The transparency mix:
an introduction

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Foreword

It may seem a necessary choice for a journal concerned with public ethics to dedicate a whole issue to the topic of transparency. Certainly, the topics of visibility, legitimacy and the supervision of public power are one of the elective fields of the project of the journal. However, the approach that we have taken is not merely celebrative, one reason being that the paradigmatic[1] value/principle of transparency continues to be problematic in theory and in application, as confirmed by the literature investigated by the authors of this issue. It is therefore worthwhile continuing to discuss transparency, despite the fact, or perhaps for the very reason, that as a value it is generally recognised, accepted and promoted. Transparency also continues to be disputed and pressed by events, which show that its relationship with the interests it confronts remains precarious, transient, questionable and disputed. It suffices to mention the institutional events triggered by the pandemic (from policies to limit spread of the virus to those for recovery and resumption of economic growth), where transparency often had to stand back for other more cogent questions (e.g. vaccine supply contracts and recovery measures). We can also reflect on the secrecy that (inevitably?) characterises political options linked to the war happening in Europe, events that more directly and immediately involve mature democracies, where the value of transparency seems to have taken root.

A multidisciplinary approach to the topic has enabled this reflection from different points of view and has allowed a focus on different aspects, while maintaining a unitary thread. Briefly, since transparency is a vehicle both of the legitimacy of power and its control, it has ontological elements of internal tension that make informed use advisable. The user should in first place be aware of interactions between the aims and instruments

of transparency. The existence of significant trade-offs makes it practically and theoretically impossible to maximise all the objectives in every circumstance. This also leads to an appreciation of margins of choice in the articulation, organisation and hierarchy of the aims and the utility of transparency. This choice is explicitly and implicitly political, at its core. The abovementioned awareness also leads, however, to reflect on the width of the domains of application of the value/instrument *transparency*. The close link between democracy and transparency remains unchanged, transparency being «ruling of public power in public»[2]. Nonetheless, the borders within which exceptions to the rule of transparency should be confined are less certain, stable and uncontroversial, if one recognises a margin of choice between the different aims for which it is used. Hence the more general indication to continually re-examine transparency, considering the institutional, political, cultural, economic and social contexts involved, without taking for granted or accepting what worked in the past, especially in view of the formidable impact of technological innovation.

In the opening essay, Alberto Pirni sketches a fundamental shift that occurred in the modern age: from power as *dominion* with *secrets* to *public* power that is visible and supervised from outside. He goes on to examine the molecular nature of the concept of transparency. Like atoms, transparency always occurs «in nature» combined with other elements. Thus, he draws attention to the ontologically *plural and instrumental* nature of transparency, and its *uncountable* aims.

The essay by Benedetto Ponti and Agustí Cerrillo-i-Martinez describes the many trade-offs activated by the plurality of these aims. Drawing inspiration from the success of transparency as an instrument for preventing and opposing corruption, the essay shows that here again there is a significant trade-off between accountability and trust. The trade-off shows the intrinsic tensions of the principle, considering its plural and granular nature, as well as the contingency of balances achieved, linked to context and to the awareness with which the instruments are predisposed and used.

The contribution by Hélène Michel concerns the context of EU institutions. In the evolution of EU law, transparency was introduced and developed as a remedy for the democratic deficiencies of its extraordinary institutional system. The author underlines two essential limits of this strategy. First, the fact that transparency cannot solve the legitimacy problems of those who operate in EU institutions. This has made transparency a sort of cover-up rather than an effective proxy for democratic-representative legitimacy. Second, a transparency bureaucracy

has been created, the consultations and decisions of which are only effectively open to those with the necessary rich professional and financial resources. This circumstance contributes to alienate from the EU citizens and associations, instead of bringing them closer.

The paper by Fabrizio Di Mascio and coauthors illustrates the results of a study aimed at verifying the degree of application of the instruments of transparency (especially FOIA access) in Italian municipalities with populations of over 30,000. The research shows the many factors affecting observance of FOIA rules at municipal level. These include organisational (size of the organisation and its catchment area), geographical (southern municipal council have the lowest observance) and cultural factors. In the case of cultural factors, the general absence of online information on how to appeal when access is denied is a concern; this situation regards the websites of all the administrations investigated, irrespective of geographical location. The author indicates the crucial nature of context in assessing the performance and the implementation difficulties of the policies and institutes of administrative transparency.

From this viewpoint, the contribution of a journalist who exploits transparency provisions for inquest journalism, is particularly helpful. Antonio Grizzuti (freelance journalist who has written for La Verità, HuffingtonPost.it, Startmag, Il Foglio and other magazines) reports that the possibilities offered by FOIA mechanisms (at EU and Italian level) are severely hampered by slowness of response and above all by the margin of discretion allowed to the authorities in assessing applications for access to information. The gaze of a professional user reveals in detail the immanent tension between *accountability* and *legitimacy* in the law and its application.

As recalled by Pirni in the introductory paper, power becomes public as we enter the modern age, both because it is distinct from private questions (in first place, from King's private patrimony) and because it is no longer secret, but public, i.e., visible and verifiable by the people, who when power becomes public, cease to be subjects becoming citizens. In the paper by P.J. «Paddy» Leerssen, the tools of administrative transparency are used to compare the advantages and risks of using transparency as a way to govern the large platforms that dominate contemporary global markets. This is a particularly interesting attempt which shows how an important new field of study (*platform governance transparency*) can draw precious indications from a more mature and consolidated area of study, as administrative transparency. The broader theme of the reasons justifying application of the transparency paradigm to private platforms

forms an ever-present background. In this case, does invocation of transparency by legislators depend on the fact that the platforms are framed as *powers*, or is it because they *perform tasks of general interest*? This is a theme to explore and a further sign of the vitality and persistent interest for transparency studies.

Note

[1] E. CARLONI, *Il paradigma trasparenza. Amministrazioni, informazione, democrazia*, il Mulino, Bologna 2022.

[2] See N. BOBBIO, *La democrazia e il potere invisibile*, in ID. *Il futuro della democrazia*, Einaudi, Torino 1995, also cited by PIRNI in this issue.