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## Secrecy in Europe

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### ABSTRACT

This article introduces a collection of papers devoted to the study of secrecy in European politics across a range of EU and national settings and policy domains. Academic interest in secret politics – those aspects of public activity intentionally concealed from the public eye – and the governance of secrecy – the political processes and regulatory frameworks governing secret keeping – is growing. This interest reflects technological, social and political developments that appear to signal the end of privacy and the rapid expansion of political secrecy in European multi-level settings. As a consequence, the tensions between democratic accountability, with its transparency requirements, and political secrecy, which is typically justified on grounds of effectiveness of state action, have become more marked and more politicised. Engaging with these developments, the contributions to this collection draw on actor- and interest-centred perspectives that focus on actors' motivations in secret politics; institutional perspectives that focus on contestation over secrecy norms; and organisational perspectives that emphasise the diversity of secrecy cultures. Further research will benefit from paying special attention to a diverse range of inter-institutional and inter-organisational secrecy settings; to political contestation over secrecy and the regulatory regimes that govern it; and to the refashioning of public-private secrecy architectures.

**KEYWORDS** Secrecy; transparency; privacy; European Union; European politics

Arguments about the justification of, and limits to, secrecy pervade European politics at both national and EU levels. For example, despite pressure by the EU on its member states to enhance transparency in the banking sector in the wake of the euro crisis, the German government and parliament are reluctant to release supervisory data relating to Germany's banks to the public (Gandrud and Hallerberg 2018). Although the European Parliament has achieved advances towards further transparency of decision making in the Council, it has largely fallen short of restricting EU governments' secrecy privileges in the Common Foreign and Security Policy (Rosén 2018). In the 'fight' against terrorism, governments have introduced targeted sanctions

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against individuals and are often reluctant to release classified information on the reasons for placing individuals on suspect lists. Such measures, which eschew transparency and legal recourse, pose a challenge to the protection of fundamental human and civil rights by supranational courts, such as the European Court of Justice and the European Court of Human Rights (Fabbrini 2018). With the accession to the EU, Western-style transparency mechanisms were transplanted to many Central and Eastern European countries, with the goal to render their intelligence apparatuses more transparent and accountable. However, the success of these measures in providing effective intelligence accountability is in doubt, not only in Central-Eastern Europe, but also in the 'West' (Aldrich and Richterova 2018). Secrecy, as these brief illustrations suggest, is a prevalent feature of politics within and among liberal democratic states, as well in the relations between states and international organisations. Yet, surprisingly little research in political science has explored the effects of secrecy on policy making; the evolution of the regulatory frameworks that govern the use of secrecy; and the tensions between secrecy and transparency.

Secrecy encompasses all those behaviours whereby one party intentionally conceals information from another (see Gutmann and Thompson 1998; Pfersmann 2006; Pozen 2010; Scheppele 1988). *Political* secrecy emphasises the politically motivated aspects of secrecy: secrecy-related behaviours, practices, and norms that affect political processes and outcomes (*secret politics*), as well as political decision-making structures, regulatory frameworks and rules that regulate the flow of politically relevant information (*governance of secrecy*). Until recently, scholarly interest in political secrecy has been confined to fairly narrow social sciences subfields, most notably intelligence studies. Moreover, academic scholarship on political secrecy has been eclipsed by an overarching interest in transparency, as witnessed by the literatures on public policy and administration (e.g. Hood and Heald 2006; see Meijer 2014 for an overview), EU politics (e.g. Abazi and Adriaensen 2017; Hillebrandt 2017; Hillebrandt *et al.* 2013; Lindstedt and Naurin 2010; Naurin 2007), public (international) law (e.g. Bianchi and Peters 2013), as well as the study of 'good governance' (see, e.g. De Fine Licht *et al.* 2014). This does not come as a surprise. Political transparency, the 'conduct of public affairs in the open or otherwise subject to public scrutiny' (Birkinshaw 2006: 189), has become an unquestionable normative standard as well as an aspiration on the part of political organisations for 'good governance'. Political secrecy, in turn, tends to be conceived as the 'dark side' of transparency, and should be the exception to liberal democratic rule. To paraphrase Jeremy Bentham, secrecy 'ought never to be the system of a regular government'.

Yet, political secrecy has always had its place in the conduct of democratic government: the state's security secrecy privilege renders a certain amount of secrecy legally permissible, normatively acceptable, and – as some emphasise – even politically necessary, in order to avert harm from internal

and external threats to state security. But secrecy also entails a tension of democratic rule: while democratic rule without transparency is unthinkable, delivering results is an equally important democratic value, and hence a certain degree of secrecy can be acceptable, if it helps bring about desired policy outputs and as long as it is democratically authorised and appropriately justified (Ansell and Torfing 2016; Gutmann and Thompson 1998). Thus, secrecy is not necessarily a ‘bad thing’, and transparency is not always virtuous. Scholarship has demonstrated that too much transparency can, under certain conditions, produce suboptimal outcomes, for instance by reducing the deliberative quality of political discussions (see, e.g. Naurin 2007). The tension between the *transparency of the democratic process*, on the one hand, and *effective governance*, which may be enhanced by secrecy and seclusion, on the other, constitutes one central theme of this special issue.

A second central theme concerns the *expansion of secrecy* in European politics. Secret politics and the governance of secrecy are playing an increasingly important role in the context of international co-operation as well as multi-level governance structures, such as the EU, in which political authority is shared and fused across jurisdictional levels. Hence, it is not only state bodies – such as ministries, agencies, parliaments, courts, or public auditors – that keep secrets. To the extent that states endow international, multi-purpose organisations with political agency to address joint problems that touch upon security sensitive issues, these organisations are likewise claiming and contesting secrecy. As a consequence, questions about exchanging and classifying sensitive information are gaining currency not only among states, but also in the relations between states and international organisations (see Galloway 2014). Moreover, secret politics and the governance of secrecy in a multi-level context pose new challenges for holding domestic and supranational power wielders to account, as well as for ensuring citizens’ rights (see Curtin 2014). Importantly, secrecy also expands sectorally. The ‘securitisation’ of public policies – the framing of issues as a potential ‘existential’ security threat – by now goes well beyond questions of ‘traditional’ security, as in defence, crime prevention and law enforcement. It has come to extend to many policy domains, ranging from migration, energy, climate change, critical infrastructures, to public health and finance (Hanrieder and Kreuder-Sonnen 2014; Huysmans 2000; Kreuder-Sonnen 2018).

A third concern of this special issue is to highlight different *analytic lenses* in the study of secret politics and the governance of secrecy: How does the EU’s multi-level governance structure affect the secrecy-induced trade-off between democratic transparency and policy effectiveness? What explains the design as well as changes to institutional architectures of secrecy? How does secret politics affect the ability of political actors to achieve their political objectives (and prevent others from achieving theirs)? How can secret politics be contained by oversight mechanisms and institutions? This paper discusses three analytical perspectives that offer answers to such questions and inform the contributions

to this collection. Following an actor- and interest-centred approach, rooted in principal-agent theory, political actors – governments, executive agencies, legislators, but also external stakeholders and civil society groups – demand or challenge secrecy arrangements to the degree that it furthers their own policy or power political goals. The second approach adopts an institutional perspective and highlights how meanings and joint understandings of secrecy evolve and affect or, indeed, challenge existing arrangements that involve secrecy. The third analytical lens zooms in on the level of political and administrative organisations and their social and political environments, and explores if and how organisations modify their behaviour or resist demands from the external environment, for instance, to disclose or share information.

### **What drives the contemporary interest in political secrecy?**

Unlike academic interest in political transparency, which has become a fixture in scholarship ranging from public law, public administration, public policy to political theory, research on political secrecy was – for a long time – a peripheral matter in political science, with few notable exceptions (see, for example, Birchall 2011). To this day, research on political secrecy does not constitute a well-defined theme in the study of European politics, furthered by a well-integrated scholarly community. Existing scholarship tends to focus on conceptual issues (what constitutes a secret?), as well as normative questions pertaining to justifications for, and the legitimacy of, political secrecy. Some claim, for instance, that political secrecy is an indispensable means of effective governance, e.g. to counter terrorism (see Neocleus 2002); others emphasise that (perceived and constructed) security threats have the potential to obscure highly problematic government practices (Aradau 2004). Still others problematise the negative effects of secrecy on democracy (e.g. Horn 2011) or policy effectiveness (Colaresi 2012, 2014), and discuss constitutional remedies to bring secrecy under control (e.g. Sagar 2013). Contributions in public law and political theory have taken issue with conceptual questions, proposing definitions of different kinds, degrees, and scopes of political secrecy (e.g. Pfersmann 2006; Pozen 2010; Scheppele 1988), while others explore the range of practices associated with secrecy and discuss their potential to fundamentally undermine transparency and ‘open government’ in otherwise democratic societies (Birchall 2011; Roberts 2006). The richest literature on secrecy is to be found in the study of (national) security intelligence. Intelligence is, obviously, central to the study of political secrecy, for (security) intelligence is a practice of information management, intended to enhance the security of the state or enable governments to stay in power (Gill 2010: 45; Johnson 2010). In sum, political secrecy is not a novel theme in academic research; but several socio-economic and political developments of the past decades are likely to give rise to a renewed focus on secrecy and its political implications.

### ***Technological change and the data revolution***

Over the past decades, we have witnessed an explosion in the generation of data about every aspect of the behaviour of private individuals. The question of who has access to these data and how they are to be used has become a central theme in the debate over transparency vs. secrecy. What is evident is that public agencies – openly or secretly – now have access to private information on a scale scarcely imaginable until recently. Moreover, regulatory frameworks for data protection have been increasingly watered down. Not only do executive agencies now collect and share airline passenger data, they also oblige many private companies, such as telecommunications or financial service providers, to save customer data and make it available to executive authorities (Lyon 2002). As has been highlighted in the context of the Snowden revelations, citizens' digital communications are subject to virtually all-encompassing (secret) surveillance, with potentially detrimental effects to citizens' privacy (De Goede 2014). Technological advances and the data revolution have gone hand in hand with states' increasing reliance on private corporations to provide security-relevant information. Public authorities' demands for storing telecommunications data, airline passenger information, or financial records on the servers of private companies have come to pose new challenges regarding the protection of citizens' privacy as well as their right to access information. Most laws protecting privacy rights are designed to apply to public institutions, and privatisation challenges what was once clearly demarcated as a public function (Roberts 2006: 21–2). However, at the same time as state and private actors hold ever-increasing amounts of data, information, and knowledge about the public, the technical ability of public institutions to keep data, information, and knowledge secret appears to be fundamentally challenged by professionalised hacking, leaking, and whistle-blowing, as exemplified by WikiLeaks and the Snowden affair. As Patz (2018) shows, taking effective steps against leaking is difficult and may not even be a shared ambition within organisations that have formal codes in place to prevent it.

### ***De-politicisation of security policies***

The special status ascribed to security policy, making it the prerogative of the executive, also renders it particularly interesting for political elites' attempts at de-politicising security-related issues (Waever 1995). Successfully framing an issue as a security problem allows policy-makers to remove it, at least partially, from the exigencies of the democratic political process and, instead, to advocate the adoption of extraordinary measures without too much political interference and opposition (Balzacq 2005; Buzan *et al.* 1998; see Kreuder-Sonnen 2018). In the context of the 'war against terrorism', states' intelligence agencies and security apparatuses have witnessed a dramatic extension of their powers

and capabilities, resulting in increasingly porous boundaries between military, police, and civilian intelligence. This development has led to new informational architectures of secrecy and challenged traditional arrangements for oversight and control, notably by parliaments and courts (Donohue 2010; Glennon 2014a, 2014b), while bolstering executive authority at the expense of transparency and rights protection (Posner and Vermeule 2010). The proliferation of such measures has been possible because governments have successfully exploited (putative) crisis situations by emphasising their quality as ‘existential’ security threats that demand ‘extraordinary’ or ‘emergency’ actions. Political elites’ de-politicisation strategies, which ultimately empower the executive, reach beyond the realm of national security. In the Eurozone crisis, for instance, the heads of state and government have justified the secrecy of their deliberations and the lack of parliamentary control by invoking the imminent threat to the Eurozone’s financial stability (Kreuder-Sonnen 2018; White 2015).

### ***Externalities of international co-operation***

Globalisation and growing international interdependence have rendered state borders more permeable, with profound consequences for how states respond to security challenges. For example, with the creation of the Schengen area, individual member states see their individual capacity to combat transnational organised crime reduced. Globalisation and market integration thus produce not only positive, but also negative externalities: it is not only goods that can flow freely across borders, but criminals, too. Market integration has, as a result, raised the demand for closer co-operation in the area of internal security (Gehring 1998; Niemann 2006). These developments imply that exchanges of classified information across institutional and jurisdictional boundaries have rapidly expanded, resulting in the creation of new, complex architectures of secrecy, which Cross (2018) refers to as ‘compound secrecy’ and Curtin (2018) as ‘second-order secrecy’. Unlike first-order secrecy, ‘second-order’ or ‘compound secrecy’ is characterised by a ‘loss of control over the secret’ (Curtin) due to the interaction of domestic and supranational actors and the ‘combination of national-level secrecy at the supranational level’ (Cross 2018). The exchange of security-sensitive information among administrations, for instance, poses a multitude of political and regulatory challenges, from developing EU-specific security classification rules and an effective oversight infrastructure, to securing a high level of rights protection (Curtin 2014, 2018). It is by no means clear whether traditional mechanisms of oversight, scrutiny, and control are sufficient to keep pace with the flows of secret information that occur in these evolving information-sharing networks (Roberts 2006: 21; see Aden 2018). Sceptics point out that the demand for international intelligence co-operation poses formidable challenges to national intelligence agencies. Despite the rising demand for international co-operation, intelligence co-operation and



information sharing may remain ‘too hesitant to address fluid transnational opponents effectively’ (Aldrich 2009: 893).

In sum, the boundaries between transparency and secrecy, on the one hand, and between privacy and surveillance, on the other, are subject to re-definition. Not only do the dynamics referred to above suggest that the politics of surveillance and secrecy are on the rise, but that they take on a new quality that is, as yet, little understood and researched. First, secrecy has expanded considerably, reaching beyond its traditional domain of internal and external security. While some contributions in this collection explore how secrecy in the EU’s multi-level system plays out in its ‘traditional’ settings of internal security (Aden 2018), as well as external security (Cross 2018; Rosén 2018), other papers examine how secrecy affects economic and monetary policy making (see Gandrud and Hallerberg 2018; Kreuder-Sonnen 2018; Rosén 2018). Second, the contributions highlight the challenges posed by the construction of secrecy architectures beyond the state. In particular, the expansion of the EU’s powers to the domain of national security policy necessitates co-ordination and co-operation among executive agencies from different member states, and between supranational and domestic actors. Several contributions to this special issue describe and discuss the political and legal challenges and obstacles that arise from building a new layer of secrecy rules and from achieving effective co-ordination and co-operation (see Aden 2018; Curtin 2018; Fabbrini 2018).

### **Secrecy, accountability, and effectiveness**

The second major theme explored in this issue results from the challenge political secrecy poses to democratic governance, especially in the context of multi-level policy making. How does multi-level policy making affect the tension between democratic accountability, which calls for transparency, and policy effectiveness, which might benefit from secrecy? From a normative perspective, the legitimacy of secret politics not only requires that citizens trust those who are entitled to withhold information, it also presupposes that appropriate oversight arrangements are in place to prevent executive actors from abusing their privileged position. Yet, democratic decision-making not only demands transparency from political actors: ‘Getting things done’ is also a core democratic value, which – under certain circumstances – might call for privileging secrecy over transparency (see Ansell and Torfing 2016: 219). Accordingly, secrecy can be justified by enhancing the effectiveness of policies, e.g. by anticipating or deceiving a potential enemy; by suppressing enemy capabilities in the field of security policies (see Colaresi 2014: 42–6); or by producing better, more informed policy decisions. Secluded deliberations may encourage candour in discussions, thus avoiding ‘stage play’ and political posturing before a political constituency (Pozen 2010: 277; see also Naurin 2007).



Ensuring that political decisions are effective and transparent, however, confronts democracies with the challenge to make certain that secret politics meets democratic standards. It has been argued that secrecy can be democratically justified if it meets the standard of 'second-order publicity' (Thompson 1999), that is, if secret keeping is itself democratically authorised. The onus is on public officials to design appropriate institutions and procedures to ensure that 'temporary secrets do not become permanent' (Thompson 1999: 193; see Curtin 2014 with regard to the oversight of secrets in the EU). Moreover, to meet basic standards of democratic accountability, 'democratic' secrecy requires some measure of oversight. If citizens are uninformed or when second-order publicity is wanting, governments are less accountable for their policies. Conversely, 'the better the tools for national security oversight, the more likely an abusive leader will be caught' (Colaresi 2014: 125). Others emphasise that the institutional mechanisms which democracies have at their disposal to prevent secrecy escaping accountability, such as parliamentary oversight committees and legal remedies, might not be sufficient to stop governments and executive bodies from overreaching their authority. 'Fire alarm' mechanisms are considered to be necessary to prevent power-wielders from abusing secrecy, for instance, through whistleblowing and leaking from within the executive and concomitant revelations in the media (Sagar 2013).

More recent contributions to this debate emphasise that in the age of globalisation, transnational terrorism, and digital communication, secret intelligence and surveillance pose new challenges to democratic oversight and accountability, but also to the protection of privacy. For instance, the contracting out of intelligence activities to private corporations as well as intensifying cross-border co-operation amongst intelligence agencies threaten to 'render the accountability mechanisms of national assemblies and parliaments powerless, since regulators can only inquire into activities by their own governments' (Aldrich 2009: 901). The tensions between democratic accountability and policy effectiveness, which secret politics brings to the fore, are thus likely to be amplified under conditions of multi-level policy making: the achievement of policy effectiveness requires co-ordination among a multiplicity of actors across different jurisdictions, but democratic accountability mechanisms are difficult to extend beyond the state.

How do political actors in an inter- or even supranational political setting handle the secrecy-induced tension between democratic accountability and policy effectiveness? Balzacq and Puybareau (2018) show that in the case of the practice of extraordinary renditions, secrecy helped governments to maintain co-operation, but only as long as they could eschew transparency and accountability. Once the public learned about these secrets and, importantly, unlawful practices, political pressures on the participating states grew sufficiently strong for co-operation to be abandoned. Cross (2018) demonstrates that policy effectiveness and accountability need not necessarily cancel each other out.

She argues that secluded decision making and confidentiality in deliberations among security experts in the EU's committee structure have enhanced the effectiveness of the EU's security and defence policies. Her contribution also highlights that policy-making effectiveness and political accountability need not be in conflict, as long as the EU is not confronted with transparency standards and benchmarks exceeding those applied to security governance in national contexts.

In his analysis of the EU's security agencies, Aden (2018) stresses that the multi-level nature of police and intelligence co-operation in the EU is prone to produce accountability deficits that are difficult to justify with reference to policy effectiveness. While international intelligence co-operation is rapidly intensifying, accountability mechanisms at the EU level are wanting, since they are still wedded to domestic frameworks. As a result, security officials 'gain scope to escape from accountability mechanisms'. Striking a similar note, Curtin (2018) shows how citizens' privacy rights are coming under pressure from EU-level co-operation in the area of security policy. She highlights the Janus-faced nature of this struggle. While domestic and EU actors pass legislation to achieve security objectives, legislators and litigators seek to limit incursions into privacy rights at the same time. The tension between security secrecy and rights protection is also at the centre of Fabbrini's analysis (2018). By adopting the practice of extraordinary renditions, the United States government and its allies committed grave human rights abuses in the pursuit of national security objectives. It took a supranational court, the European Court of Human Rights, to ensure that the states violating human rights under the cloak of secrecy were held to account.

As Aldrich and Richterova (2018) point out, public institutions and procedures at national and supranational levels are only part of the answer to accountability requirements; secrecy can also be democratically contained through what they label 'ambient accountability'. In states and societies where formal accountability structures are weak or robust cultures of oversight are lacking, 'ambient accountability provided by whistle-blowers, journalists and NGOs together with pan-European institutions and judges is better at conducting oversight in this transnational space'.

### **Empirical emphases and analytical lenses in the study of secrecy**

The contributions to this special issue draw on different theoretical approaches to explore secret politics and the governance of secrecy in the context of multi-level governance. Studying political secrecy systematically requires the analyst to explore actor motivations as well as the interactions among social and political actors. A focus on *actor motivations* implies that we find an answer to the questions of why social and political actors are keeping secrets, why they are authorising other actors, such as executive agencies, to keep secrets, or why

they decide to disclose information in the public realm, e.g. through leaking. Highlighting *social interactions* allows us to explore more systematically the social and political processes that affect secret politics and the governance of secrecy. For instance, members of a government agency may develop a strong sense of identity because of the possession of privileged information, which may lead to organisational encapsulation (Costas and Grey 2014: 1436) and thus a sense of political control and resistance to transparency. Furthermore, as highlighted by principal–agent approaches, information asymmetries may empower an agent to manipulate the policy agenda in order to obtain a preferred outcome, making it difficult for the principal to identify ‘agency slack’ or ‘slippage’ (Strom *et al.* 2003). Controlling information flows – deciding what to conceal and what to disclose – may not only affect the policy agenda in a direct fashion; control over information may also influence publicly held understandings, meanings and perceptions about a particular ‘state of affairs’ (see Barnett and Duvall 2005). For instance, political actors controlling information may be able to shape public perceptions about (security) threats, which – at the same time – may serve as a justification for controlling and applying further restrictions to information flows.

To develop a heuristic to analyse secrecy, we distinguish three analytical perspectives (see Meijer 2013). These perspectives differ with regard to their assumptions about actor motivations and the mode of social interactions. The first puts an emphasis on actors’ interests and power. Actors – governments, executive agencies, legislators, but also external stakeholders and civil society groups – demand or challenge secrecy because it advances their (exogenous) interest to further policy or power political goals. The second perspective conceives actors’ interest as endogenous and highlights how meanings and joint understandings of secrecy evolve and affect or, indeed, challenge the legitimacy of political secrecy. The third perspective focuses on political organisation(s) and their social and political environment, and explores if and how organisations modify their behaviour or resist demands from the external environment, for instance, to disclose or share information. Table 1 provides an overview of these analytical perspectives.

### ***Actor- and interest-centred perspective: the political struggle over secrecy***

Secrets are formidable means of political control. From an actor- and interest-centred perspective, secrecy is an attractive steering tool, ‘wrenching advantage from the unknowing actions of others’ (Scheppelle 1988: 5). Drawing on principal–agent theory, the political advantage one political actor can gain over another is a function of the distribution of power resources, defined by regulatory frameworks (constitutions, law, treaties), on the one hand, and the distribution of information, on the other. For instance, regulatory frameworks

**Table 1.** Political secrecy: analytical perspectives.

	<i>Actor intentions</i>	<i>Social interactions</i>
Actor- and interest-centred perspective	Secrecy as political opportunity to advance individual or corporate interests (e.g. policy, power)	Coercion, bargaining, adjudication mediated by constitutions and institutional rules
Institutional perspective	Social understandings about secrecy, beliefs in the (il)legitimacy of secrecy norms and practices	Normative contestation of the legitimacy of secrecy norms and practices through framing, arguing, and deliberation
Organisational perspective	Organisational survival in a turbulent environment where organisations are confronted with conflicting external demands how to deal with secrecy	De-coupling of organisational actions from external demands and declared intentions

define not only the scope of the security secrecy privilege held by governments and executive agencies, they also restrict the scope for executive discretion through transparency rules, legislative oversight mechanisms, or the possibility for social and political actors to challenge executive decisions in courts. Moreover, differential access to information crucially affects the ability of political actors to pursue their goals within a given set of rules. If, for instance, access to security-sensitive information is restricted, executive agents can exploit this informational asymmetry to their advantage, seriously hampering not only the possibility of ‘police patrol’ oversight (e.g. through parliamentary committees), but also of ‘fire alarm’ oversight (by keeping the public ‘in the dark’) (see McCubbins and Schwartz 1984). Exploring the dynamics of secret politics in a multi-level context, Raunio and Wagner (2017) as well as Abazi and Adriaensen (2017) have recently proposed applying principal–agent theory to explore legislative–executive relations in the formulation of the EU’s foreign and security policy.

Prevailing regulatory frameworks and the distribution of information affect secret politics, i.e. the ability of political ‘agents’ (governments, executive agencies, supranational agencies) to pursue their political objectives, and of the political ‘principals’ (legislatures, citizens, civil society) to exercise control and ensure accountability; but regulatory frameworks and hence the governance of secrecy are also a reflection of the interests and relative power of political and social actors. Attempts to change the governance architectures of secrecy are likely to be strongly contested, since a change in the ‘rules of the game’ implies a change in political opportunity structures. Changing rules to access or withhold information affect actors’ opportunities to control information and, thus, the distribution of power in the political system. With reference to inter-institutional politics in the EU, Hillebrandt (2017) has shown that the Council is poised to defend its privileged access to information in the EU’s external policies, while actors such as the European Parliament (Rosén and Stie 2017), but also civil society groups (Gheyle and Ville 2017), continue to

press for change. To bring about change in the distribution of power, therefore, requires either a change in preferences or power resources (or both). Hillebrandt *et al.* (2013) have examined how changes in preferences and power resources among EU actors and among member state governments have led to shifts in the balance of power between pro-transparency and transparency-sceptic coalitions, precipitating institutional change. Thus, actor- and power-centred analyses of secrecy as a means for political control are poised to engage with the following questions: What are the interests of different actors with regard to the scope and intensity of executive secrecy and transparency? How does political conflict among actors affect the design and workings of governance of secrecy? How do changes in the 'rules of the game' affect political conflict?

Kreuder-Sonnen (2018) argues that in times of crisis, governments may feel compelled to employ secrecy to manage crisis-induced challenges, a strategy which he refers to as reactive secrecy. But governments also see crises as political opportunities to advance their own interests by employing secrecy as a tool to exploit crisis (active secrecy), as, for instance, in the case of EU terrorist lists. Governments, thus, use their privileged position not only to bring about preferred political outcomes (through secret politics), but have also paved the way to changes in regulatory arrangements (governance of secrecy), instrumentalising crisis politics to bolster and institutionally secure executive privileges.

Highlighting the role of courts in challenging executive secrecy, Fabbrini (2018) shows how legal checks have provided a remedy to counter the abuse of the state secrecy privilege through the practice of extraordinary renditions. The institutionally guaranteed independence of the European Court of Human Rights has limited the capacity of individual governments to influence the judgments of the court. As a result, the institutional position of the European Court of Human Rights in the context of multi-level judicial politics in Europe has succeeded in overcoming secrecy where national courts had mostly failed.

Gandrud and Hallerberg (2018) show that the governance architecture regarding the public disclosure of supervisory data for banks in the EU is designed very differently across EU member states. Some countries, such as Germany, maintain strict confidentiality rules, while others release supervisory data to the public. To explain these differences in the governance of secrecy across EU member states, they emphasise the interaction between domestic banking sector rules and policy-makers' interests in pushing for more transparency. They show that in the Netherlands, where the public sector is strongly exposed to the risks emanating from a financial crisis, political pressure is high on policy-makers to make banking data public. Conversely, in Germany, where deposit insurance schemes are mainly private, policy-makers do not feel similarly pressured to push for transparency and are content with upholding confidentiality.

### ***Institutional perspective: the contested legitimacy of secrecy norms***

An institutional perspective highlights the social and ideational underpinnings of secret politics and the governance of secrecy. What are considered appropriate or legitimate secrets and regulatory frameworks depends on a 'relatively stable collection of practices and rules defining appropriate behaviour for specific groups of actors in specific situations' (March and Olsen 1998: 948). Legitimate practices and rules reflect shared social understandings about the type and range of acceptable secrets and associated behaviours. What is considered acceptable and legitimate will vary across states and societies, as well as issue areas (see Meijer 2013: 432). Moreover, the social and political acceptability of what is considered secret and confidential is not static, but evolves over time through changes in political attitudes and values and political advocacy. In the past decades, governments, executive agencies, and international organisations have been confronted with increasing political and societal pressures to render their workings less secretive and more transparent. As a result, some have already heralded the triumph of transparency over secrecy, even declaring 'the end of secrecy' (Florini 1998). For instance, the rise of the transparency norm in the EU has challenged the position of the Council of Ministers, as the European Parliament, which has become a champion for more openness and transparency, has been keen to curb secrecy in the Council (see Meijer 2013: 436). Yet, there is also a backlash. The recent financial and economic crises have given rise to a politics of emergency in the EU (Kreuder-Sonnen 2018; White 2015), whereby executive actors contravene the norms and practices of representative democracy to shield political decisions from public debate. Moreover, some research suggests that fear of terrorist attacks has left a mark on public attitudes, becoming more permissive towards counter-terrorism policies curbing civil liberties and eschewing transparency (Allouche and Lind 2010; Pew Research Center 2015).

Considered from an institutionalist perspective, changes in what citizens and policy-makers consider to be acceptable are precipitated by transformations in what secrecy means to different actors. Is the expansion of political secrecy deemed socially and politically acceptable in response to economic or security threats? What do social and political actors consider to be an acceptable balance or trade-off between transparency and secrecy? The following questions for research on political secrecy could, thus, be asked from an institutionalist perspective: How do political actors define the appropriate relationship between transparency and secrecy? How do shifts in the legitimacy of transparency and secrecy norms affect the relationships and interactions among social and political actors?

In their contribution Balzacq and Puybareau (2018) adopt a sociological institutionalist perspective arguing that executive secrecy is an important norm that regulates inter-state behaviour in the international system. States recognise

the national security exemption, a state's customary or legally mandated right to secrecy, which effectively overrides transparency requirements. A state's right to secrecy underpins the normative structures within which states interact. Moreover, it fulfils an important stabilising function for the international state system. When the 'right to secrecy' norm is challenged – whether by a transnational organisation (such as WikiLeaks) or another government (US intelligence agencies as exposed by the Snowden revelations) – states react by affirming the illegitimacy of any attempts to undermine the norm and hence the state's right to secrecy.

However, social understandings of how secrecy and transparency govern inter-state relations and politics may differ depending on context. Once we move from the realm of international security politics to the EU, states find themselves embedded in, and constrained by, norms of constitutionalism and (parliamentary) democracy (Rittberger and Schimmelfennig 2006). Accordingly, one could expect that in such an environment calls for transparency should find a more receptive response. However, even the European Parliament, a champion when it comes to demanding access to information, has seen its attempts to gain access to sensitive information in the area of foreign and security policy largely thwarted (see Rosén and Stie 2017). Rosén (2018) shows that the parliament's struggle to gain access to documents is not merely the consequence of the intergovernmental decision-making structure governing foreign policy making in the EU; it also has to do with the normative compliance pull of the 'right to secrecy'. She shows that 'keeping a secret' in the realm of security policy is considered more legitimate than in the area of trade.

### ***Organisational perspective: secrecy and organised hypocrisy***

While democratic governments and international organisations have, over the course of time, become selectively more open and transparent, organisational theorists point us to the possibility that governments, executive agencies, and international organisations may 'talk the talk', yet be reluctant to 'walk the walk'. Organisations may face conflicting demands and they may be confronted with conflicting norms. For instance, while an organisation's social and regulatory environment may demand openness and transparency, existing organisational cultures and standard operating procedures may be inimical to information disclosure. As a result, organisations respond by decoupling structures and processes designed to meet the requirements arising from conflicting demands (see Brunsson 1989). As organisations adopt transparency norms in response to external demands, they 'project an image of openness to the outside observer, while internal operations resist any meaningful connection to this image' (Hansen *et al.* 2015: 120). This decoupling of organisational action from its declared intentions has led to



the accusation (and observation) that organisations behave hypocritically. The decoupling of behaviour from formal structure and discourse fulfils one of the basic functions of a political organisation, which is to reflect and navigate the conflicting demands imposed by the organisational environment (Lipson 2007).

In recent times, 'external influences on organizations have intensified, perhaps nowhere more notably than in potent movements towards accountability, assessment, and transparency' (Bromley and Powell 2012: 2). Yet, organisations may feel that the new standards are unsuited to the resources at their disposal, or they may even provoke outright resistance inside the organisation (see Lipson 2007). As a result, organisations undertake symbolic reforms to comply with external demands, but their behaviour remains decoupled from outside expectations and organisational reform activities (see Meyer and Rowan 1977). The result is organised hypocrisy. Paradoxically, it could be hypothesised that the more governments, executive agencies, and international organisations are confronted with demands for transparency and disclosure, the more they push towards informal, secretive procedures. We lack detailed knowledge of how executive organisations, such as the Council of Ministers or the Commission, react to changes in transparency rules and legislation. To what degree do changes in the formal rules correspond with organisational practices? Or are organisational practices merely symbolic and ceremonial, while the organisation continues to 'operate in secret'?

Ronny Patz (2018) analyses organisational practices that demonstrates the reverse case: secrecy is officially mandated, but its deliberate breach is rarely sanctioned. He explores the phenomenon of information leaks in the European Commission and asks why, despite the threat of sanctions, the Commission is not successful in stopping this practice, and hence the spreading of 'secrets' continues and is considered common practice. To explain why leaking in the Commission is rarely sanctioned, he highlights that the conditions for 'organised hypocrisy' and decoupling are highly conducive in the case of the Commission. While external and internal actors demand transparent decision making, leaking is widely considered an effective strategy amongst officials in the struggle for political advantage inside the Commission.

In their analysis of the reform of intelligence services in Central and Eastern European countries, Aldrich and Richterova (2018) also point to dynamics of decoupling when they emphasise that the transplantation of Western-style laws and institutions to bolster transparency and accountability of the reformed intelligence infrastructure in Central and Eastern Europe does not necessarily translate into changes in the behaviour and practices of intelligence officials. Politicisation and personalised networks often stand in the way of achieving the objectives set out in formal legislation.

## Conclusion: secrecy and the study of European politics

It should have emerged that a sustained focus on secret politics and the governance of secrecy holds the potential to make a major contribution to our understanding of contemporary European politics, government and public policy. The discussion above has highlighted the reasons why secret politics has moved well beyond the traditional confines of foreign and domestic security and intelligence; why a focus on transparency fails to grasp fully the pervasiveness of secrecy in contemporary politics; why the expansion of secrecy, especially in multi-level settings, further accentuates the tensions between democratic accountability and policy effectiveness; and why the study of political secrecy and its governance needs to engage with diverse analytical perspectives. By way of a conclusion, we want to sketch briefly what appear as especially promising substantive emphases for future scholarship on political secrecy in a European political setting.

A first focus is on the inter-institutional and inter-organisational settings of secret politics and the governance of secrecy. These settings include, in particular, multi-level dynamics, such as in exchanges of secret information between national and EU authorities; horizontal dynamics, including secrecy across institutional and organisational boundaries at different levels of the European polity, such as between national intelligence agencies and national parliaments; settings crossing public-private boundaries, such as the arrangements governing the exchange of information between private companies that hold secret information and public authorities; settings in which ‘insiders’ and ‘outsiders’ in secret politics clash, such as public authorities and NGOs dedicated to the unearthing and publishing of state secrets; and multi-domain policy settings, in which secrecy concerns spill over from one policy domain into one or several others, such as between asylum, migration and anti-terrorism policies. Such work needs to go beyond classical comparisons of secrecy arrangements across levels of public authority in Europe’s multi-level system, across countries, institutions, or organisations; it will profit from a concentration on evolving inter-institutional and inter-organisational fields often characterised by porous institutional and organisational boundaries.

A second focus directs attention towards contestation over both secrecy (and transparency) and the formal and informal regulatory regimes that govern it. Here, the agenda has evolved rapidly, as questions over how state agencies deal with secrecy have become core concerns of both national and transnational NGOs and social movements, as evidenced, for example, by the political reactions to WikiLeaks, the Snowden leaks or the TTIP negotiations. But such contestation is also evident when it comes to more traditional concerns, such as the uses and abuses of secret intelligence in the justification of war (note the recent Chilcot Report in the UK) or arguments about shifts in parliamentary involvement in the oversight of intelligence services or security-sensitive aspects of

foreign policy (e.g. see the recent special issue of *West European Politics* edited by Tapio Raunio and Wolfgang Wagner on ‘Challenging Executive Dominance: Legislatures and Foreign Affairs’, Volume 40, Issue 1, 2017).

A third focus is on the explosion of highly personal data on individuals, commercially sensitive data on companies, and, importantly, also confidential and secret data of public authorities that is accessible and stored by private companies such as Google, Facebook, or internet providers. Public authorities seek access to data held by private companies, through both legally regulated and secret (and, possibly, illegal) means. At the same time, not only do public bodies rely on private companies for collecting, storing, and protecting secret information; state secrets themselves may be in retreat, partly owing to transparency requirements, and partly because of increasingly professionalised leaking and whistle-blowing (Harwood 2016). As a result,

states need to think hard about how to keep secrets in the digital age ... Technological advances, the fact that intelligence services work in public-private partnership far more often (instead of relying on employees with a self-professed lifelong calling) and the multiplicity of sources they use, make the secrets they keep vulnerable. (Broeders 2016: 302)

The implications of these developments for the empirical study of European political systems are far-reaching, whether it concerns the refashioning of secrecy architectures spanning different jurisdictions, public-private boundaries, and policy domains; genuinely novel regulatory challenges; or the emergence of new lines of contestation, in which traditional defenders of privacy may find themselves allied with traditional defenders of state secrecy against those agitating for the dismantling of secrecy states.

For better or worse, secret politics and breaches of secrecy, the governance arrangements regulating secrecy, and political contestation over what are acceptable and unacceptable secrecy practices are bound to assume a growing profile in the study of European politics. The burgeoning literature – academic and journalistic – on secrecy and US politics can be seen as a harbinger of things to come (see more recently e.g. Engelhardt 2014; Glennon 2014a, 2014b; Greenwald 2014; Priest and Arkin 2011). Thus, the study of secrecy and politics can be expected to become a major cross-cutting theme in the analysis of EU and comparative European government, politics, and public policy. The aim of the present collection of papers is to contribute to this thematic mainstreaming by showing how a focus on secrecy allows novel insights into the linkages between secret politics and the governance of secrecy, on the one hand, and the nature of modern political power, on the other.

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