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The failure of an early episode in the open government data movement: A historical case study

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ABSTRACT

The open government data (OGD) movement that focuses on government transparency and data reuse did not appear out of thin air. Some early episodes of this social movement can be traced to the early 1990s. This paper presents a historical case study of such an OGD episode, a campaign targeted at a government database called JURIS, initiated by OGD advocates in the early 1990s. JURIS was a legal information retrieval system created by the Department of Justice and used by government employees, which contained federal court decisions (or case law), among many other primary legal materials. Public interest groups and small publishers intended to open up the database for public access and data reuse, but their effort failed and eventually led to the shutdown of the JURIS system. This paper provides a detailed account of the history, analyzes the reasons of the failure, and discusses outcomes of the campaign. Drawing from social movement theories, especially the political opportunity structure, the paper illustrates the complexity of the social political environment surrounding the OGD movement, especially with regard to an important type of government data, primary legal information, in the United States.

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1. Introduction

Open government data (OGD), an international phenomenon aimed at making government data (“data produced or commissioned by government of government controlled entities”) publicly and freely available in digital formats for use, reuse, and redistribution, has been gaining momentum in the past ten years ([Open Government Data, n.d.](#)). OGD may seem to be one of the many “openness” social trends or movements inspired by “open source”, including open access, open knowledge, open science, open education, open innovation, and free culture ([Davies & Bawa, 2012](#); [Willinsky, 2005](#); [Yu & Robinson, 2012](#)). In these movements, the notion of openness is utilized to challenge the closed system established in various areas and emphasizes a new norm of access, sharing, and collaboration enabled by technological advancement ([Davies & Bawa, 2012](#)). Yet OGD probably has a closer connection to the long existing concept of public access to government information. In the U.S., for example, public access to government information has always been considered “essential to the realization of a civil society, democratization, and a rule of law” ([Perritt, 1997](#)), and the emphasis on public’s right to know and right to information access was demonstrated through the establishment of the federal depository library program and the passage of the Freedom of Information Act (FOIA) ([Shattuck, 1988](#)). The OGD trend highlights public access to

data, but is more technology driven, aiming at both government transparency and data reuse.

What is the nature of OGD? In the EBSCO Business Thesaurus, the official term for open data is “open data movement,” defined as “the movement that advocates for open data that is free and equally accessible to everyone to use as they please without restriction.” In the literature, many researchers have also used “movement” to label OGD (e.g., [Attard, Orlandi, Scerri, & Auer, 2015](#); [Davies & Bawa, 2012](#); [Dawes, Vidiasova, & Parkhimovich, 2016](#); [Janssen, 2011](#); [Lourenço, 2015](#); [Ohemeng & Ofosu-Adarkwa, 2015](#)). However, they often do so in a casual manner without further specifying why OGD should be considered as a social movement, and how, as a social movement, OGD has originated in recent history, attracted participants, gained support from the public, and developed over time. Most of these authors discuss OGD from legal and policy perspectives, treating OGD as government initiatives/programs/projects/plans, largely overlooking the “movement” aspects. Similarly, many seem to consider OGD, within the U.S. context, as a political phenomenon that formed in the late 2000s, signified by the establishment of the eight principles for OGD and the Obama administration’s Open Government Initiative (e.g., [Dawes, 2010](#); [Fretwell, 2014](#); [Veljković, Bogdanović-Dinić, & Stoimenov, 2014](#)).

OGD did not appear out of thin air in the U.S. It is a social movement that presents “a collective, organized, sustained, and non-institutional challenge to authorities, powerholders, or cultural beliefs and practices” ([Goodwin & Jasper, 2015, p.4](#)). In fact, as early as the 1990s, activists already started the OGD social movement in its modern

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form, requesting free or low-cost access to government data/information with the purposes of more government transparency and data reuse. Several early episodes of the OGD movement are worth noting: one was the successful opening up of EDGAR, a database that contains financial information critical for investors and traders; the other was a failed attempt to open up JURIS, a legal information retrieval system containing federal case law developed by the U.S. Department of Justice (DOJ) and used for in-house searching by government employees. This paper studies the latter as this failed challenge has received much less coverage in media and in the literature than the successful EDGAR case.

Although quantitative data is emphasized in today's OGD movement (Bates, 2012), in this paper, primary legal information is considered as a particular type of government "data" because in the JURIS case, the legal information is not only considered as government information, but also data that can be reused and redistributed for different purposes such as information retrieval research and raw material for innovative, value-added information services. In the JURIS campaign, activists' goals were very similar to those in today's OGD: making public data open to the public, technology innovation, government transparency, and data reuse. It is also worth noting that, in the U.S., primary legal information is a particular type of government information, and it is of utmost importance for citizens to have convenient access to laws, statutes, codes, case reports, and other legal data in order to be informed and empowered (Jaeger & Bertot, 2011). However, while practicing legal professionals, legal scholars, and law students are relatively well served by commercial legal information providers, public access to legal information in digital formats has always been challenging (Arewa, 2006). Digital legal information is often financially unfeasible to obtain, especially for the low-income population, and therefore the general public has only limited free access to reliable digital legal information (Jaeger & Bertot, 2011). Over the last twenty years, the idea of public access and free access to legal information has undergone a transformation as an increasing number of online legal resources have appeared in different parts of the world (Greenleaf, Mowbray, & Chung, 2013). Today a great number of legal resources are free over the Internet for public access, but a close look at the recent history shows that even with legal information, a strong case for public access, the OGD movement did not come to success easily.

This study considers the JURIS case as an early episode of the OGD social movement, which challenged the legal information access norm in the early 1990s. This challenge might have led to public access and reuse of an important government dataset but eventually failed. This paper presents the findings of a historical investigation into the shutdown of the JURIS system and the consequences of this challenge. It focuses on two research questions:

RQ1: What are some of the factors that affected the outcomes of this early episode of OGD movement?

RQ2: What are the consequences of the JURIS campaign beyond the direct outcome—campaign failure and system shutdown?

Through investigating the case of JURIS as the failure of an early OGD episode, this paper revisits the notion and reality of public access to digital legal information from a historical perspective within the OGD context. Primary legal information is an important category of government data and is crucial to the public, especially pro se litigants. The significance of the case lies in its historical value—an instance in the historical moment when public access to digital government information became a theme in the social political arena. An investigation of the historical case contributes to the broader OGD research because it enhances our understanding of the historical development of this important social movement. Analyzing a failed case is especially interesting because social movement researchers are more likely to study successful cases, while failed cases may be more illuminating and can provide useful lessons to activists and policy makers. Drawing from social movement theories in the analysis, this paper may also contribute to the theoretical discourse on social movement outcomes.

2. Literature review

To situate the JURIS case in a research context, two areas of existing literature are relevant: conception and history of OGD and outcomes of social movement. This literature review summarizes relevant literature in these areas.

2.1. The historical origin of open government data

Katleen Janssen (2012) argues that the "links of OGD with other, pre-existing movements demanding for government information, openness or participation, have been underexposed." Indeed, among nearly forty articles published on *Government Information Quarterly* since 2009 that discuss open government and/or OGD intensely, most acknowledge the origin of OGD briefly from the perspective of recent policy agendas in different countries (e.g., Dawes et al., 2016; Gonzalez-Zapata & Heeks, 2015; Jetzek, 2016; Jung & Park, 2015; Sieber & Johnson, 2015). Within the US context in particular, researchers emphasize the efforts from the Obama Administration on promoting transparency and civic engagement and discussed the OGD initiatives/programs/efforts established after former U.S. President Barack Obama issued the Memorandum on Transparency and Open Government in 2009 (e.g., Kassen, 2013; Kimball, 2011; Lee & Kwak, 2012; McDermott, 2010; Veljković et al., 2014).

Researchers who track the historical origin and evolution of OGD typically consider the international OGD as starting from "the constitutional right to know" and growing into regulations or policies in different countries (Luna-Reyes, Bertot, & Mellouli, 2014). The relationship between OGD and right to information (RTI) have been explored in detail in the literature (Access Info Europe & Open Knowledge Foundation, 2011; Janssen, 2012; Yannoukakou & Araka, 2014). Connections with other movements or communities have also been identified. For example, researchers have provided in-depth accounts of the links between OGD and the reuse of public sector information (PSI) in Europe (especially Bates (2012), with a focus on OGD in the UK, also see Janssen (2011) and Davies (2010)). According to Bates (2012), the pursuit of OGD by civil society actors (including the business community) in the UK can be traced to at least the 1970s. In addition, the linked data/semantic web community is also considered to have connection with OGD (Tinati, Halford, Carr, & Pope, 2011).

Joshua Tauberer, an OGD advocate, software developer, and creator of GovTrack.us, traces the history of OGD more extensively, with a similar emphasis on its connection with the traditional concept of free access to government information. In his book *Open Government Data: The Book*, Tauberer (2014) clearly labels OGD as a "movement" and a "small part of the broader open government movement which encompasses classic open government (such as the Freedom of Information Act) as well as the newer fields of citizen participation and citizen experience" (p.1). Tauberer considers the ancient origin of OGD to be open access to law. He traced the history of law from ancient Athens and Visigothic Europe to ancient China and Kingdom of Sweden, and found connections between the dissemination of law and government records and today's OGD movement. Citing Putnam (1962), Tauberer maintained that the early codification of law is connected with the very idea of equal access to justice.

Tauberer (2014) then discusses the open government movement as a precursor of OGD in the middle of the 20th century and the enactment of the FOIA in the U.S. as a milestone of the movement, which echoes some others scholars, for instance Abu-Shanab (2015), Luna-Reyes et al. (2014), Ganapati and Reddick (2012), and Yu and Robinson (2012), who consider open government an old concept related to FOIA. According to Yu and Robinson (2012), initially connected to the notion of public accountability, open government originated from the 1950s and played a role in the passage of the FOIA in 1966 and was almost synonymous to public access to information in the next decades.

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