I

Secrecy, transparency, democracy: Is it really possible to convey the complexity in the meaning of the thoughts proposed here in such a short introduction? The dictionary informs us that secrecy is “knowledge, information that the holder must not reveal.” Secrecy conveys silence, intimacy, discretion; it can be a very reassuring word, or to the contrary a worrying one, meaning something opaque, clandestine, and mysterious. This is a very ambiguous word, which in reality implies numerous secrets that have nothing in common.

Is it not the same case for the notorious “transparency?” According to the Robert dictionary, it is “the quality that allows the complete reality to appear.” It seems to get mixed up with truth, clarity, even purity. “Transparency is the virtue of beautiful souls,” assures Jean-Jacques Rousseau, who sought to render his “soul transparent.” Here transparency is reassuringly dressed in a virtuous cloak or perhaps a very light veil which might allow us to gaze at its nakedness. Seen in this way, it seems to be the opposite of trickery, secrecy, mystery, and of all forms of deception. But can we not look at it any other way? Could it not also be rudeness, indiscretion, and disrespect for others? If we were to blend secrecy and transparency, would they be resolutely opposite, like light and dark, day and night, and even life and death? Or could we not seek out their affinities or even their similarities?

The meaning of the third word in this group is undoubtedly the most difficult to pin down. Granted that democracy is a doctrine according to which sovereignty belongs to all citizens and that it is a political apparatus
that applies this doctrine, we must still explore its true nature. Does it simply express the sovereignty of the people supposedly governed by the mediator and his elected representatives? Does it speak of an organization which respects the minority opposition? Does it describe a society made up of liberty, equality, and fraternity? Does it signify a state which safeguards human rights and the rule of law? At the end of the day, might it be the affirmation of an ideal society, an accumulation of all the virtues? Or would it not have several aspects of declared democracy, which change with space and time? What relationships maintain the democracy which was declared by the revolutionaries of 1789, then those of 1793 and Benjamin Constant’s vision of democracy, the democracy which was established by Gambetta, and the democracy which was restored by de Gaulle, the democracy which we practice today? Has not democracy been so transformed in France over the course of half a century that we must be wary of the word itself?

Secrecy, transparency, democracy: doubtless all three cover diverse and ever-shifting realities. It is difficult to examine their links without taking this complexity into account, and we run the risk of simplifying every study, of holding democracy as an ideal society and transparency as an obvious virtue, by marrying them (or joining them in a civil partnership) in order to discover a perfect republic, one which we dream of attaining.

II

While transparency can be confused with clarity, with truth, of which it is a fashionable synonym, it should be noted that the great religious, moral, and intellectual influences which are exerted upon us have all exalted truth. Jewish tradition, Greek thought, and Roman discourse are all fed by truth. The Christian God taught, even incarnated, truth. He spoke in its name and his churches sought to transmit – and sometimes harshly imposed – the law of truth. What was the Enlightenment, whose name alludes to transparency, if not the refusal of prejudice, superstition, and lies?

What did the revolutionary spirit seek or claim to be, if not the brutal declaration of truth? In his speech on 8 Thermidor (which preceded his execution), Robespierre fudged the truth: “I promised to leave a formidable testament to the people’s oppressors. I bequeath them the terrible truth, and death!” The “terrible truth” was indeed a message of which we are, in a certain way, still the agents. And while the spirit of secularism has rejected any dominating truth, it has also brought,
although in a different way, a quest for the truth, the truth examined by the critical mind. This leads even to the pathway of doubt, the obstinate search for what is the truth, or the absence of truth, the rejection of appearances, of prejudice, and of declared and imposed truths. Is it presumptuous to believe that our civilization and the democracies which it has engendered, carries truth in its luggage like a primary truth, like a fundamental requirement that precedes all others? Should truth not shine like the sun in our culture?

III

Throughout the nineteenth and twentieth centuries and the torments of history, French law has given priority to rules which seem to uphold the reign of truth. Examples include, in civil law, the clauses governing contracts, those which condemn the defects of consent, which claim that the conventions must be fulfilled in good faith, and which favor “the common intention of the parties” in the literal sense of the term. Penal law, so strongly marked in our traditions, has never stopped exalting truth: the witness swears an oath to tell the truth. Confession is perfect proof; it is the declared truth and it allows for half of the pardon of the sin. Are both ancient and modern forms of torture not innocent, in any case excusable, if the object of them is to discover and extract the sovereign truth? There are numerous texts in penal law which punish lies in all their forms: identity fraud, trickery, manipulation, concealment. In this way our law seems to shed light on the truth. Political discourse has never ceased to extol the truth which it uses for its own ends. “I hate the lies that have done so much harm.” These words, which opened a sinister path in 1940, have been repeated in so many different forms. Does France mistake itself for the truth which it has the mission to teach and bring to the world?

IV

Let us observe nevertheless that our Christian and bourgeois society, and the law arising from it, has indeed made concessions, regarded as necessary, for reasons of appearances and secrecy. Good education has long taught manners, rituals, and respect, or at least the pretense of doing so. We must keep up appearances and when necessary “save face;” these expectations impose appearances of modesty, reserve, and even courtesy. Just as clothing – whether heavy or light – covers the naked
body, the cloak of education covers social relationships. The effects of “the common mistake” over law, the validity of acts accomplished by the heir apparent, the legal consequences of the apparent mandate, of legitimate mistakes, of simulation, and of prescription, all remind us that with time appearance either becomes the law or cancels it. These are but a few of many examples of principles that assuage transparency.

But it is without doubt “secrecy” which holds first place. It would be tedious to list all of the secrets which have protected or which protect our law: professional secrecy, secrecy of investigations, secrecy of certain procedures, manufacturing secrecy, secrecy of correspondence, secrecy of assets, state secrets, and defense secrets. Note that only certain secrets are in the public interest, while others are in the private interest, and still others supposedly serve both public and private interests (such as the secrecy of investigations), and that the rules which govern them, their grounds, and fields are very different. In each instance, their specific legal system opposes the right to withhold information and the right to know and, according to the interests involved, either one might take precedence. Should the “terrible truth” gradually chase away all the secrets just because they defy and shame superior virtue? Or should democracy keep some of its secrets, because the fundamental principle which drives it might not be a moral law, but respect for man and his liberty, dignity, and happiness? Here, then, we find rivalry and sometimes conflict between virtuous transparency and secrecy, secrecy and its close relatives: discretion, reserve, and intimacy. Are they able to tolerate one another, share roles, and live together?

In just a few years, the reign of transparency seems to have come to the fore. These so-called laws of transparency, or truth, have increased, this truth whose transparency represents only one aspect, expressing the requirements of an increasingly evident moral law. There is transparency in the stock markets, transparency in banking, transparency of competition, transparency in the political parties’ financing, transparency in advertising. The theme of these laws tells us, “We must avert corruption,” “We must make the economy more ethical.” The economy, politics, and society must become more ethical. Truth deploys itself in this way through laws and if it can, through our habits as the basis of a “true” democracy.
Similarly, we have been able to observe the decline in secrecy, of secrets. Professional secrecy and the secrecy of investigations are constantly reduced and often experienced as obstacles on the path of truth. The same goes for public secrecy: state secrecy and defense secrecy seem suspect, dressing up lies or concealing the truth on a misleading pretext for the wider interests. It would be necessary to also observe all of the police measures which adhere to essential truth and take stock of the accusations, both legal and spontaneous, from which our legal system does not wish to separate. The derivatives of secrecy, such as the duty of confidentiality, are gradually being worn away. In the private domain, respect for intimacy is decreasing, sensitive to this great wave of transparency from America. Twenty-five years ago our case law upheld our property inheritance but today has more or less been put to one side by the effects of numerous laws. A distinction has developed between an individual’s “private life” where the law still grants privacy protection and “public life” where the citizen must verify his qualities, faults, personal circumstances, history, and state of health. Democracy obliges this “public” individual to complete transparency while the citizen, enlightened by truth and in full possession of the facts, is able to appoint, dismiss, or reject him. The “public” individual is yet to be defined by the requirements of complete truth for progress and democracy. Will a day come when the description “private individual” applies only to a person whose life is of no interest to anyone?

VI

The causes and disruptive effects of this increased transparency in modern democracy are numerous and complex. At center stage is the growing role of the image in our societies which seems to make us blur the truth that it reveals and conveys. The image tells us, “I am the truth,” and its name is, “Lift the veil,” or “The right to know,” or any other name which indicates the thirst for truth. We have entered the age of the image; perhaps we will live through a time in which it is even more powerful, because as time passes, we will probably learn to discern its expertise and lies, and be wary of it. In any case, the image is, for most of us, still the natural messenger of truth, and it overcomes all obstacles.

The written word, for its part wages a constant battle with the image, a battle for influence and money. The written word cannot allow the image to preside over the success that truth brings. A large part of the
indiscretions and revelations (even illicit ones) that the written press conveys is undoubtedly due to the battle to defeat, replace, and go beyond the image. How can we ignore the strength of proof that an image carries? Through words and images, information is experienced as an absolute right, an inescapable duty that obliges the citizen to take part. Must we say everything, know everything, and reveal everything, in the name of necessary information? Is it true that to exist, freedom of information must be unlimited, as Marat claimed, and that there would be, contrary to the mistake maintained by the Declaration of the Rights of Man, an absolute liberty that no law can limit, the freedom of information which could not be anything other than the freedom of truth?

Basic forces work to maintain this rise in transparency in modern society. One force is of course money, which bears the image, the written word, information, and, even though money is often affected by transparency, perhaps even profit drawn from indiscretion, revelation, scandal, and exposed personal secrets. Secrets of the body, the bed, the heart, and the wallet have all come to light in the name of transparency. Could the law interfere with our curiosity and enjoyment? The other force that could soon penetrate secrecy pertains to modern technology. The development of files, information networks, and modern information “highways” present us with the problem of knowing whether the secrets that still protect our rights will resist progress. Already, we have seen certain secrets, such as telephone communication, gradually wear away secrecy. Does our quest for perfect transparency not imply the inevitable conquest of new technologies?

But beyond this partial acknowledgment of some of the causes which feed progress and transparency, it is necessary to reflect upon a deeper evolution of our modern democracies. Is it not that transparency is becoming the supreme virtue, or even the only virtue of a society which would no longer possess others? Could it be that the decline of religions, patriotism, and the ideologies and virtues which they supposedly brought, ultimately serves the truth that would become like the life preserver of morality in old democracies shaken by history? What of the citizens, who in most cases live without God, without patriotism (or without the taste for patriotism except for at sporting competitions), without doctrine, without waiting for the revolutionary Grand Soir, citizens who will live to an old age in a society void of direction or hope, and who are no longer interested in traditional ideals such as liberty, because it seems to already be a given in our society, or
fraternity, which has been consigned to the trash heap of impossible dreams? Do these citizens not find supreme virtue in truth, a supreme reassurance to which they attach their quest for a moral law, as well as all the technologies and their curiosity and even their thirst for distraction? Let us examine the reign, or at least the cult of transparency in modern society: architectural transparency, transparency in working conditions, transparency in offices with an open-door policy, the search for lighter, more revealing clothes, and the traceability of our food, the need to know its origins. Let us examine the decline of formal manners and the secretiveness of the past adapted to today’s convenience society. Let us also look at the enthusiasm surrounding more open and spontaneous relationships in social life, between couples where it is considered best to tell each other everything, in relationships with our children, in which the child must receive an education based on truth, physical truth, emotional truth, the child who must escape outdated ritual, manners, and all secrecy. Happy is the child who grows up in truth! Here we see emerging characteristics which are too hastily drawn and which risk being caricatured, the plans for a new world, fascinated by imagery, a world of unpredictability, in which a moral law can at times give reassurance. Would not such transparency be the last refuge of a democracy that has relinquished its dreams of solidarity, equality, and justice? Is this all that remains of a morality deprived of illusions? Is there not another ideal other than being true that would allow us to blossom in a world that is true?

VII

It would be unreasonable to ignore the dangers of modern democracy’s transformation. The nineteenth- and twentieth-century historical upheaval, the wars, the German occupation, and even the change from the rural to the industrial age, the reign of bourgeois society, the battles and alliances of Colbertism and Marxism – the list of reasons and pretexts to increase and protect secrecy in France goes on and on. This secrecy includes homeland secrets, family secrets, as well as financial and heritage secrets. Modern battle, led in the name of transparency, undoubtedly finds democratic justifications. Transparency has shone a light on public and political life. It has penetrated the mysteries of corruption. In a country where corruption was rife and on the increase due to a widespread system of “licensing,” transparency has managed to halt this increase. Undoubtedly, this battle has shaped our modern
life. Developing our knowledge and aptitude for judgment, it has been useful for democracy; it has made citizens better informed, more mature and perhaps more aware. Citizens can make now more of their civic function, if they wish. The role of the media, the missions that the legal authorities have fulfilled with dogged determination, the concessions that the legislators have had to make to the “powers that be”: these have all gradually emptied this closet of secrets which has provided democracy’s obsessions with so many resources. But every virtue risks the possibility of engulfing even the noblest ideal to dangerous ends. There is little between transparency becoming supreme virtue and this “terrible truth” that Robespierre left as a testament, this truth which commanded and justified everything – even death.

VIII

For truth does not merely hound corruption and inform citizens. It is suspicious of reserve, discretion, and old-fashioned virtues which continue to maintain links with lies. The truth only tolerates some vestiges of secrets under the condition that they do not interfere with it. Thus, do professional secrets, secrets of criminal law, and those of private lives have to bow down if they are obstacles in the mission for transparency? Year by year we see them taper off. The old rules of law, which supposedly found their basis in appearances or maintaining vested interests, must be wiped out because the truth can no longer bear them. This is what happens with criminal prosecution: it is shaped by case law until it eventually becomes civil prosecution. The rule of law itself is called into question. Can it shame or limit the assaults against the truth? Must the law, if it is opposed to truth, not be twisted and warped? Does respect for individuals, their differences and mysteries, not risk doing damage to the truth? What would citizens be if they were to hide their differences and oddities? Conformity to the model is doubtless one of the truth’s commodities. From a pessimistic point of view, what we see coming with the progress of transparency is the dictatorship of the social model. “Do not be different, because in the name of transparency, I must know you and assess you at all times.” The reign of supreme virtue requires transparency professionals. It calls for transparency judges to interpret the requirements and put them in place. It requires civil servants void of secrecy or mystery to sanction them. And here looms the cold dictatorship of truth, supreme virtue, which receives a calling to substitute all else. What about courage?
That was only in a time gone by. And what about generosity? It is undoubtedly desirable, but it does not excuse any lies, and it is often merely a sweetener. We have been told that respect for individuals, for their being and dignity, is the real fight for democracy, but this is often only a pretext to disrupt the fight for truth. And respect for human rights? Yes, without doubt, so long as they do not rise up on the path of truth or serve the enemies of truth.

Clearly, this portrait exaggerates the traits of a kind of transparency that might become despotic. But our democratic vigilance must undoubtedly be practiced. Because the formidable system characterized here satisfies itself with universal suffrage. There does not seem to be a threat to democracy; quite the contrary. The citizen who goes to vote does not oppose it. We simply need to reject the appearances, secrets, and lies that old democracies drag behind them. The purified citizen puts a better democracy in place. Transparency only exerts a gentle, pervasive despotism, one that progresses gradually without ever looking like a dictatorship.

IX

Is democracy only a political organization in which the citizens practice sovereignty? Is it not also driven by a certain idea of humanity? Does it not seek to be a system of protective rights for all individuals, for their personality, differences, liberty, and dignity? And this transparency, which looks like pure water, sunlight, like happy holidays, and all that we think we love, should we not be wary of it, as of the tyranny of all those virtues which religions, nations, and doctrines claim to bring, in order to carry out their terrible missions more efficiently?
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ABSTRACT

Is democracy simply a political procedure through which citizens exercise their sovereignty? Is it not also inspired by a certain idea of man? Does it not offer a system of law which protects individuals, their personality, their differences, their liberty, their dignity? Its openness looks like pure water, the sunlight, beautiful holidays, like everything we think we love. But should not we be wary of openness as of the tyranny of all the virtues religions, nations and doctrines have pretended to embody in order to carry out their terrible missions more efficiently?