Open Data and Transparency: A Paradigm Shift

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1. TRANSPARENCY AS DATA PUBLICATION/DISSEMINATION VIA THE WEB

This paper reviews the impact of the “Open Data System” on the concept of administrative transparency, in order to assess not only the conceptual but also the actual performance of transparency with respect to Open Data available on the web. This topic is indeed at the centre of an international debate, also as a result of specific policy options already devised by some leading (at least from this point of view) legal systems.

This investigation may appear as premature given that the Open Data system is currently a widely supported but not yet implemented reform strategy. In addition, transparency itself has recently evolved very rapidly as a concept, with consequent deep changes in terms of tools and implementation if not goals.

This is particularly true for the Italian legal system, where administrative transparency rapidly passed from a general (and generic) equivalence with the legal institution of “right to access” to a matter strongly connected with

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1 With special reference to the policy started by B. Obama, President of the United States, contained in the Memorandum on Transparency and Open Government, signed on 21 January 2009, followed (with special reference to Open Data) by the Open Government Directive written by the responsible of the Office of Management and Budget on 8 December 2009 (see: http://www.data.gov/). Even the United Kingdom followed a policy of Open Data promotion, a decision that took place in the passage from the Labour to the Tory government (see: http://data.gov.uk/).

2 Still in 2005 was critically remarked that “traditionally, transparency was as much as to say right to access” (see E. CARLONI, Nuove prospettive della trasparenza amministrativa: dall’accesso ai documenti alla disponibilità delle informazioni, in “Diritto pubblico”, 2005, n. 2, p. 579).
the information dissemination via the web\(^3\). This transformation is characterised by a fruitful and deep interaction between scientific discussion and reform policies; therefore this model ended by affecting one of the most relevant and strategic interventions by the national legislator in the course of the last parliament\(^4\).

Since the concept of transparency acquired relevance, as the result of dissemination via web of information held by administrations, the Open Data perspective could be intended in terms of substantial continuity/development (not a breakdown) along the evolution of institutions and instruments aiming at realising (administrative) transparency\(^5\). From this point of view, it should be advisable that the effects of the Open Data systems on the dynamics of the web-driven transparency could be governed by the recent (but already suitable) set of rules. In this research we aim at remarking the limits of the present-day approach with reference to the Italian legal system in comparison with the Open Data systems potentials, dynamics and philosophy as well as to suggest that these potentials, dynamics and philosophy would end (will end) by determining a change in the transparency paradigm.

2. The Features of the (Most Recent) Notion of Transparency

As stated above, on-line dissemination of information plays a central role in the Italian legal system. Such role benefits from the numerous provisions that enforce mandatory publication of certain documents and information

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\(^4\) The on-line publication of documents and information represents the rationale of transparency, as it is provided for by law no. 15 dated 2009 and the following decree no. 150 dated 2009, as well as in the law no. 60 dated 2009, the main legal issues of the reform designed by R. Brunetta, Minister of Public Administration and Innovation. Besides the authors mentioned in the previous footnote, see also V. Sarcone, *Dalla “casa di vetro” alla “home page”: la “trasparenza amministrativa” nella legge 15/2009 e nel suo decreto attuativo*, http://www.amministrativamente.it, 2009, n. 11.

\(^5\) Furthermore, the legislator defines “transparency” as “total accessibility to information” (see art. 4, par. 7, law no. 15 dated 2009, and the following art. 11, par. 1, decree no. 150 dated 2009). Nevertheless, the use of the term “accessibility” is inconsistent with the effectiveness of the dynamics came into force following the same law (see below).
on the web\textsuperscript{6}, but also stems from the absolute marginality of the right to access information for administrative transparency purposes\textsuperscript{7}. Therefore, the Italian national legal system is to be considered as lacking in assigning a real freedom to access the Public Sector Informations (PSI)\textsuperscript{8} and a series of needs that elsewhere are included in and solved by Freedom Of Information Act (FOIA) here remain with the on-line publication matter. As a consequence of the (unbalanced) interaction between right to access and on-line dissemination, the latter established itself in general terms as the one and only instrument able to transform the theoretical attitude to make the public sector data\textsuperscript{9} known to a real opportunity for all to access knowledge. This way, once the notion of administrative transparency is associated to a widespread capacity of acquiring information for the purpose of a broader democratic control on public power (especially the administrative ones)\textsuperscript{10}, the dimension and relevance of transparency may (and must) as a consequence be considered as mainly, or better exclusively, referring to the dissem-

\textsuperscript{6} A quite exhaustive list of the rules providing that the public administrations publish on-line information is the result of a survey by the Commissione indipendente per la valutazione, l'integrità e la trasparenza (CiVIT) (Independent Commission for the Assessment, Integrity and Transparency). See resolution no. 6 dated 2010, in http://www.civit.it.

\textsuperscript{7} The (further) reduction (until annulment) of the right to access potentiality for transparency purposes, following the reform of the Part V of the Administrative procedure act (Act of Parliament no. 241 dated 1990) introduced by the Act no. 15 dated 2005, can be summarised in the following sentence of law: “Instances for access aimed to a general surveillance of the work of public administrations are not eligible” (art. 24, paragraph 3); see E. CARLONI, Gli strumenti della trasparenza nel sistema amministrativo italiano e la sua effettivita: forme di conoscibilità, quantità e qualità delle informazioni, in Merloni F. (a cura di), “La trasparenza amministrativa”, cit., pp. 352-377; the actual end of the right to access (in the Italian legal framework) as a subjective safeguard tool is stressed by C. MARZUOLI, La trasparenza come diritto civico alla pubblicità, ibidem, pp. 45-66.

\textsuperscript{8} In this regard, referring to the provisions of the right to access, someone speak about an “access without transparency” (see E. CARLONI, La “casa di vetro” e le riforme. Modelli e paradossi della trasparenza amministrativa, cit., p. 786).

\textsuperscript{9} According to the definition by the Digital Administration Act, “an information that can be known by anyone” (as opposite to those “information whose may be known only by entitled person for public or personal purpose”, is considered as “public” (see art. 1, par. 1, lett. l) and n), of the decree no. 82 dated 2005 and following modifications).

\textsuperscript{10} For the formulation of the notion of transparency as connected to the widespread democratic control, see F. MERLONI, Trasparenza delle istituzioni e principio democratico, in Merloni F. (a cura di), “La trasparenza amministrativa”, cit., pp. 11-13; about the constitutional relevance of transparency as directly concerning the democratic character of the legal systems, see D. DONATI, Il principio di trasparenza in Costituzione, ibidem, pp. 83-128.
inition of data, information and documents via web, that is a “transparency without (right to) access”\textsuperscript{11} framework.

Having defined the scope of the present research, the main features of the concept of transparency – as it comes from the present legal regulation – can be described.

First of all, only the information regulated by the legislator’s provisions concerning their dissemination have to be made available on the web. In most cases, it is not a real disclosure, since this information is already publicly available and its on-line publication is suitable to fill the iatus between potential/abstract and real knowability. Nevertheless, in some cases, provisions aim at making data actually available to the general public because publication makes information otherwise not available (being subject to regulations governing public confidentiality or private protection of data\textsuperscript{12}) known via web. It can remarkably affect the way this information is processed, as confirmed by the relevant concern of the national Commissioner for the protection of personal data, even in terms of issue of regulations\textsuperscript{13}. In any case, the wideness and deepness of information to be disseminated by the web are the result of an explicit choice made by the legislature, in an analytical way and according to a incremental dynamic.

Citizens are therefore “subject” to this choice, as their claims (in its real juridical relevance) are conditioned and sized “upstream” (in their actual legal substance) just by the relevant legislative provision\textsuperscript{14}.

\textsuperscript{11} It is a paraphrase of the “paradox” formulated by Carloni (see footnote no. 8).
\textsuperscript{12} As in the case law grants that information concerning the people endowed with public roles is made available, otherwise governed by the discipline protecting personal data. It differs from the radical denial of the protection of “all information concerning the performances of an administrative official and its assessment”, as formerly provided by law no. 15 dated 2009 (art. 4, par. 9; a provision then annulled by the legislator – see art. 14, par. 1, lett. \textit{a}), law no. 183 dated 4 November 2010. On the matter see E. CARLONI, \textit{La “casa di vetro” e le riforme. Modelli e paradossi della trasparenza amministrativa}, cit.
\textsuperscript{13} The Commissioner for protection of personal data firstly referred to the on-line publications by the local administrations (see law no. 17 dated 19 April 2007, entitled: “Linee guida in materia di trattamento dei dati personali” per finalità di pubblicazione e diffusione di atti e documenti di enti locali); more recently, see the guide-lines for all public administrations (see regulation act no. 88 dated 2 March 2011, entitled “Linee guida in materia di trattamento di dati personali” contenuti anche in atti e documenti amministrativi effettuato da soggetti pubblici per finalità di pubblicazione e diffusione sul Web”.
\textsuperscript{14} C. MARZUOLI, \textit{La trasparenza come diritto civico alla pubblicità}, cit.; C. CUDIA, \textit{Trasparenza amministrativa e pretesa del cittadino all’informazione: istituti/categorie di diritto}
At this subject, the lack of “uniformity” of publication ways to make public sector data available stated by legislator (time limits, information structure, formats, etc.) is to be stressed, even if the need of standardising the public sector information processing is provided for by the Constitution\textsuperscript{15}; furthermore, even if data is regulated by mainly technical subjects, this process (of standardization) is quite implicit and carried out without a real reciprocal coordination (until now)\textsuperscript{16}. 

With reference to the legislator’s decision about the “object” to be published/disseminated via web, beyond some specific regulations on the matter (i.e. environmental\textsuperscript{17} and statistic information), the most obligations for administrations refer to data concerning the same administrations (overall, until now, data on the organisation and management than on the administrations’ activities)\textsuperscript{18}. It is easy to guess why, if transparency is intended as aiming a wider control of administrations. On the other hand, the chronological sequence of law provisions (relevant in itself as a specific field of publicity/dissemination emerged to show some organisational choices and their financial impacts\textsuperscript{19}, in order to diffusely protect impartiality and per-
formance) symbolically ended with the positive definition of transparency issued in 2009. In many cases, the regulations do not provide for the dissemination of information as already structured in acts, documents or data-banks, but call administrations for a specific processing or a further one in order to achieve transparency.

Lastly, some relevant indications come from the context in which these regulations are at. Administrations not only have to publish some data according to given methods, but also to realise a specific “three-year program for transparency (and integrity)”, with respect to which they are subject to specific powers of direction, assessment and evaluation. Furthermore, the regulations in hand (especially the Legislative Decree no. 150 dated 2009) aim at enhancing the public administrations’ performance, especially through the dissemination of the results of internal audit and assessment procedures.

The above briefly recalled items allow to remark the main features of the concept of transparency as it is intended in the Italian legal system nowadays in force.

Transparency is an outcome and a tool at the same time. It is an outcome, that is a product (in terms of potential knowledge of a given set of decisions made by the administrations) of the due dissemination of information concerning administration by the same administrations. It is a tool, because this knowledge represents a necessary prerequisite of a conscious exercise of a wider capacity of control on public administrations.

This mechanism is based on the so-called “bipolar paradigm” (administration/citizens) according to a top-down dynamics: usually is the legislator who states which kinds of information are to be published, through which channels and to which aims. In other terms, the administrative transparency represents the content of a specific public policy, aiming at achieving given goals (make it widely readable / verifiable the performance of public administra-
tions), in view of an expected result: the reinforcement of the democratic cycle. Transparency, indeed, is intended to implement or strengthen a dynamic that – by stimulating public opinion and its mediators through the dissemination / availability of information about administration’s choices and results (downward phase) – aims to determine the feedback along the traditional ways of democratic control on public power (upward phase): elections, participatory mechanisms, public discussion, etc.\(^2\)

It is not only an (apparently) obvious matter, but also a relevant policy (from a civil, institutional, social and economical point of view), and represents a remarkable progress, since it includes a series of channels of information and control of the bipolar dynamics (governments/governed citizens) within the legal system.

Nevertheless, the concept of transparency as it is asserted by this policy is to be remarked; it is a “functionalised” concept, where the instrumental dimension prevails over a juridically protected claim coming from the citizen. Also if some elements of transparency integrate a protected interest, its content is ascribed to the legislator’s discretionary power (coming from the “weakness” of the right to access to this aim\(^2\)). Furthermore those interests are formulated in terms of *essential levels of performance corresponding to civil and social rights*, explicitly aimed to stimulate a widespread democratic control on public power\(^2\). Briefly, the legislator decides “which” transparency is to be realised not only by establishing what data have to be disseminated via web, but also with reference to the goal to be achieved.

\(^{22}\) F. Merloni, *Trasparenza delle istituzioni e principio democratico*, cit., *passim*.

\(^{23}\) In other terms, the right to access is considered as “strong” referring to the judicial protection claim by the concerned people; at the same time it is “weak” as a knowledge, understanding, assessment and control instrument.

\(^{24}\) On one hand, according to art. 4, par. 6, law no. 15 dated 2009 (also in this case the integral text is contained in the decree no. 150 dated 2009), “transparency represents a base level of the public administrations’ benefits, according to art. 117, par. 2, lett. m), of the Constitution” (that is “the national State has exclusive legislative powers in the following matters … determination of the basic level of benefits relating to civil and social entitlements to be guaranteed throughout the national territory); on the other hand, the same transparency, as already remarked, “aims at diffusely controlling the principle of good performance and impartiality”, enhancing performance and paying special attention to human resources.
3. OPEN DATA AND (DISCIPLINE OF) PUBLIC-SECTOR DATA REUSE: TWO DIFFERENT PERSPECTIVES

Before proceeding, it is advisable to distinguish between the logic of Open Data (and its philosophy) and the one referring to the discipline of PSI reuse (coming from the European Community), since both aim at enhancing reuse of information collected by the public sector.

Even if there is no concordance of opinions on the notion of Open Data (lacking in an exact, official and shared definition\(^\text{25}\)), it is reasonable to assume the following points as the core of an Open Data strategy:

1. data produced or held by public administrations (all datasets) has to be made available\(^\text{26}\);
2. as soon as possible and updated\(^\text{27}\);
3. via the web;
4. in an open, non proprietary format\(^\text{28}\);
5. at the cheapest cost;
6. (available) for reuse without restrictions\(^\text{29}\).

This formulation, which takes into account the most recent regulations on the matter, it is useful, first, to clarify the relationship between the Open Data-based approach and the European provisions regulating the reuse of

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\(^{25}\) The definition contained in the website http://www.opendefinition.org, within the Open Knowledge Foundation, is in general terms (“data produced or commissioned by government or government controlled entities …is open if it can be freely used, reused and redistributed by anyone”) while, if a more detailed description is required, each relevant element of this concept is nowadays still under discussion (see below).

\(^{26}\) Naturally, in the start-up phase, this principle gives an incremental dynamics of data sets progressively published. It has to be stressed that the above mentioned Open Government Directive by OMB states that “each agency shall take prompt steps to expand access to information by making it available online in open formats. With respect to information, the presumption shall be in favor of openness (to the extent permitted by law and subject to valid privacy, confidentiality, security, or other restrictions)” (par. 1).

\(^{27}\) The prompt publication and updating of data via web is considered as a fundamental element taking into account the transparency perspective by M. Fioretti, Open Data, Open Society, 2010, pp. 50 ff., http://www.dime-eu.org/node/907. The author underlines this characteristic as directly relating to the concept of “open”.

\(^{28}\) A school of thought adds the “destructured” or “granular” (raw) and the “interconnection” (linked) characters to the “open” one. See the concept of semantic web formulated by Sir T. Berners-Lee, http://www.w3.org/DesignIssues/LinkedData.html.

\(^{29}\) There is no agreement on the opportunity of submitting data to a Creative Common license, implying the recognition and protection of the administrations’ copyrights referring to public sector data (see below, footnote n. 33).
The relationship between the European Directive 2003/98/EC (on PSI reuse) and the Open Data systems\(^{32}\), as remarked, points out some relevant features. In an Open Data system, data held by the public administrations...
comes under the Public Domain\textsuperscript{33}, even if throughout not homogeneous licensing strategies\textsuperscript{34}, and are juridically assimilated into the immaterial public good (available for reuse and inexhaustible)\textsuperscript{35}. On one hand, the public administrations have no exclusive right (copyright alike) on data\textsuperscript{36}; on the other hand, since information is to be made available for reuse, the possibility of being sold by the public administrations can be challenged, taking into consideration that the public sector data represents a by-product coming from institutional activities aiming at achieving different objectives (already financed through the general taxation)\textsuperscript{37}. The most relevant consequence is a strong reduction/annulment of the discretionary power by the public sector about the possibility of disseminating information, price poli-

\textsuperscript{33} If the licences on the matter (see the Creative Commons and Open Knowledge as well as the IODL 2.0 – Italian Open Data Licence) aim at making the public source data fully reusable by anybody, free and without restrictions (with special reference to the kind of profit/no profit activity), different strategies were adopted from a juridical point of view, referring both the relationship between the (assumed) data (public) owner and information and the resulting relationship between reuser (licensee) and information. A current of thought radically denies the necessity of recovering to licence, since they think that the public sector data is already included in the public domain. P. SAMUELSON, Enriching Discourse on Public Domains, in “Duke Law Journal” 2006, p. 786 ff.; F. BRIAN, B. FITZGERALD, M. COATES, S. LEWIS (eds.), Open Content Licensing: Cultivating the Creative Commons, Sidney, Sydney University Press, 2007; R. CASO, Proprietà intellettuale, tecnologie digitali ed accesso alla conoscenza scientifica: Digital Rights Management vs. Open Access, Paper presented at the Conference “I diritti della biblioteca” (Milano, 6-7 maggio 2008).


\textsuperscript{37} D. SOLDA-KUTZMANN, Public Sector Information Commons - A Market without Failure, selected paper presented at the LAPSI 2nd Primer and 1st Public Conf. (Milan, 6 May 2011).
cies, reuse licensing. At the same time, the legitimated (if not yet protected) claim over the use of public sector data by “anybody”, as they are ascribed to public domain, strengthens\(^ {38} \).

From this point of view, the Open Data system (in enhancing the conditions to the establishment of a legitimated claim to make the public sector data available) represents a further development of the freedom of information legislations rather than an evolution of the European regulations on the reuse of PSI; not by chance, the first positive implementation of the Open Data approach took place in those countries where the FOIA tradition is stronger\(^ {39} \).

Therefore, even if access to (and the reuse of) PSI based on the Open Data philosophy can be implemented within the directive on the reuse of public sector data (see the example of dati.piemonte.it), its fully realisation represents an evolution (at least an occasion for a deep revision) of the assumptions stated by the European Union on the PSI reuse discipline framework.

4. ADMINISTRATIVE TRANSPARENCY WITHIN THE OPEN DATA FRAMEWORK

The comparison between the European policy concerning data reuse and the Open Data approach allows explaining why the application of the Directive 2003/98 did not actually contribute to transparency in the case of the Italian legal system. In the Italian legal system, indeed, the legislator left the decisions concerning the information dissemination and the price policies to each single administration. This way, the legislator seconded the proprietary approach as well as the marketing strategies of those public administrations (in truth, not many) already engaged in releasing information to the mar-

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\(^ {38} \) See the explicit formulation (nowadays in form of claim) of a “right to reuse”. See ACCESS INFO EUROPE, OPEN KNOWLEDGE FOUNDATION, Beyond Access: Open Government Data and the “Right to Reuse”, 2010, http://access-info.org/es/open-government-data. Also the advocates of reuse aim at “obliging public institutions to authorise data reuse”. Their claims were collected by the European Commission before revising the Directive 2003/98 (see Riutilizzo dell’informazione del settore pubblico: riesame della direttiva 2003/98/CE - SEC(2009) 597, par. 4.2.

\(^ {39} \) With reference to the United State, where FOIA came into force in 1966, and Finland, where FOIA came into force in 1956.
In this perspective, the possibility of a reuse aiming to transparency is clearly limited. On the other hand, the reported continuity of setting between FOI and Open Data system must make it warned of the difficulty facing the effective implementation of the Open Data approach in a context like the Italian one, in which the right of access (as to the extent of its range) is significantly limited. For the same reasons, however, the influence of Open Data on transparency would be remarkable. If actually implemented, it allows reusing, mashupping and sharing a huge quantity of information, without any relevant restriction. The potential inherent in such a dynamic is enormous, but also unpredictable. Paraphrasing a famous definition of the web, “Open Data enables an unplanned and unforeseen knowledge”, both on methods and results, starting from the already available one.

If this feature is combined with the availability of the public sector data in terms of a protected interest granted to anyone, the influence of an Open Data system on transparency can be assessed.

Firstly, the public power (i.e. legislator, administration) doesn’t decide any more the aspects connected with transparency through the data publication; by reusing Open Data (at the beginning all data, without restrictions), users decide which aspect is to be investigated, which policy is to be assessed/checked/compared, which public money is to be followed and accounted, in which way, etc. In other words, Open Data presage a transparency that is not headed from the top, but realised by the interests, intentions and philosophies of the actors directly involved in the reuse process (bottom-up).

40 See, for example, the case of the real estate and mortgage information services, and of business profiles ones (both provided by public sector bodies), about which Italy was charged with infringement of the PSI directive. This procedure was ended following of a corrective intervention by means of law no. 96 dated 4 June 2010 (art. 44), far from satisfying. U. Fantigrossi, I dati pubblici tra Stato e mercato, in “Amministrare”, 2007, n. 1-2, pp. 277-293, C.E. Mezzetti, Dati pubblici ed abuso di posizione dominante, in “Giurisprudenza italiana”, 2006, n. 3, pp. 548-554; B. Ponti, Titolarità e riutilizzo dei dati pubblici, cit.

41 The case of piemonte.dati.it, together with some other ones, are exceptions. On the limited spaces given to transparency as a consequence of the directive on reuse, with special reference to Italy, see B. Ponti, I dati di fonte pubblica: coordinamento, qualità e riutilizzo, cit.; Id., Il patrimonio informativo pubblico come risorsa: i limiti del regime italiano di riutilizzo dei dati delle pubbliche amministrazioni, cit., passim.

42 “An architecture to enable unplanned and unforeseen innovation”, as defined by L. Lessig, lectio magistralis at the Italian Chamber of Deputies, 11 March 2010.
But the users’ different role and potential in the realisation of instruments clearly aiming to transparency is only a part of the story. Transparency can be regarded not only as a primary aim, but also a secondary, unexpected one, coming from the realisation of web-based products and services intended to different goals. Let’s give some examples. The above mentioned website of the Regione Piemonte (Piemonte Regional Authority) recently disseminated some data banks containing a road accidents repertory (1991-2008) and a list of road stretches considered as the most unsafe (same period); this data could be included in the satellite navigators’ maps in order to inform users of the potential risks. However, the same product (satellite map) would also provide a user-friendly parameter to verify the adequacy of interventions to improve the viability and the prevention of accidents made in the same period of time (transparency on choices made by public authorities). Moreover, the repertory of the public health structures (released by the same way), merged with the data coming to demography, people distribution and territory morphology, could be used (even for profit purposes) to find out the areas needing for the Alzheimer’s patients day assistance; but that would also provide useful information to evaluate the choices in the planning of the public service network concerning the organisation of caregiving in the local area. Those examples could be multiplied, even in the case of Piedmont data only. In more general terms, transparency as well (and, perhaps, more) than the result of an explicit process to that aim, would (will) end by becoming the (potential) consequence of a higher number of information-based products and information services, according to innovative, unexpected and unplanned methods.

Briefly, in a complete Open Data framework, transparency can be considered as an overall result of a series of channels mainly used by data reusers, only partially clearly aiming to administrative transparency, while the transparency itself ends by being intended as an (even) accidental, unexpected and unplanned product in the information society. As we can see, the difference between transparency as it is governed by the legal system nowadays in force (headed from the top, finalised and expected) and that one just described is remarkable.

5. A COMPLEMENTARY RELATIONSHIP

Although the transparency based on top-down dissemination and that (potentially) determined by an Open Data system show different dynam-
ics, this does not make them mutually exclusive but rather complementary. The reuse driven transparency as well as the unplanned one represent indeed a complement of the transparency/information guaranteed by the dissemination explicitly aimed to that goal. On the other hand, reuse-based transparency allowed by the Open Data systems can represent a sort of test on the consistence and effectiveness of the top-down strategies and politics. Moreover, the interaction between the two dynamics of transparency presages in any case a wider and more effective exercise of rights concerning the “transparency claim” (first of all the right to access and to participate), both in the case involving the mutual strengthening of those tools, both in the event that (instead) this help to bring out discrepancies & misalignments\textsuperscript{43}.

Indeed, an increased availability (supply) of information, knowledge and understanding leads to determine a growth in the claim (demand), too.

6. **ACTORS, OPPORTUNITIES AND RISKS INVOLVED IN THE PARADIGM SHIFT**

The reuse-driven transparency allowed by Open Data implies a remarkable (re)distribution of functions and roles within the society, considering as leaders those actors\textsuperscript{44} who, in proposing themselves as main agents of reuse for transparency purposes\textsuperscript{45}, undertake the role of social mediators with reference to transparency request and offer. It represents both an opportunity and a risk. As it is suggested\textsuperscript{46}, the transparency counterparty is power that,

\textsuperscript{43} The risks remarked by the literature is that the computer-mediated transparency gives a representation of reality less and less accurate, leading to a sort of hyper-reality tha will prevail on the considerations and reactions of involved actors. It is a consequence of the intrinsic inaccuracy of any representation, worsen by the preference for quantitative data useful to allow some form of measurement (like i.e. assessment of performance); see A. MEIJER, *Understanding modern transparency*, in “International Review of Administrative Sciences”, 2011, pp. 261-262.

\textsuperscript{44} Shortly these actors are (on a typological basis): for-profit companies, not for-profit associations, qualified mediators (newspapers, cultural associations, etc.), R&D institutions, besides the traditional actors (administrations and citizens).

\textsuperscript{45} At least, until reuse becomes a “mass”-practice, consciously carried out in order to avoid, as a part of literature states, “the dark side of Open Data” (see M. FIORETTI, *Open Data, Open Society*, cit., p. 50 ff.).

because of its intrinsic character, tends to be implicit ("dark") and not easy
to be recognised. Nevertheless, once information can not be hidden any
more, it can be made poorly significant or anyway in contrast with the gen-
eral interest (or, at least, the interests of the weakest), that is manipulated.
The Open Data misuse can be a consequence of it, affecting society in an
unexpected and unplanned way\(^\text{47}\).

This risk is justified, but it has to be stressed that giving new spaces to
freedom (as in the case of the Open Data systems) implies in any case the
risk that this freedom is used to antisocial and unfair aims, that is in contrast
with the principles and values of democracy and civil society. Even in this
case\(^\text{48}\), a conscious and careful adoption (or promotion) of measures aiming
at minimizing the effects and consequences of these degenerations is to be
taken into consideration.

To this aim, useful strategies can be: the pluralism of social actors (the
for-profit and the not for-profit ones) involved in reuse and the social com-
mitment of at least some of these actors (with special reference to the not
for-profit sector\(^\text{49}\)). The complementarity with the top-down transparency
can play a role, since it will be able to grant impartiality, reliability and
consistency. In any case, transparency has to be considered in the widest
meaning, as socially diffused and actors (and interests)-mediated; it means
that the most unclear aspects of it (untrustworthiness, scepticism, adaptive
behaviours, etc.), as they have already mentioned in the literature on the
matter\(^\text{50}\), have to be investigated, too.

Therefore, the concept of transparency in the direction of Open Data systems
implies a change in the paradigm: it is no more intrinsic, top-down and con-
nected with competitive values/interests in an authoritative way, but rather a
dynamics starting from users, socially diffused, plural, often unplanned, starting

\(^{48}\) L. Lessig, *Lectio magistralis*, cit.
\(^{49}\) Numerous and relevant examples can be found at international level (see the Trans-
parency International - IC - Association) as well as in those countries that first of all adopted
the Open Data systems (see D. Lathorp, L. Ruma (eds.), *Open Government: Collaboration,
Transparency, and Participation in Practice*, Sebastopol, O’Reilly, 2010). In Italy a relevant ex-
ample of civic hacking, prefiguring the Open Data system potentialities in the Italian legal
system, can be found; see the Openpolis association, with special reference to Openparlament
and Openbilancio (in cooperation with LinkedOpenData - publication by the end of
2011).
\(^{50}\) C. Hood, D. Heald (eds.), *Transparency: The Key to Better Governance?*, Oxford
different kinds of processes and not only aiming at reinforcing the representativeness and participation circuits. It is a challenge whose results are unexpected (because unplanned) and therefore very interesting and involving.