take their decision risks decreasing the value of information. The difficulty here could be concerns over the sensitivity of the personal care history of patients. Some patients are probably not ready to share the details of their personal care history. This limits the effectiveness of offering more customized searches for CPI. Nevertheless I hold that the websites should offer two different types of search functions. Next to the regular search function, which includes zip code and disease, a more detailed search option should be included. In this more detailed search it should be possible to customize and filter information accordingly to the personal care history. The CPI webpages for such a new design approach would have to increase the protection of sensitive data handled on their websites.

9.8 Conclusion

To conclude, I argue that PQR data in the Netherlands has not been an effective targeted transparency policy tool. It can be considered unsuccessful, because CPI has failed to trigger more active patient choice. Looking for possible reasons for this outcome, I asked which problems

explain patients' reluctance to use CPI and identified five major explanatory factors: Firstly, patients see no need to use PQR data when they can rely on own experiences with a certain hospital. Secondly, patients who consult external information sources value the information of their GP or friends and relatives considerably more. Thirdly, many patients show little awareness for the differences in the quality of care, which makes them rather passive regarding hospital choice. Fourthly, patients, although claiming that many different factors are important for their choice, end up incorporating very little CPI into their decision routines and are merely scanning information. Possible reasons for this are patients' tendency towards camouflaged decisions, their personal time constraints and their limited cognitive capacities when processing information. Fifthly, currently only *Independer.nl* uses aggregated scores in combination with star ratings. This is problematic as patients desire aggregated scores for their care choices.

The targeted transparency approach helped to highlight that the embeddedness of CPI into the decision making routines remains moderate to low, which indicates that the policy is not user-centred enough. This study produced valuable insights into the persisting difficulties with embedding PQR data in patient's decision making routines. These insights allow us to formulate three tentative recommendations. Firstly, GPs could act as intermediaries for quality of care information. This can help to establish shared decision making and improve the doctor-patient relationship. I would recommend that GPs are trained to address the differences in quality of care in the patient's consultation, which would enable patients to approach CPI better prepared. Secondly, I argue that the design improvements of CPI websites promises to increase the value of this information source. Outgoing from the Constructed Preference Theory, new filter tools are advisable to allow patients to search CPI databanks more purposefully. However my advice to policy-makers is to carefully consider what implications this could have for the sensitive data

handled on PQR websites. The redesign of these web services could also include more experience reports of patients. A standardized format of experience reports that GP and patients fill out conjointly appears advisable. Thirdly, I urge policy-makers to consider alternative pathways to distribute PQR data. I do not feel to be in a position to give advice on which exact method would be most advisable. Consequently, I call for further research into the way patients are taking their care decisions, and what information format is most suitable to these patterns.

Furthermore, one needs to question some of the underlying attributes of PQR systems. This study on elective surgery patients finds that even in circumstances where care path dependencies are low, the Dutch PQR system is ineffective. The action cycle theory of Fung, Graham & Weil (2007) clearly displays how beneficial targeted transparency policies can be. However, the question should be raised in how far attaining a full embeddedness of quality of care information is achievable even when all recommendations made would be implemented. To clarify possible limits of what CPI can and cannot deliver more research is required. Personally, I have to question some of the choices made in this contribution. Choosing a single case study to answer my research question meant that the findings are not easy to generalize. Moreover, neglecting the financial dimension allowed to say more about empowerment of patients, however vastly narrowed the quantity of sources. Nevertheless, this paper made a valid contribution to literature on empowering patients. Applying the targeted transparency framework helped to display many difficulties regarding the value for patients, and how these possibly could be approached in future. Focusing on the value of the information, I believe, could make the goal -to heighten the level of active choice taking- attainable. It would be wrong, however, to expect that all patients will use PQR systems in future and benefit to the same degree. Despite all possible limitations, I am convinced that it is desirable

to make quality indicators a public resource and remain hopeful for the future.

10 Being where the people are: the EU, open government & social media – Jasmijn van der Most

10.1 Introduction

With the expansion of Internet it has become easier to disseminate information to everyone everywhere. With information, allegedly, come opportunities to empower people. Quite often, companies and institutions such as schools or hospitals willingly provide information on Internet for everyone to see and thus provide transparency for the benefit of the public (and of course also for themselves). The same development has been occurring in politics, not in the least because Western democracies are facing a number of problems that threaten their legitimacy. Citizens feel uninformed about policies, voter turnouts have declined, and there is a widespread lack of trust in government. It seems that citizens feel incapable, disinterested or unwilling to hold their government accountable for their actions, despite this being a vital part of representative democracy. Of all contemporary Western institutions the EU is perhaps the one that faces the biggest legitimacy problems, because of its supranational nature, contested powers and complex decision making procedures.

Since US President Obama launched the Open Government Initiative (OGI) in 2009, the idea gained momentum that information as well as participation and collaboration are key to empowering people and regaining accountability. This became a global project when the Open Government Partnership (OGP) was established in 2011, in which 65 countries committed themselves to implement ambitious reforms to boost openness. The EU has also made its efforts to realize a more open government. Via its website, the EU provides all sorts of information on for example recipients of EU funds, access to documents, decision-making and much more. But how can people be empowered when the information

provided does not really reach them because they barely take the effort to visit government websites or watch parliamentary debates? This paper suggests that if the people are not where the government is, perhaps government should be where the people are: on social media.

For this reason, this chapter explores the social media strategy of the EU and aims to find out how and to what extent social media contributes to open government in the EU. By means of three case studies of the use of Facebook by the European Commission (EC), European Parliament (EP) and the Council of the EU (Council) from February 2015 to April 2015, as well as three interviews with officials of the social media department of the three institutions, I hope to develop a well-grounded line of reasoning. This paper evaluates and compares each institution's Facebook strategy with the help of the social media interactions framework developed by Mergel (2010, 2012, 2013) - further explained in section 10.3 - in order to assess their contribution to open government. Open government is broadly defined as including transparency, participation and collaboration. To further specify these three components of open government, transparency is defined as digestible "information about what the government is doing" (p. 1, OGI, 2009, Larsson 1998), participation as allowing "the public to contribute ideas and expertise so that their government can make policies with the benefit of information that is widely dispersed in society" (ibid), and collaboration as "encouraging partnerships and cooperation with ... government" (ibid). This paper finds that all three institutions are mainly focused on pushing information towards their followers on Facebook and therefore are successfully contributing to transparency by making citizens aware via Facebook of new information on their website. Contribution to participation and collaboration is found to be minimal because of the aim of neutral communication as well as a lack of more extensive collaboration between the social media officials and the politicians.

This paper is structured as follows: firstly the results of the qualitative and quantitative analysis of the Facebook pages of each of the institutions are presented and it is determined what social media strategy is employed. Secondly the results are compared and it is assessed to what extent each of the strategies contributes to open government. Thirdly, it is explained why the institutions behave the way they do on Facebook.

10.2 State of the art: debates on open government & social media

The public sector has started to embrace the potential of social media only as recently as 2009. Just as recent is the research in the field of social media and its use for the public sector (Klang & Nolin, 2011, Mergel, 2013, Khan, Swar, & Lee, 2014, Craido, Dandoval-Almazan, & Gil-Garcia, 2013). Research conducted by scholars, such as Gunawong (2014) as well as Cho & Park (2011), has specifically been focused on the contribution of social media to open government. However, thus far the focus on the one differentiating quality of social media, interactivity, has been lacking. This paper aims to fill this gap by aiming to find out how and to what extent the EU uses Facebook for open government purposes. In order to do so I apply the recently developed social media interaction framework by Mergel (2010, 2012, 2013). Firstly, there is the push strategy, in which governments push information and news towards citizens by means of social media. The information is often one-directional, comments can be disabled, and the goal is to achieve transparency by information provision and education. Secondly, there is the pull strategy, in which governments not only provide information, but also aim to pull citizens in by seeking feedback. There is some sort of two-way interaction in the form of comments by citizens and requests of information, which can be answered by the government. The objective is to provide opportunities for participation in order to engage citizens in the

policy process. Lastly, there is the networking strategy. This entails a higher level of engagement, in which there exists a reciprocated relationship between citizens and the agency, which allows for the co-creation of government innovations. This could present itself in the form of the government commenting on the feedback given by the citizen. The objective of this strategy is to achieve ongoing community building.

Previous research on social media use for open government purposes has only been focused on either Asia, where social media usage for this purpose has been found to not be very extensive (Gunawong, 2014, Cho & Park, 2011), or on the US (Golbeck, 2010; Mergel, 2013), where it was either used for self-promotion or information provision. However, research of this type for perhaps the one Western government that is most in need of an increase in accountability, is still lacking: the EU. The lack of trust, participation and knowledge of the EU fail to make the EU accountable to its citizens and therefore a way needs to be found to reach citizens. Since 2009, the EU too has become quite active on social media, creating accounts on Facebook, Google+, Youtube, Instagram and Twitter. Therefore, it is both interesting and necessary to find out whether this social media usage was merely the EU following the crowd or whether the EU recognized its great potential and succeeded in making use of it.

10.3 Methods and data collection

In order to find out to what extent the EU uses social media as a tool to increase transparency, participation and collaboration, I have conducted a case study of the messages posted on Facebook by the EC, EP and the Council between February and March 2015. The EP, EC and Council are chosen as representative for the EU because they are the three key players in the policy process; they represent both legislative and executive levels and have different levels of power delegation. Facebook

is analyzed rather than other social media, such as Youtube, Twitter or LinkedIn, because it has the greatest capacity for transparency, participation and collaboration due to the opportunity to post longer messages, to post videos that are directly visible and to add relatively long comments in the comment section. The time period of February 2015 to April 2015 provides up to date results. Postings could be easily retrieved.

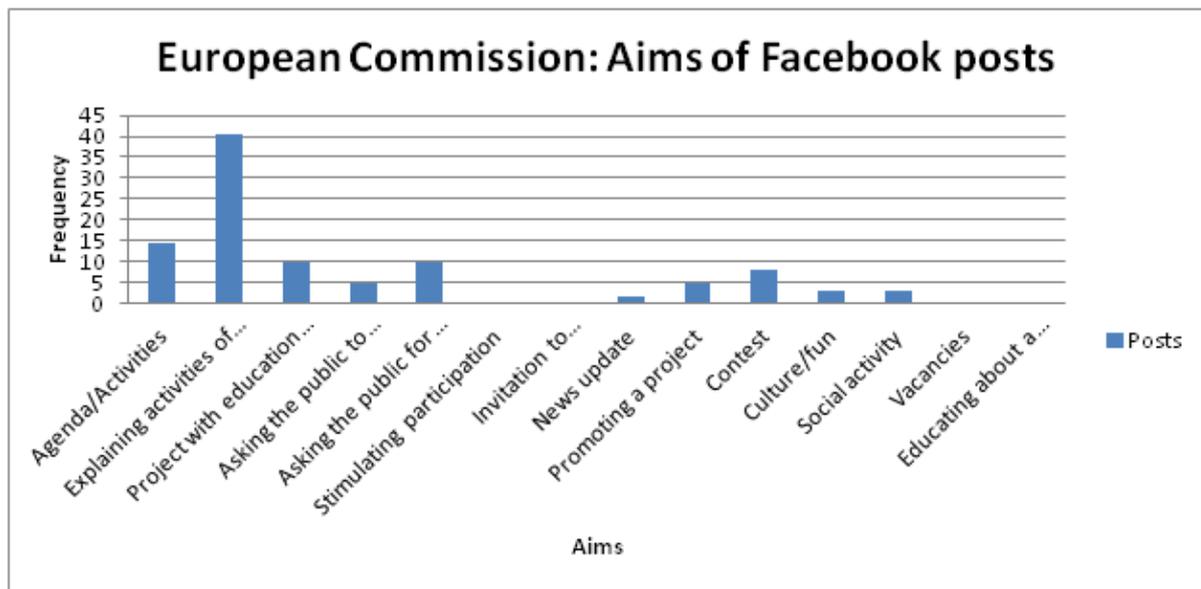
The analysis consists of three main parts. The first part consists of a descriptive statistical analysis of the aims and methods of the Facebook messages as well as the behavior observed by both the institution and the followers. This is done by means of coding the Facebook messages and is supported by interviews with heads of the social media team of the EC, EP and the Council. Coding of the messages is based on the social media interactions framework developed by Mergel (2013), which consists of the push, pull and networking strategies. The strategies represent different degrees of open government and they are identified by looking at the aims of the message, the type of methods used and the type of behavior of the institution and the citizens on Facebook. The push strategy is identified when most messages have a transparency aim, Facebook is used as a medium to recycle information from other communication channels and there is minimal to no interaction with citizens. The pull strategy is identified when messages have both transparency and participation aims, methods are employed which facilitate participation, such as the use of different languages and the pulling of information from citizens as well as when citizens display their opinions in the comment section. The networking strategy can be identified when messages display transparency, participation and collaboration aims and in terms of methods the institution is trying creating a community around itself. It also displays a two-way interaction concerning policy or public opinion. Based on these classifications each institution's contribution to open government is evaluated.

The second part of the analysis aims to compare the social media strategies identified for each of the institutions and based on that assesses how these strategies contribute to open government. This is done by looking at how and to what extent the definitions of transparency, participation and collaboration, as employed by Mergel (2013), are fulfilled. Finally, the third part of the analysis aims to find out why the institutions behave the way they do on social media. This is assessed by means of interviews with the heads of social media or Facebook for each institution.

10.4 The European Commission: a lot of pushing & a little pulling

From a careful analysis of the aims, methods and behavior of the EC on Facebook it becomes clear that the EC's posts display strong characteristics of a push strategy, but that the EC is well on its way to establishing a pull strategy. In the period of February 2015 to April 2015, most posts by the EC had a transparency aim. In Graph 1 it is visible that the categories with a transparency aim, *Explaining activities of EU*, *Agenda/Activities*, *Project with education or transparency aim* and *Asking the public to ask questions*, make up 69,3% of the posts. *Explaining activities of EU* is by far appears most frequently. This subcategory falls under the transparency aim because it contains in depth and digestible explanations about what the EU is doing, what mechanisms are in place in the EU and how the EU works. Most posts with this aim were dedicated to explaining what the EU is doing in terms of policy making. For example, on the 3rd of March the EC posted a link encouraging citizens to watch the closing session of the conference "From Emergency to Recovery" that dealt with the EU Ebola response. Furthermore, there were also some posts that informed citizens of a mechanism or piece of legislation that is already in place as well as informed citizens of how the EU works.

Graph 1



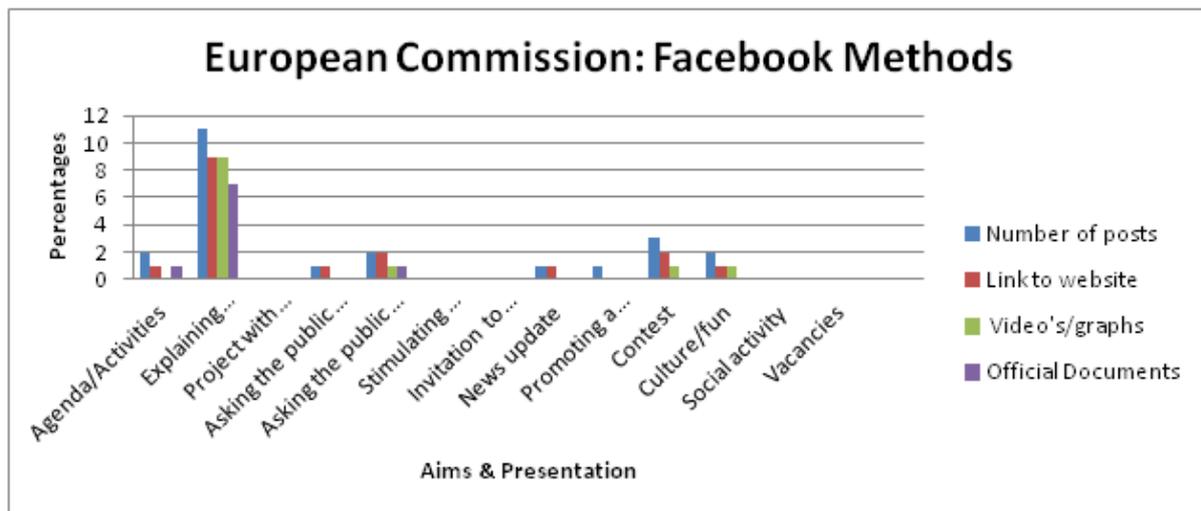
Data Source: European Commission Facebook page (February to April 2015).

9,7% of the posts was devoted to *Asking the public for its opinion*, which is a participation aim that is an element of the pull strategy. However, this happened in the case of one topic only: the Investment Plan. With this new plan Finnish Commissioner Katainen decided to go on a roadshow throughout the EU for the purpose of a Citizen's Dialogue on what the EU should invest its money in. Moreover, the EC actively encouraged Facebook followers to join their LinkedIn group in order to find out what EU citizens think the EU should invest in. Finally, no posts were found to have a collaboration aim and the rest of the 20,8% of the posts was dedicated to aims that are unrelated to transparency, participation or collaboration.

In terms of methods, the push strategy is strongly present as well. Graph 2 provides an oversight of the additional tools that the EC used with their Facebook posts and shows that the EC often recycles information already posted on its other media platforms. It can be observed that the EC directs the citizen back to its official website in 82% of the cases. This is often where the bulk of the information can be found.

Furthermore, in 27,4% of the cases, the EC presents official documents, although they are almost always provided after one has been led back to the website. In 46,6% of the cases videos are used, which includes both videos on the website, but there are also a number of videos that have not been recycled but which have specifically been created for social media in order to explain certain things in a digestible manner.

Graph 2



Data Source: European Commission Facebook page (February to April 2015).

When looking at its methods, the EC also displays some elements of the pull strategy. For example, the EC has its Facebook page available in all languages of the EU and thus it makes an effort for everyone to understand what it has to say. Furthermore, the EC reads the comments posted by its followers every day and it has a moderate reply rate of about 36 replies stretched over 62 posts. Nevertheless, this is not used for policy purposes all that often. It is more difficult to observe the EC actively pulling information from citizens. It was only once, in the category *Contest*, on the 24th of April 2015, that the EC asked its followers to submit their Spring pictures for the Spring in Europe photo competition. Whether this should be called participation can be doubted,

as it does not reveal anything to the EC about the participant's sentiments, opinions or policy suggestions for the EC. (EC Social Media Coordinator, personal communication, June 2, 2015).

The behavior of the EC on Facebook shows some elements of the pull strategy as well as some of the networking strategy. The EC receives on average 19 comments per post, but this differs per subject. Through these comments citizens participate and display their sentiments and opinions, which shows that the EC presence on Facebook fosters and creates a degree of engagement. However, when contrasting this to the total number of 450K followers, the EC should be able to trigger more comments. The presence of the networking strategy can be demonstrated by the average of 139 shares per post, which shows that the EC to a certain extent succeeds in creating a network of people that not merely passively absorbs the content posted, but engages with it by sharing it with their social network. Furthermore, there is a certain degree of interaction between the citizens and the EC on Facebook. In table 1 it is visible that the EC posted comments under its messages 22 times and reacted to 14 out of the 28 questions posed. Nevertheless, this interaction never quite takes the form of co-design, as is intended by this strategy. The EC often only partially reacts to the question or comment and uses that opportunity to push more information towards the citizens. This happened, for example, when the EC posted (23 April, 2014): "Europe shows solidarity and moves ahead united to save lives. EU leaders have agreed to triple the resources available to Triton border mission..." This is followed by following comment: "Hold the horses, who is showing solidarity? Those 2 on the picture? I can't remember if I was asked in any kind of referendum or else. For sure that don't have my mandate". By his comment this citizen shows that he thinks there should be a referendum on how to deal with the migration issues that the EU is experiencing. However, the EC consequently reacts to this by stating: "The members of the European Council are the heads of state or government of the 28 EU

Member States..." followed by a link to the Council website, where the tasks of the Council are explained. This is a very indirect and standardized response to the statement by the citizen, something which also did not fall well with the citizen in question, as he replied: "You think I'm stupid? I know well enough who they are...". Moreover, the EC never reacts twice to the same person, which prevented that Facebook would serve as a platform of debate between the EC and its citizens.

Table 1 – European Commission Facebook Page Behavior

Aim	Posts	Likes	Shares	Comments under post	Comments by EC	Questions By citizens	Answers by EC
Agenda/Activities	9	2664	736	192	0	4	2
Explaining activities EU	25	9575	4812	477	8	10	5
Project with education or transparency aim	6	3335	1133	274	2	4	2
Asking public to ask questions	3	509	66	27	4	1	1
Asking the public for their opinion	6	3812	649	50	1	1	0
Stimulating participation	0	0	0	0	0	0	0
Invitation policy platform	0	0	0	0	0	0	0
News update	1	1211	186	45	2	1	1
Promoting a project	3	795	522	55	4	4	2
Contest	5	1119	186	31	1	1	0
Culture/Fun	2	406	248	11	0	1	1
Social activity	2	857	92	22	0	1	0
Vacancies	0	0	0	0	0	0	0
Educating about a subject	0	0	0	0	0	0	0
Total	62	24283	8630	1184	22	28	14

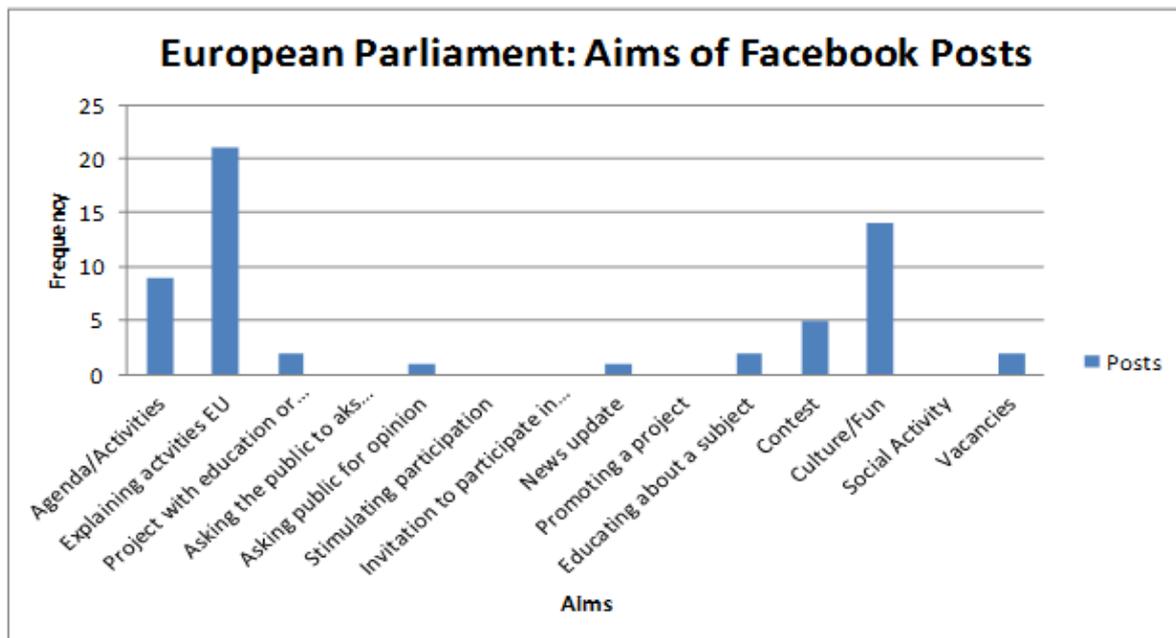
Data Source: European Commission Facebook page (February to April 2015).

10.5 The European Parliament: pushing transparency and pulling pictures

Similarly to the Commission, the EP mainly displays elements of the push and pull strategies. Graph 3 shows that most posts (56,1%) are devoted to the transparency aims and thus the push strategy can be detected here. *Explaining activities of EU* is by far the largest category, with 36,8% of the posts falling in that category. The EP makes an effort to explain in detail various aspects related to the EP and the EU. Most posts were dedicated to describing what the EU is doing, in the field of, for example, creating jobs, maritime policy and mobile phone legislation. To a lesser extent the EP paid attention to *Agenda/Activities* and *Project with education or transparency*.

The EP only twice asked for the opinion of its followers. On the 28th of March they asked how countries should adapt to the change from winter to summer time and on the 21st of April the EP asked what more the EU should do to about the migrants crossing the Mediterranean. Because there are so few of these messages, a pull strategy cannot clearly be observed. Furthermore, as no messages were dedicated to *Invitation to participate in a policy platform*, the networking strategy is also not present in the aims of the messages. In contrast, 42,2% of the posts were dedicated to aims that are unrelated to transparency, participation and collaboration. The most appearing sub-category (24,6%) here was *Culture/fun* which mainly contained posts about sharing pictures of cities in Europe, European films and holidays, such as Valentine's Day and Easter.

Graph 3



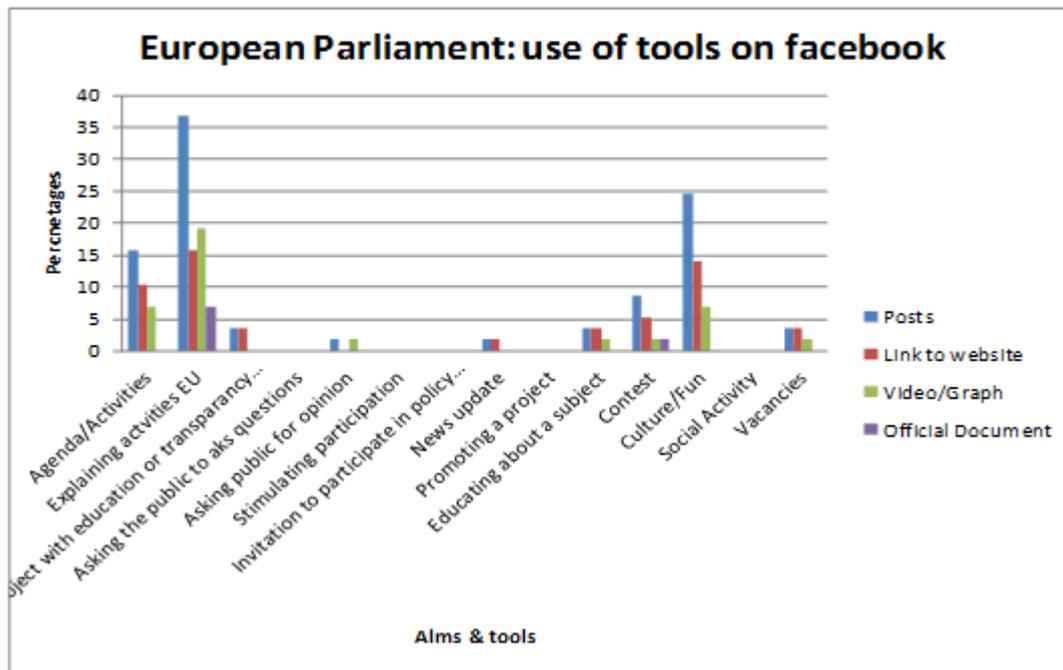
Data Source: European Parliament Facebook page (February to April 2015).

In terms of methods, the push strategy is largely present. Graph 4 provides an oversight of the additional tools that the EP uses with its post and it is visible that in 57,9% of the cases the EP leads citizens back to its website. However, the EP does not recycle official documents as much, as they can be found via the EP Facebook page in only 8,8% of the cases. This means that the EP makes an effort to create its own content on its website to make the information more accessible to the public. This is also reflected in the number of videos posted, which happened in 38,7% of the cases. The pull strategy can be detected in the fact that the EP Facebook page is available in other languages than English, facilitating transparency as well as participation. The EP also reads the comments multiple times a day and therefore is informing itself about the opinions of the citizens. However, this does not mean that in the EP actively seeks out and uses the comments by followers for policy. The EP itself confirmed this on its Facebook page (13 April, 2015) in a reply to a citizen that their main intent behind their Facebook page is to provide

information: "We believe that our best defense tool is the truth, and we try to give people as much information as possible on the works of the EP through this page..." (Social Media Coordinator EP, personal communication, 10 June, 2015).

Although the EP may not be pulling opinions and ideas of citizens, they are pulling something else: pictures. In the category *Culture/Fun* the EP often asks its followers to post their spring, winter and Easter pictures as well as pictures of European capitals. In general these posts do very well with the followers as *Culture/fun* is the category that received the most likes out of all categories and followers actively participate and share their pictures. Despite the engagement that these posts may generate, they cannot be seen as contributing to the pull strategy nor to participation because the term here means that the public is asked to contribute its ideas and expertise in order for the government to use this information when making policy and the type of information generated from these posts is not useful for policy.

Graph 4



Data Source: European Parliament Facebook page (February to April 2015).

The behavior of the EP displays pull as well as some limited networking elements. The EP allows comments and on average citizens comment 62 times per post. This shows that citizens are engaged and are participating by providing their opinions. On average, there are 324 shares per post, which demonstrates that citizens are actively trying to share the EP's messages with their network and thus are helping the EP to build a community. Moreover, there also is some interaction between citizens and the EP. As can be observed in table 2, the EP has answered 9 out of 20 questions and has reacted to followers' comments 33 times over the 57 posts placed by the EP. However, the EP is not behaving in such a way to create an environment on their Facebook page that fosters collaboration. The EP never interacts twice with the same person and therefore does not allow a collaborative discussion to ensue. In fact, when it reacts or answers a question the reply is often informative in nature, referring followers to more information. For example, when the

EP (16 March, 2015) created a post explaining the tasks of the EP a citizen commented that the EP should make it mandatory for representatives to attend all general sessions. The EP replied, providing an article on what MEPs are doing when they are not attending the plenary. This shows that the EP is actively avoiding a discussion, but instead chooses to provide more information.

Table 2 – European Parliament Facebook Page Behavior

Aim	Posts	Likes	Shares	Comments under post	Comments by EP	Questions By citizens	Answers by EP
Agenda/Activities	9	3476	569	260	4	7	6
Explaining activities EU	21	18430	6554	1384	12	10	1
Project with education or transparency aim	2	1630	232	64	2	1	1
Asking public to ask questions	0	0	0	0	0	0	0
Asking the public for their opinion	2	933	569	258	0	0	0
Stimulating participation	0	0	0	0	0	0	0
Invitation policy platform	0	0	0	0	0	0	0
News update	1	615	287	11	0	0	0
Promoting a project	0	0	0	0	0	0	0
Contest	5	7723	1523	310	7	0	0
Culture/Fun	14	21155	2977	723	6	2	1
Social activity	0	0	0	0	0	0	0
Vacancies	2	1483	836	108	2	0	1
Educating about a subject	2	26012	5452	508	2	2	0
Total	58	81457	18999	3626	35	22	10

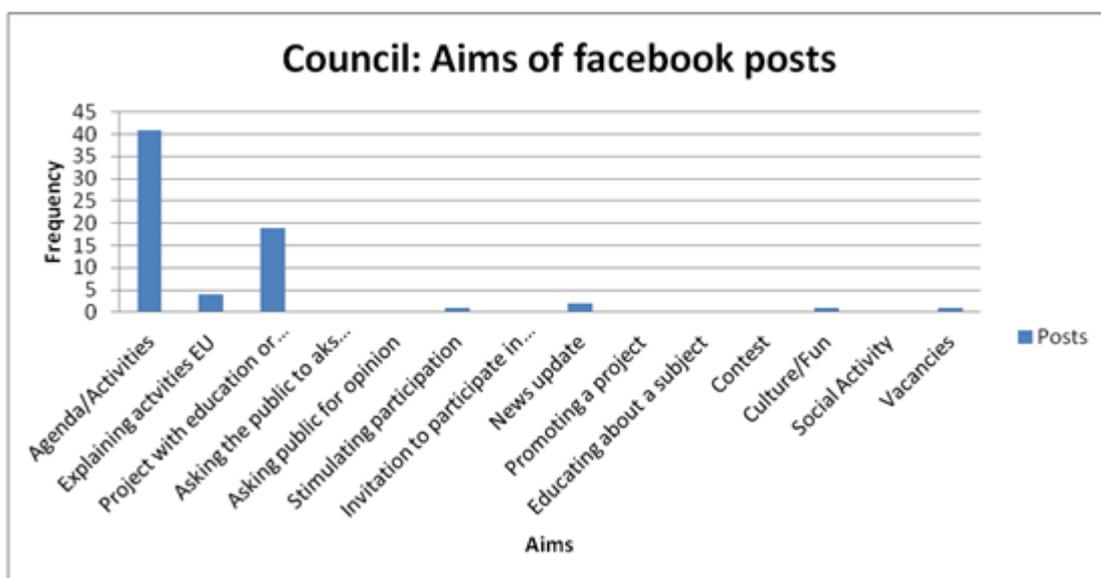
Data Source: European Parliament Facebook page (February to April 2015).

10.6 The Council: pushing Council meetings

The social media strategy of the Council mainly displays elements of the push strategy. The Council focuses on providing its followers with information on what is going on at the moment in a consistent and coherent way. Graph 5 shows that a large majority of the posts (92,8%) have transparency aims, and that *Agenda/Activities* is the category that

appears the most, as it makes up 59,4% of all posts. The reason for this is that the Council predominantly posts messages that either announce the agenda of an upcoming Council meeting or report on the outcome of a passed Council meeting. These messages often shortly sum up the topics that were or will be discussed: "Amongst other topics at last week's Justice and Home Affairs Council meeting, ministers held a discussion on #migration and stressed that the fight against criminal networks of smugglers and traffickers should remain a priority. Learn more about the full outcome of the meeting: <http://ow.ly/Ko2DT>" (Facebook Council, 16 March 2015). The pull and networking strategies cannot be detected in the aims of the Facebook posts of the Council. Only the post on the 31st of March displayed the participation aim to a certain extent as it concerned an encouragement for citizens to participate in a debate with descendants & colleagues with the EU's founding fathers. But in none of the other posts did the Council ask for the opinion or expertise of citizens on certain issues.

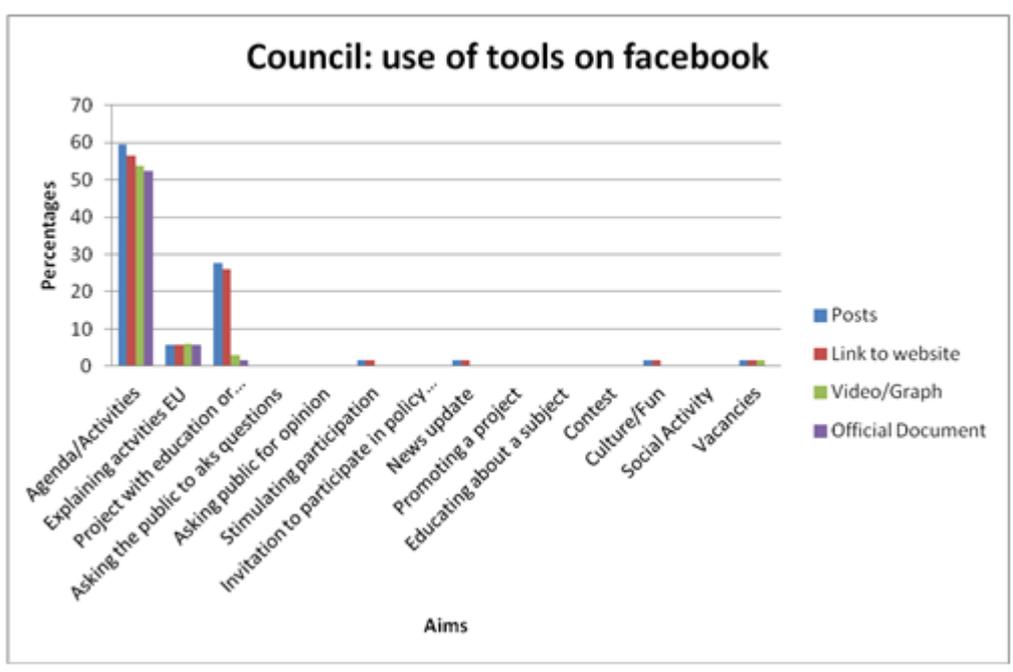
Graph 5



Data Source: Council Facebook page (February to April 2015).

The Council mostly makes use of links to its website to push more information towards citizens, as can be seen in graph 6. These pages often contain a short summary, quotes by Ministers as well as a short video of the press conference and links to relevant official documents. This shows that the Council uses Facebook as a tool to support and lead citizens to its website, rather than using Facebook as a tool of communication in itself. There is no sign of the Council using methods that are inherent to the pull strategy or the networking strategy. Graph 5 furthermore shows that the Council does not actively pull information from citizens, since it does not ask for the opinion or ideas of citizens in its messages. It does, however, read the comment section multiple times a day, albeit this information is not used for policy purposes (Member of the Secretariat of the Council, personal communication, June 3, 2015).

Graph 6



Data Source: Council Facebook page (February to April 2015).

Both the citizens and the Council are not very interactive on the Council Facebook page. From table 3 it can be deduced that the Council barely reacts to the comments posted by its followers. Although only 11 serious questions were asked during the three month period of February 2015 to April 2015, the Council only answered 4. The Council also never reacts twice to the same person. This interaction is so limited that it cannot fall under the networking strategy nor the pull strategy. Furthermore, out of all 166K followers who receive the Council's posts there were on average only 174 likes per post, 36 shares per post and merely 10 comments per post. The small number of average of comments per post indicates that even the inherent pull strategy of Facebook is barely present because citizens are not displaying their opinions in great numbers. Nevertheless, there are still comments that do show opinions as the following reactions to the Council post display: "Why an informal body and a minister never elected by me can decide of my life???"(Facebook Council, 9 March, 2015), "Excellent!! Green Revolution in action" (Facebook Council, 5 March, 2015) and "Solidarity with the Greek people!" (Facebook Council, 20 February, 2015).

Table 3 – Council Facebook Page Behavior

Aim	Posts	Likes	Shares	Comments under post	Comments by Council	Questions By citizens	Answers by Council
Agenda/Activities	41	6441	1442	426	1	6	1
Explaining activities EU	4	676	233	45	0	0	0
Project with education or transparency aim	19	3059	467	198	1	5	3
Asking public to ask questions	0	0	0	0	0	0	0
Asking the public for their opinion	0	0	0	0	0	0	0
Stimulating participation	1	1370	31	6	0	0	0
Invitation policy platform	0	0	0	0	0	0	0
News update	2	1323	110	14	0	0	0
Promoting a project	0	0	0	0	0	0	0
Contest	0	0	0	0	0	0	0
Culture/Fun	1	184	25	9	0	0	0
Social activity	0	0	0	0	0	0	0
Vacancies	1	205	218	22	0	0	0
Educating about a subject	0	0	0	0	0	0	0
Total	69	13258	2526	720	2	11	4

Data Source: Council Facebook page (February to April 2015).

10.7 Comparing the Commission, Parliament & the Council

The degree to which the Commission, the Parliament and the Council use their social media account for open government purposes is quite similar. The three institutions mainly display elements of the push strategy and to a lesser extent elements of the pull strategy. Despite the fact that followers did share messages, the networking strategy is not present anywhere since no collaborative interaction between the institutions and its followers could be observed. Regardless of these similarities, it is possible to detect some differences in both the extent to which they are dedicated to open government as well as how they contribute to open government.

The EP and the EC are dedicated to open government to a similar extent as they both maintain a mixed push/pull strategy, albeit they

reach this objective in different ways. Both the EC and the EP are strongly focused on transparency aims, which make up 69.3% and 56% of their posts, respectively. However, the EC also dedicated 9,7% of its posts to asking citizens about their opinion on the investment plan. This remains a relatively small share of the total number of messages, but it is much more than observed for the other institutions. Looking at methods and behavior, the EP manages much better to passively pull information from citizens than the EC through their comments, as the EP, on average, received 62 comments per post, which is the highest number out of all three institutions. The EP's Facebook page was also the most interactive since it reacted 42 times stretched over 56 messages. Furthermore, it is notable that 42,2% of the messages of the EP were not related to open government purposes at all, which shows that the EP also seemed quite focused on creating a non-political relationship with its followers.

The EP and EC's presence on Facebook contributed to transparency by bringing to the attention of citizens detailed, but digestible explanations about the activities of the EU. Furthermore, both institutions were available to answer questions and they replied in about 50% of the cases. They also contributed participation, albeit this contribution remains limited because only part of the definition of participation is fulfilled: the public is allowed to contribute its ideas and through comments and they do so. Citizens even discuss with each other, which shows that citizens are engaged, as intended by the pull strategy. However, it can be questioned to which extent their comments are useful for policymaking as there are many spam and offtopic comments. Moreover, the EC uses these comments for policy purposes only when this is demanded by policy makers, which is not very often (EC Social Media Coordinator, personal communication, June 3, 2015).

The Council's Facebook use contributed less to open government than the EP or the EC, because of the former's sole focus on the push strategy. 92% of its aims were transparency related, it mainly used push

methods by leading citizens back to its website and it reacted only 6 times, stretched over 69 posts. Citizens also seem least triggered to show their opinion on the Council Facebook page. With its presence on Facebook, the Council contributes to transparency to a certain extent because it covers almost every Council meeting and brings this to the attention of the citizens. This shows that the Council is making a great effort to keep its followers up to date on what it is doing. Contentwise, the information provided in the summaries is very digestible. In addition to an official document, the Council provides a short summary of the topics discussed as well as some quotes by Ministers. However, the summaries do not contain very much information. For example, the summary provided by Council in its post of the 16th of March, mainly sums up what has been discussed: "The Council held a public debate on two proposals to improve rail services in the EU (fourth railway package). The proposals aim to liberalize services and strengthen the governance of railway infrastructure". It is not elaborated upon what this entails exactly and how this is going to be achieved. For more information, readers will have to resort to the official document on the outcome of the meeting. This, however, may be too difficult to comprehend for some readers.

An aspect that limits transparency is the fact that focus seems to lie on simply stating what is happening rather than explaining what is happening. This is the main difference between the category *Agenda/Activities* and *Explaining EU activities*. The latter provides a different, and perhaps more profound, transparency because it allows the reader to truly understand what is happening rather than merely taking notice of it. In this aspect the Council Facebook page is lacking because it only posted 4 messages that were related to explaining what the EU was doing and how the EU works. Occasionally, the Council does have such information available, but one has to actively look for it on the Council website. It can thus be concluded that the Council contributes to

transparency with its push strategy concerning Council meetings, albeit this transparency is more informative than explanatory.

10.8 Explaining the EU's Facebook use

This paper found that in terms of aims and methods the push strategy was predominantly present on the Facebook pages of the three institutions. In the cases of the EP and the EC this benefitted transparency by bringing to the attention of citizens detailed but digestible information on the activities of the EU. This focus comes from the objective to not only inform but also to explain and to justify the EC's actions on social media. The Council, in contrast takes a slightly different approach, since their Facebook strategy benefits transparency because of its focus on updating its Facebook followers on new events as well as by presenting the information in a digestible way, rather than explaining the activities of the EU. The Council Facebook page mainly consists out of posts that lead to a short summary of the agenda of Council meetings and the decisions made there.

The reason for this approach can be explained by how the Council views transparency and what information is readily available to share. A source inside the Council declared that how much transparency the Council offers on its Facebook page depends on how much transparency EU politicians allow. In EU legislation it is determined that EU citizens have access to documents and have the right to information about the Council meetings and this is why the Council Facebook page reports on this. This could also possibly explain why the Council Facebook page lacks posts on *Explanations of activities of EU*. As the Council solely focuses on providing information that is explicitly allowed or mandatory to be provided, it is easy to overlook the possibilities that Facebook offers to provide information that the EU has not explicitly made mandatory to provide, but which it also not disallows to provide, such as information on

how the EU works or in depth topical information. Another factor that played into the lack of posts on *Explanations of activities of EU* is the fact that this information is not as readily available on the Council website. However, Council is planning to change this and provide more topical and in depth information via its posts (EC & EP Social Media Coordinators & Member of the Secretariat of the Council, personal communication, June 3, 2015).

The pull strategy is to a limited extent present on the EP and Commission Facebook pages. The EP and the EC showed some, but not too extensive signs of actively encouraging participation by asking citizens for their opinions in their posts. The EC Social Media Coordinator explains that the EC only explicitly asks for the opinion of citizens on social media when there is a specific need for this. This was for example the case in the Investment Plan Roadshow posts by the Commission. The Council does not ask for the opinion of citizens at all on its Facebook page because it is not actively planning on doing something with these opinions. A source inside the Council explains that the Council, as an indirectly and nationally elected and selected body of ministers, is positioned relatively far away from EU citizens and because all ministers are delegates of their own country, the consultation of citizen's opinions or policy advice takes place in different degrees per Member State and happens through national channels.

Although, the institutions may not actively seek feedback from citizens on Facebook all that often, they automatically receive it through the comment sections. All institutions read these comments at least once a day or more. The EC and EP do share useful information drawn from the comments with other spokespersons, EU officials or the units dealing with citizen feedback, albeit this does not happen often. In contrast, the Council does not at all make use of information they receive out of the comment section for policy purposes because of the large scale that Facebook operates on and the lack of good content driven discussions on

Facebook (EC & EP Social Media Coordinators & Member of the Secretariat of the Council, personal communication, June 3, 2015).

For all institutions it was observed that the networking strategy occurred the least. Although citizens were triggered to share posts, no institution tried to actively stimulate citizens to collaborate or even to promote or announce a collaboration project, such as Citizen's Dialogues on certain topics. The EC Social Media Coordinator noted that perhaps this is a point for improvement for the future. Furthermore, no passive collaboration, flowing from interactions in the comment section, could be observed, as the interaction that took place never quite took the form of co-design or even collaboration on policy. When the institutions respond to citizens, it is mainly to provide more information, to answer a question or to correct false statements, rather than to enter into a discussion; the institutions try to remain as neutral as possible. As pointed out by all interviewees, the social media unit is separate from the policymakers and there is no extensive collaboration between the two. The social media teams' main task is to provide objective and neutral information about the institution and when responding to comments they cannot speak on behalf of the policymakers. Oftentimes citizens think that they are speaking to politicians on Facebook, but the EC always tries to clarify that it is in fact the social media team they are talking to. Additionally, they try to facilitate real opportunities for citizens to get into contact with politicians through chats that they announce and organize on their Facebook page, since it has a much wider reach than the pages of the individual commissioners (EC & EP Social Media Coordinators & Member of the Secretariat of the Council, personal communication, June 3, 2015).

In sum, the extent to which Facebook use contributes to transparency depends on the institution's view of transparency as well as the tools that are readily available to offer transparency. Moreover, Facebook's contribution to participation depends on how interested policymakers are in citizen's opinions, which was found to be rather low

for the time period of the study. Nevertheless, this can differ per institution, as an intergovernmental institution is less interested in such matters than the European Parliament and the Commission, since they are of a more supranational nature. Furthermore, the effectiveness of participation depends on how triggered citizens are to comment and whether fruitful discussions occur. Finally, collaboration on Facebook is difficult to achieve as long as the social media teams are not in closer contact with policymakers .

Comparing the results of this study to previous research in this field on the US and Asia, this study finds that the EU's social media use for open government purposes is largely similar to that of other governmental institutions. Being where the people are and providing information is often the main objective (Mergel, 2013, Golbeck, 2010, Gunawong, 2014). The US agencies' as well as the EU's social media behavior goes slightly beyond this by also displaying some elements of the pull and networking strategies by being present on social media and letting citizens comment, but in general they remain rather passive in their contribution to participation and collaboration. This paper was among the first to address social media usage for open government purposes and therefore it is difficult to place the results of the case of the EU in perspective. Further research will need to show whether neutrality issues and a lack of collaboration between the social media department and the policymakers are among the main reasons why social media use is not more focused on participation and collaboration aims in other governments.

10.9 Conclusions

This paper aimed to find out to how and to what extent social media use by the EC, EP and Council contributes to open government. It found that the institutions mainly displayed elements of the push strategy and to a

lesser extent elements of the pull strategy, while the networking strategy barely appeared. The EC and EP's Facebook pages contributed to transparency by providing citizens with digestible information on the activities of the EU by means of leading them to their websites, whereas the Council mainly focused on keeping citizens up to date on Council meetings. The reason for the differing approaches was found in differences in the perception of transparency as well as the material that was available on the website. This paper also found that the EU's Facebook pages contribute to participation by letting people comment on their pages. However, the extent to which they use this information for policy purposes is limited because there is limited demand for this by policymakers. Finally, it was found that Facebook use by the institutions does not contribute to collaboration since the social media teams do not actively ask or promote collaboration on the Facebook pages and they cannot enter into discussions since they cannot speak on behalf of the policymakers.

The results show that the EU institutions' presence on Facebook has an added value in terms of open government because it is able to update citizens on where and when new or old information can be found in a relatively easy way. However, the unique feature of social media, interactivity, is used only to a limited extent for open government purposes and therefore much progress can still be made on this aspect. The institutions could make better use of the opinions of citizens offered on Facebook and integrate policymakers better into the social media activities of the institutions to make participation and collaboration on Facebook becomes possible.

It must be kept in mind that the results of this paper only paint part of the whole picture as the research was conducted over a time period of a mere three months. This could have influenced the results because the content of the posts is naturally affected by salient issues at the time, which may call for different degrees of transparency, participation and

collaboration. However, the results are also based on interviews and they do not indicate that this paper should have found different results. Nevertheless, it would be useful if further research could explore a longer period of time and could also include other social mediums on which the EU is present, such as twitter and Youtube. Furthermore, because the EU is more than its institutions, more research could be done on the contributions of individual EU official's social media presence to open government.

11 French Politicians on Facebook and Twitter. Revitalizing political representation? – Christophe Leclerc

11.1 Introduction

In contrast to the previous contribution, this paper tackles the issue of transparency and social media with a more national perspective. By looking at French deputies posts on Facebook and Twitter, but also by directly inquiring how French citizens assess the issue of political transparency on social media, this analysis aims at providing new insights into the issue as to whether the presence of politicians on social media can affect power relations between citizens and politicians. The underlying rationale is to find out whether this form of transparency ultimately enhances representative democracy.

Over the last decades transparency has often been depicted as the ultimate remedy for various political, economic and societal problems. Stiglitz (1999; 2000; 2002) outlines the significance of transparency for averting market failures and enhancing public financing. Similarly, Lindstedt and Naurin (2010) investigate the capacity of transparency to reduce corruption and achieve fairer and more efficient governance, while Schultz and Kenneth (1998) analyse how better means of communication and transparency can diminish risks of war and international conflicts. Recent cases and scandals have added fuel to debates about transparency. The Luxleaks affair revealed the need for more transparency with regard to existing tax schemes for multinational companies (Gotev, 2015). The opacity of the TTIP negotiations has made experts and citizens suspicious regarding the content of this trading agreement and signal the risk of lowering safety standards and endangering customers' safety (Crisp, 2015).

If we turn to the realm of politics, we quickly notice that the relationship between transparency and democracy has provoked intense and convoluted debates. Is transparency of governments a necessary feature of democratic regimes? Or, is transparency a political key for better governance? In his succinct definition of democracy, Schumpeter (1942) did not yet consider transparency as an inherent and essential characteristic of democratic regimes. Democracy, he argues, is only determined by the electoral competition and free elections. By contrast, Dahl (1971) - with his famous concept of Poliararchy - places transparency at the core of the democratic framework. As he claims, a democratic regime is not only a regime in which electors have the right to freely vote for their future representatives and governments, it is also a system that allows its citizens to be fully informed - by different and independent sources of information - before they cast their ballot. This implies a free and transparent flow of information.

The recent legitimacy crisis affecting many Western democracies, has given new impetus to pro-transparency arguments. In a society where citizens are slowly disengaging from politics, many experts and politicians argue, greater transparency and accountability in politics are the best options available to revitalize representative democracy. Making use of new means of communication, several European governments - including the European Union - have recently taken measures to improve oversight over politicians and big companies' financial and fiscal activities ("European Commission presents", 2015; Bekmezian, 2013). Moreover, many local and national politicians are now trying to share their opinions and activities on social media with the goal of restoring the dialogue with their electorate. In the light of this recent trend of developments, this paper examines the use of Facebook and Twitter's by French politicians, and addresses the following research question "Does transparency through social media succeed in re-connecting French representatives with their citizens?"

This paper concentrates on France for two main reasons. Firstly, with only 17% of French citizens trusting their own government, and 24% trusting the French "Assemblée Nationale", France is today one of the most distrustful European countries with regard to its national institutions (Eurobarometer, 2014). It is highly relevant, therefore, to ask whether the presence of French representatives on social media can bridge the growing gap and help overcoming the crisis of political legitimacy. Secondly, since most existing studies on the topic have exclusively focused on the United States, it is high time to look at a different case. The focus on Facebook and Twitter can be justified by two arguments. With approximately 1,415 billion of people using Facebook and 288 million of people on Twitter, these two platforms are among the most widely used social networks worldwide today ("Leading Social Networks", 2015). Additionally, the design of Facebook and Twitter's, based on easy and direct interaction between users, is especially appropriate to analyze political debates.

This paper claims that, although French politicians widely use Facebook and Twitter, their attempts to re-engage citizens in politics frequently remain futile. In other words, even though a lot of information is shared on social media, only a small part of the population takes the time to consult it.

In order to answer my research question this chapter builds its analysis around two main axes. In the first part, it examines to which extent French deputies are using Facebook and Twitter and evaluates the nature of their activities on these social networks. Furthermore, in a second part, the chapter looks at how citizens judge the attempt to enhance transparency through social media and sheds light on whether people use communication through social media to be informed about the opinions and activities of political figures.

11.1.1 State of the art: Understanding transparency in the frame of political representation

Representative democracy is the cornerstone of modern Western societies. Although the idea of representative democracy goes almost unchallenged, trying to define and understand what democracy represents can sometimes appear to be quite puzzling.

For Jean Jacques Rousseau (1762), political representation is incompatible with the notion of democracy. He argues that popular sovereignty –the general will of the people – cannot be represented because representation necessarily implies alienation. In Rousseau's view, the "deputies of the people" should therefore not be seen as representatives but rather as commissionaires or delegates, deprived of true political will. This vision of direct democracy through political delegation has been widely criticized for its lack of practicality. Before Jean Jacques Rousseau, Montesquieu highlighted the advantages of electing politicians endowed with free mandates. He argues that having independent representatives is the best way to take into consideration the plurality of society and to make laws that are applicable to the general interest of the people (Urbinati, 2006). This line of thinking was further developed by Sieyes who, contesting Rousseau's ideas of direct democracy, raised representative democracy to the norm. Sieyes argued that representative democracy is the only system that provides "authority from the top and confidence from the bottom" (ibid.).

Today, all Western democracies have adopted a system of political representation in which elected politicians are free to act in accordance to their political views for a limited time span. Urbinati (ibid.) argues that modern representative democracy is somehow situated between Rousseau's rigid view of political delegation, and Sieyes's conception of free mandate. Although political representation does not institute legally binding mandates, it entails a system of check and balances from the citizenry to the representatives. This system of check and balances

constitutes a new type of mandate, a political mandate whose currency is both political and ideological. In this context, the representative does not only act on the behalf of his constituents, he must also act in the best interest of the represented. This implies a complex - almost symbiotic - relationship between the voters and the representative through which representative must be constantly in tune with society and vice versa. Such a complex relationship, as suggested in Urbinati's description, requires advanced means of communication between the voter and the representative. It also presupposes an advanced level of transparency, through which citizens can hold their representatives answerable for their actions.

Some scholars (e.g. Mair, 2011; Crouch, 2004) state that the classical conception of political representation has recently been challenged by various trends in modern society. Mair (2011) argues that the development of mass democracy during the 20th century, coupled with the emergence of economic, technological and political globalization, has profoundly changed the nature of politics in Western democracies. In a world becoming more and more complex, and in which an increasing number of national and supranational actors are involved in the process of policy making, it becomes extremely complicated - to not say impossible - for citizens to understand the actions of their representatives. Under such conditions, citizens slowly start to drift away from politics, disengaging themselves from any sort of political engagement.

As a consequence of these late developments, modern democrats are calling for ways to transcend traditional forms of political representation and bridge the increasing gap between electors and representatives. Many studies explore the impact of new technologies on representative relations particularly in terms of intensifying transparency (Coleman & Gotze, 2011; Coleman, 2004; Grossman, L, K, 1996; Becker & Slaton, 2000). Chadwick (2006) investigates the potential for the creation of common cyber political spaces through which citizens and

politicians could efficiently exchange information. Coleman (2005) argues that new technologies offer new ways of communicating and new means of transparency, which could eventually galvanize and redefine the traditional represented/representative relationship. Firstly, better access to information and advanced transparency could hold up the actions and opinions of representatives to public scrutiny. Secondly, new technologies could take away time and space barriers by allowing citizens to instantaneously and transparently contact their representatives, thereby creating a more direct relationship. Robin Cook, leader of the House of Commons, strongly endorsed this view. In 2002 he declared that "new technologies can strengthen our democracy, by giving us greater opportunities than ever before for better transparency and a more responsive relationship between government and electors" (Coleman, 2005: 183, cited after Morris, 2001: 1013).

Initially, however, political elites were not too eager to exploit the full potential of technology. Instead, they were rather halfhearted about the new technology, and did not try to change existing practices (Coleman, 2004, 2005; Jackson, 2005). Only with the advent of social media the opportunities to increase transparency were more fully acknowledged. Today, millions of citizens are connected in a single digital world where information moves faster than ever. They share their views on countless numbers of topics, and instantly react to news feeds. Moreover, they have the opportunity to follow their representatives' activities by looking at their Internet pages, on which they can openly address their concerns.

These new trends have only begun to be tackled by academic studies. Although quite a few authors focus on the potential effect of social media on civic and political participation (Zuniga 2012; Vesnic Alusevic, 2012; Gustafson, 2012; Zhang et al, 2008; Leung, 2009), and on their impact on the public sector (Mergel, 2013), only very few have examined the link between transparency through social media and political representation.

It is therefore in the aim of filling up this academic gap that this paper aims at exploring to what extent transparency in social media succeeds in bringing together citizens and representatives.

11.2 Method and data

In a first part, this paper assesses to which extent social media are today used by French politicians to publicly communicate their actions and whether these pages are commonly visited by social media's users. This study, which only focuses on the cases of Twitter and Facebook, mainly makes use of quantitative and qualitative methods of analysis. To begin with, this paper evaluates the share of deputies that hold an official Facebook or Twitter account in 2015 and, subsequently, when it is the case, looks at their Facebook and Twitter pages in order to retrieve their amount of followers. We decide to divide these Facebook and Twitter pages into five categories: (1) pages having between 0 and 1.000 followers, (2) pages having between 1.000 and 5.000 followers, (3) pages having between 5.000 and 50.000 followers, (4) pages having between 50.000 and 100.000 and (5) pages that have more than 100.000 followers. Following this quantitative examination, this paper selectively focuses on a limited amount of Facebook and Twitter accounts. It therefore investigates the type of information shared on these pages, and observes the type of reactions these posts may have triggered. To do so, concerning the Facebook pages, this paper examines in a first time the amount of "like", "share", and "comments" these publications have gathered. Regarding the nature of information they provide, these posts are furthermore divided into three categories. The first category (Opinion) covers opinion articles, opinion status, and other type of political or legislative information. The second category (Activity) involves any type of evidence that may inform citizens on the activities and local actions of their representatives. The third category (Other) brings together information that is not associated with politics. Finally, this paper looks at

the amount of direct interactions – direct reply on the Facebook comments box - between followers and owners of these pages. With respect to Twitter pages, the analysis focuses on the amount of "Retweet" and "Favourite" each post generated. These posts are subsequently separated following the same pattern of categories previously used with Facebook pages (Opinion, Activity, Other). Moreover, similarly to the Facebook study, the amount of direct interactions between people and holders of these pages is inspected. Due to the limited scope of this paper, this examination concentrates on one Facebook and one Twitter page per category during a limited time frame of three months – from January to April 2015.

The second part of this research firstly examines whether people actually use social media to oversee the actions of their representative. Furthermore, it sheds light on how people evaluate the efficiency and credibility of this process of political transparency on Twitter and Facebook. In this respect, this paper analyses the results of a survey conducted among 150 French citizens. This survey hence aims at testing two hypotheses; H1 stating that "a small part of Facebook and Twitter users, use social media to be informed about the political activities of their representatives", and H2 claiming that "social media has not succeeded in creating a new type of interaction between represented and representatives".

11.3 Facebook and Twitter: two new transparent platforms used by representatives to inform their citizens and re-connect with their electorate?

In this section, this paper addresses the issue of transparency of politicians through social media. It analyses, in a first time, to which extent Facebook and Twitter are used by French deputies to share

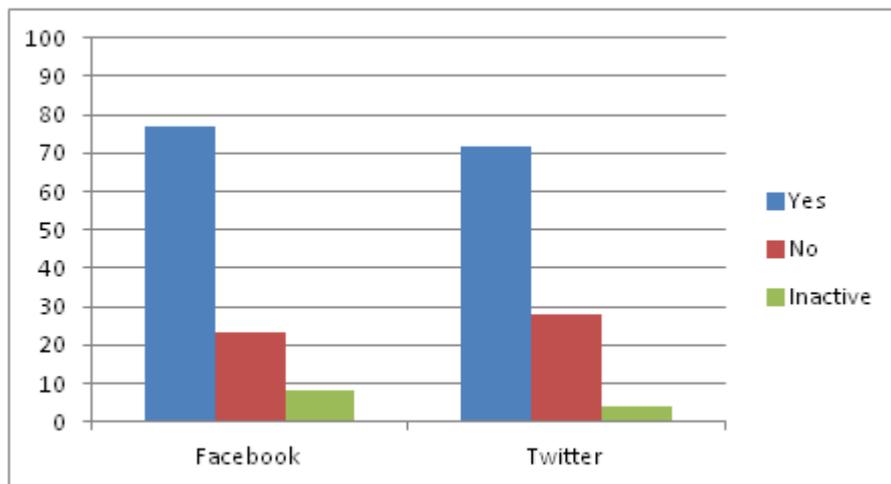
different sort of information with their public. In a second time, it sheds light on the nature of these publications, trying to understand whether they focus on political topics and whether they tend to generate direct interactions with the citizens.

11.3.1 Assessment of the use of Facebook and Twitter among French deputies

This analysis begins by examining the propensity of French political representatives – meaning here French deputies - to use Facebook and Twitter. There are at the moment 577 deputies composing the French National assembly. This study examines the case of every single deputy, establishing whether they are active on social media and, if yes, their number of followers.

This examination shows that 77% (444 deputies) of the French deputies hold an official Facebook page. Out of this 77%, 8% have however not posted any information since the 1st of January 2015. These deputies will be assigned to the "Not Active" category from now on (Figure 4.1.1). Concerning Twitter, 72% (415) of the French deputies possess an official Twitter account; among them 4% are considered not being active (Figure 4.1.1). These numbers indicate that using social media for political purposes is today a widespread behaviour among French representatives. It also suggests that, although French deputies use Facebook and Twitter to a really similar extent, there is biggest tendency of being inactive on Facebook than on Twitter.

Figure 4.1.1: Deputies on Facebook and Twitter

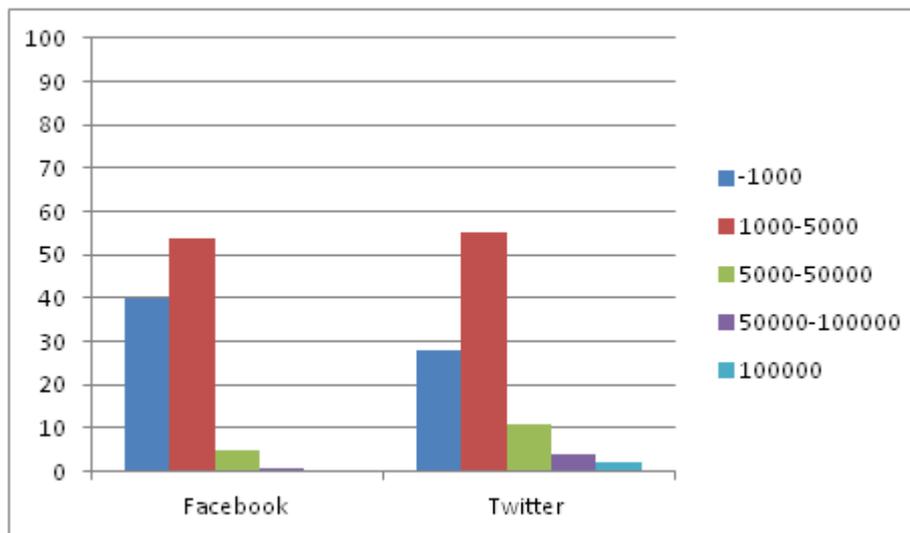


Source: Author's calculation based on Facebook and Twitter's data, 2015.

Yet, even though it seems clear that social media are today regularly used by French political representatives, it is essential to know to which extent these pages are actually being visited by the public. Regarding deputies' Facebook pages, this analysis shows that 40% of the pages have less than 1.000 followers, 54% have between 1.000 and 10.000 followers, 5% between 10.000 and 50.000, 0.7% between 50.000 and 100.000, and only 0.3% with more than 100.000 followers (Figure 4.1.2). These results appear to be quite different when looking at Twitter pages. As observed in this research, 28% of deputies' Twitter pages have less than 1.000 followers, 55% have between 1.000 and 10.000 followers, 11% between 10.000 and 50.000, 4% between 50.000 and 100.000 and 2% with more than 100.000 followers (Figure 4.1.2).

Two conclusions can be drawn from this study. First of all, there is a clearer tendency for Facebook pages to have less than 1000 followers than Twitter pages. Second of all, there is a better propensity for Twitter pages to reach really important amounts of followers (more than 10.000). These two elements suggest that Twitter is more commonly used by the public than Facebook when it comes to political issues.

Figure 4.1.2: Deputies on Facebook and Twitter per category



Source: Author's calculation based on Facebook and Twitter's data, 2015.

In conclusion, one can claim that Facebook and Twitter are today extensively used by French deputies for political purposes. Yet, while both social networks seem to be used to a similar extent by French representatives, they tend to encounter a contrasted success in terms of Followers. In respect of Facebook, 94% of the pages examined gather between 0 and 10.000 followers while only 1% of them are being followed by more than 50.000 people. These are two really low numbers. This situation is however different regarding Twitter pages. Indeed, with only 28% of pages with less than 1000 followers and 17% with more than 50.000, one can argue that Twitter can generally attract a higher number of followers and, therefore, has a better capacity to digitally connect people with their representatives.

11.3.2 Observing the nature of information and type of interactions: a content analysis of ten case studies

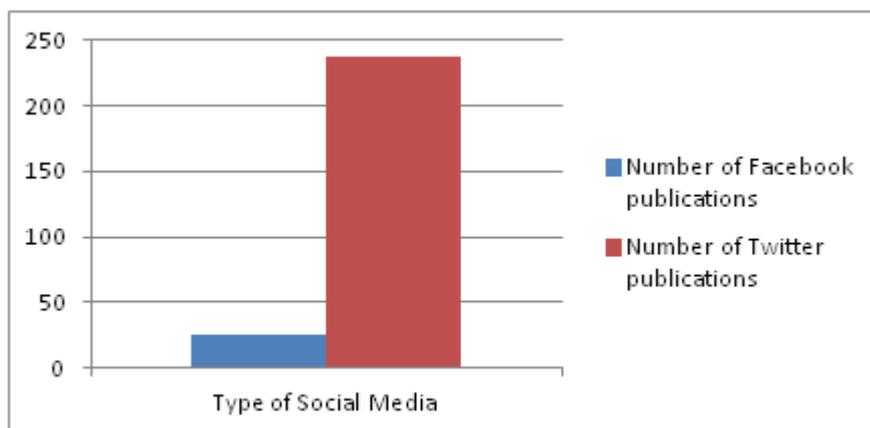
The second part of this paper intends to shed light on the nature of the information published by the French deputies on Facebook and Twitter

and, moreover, on the type of reactions these publications engender. In order to draw a representative picture of the content of these pages, this study investigates ten different case studies. The selection of these cases follows the classification set in the previous section; examining one Twitter and Facebook account per category of followers. These pages are subsequently compared in terms of quantity of publications shared, type of information published, and nature of reactions these publications generate (see section methods and data).

11.3.2.1 First category: between 0 to 1000 followers

Concerning the first category of followers (0 to 1000 followers) we investigate the Facebook page of Gilles Savary (227 followers) and the Twitter page of Martial Saddier (717 followers). Gilles Savary is the deputy of the 9th district of Gironde and Martial Saddier is the deputy of the 3rd circonscription of Haute-Savoie; both are generally unknown on the national scale. When looking at a quantitative perspective, a first analysis of these two pages shows that an extensively higher amount of information have been published on the Twitter page (237) in comparison with the Facebook page (25) (Figure 4.2.1.1).

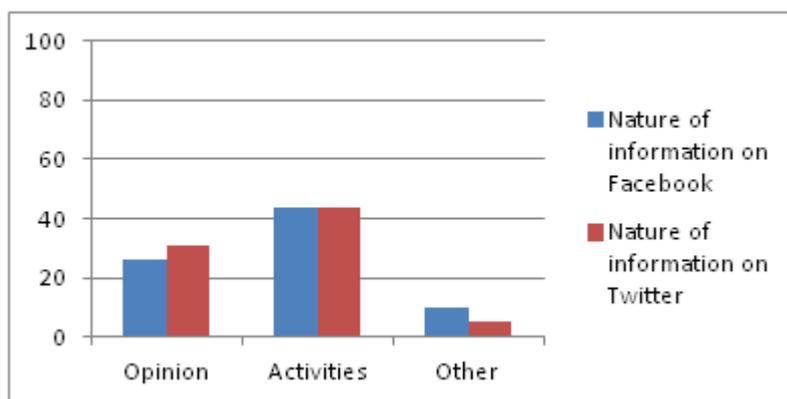
Figure 4.2.1.1: Number of publications on Facebook and Twitter



Source: Author's calculation based on Facebook and Twitter's data, 2015.

In regard to the nature of these publications, the results of this research tend to display that a large part of the information shared on these two pages was about political matters. With less than 10% of the publications classified as "Others" in both cases, most of the information published concerned the activities or the opinion of the deputy (Figure 4.2.1.2).

Figure 4.2.1.2: Type of information published



Source: Author's calculation based on Facebook and Twitter's data, 2015.

Comparing these two pages shows that Facebook and Twitter publications bring about really different types of reactions from the public. Following the method previously mentioned in the Method and Data section, this study suggests that, in this case, Facebook posts generate a higher number of reactions from the people (Table 4.2.1.3). A more in-depth investigation of the Facebook and Twitter comments indicates that comments and discussions often tend to be more constructive and less vulgar on Facebook than on Twitter. Furthermore, it is interesting to observe that, with the exception of two or three cases, almost none of these comments or reactions have revealed direct discussions or interactions between the holder of the page and the public.

Table 4.2.1.3: Type and number of follower's reactions

Type of reactions (Facebook)	Average number of reactions
"Like"	31
"Share"	4
"Comment"	5

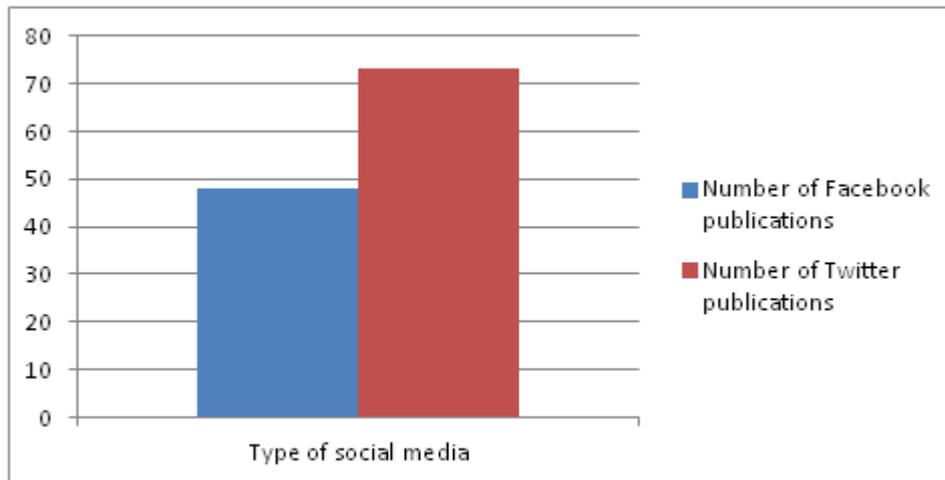
Type of reactions (Twitter)	Average number of reactions
"Retweet"	3
"Favourite"	0.5
"Comment"	1

Source: Author's calculation based on Facebook and Twitter's data, 2015.

11.3.2.2 Second category: between 1.000 and 10.000 followers

This section focuses on the Facebook and Twitter pages of the deputy Laurent Baumel (Facebook: 5403 followers; Twitter: 5233 followers). Laurent Baumel is the former mayor of Ballan-Miré and is currently the deputy of the 4th district of Indre-et-Loire. Member of the *Partie Socialiste*, he is quite renowned locally but remains rather unknown to the French general public. Similarly to the precedent case, our examination shows that more information were released on the Twitter page (73) than on the Facebook one (48) – however with a lower differential between the two (Figure 4.2.2.1).

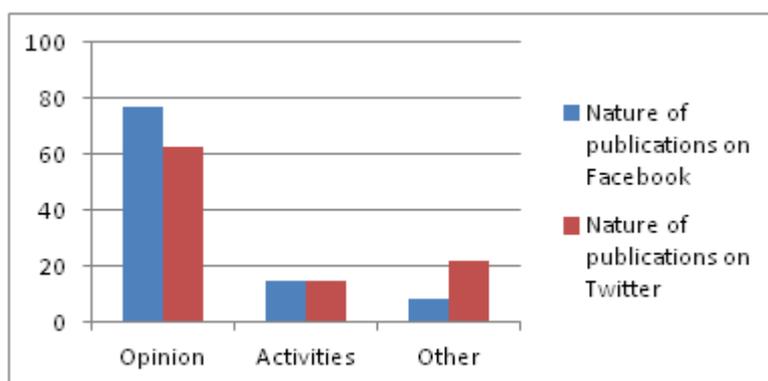
Figure 4.2.2.1: Number of publications on Facebook and Twitter



Source: Author's calculation based on Facebook and Twitter's data, 2015.

With 8% of the Facebook posts and 22% of the Twitter publications qualified as "Others", one can argue that a great part of these publications is moreover related to political issues; either explaining representatives' activities or opinion. This confirms our previous findings and indicate that most of the information shared by the deputies addresses political questions (Figure 4.2.2.2).

Figure 4.2.2.2: Type of information published



Source: Author's calculation based on Facebook and Twitter's data, 2015.

Regarding reactions to these Facebook and Twitter posts, it is significant to point out that, here again, Facebook posts triggered more reactions than Twitter publications (Table 4.2.2.3). A large majority of Twitter comments was revealed to be insulting and highly offensive, whereas Facebook discussions were again more fruitful for dialogue. However, only a few numbers of these discussions actually involved a direct interaction between the followers and the owner of these two pages.

Table 4.2.2.3: Type and Number of followers' reactions

Type of reactions (Facebook)	Average number of reactions
"Like"	26
"Share"	5
"Comment"	4

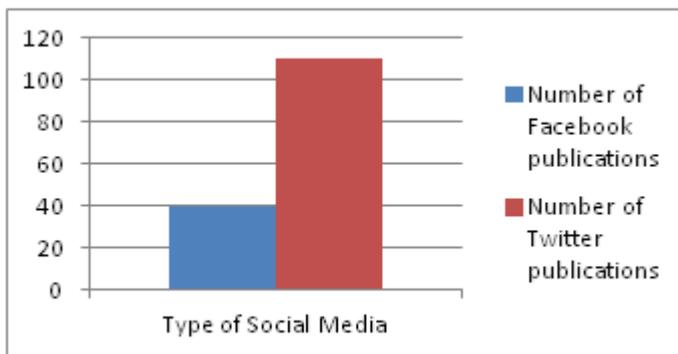
Type of reactions (Twitter)	Average number of reactions
"Retweet"	5
"Favourite"	2
"Comment"	5

Source: Author's calculation based on Facebook and Twitter's data, 2015.

11.3.2.3 Third category: between 10.000 and 50.000 followers

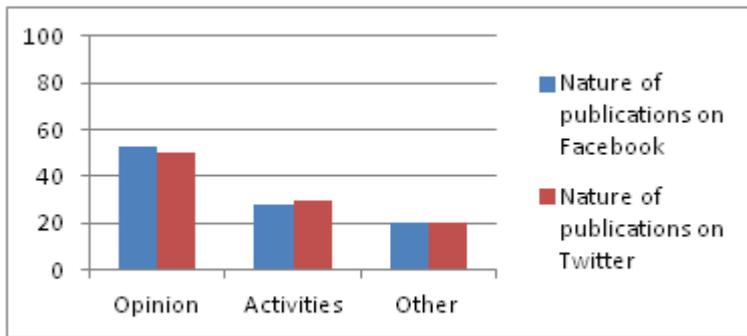
This third section examines the case of the Facebook and Twitter pages of the French deputy Frank Riester (Facebook page: 12482 followers. Twitter page: 21.100 followers). Frank Riester is the incumbent mayor of Coulommiers and current deputy of the 5th district of Seine-et-Marne. Member of the newly created movement "Les Republicains" – formerly named UMP – he is sometimes considered as being one of the future leaders of the French right-wing movement. Analysing these two pages, firstly indicates that a higher amount of information is published on Twitter (110 publications) than on Facebook (40 publications) between January and May 2015 (Figure 4.2.3.1). 80% of these publications is moreover classified in both cases as either "Opinion" or "Activities", thus leaving only 20% in the "Others" category. This corroborates our previous results (Figure 4.2.3.2).

Figure 4.2.3.1: Number of publications on Facebook and Twitter



Source: Author's calculation based on Facebook and Twitter's data, 2015.

Figure 4.2.3.2: Type of information



Source: Author's calculation based on Facebook and Twitter's data, 2015.

Finally, in regard to the type of reactions, this examination confirms that Facebook posts have a strong tendency to generate more reactions from the public (Table 4.2.3.3). These reactions appear to be undoubtedly more positive and respectful on Facebook than on Twitter. Yet, here again, they only provoke a really limited number of direct interactions between represented and representative.

Table 4.2.3.3. Type and number of followers' reactions

Type of reactions (Facebook)	Average number of reactions
"Like"	75
"Share"	2
"Comment"	7

Type of reactions (Twitter)	Average number of reactions
"Retweet"	5
"Favourite"	2
"Comment"	6

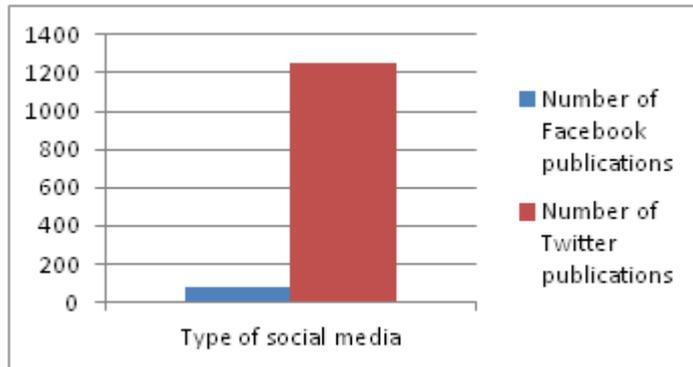
Source: Author's calculation based on Facebook and Twitter's data, 2015.

11.3.2.4 Fourth category: between 10.000 and 50.000 followers

Regarding the fourth category, this study looks at the Facebook page of François Fillon (63.803 followers) and the Twitter page of Marion Maréchal Le Pen (61.900 followers). François Fillon is the deputy of the 2nd district of Paris. He is one of the leaders of the French right wing party "Les republicains". Marion Maréchal Le Pen is the deputy of the 3rd district of Vaucluse. Being the granddaughter of Jean Marie Le Pen, and niece of Marine Le Pen, she is often described as the new rising figure of the extreme right party "Front National". In respect to the number of Facebook and Twitter publications, a first observation of these two pages shows that, while only 77 post were shared on François Fillon's Facebook

page, 1250 posts were published on Marion Marechal Le Pen 's Twitter page (Figure 4.2.4.1).

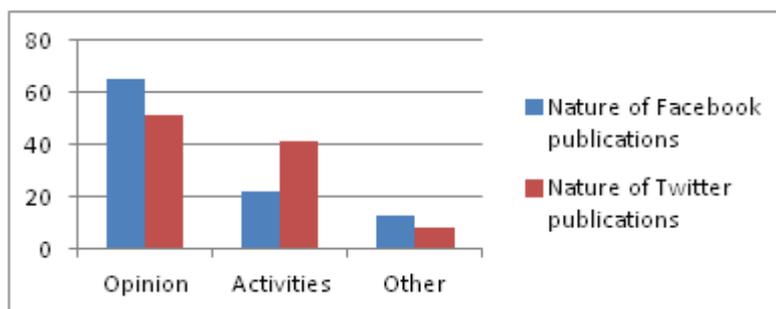
Figure 4.2.4.1: Number of Facebook and Twitter publications



Source: Author's calculation based on Facebook and Twitter's data, 2015.

Looking at the nature of these Facebook and Twitter publications indicates that only 13% of Facebook posts and 8% of Twitter publications fit into the category "Other". Thus, one can claim that both Facebook and Twitter pages mainly aimed at informing the public about the opinion or the activity of the deputy under consideration (Figure 4.2.4.2)

Figure 4.2.4.2: Type of information



Source: Author's calculation based on Facebook and Twitter's data, 2015.

Furthermore, a last glance over these pages reveals that Facebook posts initiate more public reactions than Twitter publications in terms of "Like", "Share", "Retweet", and "Favourite" (Table 4.2.4.3). The situation is however relatively different regarding the comments left by users of these pages. Moreover, comments and discussions are in general more productive and meaningful on Facebook than on Twitter. These different reactions however did not generate any direct interactions between social media users and their representatives.

Table 4.2.4.3: Type and number of followers' reactions

Type of reactions (Facebook)	Average number of reactions
"Like"	571
"Share"	60
"Comment"	35

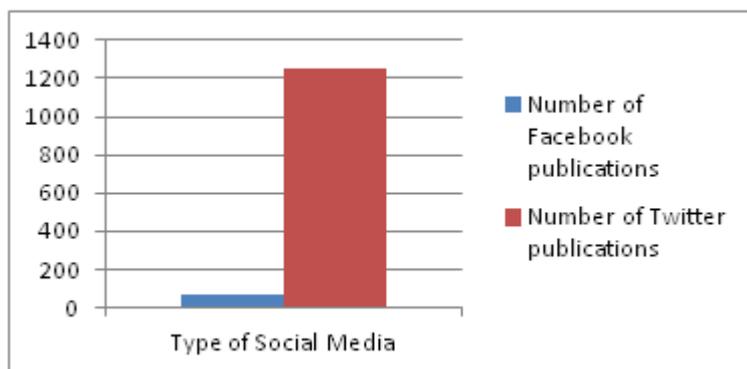
Type of reactions (Twitter)	Average number of reactions
"Retweet"	152
"Favourite"	51
"Comment"	77

Source: Author's calculation based on Facebook and Twitter's data, 2015.

11.3.2.5 Fifth category: more than 100.000 followers

For this last category, this section concentrates on the Facebook page of Marion Marechal Le Pen (240. 210 followers) and the Twitter page of François Fillon (233. 000 followers). A higher number of publications was released on François Fillon’s Twitter page compared to Marion Marechal Facebook page (Figure 4.2.5.1).

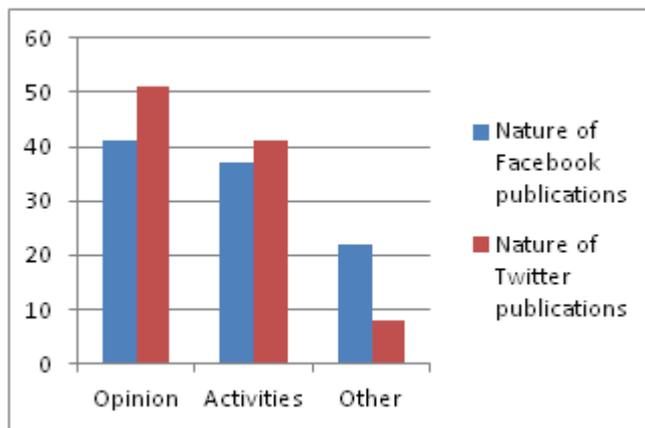
Figure 4.2.5.1: Number of Facebook and Twitter’s publications



Source: Author's calculation based on Facebook and Twitter's data, 2015.

Moreover, 8% of the information shared on Marion Marechal Le Pen's Twitter page is labelled as "Others". This number appears to be higher in the case of François Fillon’s Facebook page - 22% of the publication being characterized as "Others" (Figure 4.2.5.2). Yet, one can argue that a large share of the information disclosed on these two pages communicates about the political agendas of the two deputies.

Figure 4.2.5.2. Type of publications



Source: Author's calculation based on Facebook and Twitter's data, 2015.

The examination of the type and number of followers' reactions suggests that, once again, Facebook publications have a tendency to generate more reactions from the public, once again, with more constructive discussions started on Facebook, and no direct interactions (Table 4.2.5.3).

Table 4.2.5.3. Type and number of followers' reactions

Type of reactions (Facebook)	Average number of reactions
"Like"	8832
"Share"	537
"Comment"	589

Type of reactions (Twitter)	Average number of reactions
"Retweet"	30
"Favourite"	10
"Comment"	82

Source: Author's calculation based on Facebook and Twitter's data, 2015.

To conclude, these findings indicate that a really large part of the publications shared by politicians on Facebook and Twitter are about political issues. These publications tend moreover to generate relatively high number of reactions on both platforms – although this number is generally more important on Facebook than on Twitter. However, looking at followers reactions teaches us that a lot needs to be done before to fully transform social media into a new type of electronic democratic consilium in which represented and representatives could freely exchange opinions and information. Although some Facebook discussions appeared to be rather constructive and purposeful, people's reactions - most

particularly on Twitter - were in general relatively aggressive and insulting. Moreover, with the exception of a few cases, only a really low number of these discussions actually involved direct dialoguing between the deputies and the public.

11.4 Looking at the other side: an analysis of the impact of transparency in social media on French citizens

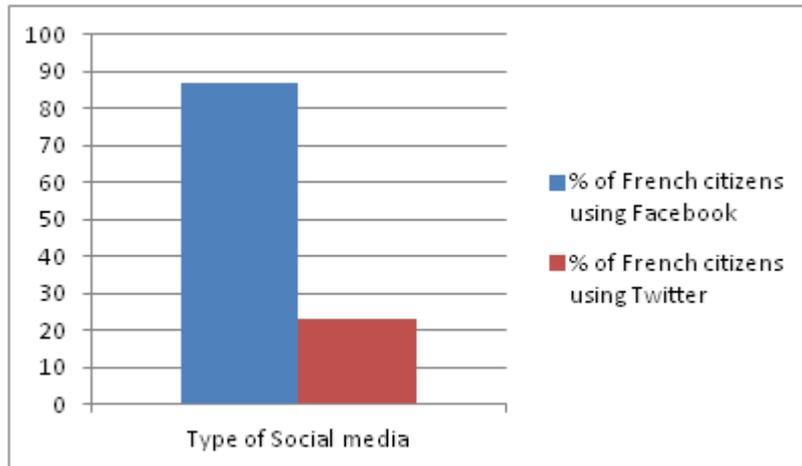
After having analysed the propensity of French deputies to use social media as a new transparent and democratic tool, this paper now looks at the other side of the mirror; assessing how people actually evaluate this process. We considered that the best way to calculate such an elusive type of information was to conduct a survey among French citizens. This survey aims at testing two distinguishable, albeit complementary, hypotheses. The first hypothesis H1 establishes that "a small part of French citizens use social media to learn more about the opinions and activities of their representatives". The second hypothesis H2 states that "social media has not succeeded in informing the public and in creating a new type of interaction between represented and representatives".

11.4.1 Testing the first hypothesis (H1): to which extent do people use social media with the goal of being informed about their representatives' activities and opinions?

The following part aims at testing our first hypothesis (H1); "a small part of French citizens use social media to learn more about the opinions and activities of their representatives". In order to obtain a first outline of the situation, we start off our questionnaire with two rather simple and straightforward questions; Q1 "Are you a user of Facebook?"; Q2 "Are you a user of Twitter?". We observe that most of the people surveyed

declared to belong to the Facebook community (Yes: 87%, No: 13%), whereas only 23% of them are users of Twitter (Figure 5.1.1)

Figure 5.1.1: Percentage of French citizens using Facebook or Twitter

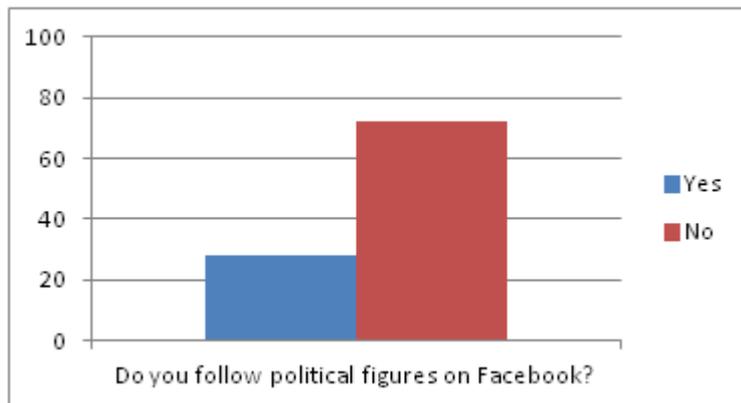


Source: Author

We then decide to firstly extend and deepen this analysis by asking the people surveyed whether they follow political figures on Facebook (Q3) or Twitter (Q4), and if yes, the frequency with which they consult these pages (Q5; Q6). To the question "Do you follow political figures on Facebook?" 28.5% of the people answered with a "Yes" (Figure 5.1.2). A breakdown of these results shows that most of the people actually claim to follow international or national political figures, only 3.5% of them actually declaring to follow their local deputy (Figure 5.1.3). Regarding Twitter, our results display that 43% of the people surveyed follow one or several political figures (Figure 5.1.4). Moreover, similar to the previous case, most of the respondents declare to follow either an International politician (50%) or a French national political figure (42%). Only 8% disclose to follow a politician of the European Union and none of them have actually "befriended" their local deputy (Figure 5.1.5). We further expand this study by assessing how many times our respondents tend to

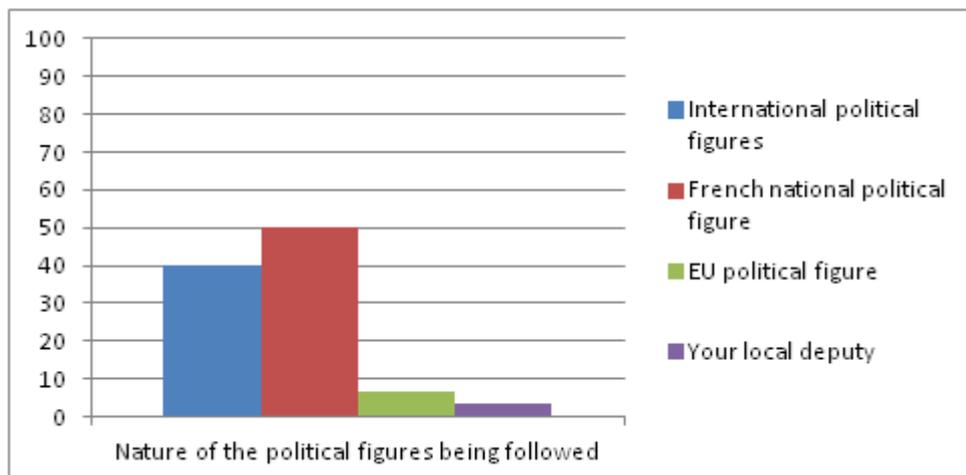
visit these Facebook (Q7) and Twitter pages (Q8) per week. In respect of Facebook pages, a majority of the people surveyed admitted to visit them less than one week (43%); 13% visit them two of three times a week, 24% once a week, and only 20% consult them everyday (Figure 5.1.6). Likewise with Facebook, a majority of Twitter's users go on these pages less than one week (33%) when only a minority check them everyday (13%) (Figure 5.1.6).

Figure 5.1.2. Percentage of people following political figures on Facebook



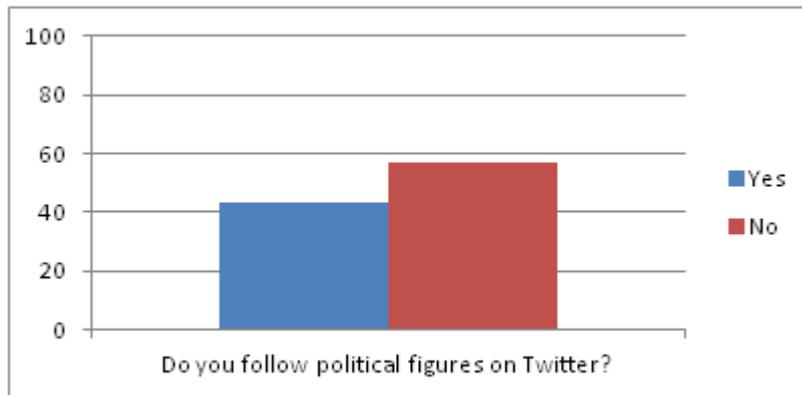
Source: Author

Figure 5.1.3. Nature of the political figures being followed on Facebook



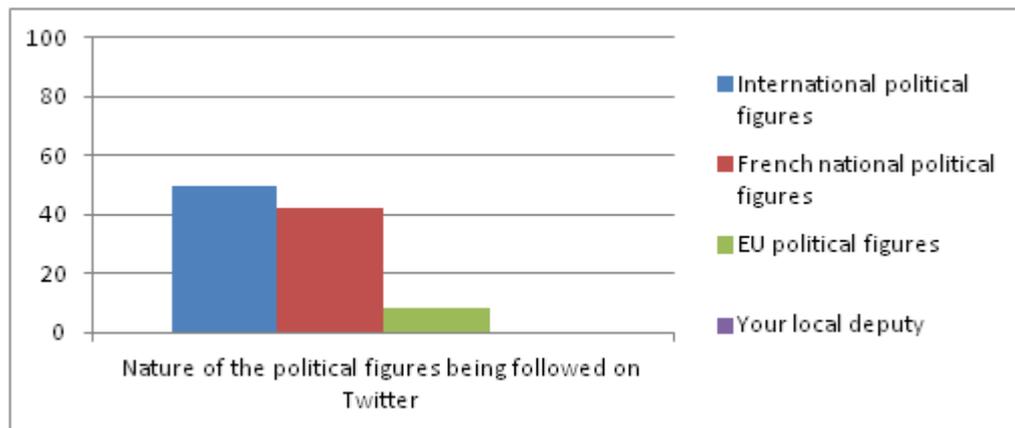
Source: Author

Figure 5.1.4. Percentage of people following political figures on Twitter



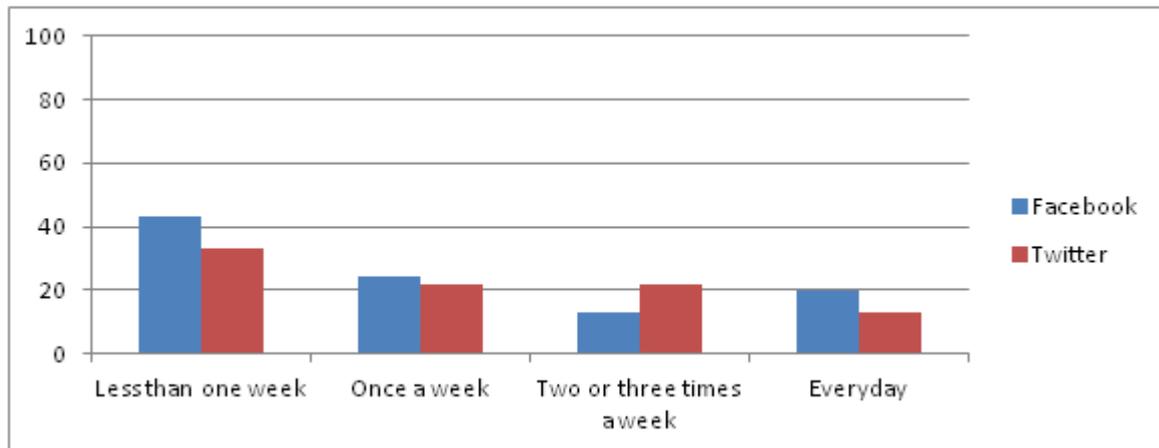
Source: Author

Figure 5.1.5. Nature of the political figures being followed on Twitter



Source: Author

Figure 5.1.6. Frequency of visits per week (Facebook and Twitter)



Source: Author

To sum up, one can firstly claim that a really large majority of the respondents hold a Facebook account. Among these Facebook users, 71.5% declare to not follow one or several political figures, and when they do, they choose to follow renowned international or national politicians rather than local representatives. In regard to visit frequency, it is relevant to note that a small share of the people who actually follow politicians on Facebook check their pages every day and a large part of them consult them less than once a week. Secondly, people's answers indicate that a really low number of respondents use Twitter; but that, in contrast to Facebook, a bigger part of them do it for political purposes. Similarly to Facebook, they prefer to follow famous political figures rather than local deputies and tend to not visit these pages on a regular/daily basis. Hence, one can argue that using Facebook is significantly more popular among French citizens than using Twitter. Moreover, although Twitter's users may be more prone to follow and visit political pages than Facebook users, such behaviour remains really unusual and limited for both cases. Our findings suggest that there is, furthermore, a greater tendency for people following these pages to be interested in famous national or international figures rather than in local representatives –

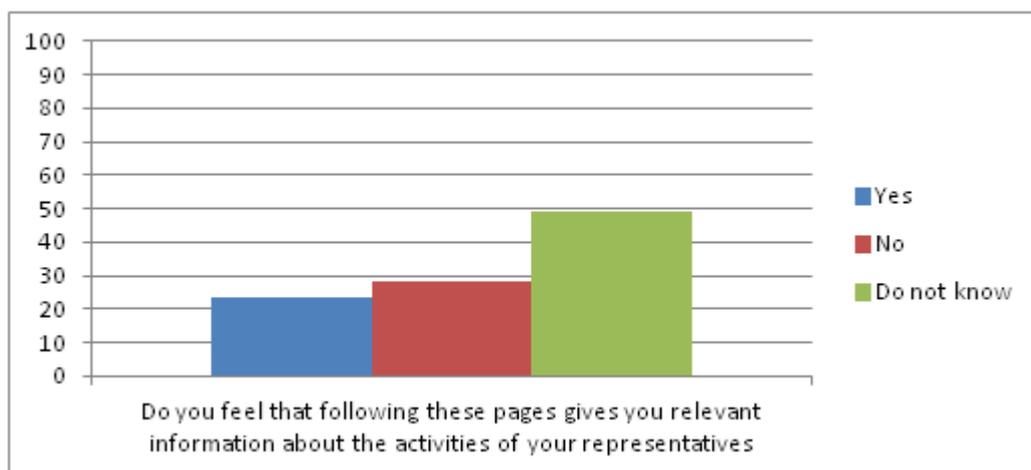
despite the fact that the former may actually govern farther away from the respondents' constituency or country. Overall, these results tend to validate our first hypothesis (H1): "a small part of French citizens use social media to learn more about the opinions and activities of their representatives".

11.4.2 Testing the second hypothesis (H2): Transparency in social media, a successful tool to connect the citizens with their representatives?

The second part of this study intends to test our second hypothesis (H2); "social media has not succeeded in informing the public and in creating a new type of interaction between represented and representatives". For that purpose, we examine how French citizens evaluate this process of transparency of politicians in social media; whether they think it is an effective and useful tool, and whether they feel that it has managed to bridge the gap between them and their representatives. We firstly asked our respondents whether they deem that following these pages gives them relevant information about the different activities of their representatives (Q9). We obtained rather balanced results; with 23.5% answering with a Yes, 28% with a No, and 49% admitting not having any opinion (Figure 5.2.1). Quite similar results were found to the next question - "Do you feel that following these pages allow you to better understand what happens at French Assemblée Nationale" (Q10) - for which 16.5% of the respondents decided to tick the box "Yes" and 38.5% the box "No" (Figure 5.2.2). We then tried to tackle the issue from a different perspective. Accordingly, we asked our panel of participants whether they think that politicians usually take people's interventions and discussions on social media into consideration (Q11). The answers collected were in line with our previous findings and indicated a high degree of scepticism and disregard from the public (Figure 5.2.3). To finish our analysis, we decided to ask, as a final question, whether

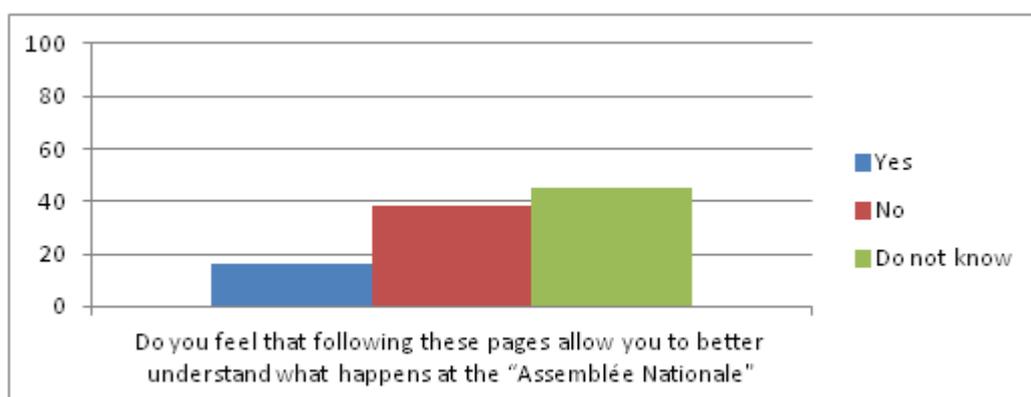
transparency in social media has succeeded in creating a new link between citizens and representatives (Q12). Not surprisingly, our findings demonstrate that a majority of the people (46%) do not believe that transparency in social media generates today a new type of interaction between citizens and representatives (Figure 5.2.4).

Figure 5.2.1. Do you feel that following these pages gives you relevant information about the activities of your representative(s)



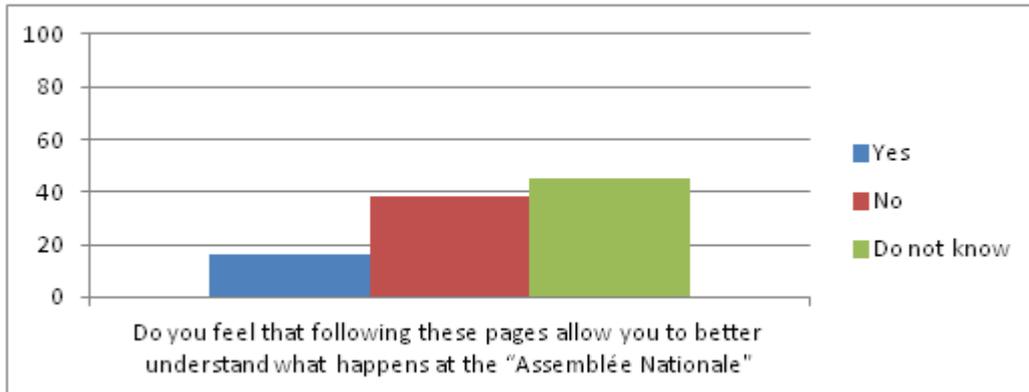
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Figure 5.2.2. Do you feel that following these pages allow you to better understand what happens at the "Assemblée Nationale"



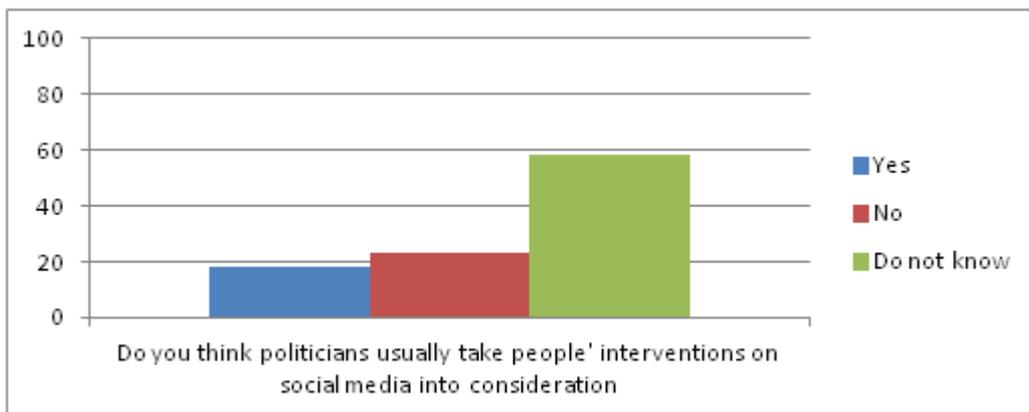
Source: Author

Figure 5.2.3. Do you think politicians usually take people' intervention on social media into consideration



Source: Author

Figure 5.2.4. Do you feel that following these pages has succeeded in creating a link between you and your representatives?



Source: Author

Putting it all together, our findings suggest that most of the people surveyed tend to poorly evaluate the process of political transparency in social media as it stands today. First of all, regarding efficiency, they deem that following politicians' pages fails to provide citizens with relevant information on the activities and opinions of their representative. They judge, moreover, this information not to be sufficient to understand the ins and outs of the French assembly, and think that this process of

transparency often resembles a one way road, in which politicians tend to ignore people's suggestions and remarks. Second of all, only a few respondents believe that following politicians on a social media creates a new interaction between citizens and representatives. This supports the view that Facebook and Twitter users are highly sceptical about the idea of transparency of politicians in social media and corroborates our second hypothesis (H2): "social media has not succeeded in informing the public and in creating a new type of interaction between represented and representatives".

11.5 Conclusion

Today, reengaging citizens into politics and restoring their trust towards political institutions is an important issue. For many scholars, the advent of internet - and most particularly of social media - has offered new possibilities to modernize representative democracy and revolutionize citizens' relationship with their political representatives. This networked revolution implies the creation of new means of transparency by which citizens would potentially be able to inform themselves about the activities and opinions of their representatives and by the same way directly interact with them. In light of this argument, this paper tackles the issue of transparency of French representatives on Facebook and Twitter, and addresses the following research question "Does transparency in social media succeed in re-connecting French representatives with their citizens?".

The first part of this paper examines the general usage of Facebook and Twitter by French deputies. This analysis indicates that both social networks are conventionally used by French deputies for political purposes – yet, with a greater amount of followers gathered on Twitter's pages and a greater extent of information generally shared on Twitter. Only a few of these posts turn out to be about non-political matters and a really large

part of these Facebook and Twitter's publications tend to either inform the public about politicians' legislative and political activities or to bring light on certain political positions. Furthermore, our study displays that these publication sometimes generate – on both social media – a high amount of public reactions. However, the really low amount of direct interactions between users and politicians, and the poor nature of the discussions these publications provoke – most particularly on Twitter - imply that transparency in social media does not fully achieve its purpose and fails to create new links between the French citizens and their deputies.

The second part of this paper addresses the issue through a different angle by looking at how people assess this process of political transparency in social media. In this regard, we decided to conduct a small, convenience-based survey among the French population. The first part of the survey shows that, while most of the people surveyed hold a Facebook account, only a minority revealed to be Twitter's users. Moreover, only a limited part of those using social media declared to follow one or several politicians on Facebook or Twitter. When they do, they furthermore admit to hardly visit their pages and read their publications. Secondly, a majority of the people surveyed disclosed to not believe that transparency in social media can help them understand better the complexity of political affairs. A large part of them feels that politicians tend to ignore people's suggestion and comments on social media, and that following politicians on social media does not succeed in creating a new kind of relationship with their representatives.

These results suggest that, although French politicians use social media to share political information, most French citizens do not take the time to consult it. This can be due to many factors; either because they deem the information shared not to be sufficiently relevant or trustworthy, or simply because they are not present on social media. Additionally, they show that, when people actually react to politicians'

publications, it is often done in a clumsy or aggressive way, and rarely leads to any direct interactions between the public and the politicians.

It is important to note that this paper also contains a few limitations. To start, one must mention that, due to the limited resources and time span that were allocated for the completion of this study; we only managed to collect 150 answers to our questionnaire. Although this number is sufficient to draw some conclusions and have an idea of the general trends on the issue, it would be relevant to extend this research and therefore survey a larger amount of people. Moreover, it would be interesting to look at generational schemes and examine whether the young generations apprehend the issue of transparency in social media in a more positive fashion than their elders. This could be done by performing a correlation analysis of the data extracted from the questionnaire.

12 Surveillance and sousveillance on Facebook: Between empowerment and disempowerment – Mateusz Bucholski

12.1 Introduction

It seems there is no end to the growth of social media. Facebook, in particular, enjoys its hegemonic position as the leading social networking site, with more than one and a half billion global monthly active users throughout 2015 (Facebook Newsroom, 2015). 71 per cent of all adult Internet users in the United States have used Facebook in 2014, which constitutes 58 per cent of the entire U.S. adult population (Duggan et al., 2015). The website has permeated many aspects of social, cultural, and economic life. It has equipped its users with new ways of online social interaction, governments with new means of communicating policies with the public opinion, and businesses and advertisers with a platform for reaching consumers faster and on a broader-than-ever scale. David Lyon (Bauman and Lyon, 2013), the leading scholar of international surveillance studies, observes: "Facebook has quickly become a basic means of communicating – of 'connecting', as Facebook itself rightly calls it – and is now a dimension of daily life for millions" (p. 35).

The effect of social networking and social media on mass popular culture of the modern world is undoubtedly immense. What is less clear, however, is the normative value and nature of Facebook. From its appearance on the Internet, the website has been an object of criticism pointing to the modern paradigm of individuals' lives being constantly exposed to the public gaze. The increasingly complex and decreasingly intelligible architecture of the globalising "technoscape" (Appadurai, 1990, p. 296) have created new means of surveillance. David Lyon (1994) has been at the forefront of this line of thinking, arguing together with

Zygmunt Bauman that modernity brought about the rise of a new Panoptic "surveillance society". Lyon sees Facebook as an exemplary modern surveillance system, designed for the purpose of collecting data about its users and turning it into commercial profits. The revelations about the global surveillance of Facebook users by the U.S. National Security Agency, exposed by Edward Snowden in 2013, seem to be a case in point. The international uproar that followed inspired many to reflect critically on the nature of social networking sites and to question their safety.

Contrastingly, technology and Internet enthusiasts are a lot more eager to promote social media. In their optimistic narrative, Facebook (and the Internet in general) is "an arena for interactive democracy, critical expression, as well as a site of new identity formation" (Koskela, 2006, p. 165). The question remains how to see the role of surveillance in all this. Can surveillance have positive effects at all, and if so, what could they be? One answer is to turn the concept of surveillance on its head. Jean-Gabriel Ganascia (2010), for instance, talks about a "generalised *sousveillance*", which gives the user the opportunity to reverse the gaze and point it at their overseer. Ganascia proposes a reconceptualisation of the Panopticon into a "Catopticon" that "allows everybody to communicate with everybody and removes surveyors from the watchtower" (p. 489). Can this perspective of catoptic *sousveillance* be applied to Facebook?

This contribution aims to comparatively assess those two divergent perspectives in an attempt to answer the following central question: *To what extent is Facebook a system of panoptic surveillance or catoptic sousveillance?* The central question comprises two parts. I firstly reflect on whether Facebook can be seen as a system of surveillance and a Panopticon. Thereafter, I turn to the question of the Catopticon: Can Facebook be perceived as a system of *sousveillance*? Lastly, if Facebook can be theorised using both surveillance and *sousveillance*, what sort of synthesis can be derived from these concepts? I analyse the contents of

two documents underlying Facebook policy, the *Terms of Service* and the *Data Policy*. A Foucauldian toolbox is particularly useful here, since Foucault's reading of the Panopticon includes a reflection on the power dynamics within this mechanism. Surveillance is thus not only the condition of being watched, but also subjection to a certain power and discipline.

Following these lines, my focus does not shy away from a certain emphasis on power: surveillance and sousveillance both point to the concept of power and to (albeit divergent) power relations. I am interested not only in the content of the two analysed policy documents, but also in the implicit power relationships between Facebook and its users which may stem from their discourse. Power is defined by Foucault (1978) as a ubiquitous social relation: "Power is everywhere; not because it embraces everything, but because it comes from everywhere" (p. 93). It is not a "thing" which can be owned by individuals or the state, but rather a relation between people or groups in the social body (O'Farrell, 2005, p. 99). Thus, if surveillance is understood as a hierarchical dependency between the observer and the observed, then the gaze results in subjugating the latter and empowering the former. But the perspective of sousveillance reverses this power relation, and empowers the user of social media *vis-à-vis* Facebook. There no longer is a clear-cut dependency, but rather the idea that everyone can observe everyone in an egalitarian setting. This reversal of power relations is perhaps the clearest conceptual difference between surveillance and sousveillance. The answer to my central question, therefore, incorporates reflections on power within the concepts of surveillance and sousveillance.

The next chapter inspects Facebook's *Terms of Service* and *Data Policy*. This analysis is followed by a more detailed discussion of the Panopticon in chapter three. Chapter four turns to the concept of sousveillance, in order to see if Facebook can also be used productively, e.g. to create new subjectivities, as argued by Ganascia (2010). My

conclusion then attempts to theoretically reconcile the perspectives of surveillance and sousveillance, and discusses power relations inherent to these concepts.

12.2 Facebook's *Terms of Service* and *Data Policy*: Content Analysis

Privacy policies are certainly not amongst the most frequently read documents. They do, nevertheless, to a large extent determine the power relations between the user and the website, in particular by specifying what happens to user data and who retains control over them. When Facebook's terms hit media headlines, it is typically with an aura of intransparency and surveillance (cf. Vedantam, 2012; Smith, 2013; Lapowsky, 2014; Smith, 2015). Concern often revolves around the issue of who owns and controls user data, and how it is used. These are also my guiding motifs here. I firstly look at the *Terms of Service* (Facebook, 2015a), which specifically deal with the topics of privacy, data-sharing and safety. I then inspect the *Data Policy* (Facebook, 2015b), a *de facto* privacy policy intended to supplement the *Terms of Service* with a more detailed discussion of privacy.

12.2.1 Terms of Service

The *Terms of Service* analysed here have been last revised on January 30, 2015, and were the most recent, original U.S. English version in force at the time of my writing (Facebook, 2015a). The document is divided into eighteen sections, of which the first four: (1) "Privacy", (2) "Sharing Your Content and Information", (3) "Safety", and (4) "Registration and Account Security", prove to be most illuminating for a discussion of surveillance on Facebook. The "Privacy" section opens with an assertion: "Your privacy is very important to us" (para. 1). The document, together with the *Data Policy*, as it is explained, was designed with the aim to disclose how Facebook collects and uses user data. In theory, this should

help users make informed decisions about privacy. But is this really the case? Do these policies explain what Facebook does with user data – and who owns this data – clearly and exhaustively? I argue this is far from being clear.

The first hindrance is at the level of language. The *Terms of Service* are written in a legalistic, elitist, vague, brief and abstract manner, without the use of any practical examples that would provide a more relatable level of understanding for the user. Evidence thereof is found in the opening paragraph of section two ("Sharing Your Content and Information") which states: "[Y]ou grant us a non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to use any IP [intellectual property] content that you post on or in connection with Facebook". The meaning of this passage is hardly accessible to the non-specialist. What does this accumulation of adjectives entail? Firstly, a non-exclusive license (undefined in the *Terms of Service*) "grants to the licensee the right to use the intellectual property, but means that the licensor remains free to exploit the same intellectual property and to allow any number of other licensees to also exploit the same intellectual property" (Taylor and Wessing, n.d., para. 3). Thus, when the user provides Facebook with data about themselves, they share this data not only with Facebook, but also with an unspecified number of third parties who are never explicitly listed by name in the *Terms of Service*. The user cannot know what companies have the right to use their data, and for what purpose. Secondly, "transferable" entails Facebook can sell or otherwise grant the rights to access user data to third parties. This is confirmed by the adjective "sub-licensable". Thirdly, the user provides their data without any monetary compensation, e.g. in the form of a royalty fee. Lastly, the content shared with Facebook can be used by the company worldwide.

The above passage establishes a one-directional power dependency between Facebook and the user, in which the latter is clearly in a disadvantaged position. The user does not own their data, since they

cannot govern it with awareness and agency. It is not the user who can control what rights they grant to Facebook in terms of data usage and access, but Facebook itself who dictates how, when, and with whom it wishes to share information. In other words, users no longer control their data in any meaningful way. Data becomes a commodity; acquired, sold, and resold without any conscious involvement of its righteous owner. There is an additional passage that sheds light on who is in control, not only of data but of users' Facebook accounts in their entirety: "You will not transfer your account . . . to anyone without first getting our written permission" (section 4, para. 9). The rationale behind this requirement is left unexplained. The question which thus comes to mind is: Who owns our online personas, and who has the power to control them? It seems that the user has little power in this respect. Evidence in support of this is found in section two, paragraph two: "removed content may persist in backup copies for a reasonable [unspecified] period of time". The user has no way of deleting once-uploaded data effectively. Therefore, how can privacy be "very important" to Facebook, when the users not only cannot know with whom the website shares their data, but have no means of deleting their content with an immediate and conclusive effect?

Another concern arises from reading paragraph four of section two:

When you publish content or information using the Public setting, it means that you are allowing everyone, including people off of Facebook [non-users], to access and use that information, and to associate it with you (i.e., your name and profile picture).

The Public setting is the default setting for all new user accounts, which needs to be changed with a conscious effort on the side of the user, should they wish to retain a higher level of privacy. This means that users uninformed about available privacy settings other than the Public setting automatically subject themselves to full transparency and potentially full

surveillance, since there is no way of knowing who is viewing their data and with what intentions. Combined with paragraph one of section four ("You will not provide any false information on Facebook"), the data obtained *via* surveillance of Facebook users is readily-available to a broad audience and in principle factually valid. Connected with this is paragraph seven of the same section: "You will keep your contact information accurate and up-to-date", which begs to consider why. An answer, yet again, is nowhere to be found in the *Terms of Service*, but this theme returns in section six, paragraph two, which obliges the user to update their mobile phone number information within 48 hours after its change or deactivation.

The last issue with the *Terms of Service* is in the method used to inform Facebook users about policy revisions. Paragraph three of section thirteen states: "Your continued use of the Facebook Services, following notice of the changes to our terms, policies or guidelines, constitutes your acceptance of our amended terms, policies or guidelines". This method does not ensure the effective dissemination of information (and it does not specify how Facebook will inform users about its policy amendments), since it does not require the user to become familiarised with policy revisions and what they entail in practice. It is merely assumed that since the user has been notified in whatever way, their continued use of Facebook constitutes an agreement to all changes. This approach has backfired in the past, exposing Facebook to criticism for its inadequate communication of policy revisions and company plans, as well as for its outright ignorance of users' opinion (cf. Fiveash, 2012).

12.2.2 Data Policy

The *Data Policy* (Facebook, 2015b; last revised January 30, 2015) supplements the *Terms of Service* with an explanation of what data Facebook collects about its users. The document opens with a broad

description of the types of information collected, but again it lacks specificity. Paragraph two ("Things you do and information you provide") states: "We collect the content and other information you provide . . . including when you sign up for an account, create or share, and message or communicate with others". It is not specified what sort of content and "other information" is meant. Disconcerting here is the inclusion of messaging under the surveillance umbrella: Facebook collects private messages exchanged between users. Given the vague meaning of the verb "collect" used throughout the text, it is impossible to assess how Facebook uses this data (e.g. are the contents of private messages being read or otherwise inspected, and is this done by a human or a machine). The paragraph then explains that the website also collects metadata, i.e. "data that provides information about other data" (Merriam-Webster, n.d.), such as the geographic location where a photo was taken, and the date a certain file was created. This list is certainly not exhaustive, since Facebook avoids completeness in its phrasing (e.g. by using open terms such as "This can include" in paragraph two). What is clearer is the ubiquity of surveillance: it is concerned not only with "what" (the content itself), but also "when" (file date-stamps), "where" (geotagging), and "how" (user interactions with Facebook). It is justified to say that nothing goes unnoticed. One's likes, political affiliations, beliefs, social connections, etc., are subject to constant oversight. Since data is collected at all times, the gaze is always present. Furthermore, what brings Facebook even closer to the model of the Panopticon is the interest in behavioural patterns and means of controlling them.

Here, what is also being collected is the information about how users interact with Facebook, e.g. the types of content viewed or engaged with, or the frequency and duration of Facebook activities (Facebook, 2015b, para. 2). The company is interested in the behaviour of its users, which points to Foucault's (1995) disciplinary power and panopticism, with their emphasis on behaviour and means of controlling it. The more

Facebook understands about the ways in which users interact with its services, the more potential it has to change and influence user behaviour. The aim is to maximise the amount of time spent on Facebook, since this increases user exposure to Facebook's advertising system. The purpose of surveillance is thus to discipline into a psychological state of social media dependency. For this to succeed, the user cannot realise just how much of their life they invest in the website. This is why such individual statistics, although evidently collected, are never disclosed.

Surveillance also targets non-users. Paragraph three of the *Data Policy* ("Things others do and information they provide") explains that Facebook collects data provided by other people using its services, including "information about you, such as when they share a photo of you, send a message to you, or upload, sync or import your contact information". Thus, one could be in Facebook databases without knowing and without consenting. Surveillance is no longer tied to the website itself, but permeates the offline reality. Facebook tracks the movements of users and non-users alike; specific geographic locations of devices used to access its services, data about one's phone operator or Internet service provider, and also about the movement of users across the Internet *via* the use of Facebook's social plugins (e.g. the ubiquitous "Like" button). Surveillance is a network where information is gathered not only through facebook.com, but also *via* third parties and companies owned by Facebook (Facebook, 2015b, para. 7–10), e.g. the photo-sharing platform Instagram and the instant messaging service WhatsApp.

What is the purpose of this network of data-collection? How is this information used by Facebook? The answer is found in paragraph seventeen of the *Data Policy*:

We use the information we have to improve our advertising and measurement systems so we can show you relevant ads on and off our Services and measure the effectiveness and reach of ads and services.

The aim is thus to rationalise with scientific precision the behaviours of Facebook users; to turn the user-body into a body of knowledge: studied, examined, tracked, surveilled, predictable, knowable. This process of "datafication" transforms the chaos of social action "into online quantified data, thus allowing for real-time tracking and predictive analysis" (van Dijck, 2014, p. 198). The obsessive fixation on measurement and effectiveness demands an endless stream of data. The user becomes objectified into a source of information about themselves and others; information which is extracted with the use of panoptic gaze and examination (Foucault, 1995). Because for advertising to be seductive and efficient, Facebook needs to establish the truth about the user. Examination, defined by Foucault (1995) in terms of a "normalizing gaze, a surveillance that makes it possible to qualify, to classify and to punish" (p. 184), together with surveillance (or "hierarchical observation" if one is to stick strictly with Foucault's terminology), make users into describable, analysable, knowable "cases": "object[s] for a branch of knowledge and . . . hold[s] for a branch of power" (p. 191).

Facebook's power is thus in the creation of a discipline; a body of knowledge about individuals. Just as hospitals employ registers on a micro-scale to identify and classify patients, Facebook is one immense register and database wherein observing users and their behaviours becomes an industry and is capitalised for financial gain: "[W]e use all of the information we have about you to show you relevant ads" (Facebook, 2015b, para. 30). At the surface, using Facebook demands no monetary payment from the user. It instead uses personal data as the "new currency" (cf. Taylor, 2014): users are expected to reveal their lives and give up privacy, since only then do they generate profit. Surveillance – or "*dataveillance*" (van Dijck, 2014) – is the business strategy of choice in the new "data economy" of Web 2.0 (Eggers et al., 2013, p. 20). The Facebook experience is commercialised, privacy commodified, and the

user willy-nilly made into a consumer. Users are "simultaneously *promoters of commodities* and the *commodities they promote*. They are, at the same time, the merchandise and their marketing agents" (Bauman in Bauman and Lyon, 2013, p. 32, original emphasis). This is where Facebook's power is most explicit: in the ability to control user subjectivities, to persuade them to behave in a certain way, to make them share details of their lives that would not have been shared otherwise. This power is asymmetrical in its effects: the user is disprivileged and disciplined to obey the rules of the game (e.g. in that they will not upload certain content or use Facebook for commercial purposes), whereas the company enjoys almost unrestrained freedom to dictate those rules, while giving a negligible chance of appeal (cf. Facebook, 2015b, para. 40). Both the *Terms of Service* and the *Data Policy*, therefore, create a situation where the user is comparatively disempowered *vis-à-vis* the company.

Lastly, on the language employed in the *Terms of Service* and the *Data Policy*; it is informal, especially in the latter document. It aims to shorten the distance between Facebook and the user, e.g. by the frequent use of direct "you". However, this easy-to-process linguistic simplicity does not go hand in hand with the complexity of technical solutions behind the website, which are hidden beneath discourse and remain invisible to the user. These policies do not explain how things really are. Instead, with the help of vague buzzwords such as "safety" and "security", they aim at reassurance. There is not much meaning or substance behind this user-friendly façade.

12.3 Surveillance: Facebook as Panopticon

What conclusions can be derived from the two analysed policies in terms of surveillance? Can Facebook be considered a modern-form Panopticon? This chapter presents arguments that can be put forward in support of such claims.

The Panopticon was designed by the English founder of utilitarianism Jeremy Bentham in 1791 (Lyon, 1994, p. 63). This new type of penitentiary – an "all-seeing place" – was to have a semi-circular layout with cells grouped around a central "inspection lodge" from where the guards could see every prisoner. The prisoners themselves, however, could never see the guards who remained outside their gaze, hidden behind a clever system of louvres (O'Farrell, 2005). The defining features of Bentham's Panopticon were hence the permanency, inevitability and uncertainty of surveillance. By permanency is meant that the Panopticon subjected the prisoner to a ceaseless gaze; there were no periods in time when the inmate was not being potentially watched. Surveillance was inevitable, since there was no escape from the gaze. The cell was an enclosed space which was at all times exposed. In this setting, privacy is a utopia, since no action can be performed in secrecy.

Furthermore, what is perhaps the crucial characteristic of the Panopticon is the uncertainty whether one is being watched at any given moment. Since the prisoner had no way of seeing the guard, they could never know for certain if the gaze was being directed at them. Nevertheless, the potential of being watched was in itself sufficient to change the prisoners' behaviours. The Panopticon is therefore a place where individuals are governed by the "art of distributions" (Foucault, 1995, p. 141) which comprises four processes: (1) enclosure (the prison as a distinct enclosed place, separated from the outside world); (2) partitioning (each person having their own delegated space within this enclosed place); (3) elimination of confusion *via* the use of functional sites (space rationalised, everything serving its purpose, elimination of waste); and (4) ranking (classification of people's performance, their division into homogenised groups such as classes or units) (pp. 141–146).

Thus, for Facebook to be a Panopticon, its design would have to reflect these principles. Is this the case? Firstly, the website is an enclosed place in the Internet *ex definitione*. Facebook is a domain

separated from all other sites in the World Wide Web. Access to Facebook is restricted and subscription-based, since an account is needed to view and share content. Signing up for an account constitutes the first layer of surveillance: a real first name and surname, email address or mobile phone number, and date of birth are required. This information, as outlined in the *Terms of Service* to which the user agrees upon registration, must be truthful (whether the user has really read the *Terms of Service* and the *Data Policy* is never verified upon registration). Facebook is, like the Panopticon, "a place heterogeneous to all others and enclosed in upon itself" (Foucault, 1995, p. 141). Secondly, every user interacts with Facebook *via* their own account and personalised Timeline and News Feed. User experience is highly individualised, since the content displayed under each account will vary depending on the user's personal likes, affiliations, friend network, activity level, etc. But what is obvious is that indeed "[e]ach individual has his own place" there (p. 143). If Facebook is a Panopticon, then each account is a cell designed to contain all the information about the user.

Thirdly, the space of Facebook is rationalised; divided into "functional sites" for the purpose of quick and easy navigation and control. Having logged in, the user is presented with a list of Favourites. Atop is the link to their News Feed, which allows the user to decide how to sort posts ("stories"): chronologically or by highest popularity (popularity is measured, e.g., by the number of "likes" and comments a post has received). This is followed by three other constants: Messages, Events, and Photos. The remainder of the Favourites list consists of Groups (small-scale discussion forums, public or restricted) the user has joined. Facebook is hence a structured, well-ordered and coherently organised place. Each element of the News Feed and the user interface serves a purpose and is everything but incidental. The complex, proprietary logic by which the News Feed is populated with content ensures each element

catches the user's eye. There is no room for redundancy if users are to spend increasingly more time on Facebook each year.

Fourthly, one can also see the last feature of the Panopticon mirrored in Facebook's design. Ranking works to divide users into groups differentiated by hobby, profession, residence, nationality, education, etc. This process is double-layered. On the one hand, users purposefully become members in communities they choose. On the other hand, Facebook itself ranks individuals into broad categories: "[we] provide non-personally identifying demographic information (such as 25 year old female, in Madrid, who likes software engineering) to . . . partners [i.e. advertisers] to help them *understand* their audience or customers" (Facebook, 2015b, para. 30, own emphasis). Thus, ranking aims to make users intelligible, their behaviours predictable. Additionally, Facebook friendships often become a benchmark for personal popularity. The quantification of social relations into calculable figures rewards those who favour quantity over quality of connections.

Moreover, the "Year in Review" feature, available from late 2014, which produced a collage of the most popular status updates, events and photographs posted on a person's Timeline during the passing year, can also be seen as the process of ranking at work. One's "Year in Review" could be shared with others. The longer, more cheerful, colourful and significant the collage, the better one's 2014 must have been in comparison with others. "It's been a great year!" read the automatically inserted headline, as if forcing enjoyment. Whose year was the greatest, whose collage the most startling, whose life the most enviable? Submitting oneself to the gaze is undoubtedly enticing – surveillance produces a seductive state of complete visibility:

The condition of being watched and seen has thereby been reclassified from a menace into a temptation. The promise of enhanced visibility, the prospect of 'being in the open' for everybody to see and everybody to

notice, chimes well with the most avidly sought proof of social recognition, and therefore of valued – 'meaningful' – existence. (Bauman in Bauman and Lyon, 2013, p. 26)

Naturally, Facebook is not a prison where users are physically held locked in cells. The cell is rather purely figurative and psychological: deleting the traces of one's online presence is possible but no longer permissible: "[L]iving social life electronically is no longer a choice but a 'take it or leave it' necessity" (Bauman in Bauman and Lyon, 2013, p. 30). The price for non-compliance with the "show-and-tell culture" of today is social death (pp. 30–31). But the willingness with which Facebook users disclose the details of their lives, regardless if they are being physically disciplined into doing so, is consistent with the Panopticon's logic. For panopticism, Foucault (1995) argues, with time replaces the need for external disciplining with internal self-discipline: "[T]he inmates should be caught up in a power situation of which they themselves are the bearers" (p. 201). Although the possibility of deleting's one account exists, exercising it seems almost unthinkable.

It appears that the prerequisite to living a life is to live it publicly. Bauman (Bauman and Lyon, 2013) observes that this confessional tendency is perhaps not new: "The eagerness to disclose the details of one's life is not a generational characteristic of today's youth, but a proof of an underlying commonality of all people and all ages – of an inherently confessional society" (p. 31). Confession is in itself an act which breeds on surveillance: without the possibility of one's secrets being discovered uncontrollably, there would be no need to share them in a controlled manner. Confession gives the illusion of having power over one's self-narrative. This is what makes social networking sites so universally appealing. Facebook capitalises on the confessional society by providing a platform where secrets can be revealed, and are indeed expected to be revealed. This can also explain the online "privacy paradox" – the fact "that while Internet users are concerned about privacy, their behaviors do

not mirror those concerns" (Taddicken, 2014, p. 248). Taddicken (2014) discovered that people's privacy concerns have little impact on their online self-disclosure. Indeed, Facebook normalised surveillance. Submitting oneself to its gaze is an oft-rewarding experience which affords a sense of being heard and understood; of significance and belonging.

Is Facebook a system of panoptic surveillance? The permanency and totality of surveillance on Facebook suggests that it indeed is. The *Data Policy* showed how the gaze works continuously to gather all the available data about the user: their status updates, comments, private messages, "likes", political affiliations, hobbies, personal connections, photographs, videos, geographic locations, events attended, places visited, and many more. This totality of collected data allows to create a comprehensive behavioural profile of an individual, and to track its changes over time.

Who is then the surveillant in this setting? Bruno (2012) makes two arguments: (1) personal data is subject to corporate and police inspection, but also to a "lateral surveillance" by family members and friends (p. 344); (2) the user is not only a subject of surveillance, but can also surveil others in a system of "collaborative surveillance" (p. 344). Thus, the users are at the same time subjects to and sources of surveillance. They are being surveilled, but can themselves watch others. This is a major difference between Facebook and the original Panopticon. The modern gaze works in more than one direction, which invites to consider the alternative perspective of *sousveillance*: Can users reverse the direction of surveillance and point it at Facebook, so as to make the once-inspector seen?

12.4 Sousveillance and the Catopticon

Whereas the previous chapter argued for a view of Facebook as a modern informational Panopticon, this one explores the alternative perspective of sousveillance and the Catopticon it is argued to create.

The notion of sousveillance, introduced by Mann (Mann et al., 2003) and further developed by Ganascia (2010) who applies it to the modern "Infosphere" of the Internet, is a reversed or inverted form of surveillance. If surveillance signified watching from above (the French prefix *sur* translates to "over"), sousveillance is an act of watching from below (*sous*) (p. 493). It is a situation where "anybody may take photos or videos of any person or event, and then diffuse the information freely all over the world" (Ganascia, 2010, p. 489). Sousveillance is a recent theoretical development in contemporary technological societies; one which is argued to describe their reality better than the traditional conceptualisation of surveillance.

The sousveillance perspective hence challenges Lyon and Bauman's view of modern surveillance society. Postmodernity, it argues, has replaced the surveillance-governed state with a new, more fluid and flexible form of social organisation; with a new "sousveillance state" (Ganascia, 2010, p. 491), and a "sousveillance society" which is "equally distributed, strictly egalitarian and delocalized over the entire planet" (p. 496). This is not to say that surveillance has dissolved completely. Rather, surveillance and sousveillance coexist, although the latter now dominates. Sousveillance has led to the blurring of boundaries between public and private, and to the emergence of the Catopticon:

[W]hile the architecture of the Panopticon was designed to facilitate surveillance by prohibiting communication and by installing surveyors in a watchtower, the architecture of the 'Catopticon' allows everybody to communicate with everybody and removes surveyors from the watchtower. (p. 489)

Unlike the original Panopticon, the Catopticon makes everyone seen while allowing everyone to see. There is no longer need for the watchtower, regardless if occupied or abandoned. Sousveillance generalises supervision equally onto everyone. The prisoner becomes the guard; not only to himself, but also to his once-inmates.

Ganascia (2010) gives an example of sousveillance at work. In 1996, twenty-year-old Jennifer Ringley began recording her life with a webcam and streaming the image online (an activity termed "lifecasting"). For seven years Ringley shared the images of her private life with an unknown audience, what gave her an Internet celebrity status and three million daily visits to her website (p. 492). Today, Facebook and its ilk allow anyone to become Jennifer Ringley. This sort of online exhibitionism has become a customary habit for Generation Y. But can it be said that Facebook is a system of catoptic sousveillance? Several points for consideration arise.

Firstly, let us briefly return to Facebook's News Feed. The previous chapter described the left-hand side portion of the website. In the right corner of the user interface lurks an even more intriguing feature – the friends' activity feed widget known as the "Ticker". The Ticker shows the activity of our Facebook friends in real time: their new posts, comments, "likes", social connections, attended events, etc. (Facebook, 2014). Thus, the Ticker affords surveillance of the online actions of others as they unfold. It shows

who had friended whom, who changed profile pictures, who had written on other people's Walls and what they wrote, and who had posted new photographs, joined or left a new group, started dating, broken up, written a public note, or altered their lists of favorite books or movies. (Westlake, 2008, pp. 21–22)

It is a powerful tool, perhaps more revealing of a person's life than Jennifer Ringley's visual "lifecasting" project could have ever aspired to be. The News Feed itself gives an insight into the lives of others, but whereas content posted to the News Feed is nearly always decided on by the user, the Ticker tracks user's actions without any prior consent. Altogether, the elements of the News Feed work to create a system of mutual observation – of *sousveillance*. *Catoptic sousveillance* is based on three principles: (1) totality of transparency; (2) its equality; and (3) unrestricted communication (Ganascia, 2010, p. 497). All of those are reflected in the logic of the News Feed: transparency is a universal principle applied to every user equally by default (there is no escape from one's actions being mentioned in their friends' Ticker); everybody is hence able to watch everybody else. Communication flows between Facebook users are also unrestricted, meaning that they remain outside the control of any particular state authority.

Moreover, the last feature, dubbed by Ganascia (2010) as "total communication" (p. 497), played an important role during the Arab Spring of 2010–2011. Social networking sites like Facebook and Twitter allowed protesters to bypass the state-controlled media channels in an effort to create their own, independent and autonomous narratives. *Sousveillance* thus ensures a system of checks and balances between the people and the governments. It helps "to denounce abuse or to check the conformity of public goods" (p. 493). Facebook can be a tool for an independent dissemination of truths about events, companies, states and individuals, which challenges the traditional power structures of the localised nation-state. Moreover, Facebook's global outreach allows these truths to circumvent national propagandas and to cross-check with information across multiple sources. The outside world knew what was happening inside Egypt, Tunisia or Libya from Facebook and Twitter users on the spot who posted about events as they were unfolding. This sort of honest, first-hand insight was made possible by these social networking

platforms, since Facebook allows its users to broadcast information on a larger scale. Ganascia (2010) observes:

In the past, only powerful institutions like states or rich companies had the ability to broadcast information on any scale. Since those new techniques enable everybody to be a potential source of information, they appear to promote individual autonomy. Anyone who has something to say to the world can do so freely on the Web. (p. 495)

This shows that the Catopticon can have positive effects as a safeguard against tyranny. When everyone is equally empowered to see what everyone else is doing, it is less likely that crime and abuse will go unnoticed. Facebook has performed this function during the Arab Spring, and will likely continue to be a platform for politically-subversive advocacy.

It seems that the use for Facebook, and what one makes of it, is an individualised enterprise. Social networking can become a Panopticon but it can also serve to empower the user, to provide them with tools to subvert existing power structures within modern societies. Facebook as Catopticon enables a truly independent and unrestricted expression of opinion. Such freedom is certainly liberating, but at the same time also overwhelming. With the increasing abundance of information shared online, making sense of the world demands more initiative and responsibility on the side of the user than ever before. The power of Facebook, whether it lies in the hands of the company or its users, can be at once destructive and productive.

12.5 Conclusion

Returning to my central question whether Facebook constitutes a system of panoptic surveillance or catoptic sousveillance, I argued in favour of

both perspectives. Firstly, I discussed the perspective of surveillance, pointing to similarities between the logic and architecture of Facebook, and the structure of Bentham's Panopticon, supplemented with Foucault's concept of panopticism. My content analysis of Facebook's *Terms of Service* and *Data Policy* pointed to the immense scope of online surveillance: all sorts of data shared by the user are being subject to the company's close scrutiny, serving to create a holistic behavioural profile for the purpose of targeted, personalised advertising. Facebook hence becomes a site for the working of a specific power-knowledge, concerned with making the user-body discernible, analysable, calculable, and predictable. This was reflected in Foucault's "art of distributions" which comprised of enclosure, partitioning, elimination of confusion, and ranking. I argued that these four principles are mirrored in the functioning of Facebook.

Secondly, the perspective of sousveillance was then considered, defined by Mann (2003) and Ganascia (2010) as an inversed form of surveillance where it is the user who becomes the observer. Indeed, this pattern of the gaze's working can also be observed in the case of Facebook. Not only does the website render its users visible to itself, but it also equips users with tools to surveil others in a lateral direction. The Ticker was one discussed example thereof. Sousveillance thus turns complete personal transparency into the norm. It also empowers users with new means of self-narration, and provides a platform for autonomous narratives of the world. This makes Facebook particularly helpful as a tool for politically subversive, anti-systemic advocacy, e.g. during the Arab Spring of 2010–2011.

But if Facebook is a site where surveillance and sousveillance blend, what does this tell us about the nature of those two phenomena? What is the relationship between surveillance and sousveillance, and are they necessarily mutually exclusive? Surveillance argued for a downward gaze, pointed by Facebook from above at the user placed below. In this

scenario, the gaze subjects users to a ceaseless observation and disallows them to see its source. *Sousveillance*, contrastingly, reversed the gaze's direction upwards and sideways. The user is now the one who subjects their surroundings to oversight.

Yet, is this not ultimately a situation of surveillance, inverted or not? If surveillance is understood as watching someone without their knowledge or consent, then it can be said that Facebook surveils its users but the users similarly surveil Facebook. The only difference between surveillance and *sousveillance* is the direction at which the gaze is pointed. What is common to both is their infringement of the individual freedom to not be seen or gazed upon. Surveillance and *sousveillance* should hence be seen as two sides of the same coin. It makes less sense to speak of subjective empowerment or disempowerment here, since power becomes an overarching fluidity. Power, perceived as the ability to create knowledge – a Foucauldian "power-knowledge" – is not exercised by Facebook or the users alone. There is not a single subject of power here but multiple entities bound by mutual dependencies: Facebook needs users for its economic survival, and users need Facebook as the platform for social connectedness and online self-narration:

Social media depend for their existence on monitoring users and selling the data to others. The possibilities for social media resistance are attractive and in some ways fruitful, but they are also limited, both due to the lack of resources for binding relationships in a liquefying world and to the fact that surveillance power *within* social media is endemic and consequential. (Lyon in Bauman and Lyon, 2013, p. 12, original emphasis)

Doubtless, *sousveillance* gives leeway for social media resistance, but these possibilities are not unlimited. Furthermore, it would seem that in the modern globalising world of increased pace and interconnectedness, services such as Facebook become essential for sustaining social

relationships over geographic distance. The ultimate responsibility for how Facebook is employed, and what purposes it serves, is with the users themselves:

[I]t is the uses that we – Facebook's 'active users', all half-billion of us – make of those offers that render them, and their impact on our lives, good or bad, beneficial or harmful. It all depends on what we are after; technical gadgets just make our longings more or less realistic and our search faster or slower, more or less effective. (Bauman in Bauman and Lyon, 2013, pp. 27–28)

This is why awareness and consciousness are crucial in the online realm. I hope to have equipped readers – users of social media – with basic insights needed to make informed choices about our online presences, and the risks involved therein.

13 Conclusion

Based on the Baconian imperative that "knowledge is power", the drive for transparency gathers up ever-more speed. Especially in politics and economics, transparency has become a widely used catchphrase.

Transparency is supposed to alter information asymmetries, improve market efficiency and establish a more inclusive and fair political praxis. While transparency is hoped to alter power relations, and thus to be a revolutionary or at least a reformative tool, surveillance is the privilege of those already in power, and thus regarded as a reactionary tool.

The studies in this joint volume have investigated this dichotomy by looking at various actors in regard to their possibility to change or cement existing power relations, symmetries, improve market efficiency, and establish a more inclusive and fair political praxis. While transparency is hoped to alter power relations, and thus to be a revolutionary or at least a reformative tool, surveillance is the privilege of those already in power. Each contribution, in its unique way, took a skeptical stance towards potential power shifts induced through societal or behavioral changes. This book examined a multitude of societal actors and the power relations between them. Although all contributions highlighted very different subject matters, some common themes emerged. These common themes ought to be highlighted in this final section. Moreover, this final chapter allows us to briefly summarise the central themes and most important finding of each article.

The first contribution treats surveillance and transparency as two sides of the same coin in the sense that both are attempts at changing behaviour by increasing the visibility of actors. Zeijl examines several attempts at transparency from a wide variety of actors. He argues that transparency, as it is currently put in practice by governments and companies, is more lip service than real concern with accountability and openness. Zeijl claims that these attempts at transparency are influenced by the logic of surveillance and therefore consolidate already existing

power relations. While there are alternative ways of constructing transparency, they all have possible adverse effects that cannot and should not be easily cast aside. Therefore, one needs to critically assess what the exact benefits of transparency are in order to reach a balanced judgement on whether these possible adverse effects are worth the risk. Since transparency is more often invoked than defined, it is absolutely crucial to pay attention to the structure that transparency is supposed to assume, its organisation, its agents, and its potential impacts. Otherwise, transparency becomes a metaphysical catchphrase to graze (political) support rather than a real concern for accountability and openness.

Groene and Duffy adopt a historical perspective and investigate surveillance policies enacted during the German autumn. Informed by Marx's concept of "new surveillance", they claim that counter-terrorist measures which increased the level of surveillance greatly impacted on the social hierarchy. By blurring the boundary between normality and a state of emergency, basic principles of the German *Rechtsstaat* were undermined. The increase in surveillance greatly empowered executive and legislative powers at the expense of individual rights and liberties. While counter-terrorist policies were directed towards capturing the RAF, they have outlived their original purpose and now belong the normality of the German *Rechtsstaat*. An important part of these counter-terrorist policies was the computerization of data and the establishment of big databases, pushed by BKA president Herold.

König's work is informed by the importance of databases and by the concept of "new surveillance", too. However, her contribution focusses on post-9/11 technologies and addresses the disempowering effects of surveillance on non-EU citizens. König assesses the European border surveillance systems Eurodac, VIS and SIS and concludes that all three exhibit features of social sorting. In doing so, the traditional concept of borders is greatly changed. Previously, a place-bound border checkpoint was responsible for dividing into in- and outsiders, whereas today

increasingly interoperable databases classify migrants according to a fixed set of categories of risk and worth, and aim at the exclusion of migrants from society. Therefore, border surveillance is not limited to territorial demarcations anymore but exceeds the boundaries of nation-states. As the lines between internal and external security threats are blurred and the "enemy within" becomes the rationale of borders, the border is being shifted into society itself. To describe this new kind of border, König has coined the term "socio-digital border" which brings together the social purpose of classification and rebordering and the technical means by which this is done.

Sombetzki & Quicker highlight which risks can emerge for individuals when stringent surveillance regimes generate disproportionate power relationships. These power relationships can pit individuals against each other through the creation of an inside and an outside group. The surveillance systems "SIS II and EUROSUR enforce a conflation of asylum and illegal immigration and thus foster an exclusion of asylum seekers". Sombetzki & Quicker clarify with their insightful and detailed analysis of EU policy documents how an asymmetrical, unidirectional transparency gaze is established that fortifies the power exertion of observing state bodies. The text of Sombetzki & Quicker exhibits what relevance the concept of Bentham's Panopticon still has today. Their contribution stimulates readers to think about the impact extensive technology-based surveillance is having on asylum seekers. This impact intensively influences individuals lives, so that one starts to wonder if we are experiencing the formation of a new and complete panopticism.

Hensels focusses on the framing of transparency regarding the Dutch Royal family. She analyses reports in the newspapers *Trouw* and *de Volkskrant* in between the years 2000 and 2015 in order to find out which frames have been used in the media. She reconstructs three mutually exclusive frames which have been used in the media under scrutiny by means of a qualitative, inductive content analysis. The first frame is

labelled "maintenance of the status quo is untenable-frame" and is linked to progressive thinking. Central notions of this frame are "progress" and "democracy". In this frame, transparency is seen as an intrinsic good and is linked to the idea of an open and honest government. It is demanded from the Royal Family to catch up with society and other institutions and to modernise. The second frame, "argument of untouchable value(s)-frame" is diametrically opposed to the first and represents conservative ideas. In this frame, the Royal Family is seen as fragile cultural heritage that needs to be protected from the contemporary media landscape and its drive for ever-more transparency. The last frame, "it is not of life importance-frame" is linked to pragmatic thinking. In this frame, the transparency issue is not seen as relevant since the monarchy merely has a symbolic function.

The findings of van der Most indicate that the EU institutions fail to make use of the full potential social media offers for bringing increased transparency and participation into society. The obstacles van der Most describes are mainly the lack of collaboration between Brussels policy makers and their social media teams and their self-conception as being supranational actors that do not require as active and direct input from citizens. Despite these difficulties, van der Most lines out that the EU institutions' social media presence is bringing more transparency by providing additional information. The facebook pages of the EU institutions, however, fail to make use of the unique interactivity characteristic of social media for participation and collaboration purposes, and therefore limit the empowerment of the people to mere information provision.

Quite similar were the findings of Leclerc who offers an interesting perspective on how Facebook is being used in the hope of activating civil society and reconnecting it to their democratic representatives. He, however, remains very skeptical to what degree the full potential of social media is being used as interaction between electorate and elected

remains modest. Leclerc suggests that the reasons for the quiet reserved behaviour of citizens lies amongst others in a lack of trust in politicians, limited social media activity and the perception that information shared by politicians is irrelevant.

A different perspective on surveillance yet again comes from Bucholski. He questions the direction of the gaze within the social platform Facebook. Bucholski quickens us to realise that Facebook could just as much as being seen as a forum for mass surveillance, could also be seen as one of *sousveillance*. The perspective of *sousveillance* highlights the possibility that power relations may be reverted. This in turn could mean that users are being empowered to surveil themselves, rather than merely being surveilled from above, *vis-à-vis* the website. Bucholski finds that the direction of power exertion is not to be identified with full certainty. He claims that it all very much depends on the way users make use of social media. There remains no question that Facebook can be equated with an "immense scope of online surveillance", given that Facebook operates a "specific power knowledge". In stark contrast to this stands the fact that through making "complete personal transparency" the norm it opens the door to the empowerment of its users. For Bucholski, no clear power relations remain in a context where the gaze could be directed in both directions. The users bring to light these two sides of the same coin. It is up to them to use Facebook in their own interest.

Zeijl and Bucholski are united in their critical stance towards *sousveillance*. Both acknowledge its potential and consider it to be a major new development. While Zeijl and Bucholski value *sousveillance* as a legitimate new theoretical perspective, they are reluctant to endorse the enthusiasm of its inventor Steve Mann. Mann reckons technology to be inherently good and invokes new devices as quick-fix. Bucholski and Zeijl, however, draw attention to the human element and highlight the importance of the way technology is actually used by us.

Governments and other political actors often wish to make more information on certain processes publicly accessible online and hope that this would increase transparency. The popularity of this practice, however has led to question its effectiveness, usefulness and purpose. The question often becomes: does more information necessarily lead to more transparency, and does this alter the daily decision making of ordinary citizens? That Internet-based transparency tools to a large extent remain ineffective, was also one of the main findings of Werner. Patients in the Netherlands remained reluctant to make use of the targeted transparency tool provided for them. The main message here is once again that expectations need to be managed when it comes to using internet resources to empower certain societal actors. Empowerment requires that those ways chosen to bring more transparency are running parallel to the daily routines of the targeted audience. This appears to be the case regardless whether we speak about patients or the voters and citizens.

To subtract a common message from all these different pieces of work remains challenging but on a very basic level they all turn to one question: how do power relations shift through changes of degrees of transparency and its counterpart surveillance? Our texts can be divided into two main categories: on the one hand, the first four articles all highlight how surveillance can lead to those actors in control increasing their power over other actors in a society. It becomes clear that this most certainly is possible and helps us to understand better *via* which processes this occurs. On the other hand, the last articles focus greatly on the question of how transparency can actually empower people and alter their relationship to actors that have certain power over them (be it doctors or politicians). Van der Most, Leclerc and Werner all highlight the potential for empowering actors within a society by employing transparency tools that make use of computer based technology. They, however, all report that great difficulties remain to reach any form of empowerment through these new technologies. The common message

needs to be that the potential to empower certain actors through increasing transparency is great but that many obstacles remain. How great the potential of the 21st century's digital networks is, becomes tangibly clear in Bucholski's text. The picture of power being exercised through surveillance systems drawn by Groene and Duffy and König, is a system of surveillance that appears very rigid and solid. So solid indeed that one may start to question if it is actually possible to change these institutions. Bucholski however, encourages imagining that changing the patterns of surveillance could still be possible. The last three articles have little to say about surveillance but that does not mean that the discussion around it does not affect the studied matter.

We conclude that surveillance and transparency are necessarily interlinked and are merely two different sides of the same coin. One has to conclude that when things become transparent to one group, this may also give them the power to surveil. The message that can be taken from this joint volume needs to be that those power relations that are underlying the prevailing pattern of transparency and surveillance are rigid to change. Their rigidity is linked to their connection to the existing power relations in a certain moment of time. When considering that knowledge is power, changes in knowledge through changes in the transparency or surveillance patterns in society can alter power relations. The rigidity is only the logical consequence of the desire of those that possess certain powers to maintain or even extend these.

14 References

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