

## Transparência e opacidade do estado no Brasil: Usos e desusos da informação governamental

By José Maria Jardim. Niterói, Rio de Janeiro: Editora Universidade Federal Fluminense (EdUFF), 1999. 239 pp. Softcover. R\$49.95BRL. ISBN 85-228-0288-2.

Promulgated only a few years after the end of the Civil-Military Regime (1964–1985), Brazil's 1988 Constitution represented the final closure of a controversial period in the country's history. Within one of its articles<sup>1</sup> was the guarantee of access to information to all, which constituted an initial step toward improving the population's awareness of the use of information by the government. Such guarantees were interpreted as a sign of redemocratization and raised expectations that the State would be, henceforth, transparent and socially responsible.

During that period, a spirit of hope hung in the air, encouraging people to reflect on their rights and duties and on what it would mean to fully exercise their citizenship. Two scenes capture the imagination of the generation immersed in that prospect: in the first, hundreds of people took shelter in the domes of the Federal Congress in Brasília as the Constituent Assembly was launched; and, in the second, Federal Deputy Ulysses Guimarães waved a copy of the new Brazilian Constitution in the air under a heavy confetti storm on October 5, 1988, the day it was enacted.

In the midst of this movement marked by passionate speeches by politicians in favor of the new Constitution, action plans were drawn up to modernize the State and facilitate more transparency. Under these plans, managerial instruments would control the information produced by this new modern State—a State that would, in turn, guarantee not only citizens' access to information, but also the social visibility of that information. By guaranteeing citizens the right to access information, they would now possess additional means of demanding accountability from the State, thus obligating the State to reveal its accounts and exposing it to evaluations of efficiency and effectiveness.

Published in 1999, more than ten years after the approval of the Constitution, José Maria Jardim's *Transparência e opacidade do estado no Brasil: Usos e desusos da informação governamental* (*Transparency and Opacity of the State in Brazil: Use and Misuse of Governmental Information*) was the result of his doctoral thesis, which covers the period between 1985 and 1997 and presents a brief retrospective of the history of Brazil beginning in the 1930s. The book's main argument revolves around the hypothesis that the Brazilian Federal Public Administration—despite operating with high financial, political, social, and

scientific costs—became the “locus of informational opacity” as a result of a complex set of factors. Combined, these factors influenced the development of information management in the country.

In accordance with the envisioned plans, the Public Administration would be composed of a direct and an indirect administration. The direct administration included ministries, their respective secretariats, departments, police stations, and other administrative units. The indirect administration was composed of autarchies, foundations, public companies, and mixed-capital companies. The informational component of the administration consisted of archives, libraries, documentation centers, and information technology sectors.

Even though archival theory and practice form the backbone of Jardim’s book, its seven main chapters present a dense and provocative text that interconnects the writings of leading authors in political science, administration, history, and sociology. Another peculiar aspect of the structure of Jardim’s book is its table of contents, which is unusual among other archival science works in Brazil. The following chapter titles, linked in a harmonic way, present a poetic, lexical composition, structuring the work into a systematized whole—for example, “Outlines to the Half Light: State and Information”; “Zones of Light and Shadow: Administrative Transparency and the Right to Government Information”; and “Inequality, Citizenship and Exclusion: The State in Brazil.”

The complex and rich composition of Jardim’s work, which does not limit itself to archival science but rather goes beyond the boundary of the discipline, may be attributed to the breadth of the author’s professional life and experiences. Having received an undergraduate degree in history, Jardim worked at the National Archives of Brazil for more than ten years and was the mastermind behind the creation in 1985 of the Public Archives of the Federal District (ArPDF) in Brasília and of several public archives in other Brazilian states. Considered one of the foremost experts in the archival field in Brazil, he was the mentor behind the creation of several archival studies undergraduate courses in the country, besides being one of the most important designers of the records and archival management master’s degree program at the Federal University of the State of Rio de Janeiro (UNIRIO). The “José Maria Jardim Award” was created in 2017 to honor the best works presented at the Archival Knowledge Seminar (SESA).<sup>2</sup> Jardim himself retired in March 2019 as a senior professor at the School of Archival Science at UNIRIO.

Even though *Transparência e opacidade do estado no Brasil* was originally published more than twenty years ago, it is still very timely and excels in several specific areas: the depth and extent with which it scrutinizes a study prepared by the National Archives<sup>3</sup> about the problem of information management and archives in Brazil; the data produced through nineteen interviews carried out in Brasília with information professionals and bureaucrats of the Public

Administration; and the analysis of the sites of twenty-one ministries and the presidency. The quality of these studies transforms Jardim's book into an enduring publication that is currently used as an indispensable reference in various archival studies undergraduate courses in Brazil.

Jardim demonstrates how, despite all the material and legal resources employed and destined to be used for archives and records management, "reflections on information policies of the Federal government are practically absent" (p. 179). This would thus constitute "a deep gap between the discourse of governmental transparency and the effective availability of governmental information" (p. 168).

Based on the interviews collected by Jardim, it becomes obvious that much of what was promised and sought in relation to information management in the Public Administration, starting in 1988 and after the creation of the archives law in 1991,<sup>4</sup> did not come to fruition. Those objectives were not achieved due to the Brazilian State's strong tradition and culture, according to which information and power should be confined to the highest spheres—that is, to the offices of senior managers and leaders.

The interviewees reveal that archives had become peripheral to the Public Administration; at the same time, "the value attributed to archival information (and not necessarily to archival services) was linked to the possibility of the administrators' demands being met during certain moments" (p. 182). These circumstances resulted in the devaluation of the archives by the managers themselves who, through appropriation of the public sphere by private interests, took ownership of public records; and who, furthermore, after the end of their term of office, embezzled the State archives, a fact that underlines the negligence of the Public Administration.

In addition to the appropriation of public records by managers, senior State managers' adherence to "secrecy" is another practice that further illustrates the opacity of the Public Administration regarding the management of its archives. This culture of secrecy was made apparent not only through the manner in which they classified records and attributed custody periods, but also in the way they exerted control over their files. In fact, these files were considered "informational capital," that is, a bargaining chip to negotiate either with their peers or with those lower in the administrative hierarchy. These practices thus explain and reinforce the true nature of the Public Administration as one "naturally" inclined toward secrecy.

As the informational opacity of the State is a historical and structural element of the Brazilian Federal Public Administration itself, Jardim concludes that the State's vocation in Brazil makes it incapable of elaborating information policies in which access to information is a fundamental right. The author's closing remarks suggest that, to reverse this opacity as a chronic characteristic

of the Brazilian State, transparency must be considered a political aim and civil society must be involved in its pursuit; and, to this end, it would be helpful if State and citizen were brought into closer contact. Jardim predicted that if these measures were taken, Brazil would finally be on its way to fulfilling the objective of increasing the transparency of the State within informational spaces.

Looking back at the State's actions during the twenty-some years since the publication of this prediction, it is possible to assert that Jardim's prognosis was essentially correct. First, it must be admitted that, from a cursory glance at the initiatives taken since that time, advances are indeed apparent: the Law of Information Access was promulgated in 2011,<sup>5</sup> and the General Law of Personal Data Protection came into force in 2020.<sup>6</sup> Those supposedly major advances must be qualified as merely "apparent," however, for no matter how progressive the legislation, what matters most is how these laws are put into practice. In practice, the State's upper echelons have continued to decide, in spite of those laws, whether or not a citizen will have access to information. One example is the fact that throughout the coronavirus pandemic, the Ministry of Health is the Brazilian public institution with the highest number of neglected requests for access to information, according to the comptroller general of the Union.<sup>7</sup> Many examples abound in which the State has continually denied access to information to protect its agents in the highest ranks of Public Administration.

The failure of these major laws to make the opaque structures of the State more transparent could be attributed to the fact that Jardim's recipe for change has not yet been thoroughly applied: the main stakeholders have not turned transparency into a widely accepted political aim, and civil society has maintained a continued distance and demonstrated a lack of engagement in the pursuit of that objective. Given these lackluster "advances" since his magnum opus was published, Jardim would probably agree with the evaluation that average Brazilian citizens still cannot be considered true protagonists in the democratic process of their own country, for the fact remains that transparency itself still cannot be considered a true paradigm of the Brazilian Federal Public Administration.

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## NOTES

<sup>1</sup> Brasil, Constitution of the Federative Republic of Brazil, October 5, 1988, [http://www.planalto.gov.br/ccivil\\_03/constituicao/constituicao.htm](http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm), captured at <https://perma.cc/3SN7-CTCE>.

<sup>2</sup> For more information, see <http://www.uepb.edu.br/80-seminario-de-saberes-arquivisticos-traz-a-paraiba-pesquisadores-do-brasil-e-portugal-para-debater-a-arquivologia>, captured at <https://perma.cc/QU5Y-J9V3>.

- <sup>3</sup> For more information, see <https://www.gov.br/arquivonacional/pt-br>.
- <sup>4</sup> Created in 1991, by Law n° 8.159, of January 8, the Archives Law's main goal was to establish that the executive branch was responsible for the implementation of a national policy to manage records and protect public archival documents, as an instrument to support administration, culture, scientific development, and as evidence and information. Brasil, Lei n° 8.159, de 8 de janeiro de 1991, "Dispõe sobre a política nacional de arquivos públicos e privados e dá outras providências," [http://www.planalto.gov.br/ccivil\\_03/leis/L8159.htm](http://www.planalto.gov.br/ccivil_03/leis/L8159.htm), captured at <https://perma.cc/87NV-5FV3>.
- <sup>5</sup> Brasil, Law n° 12.527, of November 18, 2011, "Lei de Acesso à Informação," [http://www.planalto.gov.br/ccivil\\_03/\\_ato2011-2014/2011/lei/l12527.htm](http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2011/lei/l12527.htm), captured at <https://perma.cc/BM72-8F53>.
- <sup>6</sup> Brasil, Law n° 13.709, of August 14, 2018, "Lei Geral de Proteção de Dados Pessoais (LGPD)," [www.planalto.gov.br/ccivil\\_03/\\_ato2015-2018/2018/lei/L13709.htm](http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/lei/L13709.htm), captured at <https://perma.cc/5DMK-JXWZ>.
- <sup>7</sup> Brasil, Controladoria Geral da União, "Painel Lei de Acesso à Informação," <http://www.paineis.cgu.gov.br/lai/index.htm>, captured at <https://perma.cc/R5ND-N5EV>.