Lessons learned? How open government research can inform platform transparency

Paddy Leerssen

The emerging field of platform regulation is taking on transparency as one of its core principles. How does this new project relate to the existing body of research around public transparency and open government? This essay offers some preliminary reflections. First, it reviews common disclosure policies for platforms and compares them to government transparency precedents. Second, it discusses important differences and commonalities between transparency and accountability in these two respective domains. Platform transparency, I argue, should take heed of the critical turn in government transparency research over the last two decades, and adopt the same focus on compliance, usage and impact as important topics for (empirical) research. Looking forward, researchers across both fields should aim to develop hybrid perspectives, which combine government and platform transparency resources with a view to charting the interactions between these entities, not as strictly rival powers but as frequent collaborators.

1. Introduction

If the government transparency ideal attained «quasi-religious significance» around the turn of the new millennium, two decades hence the faith might be losing its fervor. In that time, a growing body of research and a slew of failed policy experiments have pointed to transparency's limitations and failure modes. Over that period, policymakers are now championing transparency as a core tenet on the new frontier of platform governance. A flurry of new lawmaking in this field continues to focus on disclosure and data access. Could this movement be repeating past mistakes? How can the open government literature inform new attempts at platform transparency?

And what differences must open government experts keep in mind when the topic shifts to platforms?

Those are big questions and this is but a modest essay. What follows is not an exhaustive review, but a general overview - an early attempt to start connecting dots between these two literatures, and highlight what I consider important commonalities and differences between these two domains of transparency.

2. Context: Contemporary governance as platform governance

Why compare private platforms to public powers? The ideal of transparency in government can be traced back at least as far as Enlightenment thinkers such as Immanuel Kant and John Stuart Mill[1]. Transparency of corporations came later. On some US accounts corporate transparency has its roots the interbellum Progressive Era's anti-trust movement, and Justice Brandeis' call for «sunlight» as the best disinfectant[2]. Other accounts take as starting point the post-Reagan era of privatization and globalization, as part of the broader turn to «governance» through private and non-state forms of regulation[3]. In both timelines, the trend is clear that private actors have started to face calls for transparency as their power concentrates and become recognized as exercising state-like regulatory functions.

This turn to non-state governance coincided with a renewed interest in transparency stemming from new digital technologies, which promised ever greater capacities to store, transmit and process information[4]. That promise of «openness», in its modern usage as digitally-inflected variant on transparency, inspired not only the «open government» movement in public administration but also non-state domains of internet-based transparency such as the Open Software and Open Knowledge movements. At the intersection of these trends—privatization of regulatory functions, and their digitalization—stands the platform.

Though internet technology initially promised a decentralization of power, it soon resulted in its *re*centralization in the hands of dominant platform services: from Airbnb in short-term rental to Amazon in retail and YouTube in audiovisual media[5]. The digital markets these services occupy tend towards monopoly, and a handful of the most powerful players—Google, Apple, Facebook, Amazon and Microsoft, known collectively as 'GAFAM'—have furthermore been able to leverage and agglomerate this power across different markets and services[6]. In ever more domains, our information society is a platform society[7].

A corollary to the platform society is that contemporary governance, in ever more domains, is platform governance[8]. Whereas the decentralized web of the 1990s was often considered resistant to public regulation – due its dispersed, cross-border and anonymous structure – the platform now occupies an influential gatekeeping position with detailed (datafied) knowledge and finegrained technological control over their users[9]. Platforms exercise this control for their own commercial purposes, but also in response to government demands. For these governments, enlisting the cooperation of platforms may the only feasible strategy to regulate online behavior effectively. In ever more domains, therefore, governance consists in the governance of and by platforms[10]. And in keeping with their growing influence, these 'new governors' are facing calls for greater transparency and accountability[11]. As we'll see below, many of these proposals find precedents or resemblances in government transparency.

3. Platform transparency policies and their public predecessors

We now see the first legislation addressing transparency in online platforms. Robert Gorwa and Timothy Garton Ash have already discussed some important features of platform transparency, with a greater emphasis on voluntary and self-regulatory aspects[12]. This contribution examines state-imposed transparency law and regulation, focusing on the EU and its Member States.

Some analyses of platform transparency legislation might start with the EU General Data Protection Regulation (GDPR) of 2016. This complex framework imposes many different obligations on the processing of personal information, and many of its provisions relate to transparency – primarily towards the individual data subjects affected[13]. Transparency is indeed mentioned as one of the GDPR's core goals, and as one of the fundamental principles – «lawfulness, fairness and transparency» – with which all data processing must comply[14]. Whilst certainly significant to platform practices and business models, however, it should be noted that the GDPR is not exclusively focused on platforms in particular, nor indeed on digital services in general. The GDPR is a horizontal instrument that applies to all sectors and even to most government entities[15]. The same can be said for more recent efforts such as the AI Act, Data Act and Data Governance Act: relevant to platforms, but not specific to platforms.

Transparency rules aimed specifically at platforms are more recent still. The EUs flagship instrument is the proposed Digital Services Act

(DSA), scheduled for a final vote in 2022. Many more niche sectoral instruments have cropped up besides, such as the revised Audio-Visual Media Services Directive, the Platform-to-Business Regulation[16]. Platform regulation is also high on the agenda in many other countries across the globe, with Canada and Australia being relatively proactive[17]. For its part US congress has proposed a flurry of platform-related bills, but it may be some time yet before any of these passes the Capitol's partisan[18]. One reason to focus on the EUs rules is that their proposals may well come to serve as global standards – the «Brussels effect» which can already be observed for the GDPR[19].

Many of these proposals for platform regulation contain disclosure rules which resemble established principles of government transparency. The DSA's new transparency rules for «content moderation», i.e. platforms' enforcement of content rules, can be likened to legality and due process requirements. Indeed, scholars including Evelyn Douek liken content moderation to public administration, and expressly draw on due process as a regulatory model[20]. Hence, echoing the due process principles of legality, foreseeability and accessibility, the DSA requires platforms to codify content rules clearly and unambiguously in their Terms of Service[21]. Likewise, the governmental duty to give reasons is echoed in the DSA's Statement of Reasons which platforms must provide for each content removal decision[22]. In self-regulation, Facebook has taken things a step further with their Oversight Board, which is modeled on judicial oversight and interpretation of rules – though critics have rejected this self-regulatory model as a performative mimickry, or «transparency theater», compared to binding due process requirements grounded in public law[23].

But platform transparency law is not limited to the due process model of individual rights protection. Other rules bring us closer to something resembling open government. Generally, open data demanded of platforms is far more modest than the categorical transparency expected of public bodies. There is no equivalent of a FOIA law granting general access rights to information held by platforms[24]. At most, data subjects under the GDPR can demand access to personal data relating to them as individuals[25]. It is worth noting that this access right was not initially conceived of as a FOIA-type watchdog instrument but rather as a means for individual empowerment. However, data protection researchers such as Jef Ausloos and René Mahieu now emphasize that its main contribution in practice may be to enable new forms of academic and journalistic research, in a way not dissimilar from public records laws[26].

Rather than generic access rights, most transparency rules for platforms instead focus on proactive disclosure obligations for designated datasets. Perhaps the most established and commonplace format is content moderation reporting: the release of periodical reports documenting aggregate statistics about content deletion and other gatekeeping decisions[27]. These reporting rules are prevalent in the DSA as well as national legislation such as the German *Netzwerkdurchsetsungsgesetz,* known in the Anglosphere as the «Network Enforcement Act» or «NetzDG»[28]. Other proactive disclosure requirements in the DSA include the following: platforms will be required to publish databases of all (political) advertisements sold on their service; to provide explanations of their recommender systems to users; and to publish periodical reports about their diagnosis and mitigation of certain «systemic risks» surrounding content moderation[29].

Bucking this general trend towards proactive transparency, perhaps the most significant development in recent legislation is the novel idea of generic, reactive access rights for regulators and researchers. Article 40 of the DSA, on «data access and scrutiny», allows competent regulators to request access to data held by platforms, either for their own usage or for study by academic researchers[30]. In the US, the draft Platform Transparency and Accountability Act (PATA) takes a very similar approach[31]. These proposals are not limited in terms of their subject matter, casting a wide net across different platform policies and functions. These frameworks foresee confidential access by trusted researchers under secure conditions, which will allow them to analyze privacy-sensitive personal data but may also prompt complex, technical disagreements about the reliability and replicability of their findings[32].

Those familiar with the open government literature might view this new frontier in transparency regulation with some weariness. As I mentioned above, the ideal of transparency has recently been undergoing a major reappraisal in public administration scholarship and in governance literature more generally. This shift was already presaged as early as 2006 by Christopher Hood's widely-cited observation that transparency, in its turn-of-the-millenium heyday, had attained a «quasi-religious significance»[33]. This characterization spoke not only in the fervor of transparency advocates, but also to the lack of (empirical) evidence for many of their beliefs. Since then, a growing literature, including empirical work on usage and effects, has served to dampen the enthusiasm for transparency in government and in other domains, pointing to its many failures, costs and limitations[34]. This critical turn in transparency studies, though not

discrediting the ideal entirely, has swung the pendulum back to a position of uneasy, cautious ambivalence. Any endorsement of transparency is increasingly hedged and qualified. Does platform transparency risk repeating the same old mistakes? What can be learned from experiences with government?

4. How platform transparency differs

Before seeking out commonalities and analogies between platform and government transparency, I would first like to reflect on some important differences.

First, platform transparency, in contrast to open government, does not pursue economic goals. For government data, «unlocking» its commercial value is often considered an important or even primary purpose[35]. But such considerations have not yet entered explicitly into platform transparency, which is conceived of exclusively in terms of accountability and regulatory principles such as individual autonomy and empowerment. A parallel, economic program for commercial access to platform data can be found in competition law instruments such as the Digital Markets Act (DMA), but it remains in its own silo[36]. Whereas open government often conjoins these economic and political purposes, with platform transparency they remain rather clearly separate.

Second, it is important to note that platforms are not accountable to the same mechanisms as (democratic) states. Of course, platforms lack the electoral accountability of elected governments, as well as their constitutional constraints. As publicly listed corporations, their constituency, if any, is the meeting of shareholders. Compared to most private entities, platforms can also be even more resistant to national laws and regulations (owing not only due to their size and influence but also due to their cross-border service provision and jurisdictional arbitrage)[37]. Market-based accountability mechanisms such as user choice should not be overstated either, since platform markets suffer from several failures and externalities that undermine competition, including supply-side returns to scale, demand-side returns to scale (i.e. «network effects»), and user lock-in[38]. These considerations should prompt us to problematize, even more so than one already might for governments or for other corporations, any expectation that these «new governors» will be responsive to public opinion or other forms of social and public accountability – or indeed even to consumer demand[39]. Relatedly, it suggests that transpar-

ency of platforms might serve a primarily *monitorial* function, with lesser opportunities for deliberative and participatory usage explored in open government research[40].

How, if at all, are platforms accountable? The platform governance literature observes that government regulation is an important driver for reform[41]. More specifically that even the threat of future regulation has an important disciplinary effect on platforms, which typically try to pre-empt such threats through their own «voluntary» measures[42]. This threat of regulation plays an important factor in explaining why platforms do sometimes respond, under certain conditions, to public opinion; not out of any direct political accountability towards this public, but instead out of the indirect commercial or regulatory risks associated with negative publicity. Of course, transparency can also engage «harder» forms of accountability such as triggering the enforcement of existing laws[43].

Another important difference between platforms and states is their degree of digitization. In open government, a major barrier for many organizations has been the costs of digitising relevant data for purposes of dissemination[44]. Platforms, by contrast, are born digital. Indeed, their very business models revolve around the datafication and commodification of user behavior[45]. This model makes platforms ideal instruments of surveillance, but also contains within it the promise of more «open» and transparent governance. In their present design, platforms stand accused of being asymmetric «one-way mirrors», which expose their user to extensive surveillance without revealing their own inner workings[46]. As a counterexample, open platforms such as Wikipedia illustrate how digital platforms can invert this relationship and provide far-reaching transparency as to their own operations[47]. Mikkel Flyverbom has warned against the limitations of such a project, since platform datafication imposes its own epistemic biases which colour and distort our view rather than offering any immediate, or objective access to truth[48]. For related reasons, Bernhard Rieder and Jeanette Hoffman propose a reorientation from «transparency» to a more cautious principle of platform «observability», as an ideal of regulated, programmatic, and real-time access to platform data and analytical tools of platform outputs. Along these lines, recent scholarship warns against excessive or uncritical reliance on platforms' own datafication logics and epistemologies. Still, the problems of platform transparency are primarily problems of access and interpretation, more so than problems of registration or collection. Whereas governments are often hard-pressed to pro-

duce meaningful data, platforms do so abundantly – then hoard it as a monetizable asset.

5. Connections and Resemblances

Despite these differences, I suggest that the open government literature has much to teach platform regulation.

Compared to platform transparency, the literature on open government has a better view on usage and impact. In both fields, transparency policies have often been premised on the expectation that on-line netizens would eagerly seize at the available data. A key lesson from two decades of open government research is that this image of the «armchair auditor» is overly optimistic, if not downright naïve. Even the academic literature can be accused of some idealism here, with a literature review by Safarov et al showing that the benefits of transparency are often asserted in theory but rarely tested empirically[49]. What evidence we do have shows that the majority of public datasets are rarely used, if at all[50]. And where usage does occur, such as with FOIA, unintended (commercial) usages may in fact predominate over the intended accountability usage by public watchdogs[51]. The open government literature has also grappled with methodological limitations regarding the study of usage, which may be diffuse and difficult to measure[52]. The open government literature now advocates a more user-oriented philosophy in transparency policymaking and design, which accounts more proactively for user demands[53]. This body of work might be a source of inspiration for platform research, where there has been relatively little study of transparency usage and impact. In a recent article I have taken a tentative first step in researching to journalistic usage of Facebook's Ad Library[54]. But such empirical investigations of usage are still few and far between, and there is much research yet to be done.

Related to these demand-side concerns – If you build it, will they come? – the open government literature has hosted a lively debate on active versus passive transparency. Since proactive publication of data often fails to reach an audience, it has been argued that the more effective method is to disclose only on request, or «passively», as in the case of many public records laws[55]. This passive approach helps to tailor disclosures towards content in which at least one person is actually interested. Yet US critics of FOIA underscore that these reactive approaches struggle with enforcement and transaction costs; the regulated entity is often able

to undermine its efficacy by overinterpreting relevant exceptions and protracting appeals processes, each on a case-by-case basis[56]. This leads some to advocate for proactive transparency as a possible fix[57]. In this light, expert opinion remains somewhat divided, but in any case this discourse may be instructive for comparable debates now taking place as regards platforms.

Related to the above, the open government literature has observed a risk of commercial co-optation, not only in FOIA-type public records but also for other policies such as open meeting requirements[58]. This has prompted debate as to whether certain instruments such as FOIA should grant priority to journalistic and other watchdog usages. In platform governance, commercial co-optation should be especially concerning since commercial usage is rarely taken into consideration as an express policy goal. As discussed, many open government policies expressly pursue or at least tolerate commercial usage. But in many areas of platform transparency the prospect of commercial usage has barely entered the discussion at all. For instance, in the context of platform advertisement archives, there appears to be commercial usage with which relevant policymaking does not appear to have reckoned[59].

Finally, the open government literature provides a template to study the risk of manipulation and strategic compliance by the disclosing party. Even democratic governments have proven resistant to transparency regulation, often ignoring requests, complying only partially, or ignoring the spirit of the law («compliance without concordance»)[60]. Compliance tends to be especially weak for politically sensitive topics, where the disclosing party might refuse disclosure, or appeal in bad faith to exceptions and limitations, or disclose selectively or inaccurately. As platforms begin to face binding disclosure duties, similar research methods and concepts could find fruitful application here too. Given the profit-driven nature of platforms, their incentives to oppose and undermine transparency regulation may be even greater than for states. A key challenge will be to distinguish good faith objections on such issues as privacy and security from platforms' bad faith avoidance of accountability. An added complication is that platforms often engage in «voluntary» transparency policies going beyond their obligations under the law, which have often proven to be incomplete to distract from more sensitive areas of platform governance – prompting accusations of «transparency washing»[61]. The extreme scale and complexity of platforms' (algorithmic) operations, coupled with their fine-grained control over data access infrastructures such as APIs and graphic

interfaces, further enhances their capacity for misleading or otherwise manipulative disclosure[62]. Platforms thus exhibit stronger motives and greater capacities for strategic «management of visibilities» than do governments[63].

6. Concluding remarks: Chimera, not Charybdis

In closing I will add that platforms and governments, though commonly juxtaposed as rival powers, more often work in tandem. Our prospect is not so much the difficult choice between two competing powers – either the Scylla of state or the Charybdis of tech – but rather a chimerical melding of the two. Governments can leverage platform power to achieve their regulatory goals. And since platforms often find it in their interest to appease governments, this usually results in quasi-voluntary arrangements outside the purview of conventional public rulemaking[64]. In turn, platforms litigate and lobby state power to work in their favor[65]. The result is a «hybridisation» or «privatised regulation», where responsibility is dispersed and entangled between public and private power[66]. This entanglement affects transparency too; platform transparency may depend on government transparency, and vice-versa. Disclosures from governments might reveal their dealings with platforms, and create a more complete picture of platform governance[67]. Conversely, disclosures from platforms might also serve as a window onto the role of government in digital ecosystems. It will be no small feat, but only by combining government and platform transparency research can we hope to tame this strange beast.

Note

[1] C. HOOD, *Transparency in Historical Perspective*, In C. HOOD, D. HEALD (eds.), *Transparency: The Key to Better Governance?*, Oxford University Press, Oxford 2006; A. Meijer, *Government Transparency in Historical Perspective: From the Ancient Regime to Open Data in The Netherlands*, in «International Journal of Public Administration», vol. 38, 2015, pp.189-199.

[2] D. POZEN, *Transparency's Ideological Drift*, in «Yale Law Journal», vol. 128, 2018.

[3] A. MEHRPOUYA & M.-L. SALLES-DEJLIC, *Seeing like the market; exploring the mutual rise of transparency and accounting in transnational economic and market governance*, in «Accounting, Organizations & Society»,Vol. 76, 2017 (distinguishing «liberal» and «neoliberal» models of transparency).

[4] H. MARGETTS, *Transparency and Digital Government*, In C. HOOD, D. HEALD (eds.), *Transparency: The Key to Better Governance?*. cit.

[5] Y. BENKLER, *Degrees of freedom, dimensions of power,* in «*Daedalus*», vol. 145, 2016, pp. 18–32.

[6] T. BARWISE, L. WATKINS, *The evolution of digital dominance: how and why we got to GAFA*, in M. MOORE, D. TAMBINI (eds.), *Digital Dominance: The Power of Google, Amazon, Facebook, and Apple*. Oxford University Press, Oxford 2018.

[7] J. VAN DIJCK, M. DE WAAL, T. POELL, *The Platform Society: Public Values in a Connective World*, Oxford University Press, Oxford 2018.

[8] R. GORWA, *What is platform governance?*, in «*Information, Communication & Society*», vol. 22, 2016, p. 6 ss.

[9] J. VAN DIJCK, M. DE WAAL, T. POELL, *The Platform Society*, cit.

[10] T. GILLESPIE, *Governance of and by platforms*, in J. BURGESS, T. POELL, A. MARWICK (eds.), *SAGE Handbook of Social Media,* SAGE Publishers, Thousand Oaks, California 2017.

[11] K. KLONICK, *The New Governors: The People, Rules and Processes Governing Online Speech*, in «*Harvard Law Review*», vol. 131, 2018, p. 1598 ss.; J. VAN HOBOKEN, R. FAHY, *Smartphone platforms as privacy regulators*, in «*Computer Law & Security Review*», vol. 41, 2021.

[12] R. GORWA, T. GARTON ASH, *Democratic Transparency in the Platform Society*, In N. PERSILY, J. TUCKER (eds.), *Social Media and Democracy: The state of the field and prospects for reform, Cambridge University Press*, Cambridge 2020.

[13] Disclosure obligations can be found *inter alia* in Section III.1 of the GDPR ('Transparency and modalities').

[14] GDPR, Recital 31 and Article 5(1)(A).

[15] GDPR, Article 2.

[16] Other examples include the Platform-to-Business Regulation («P2B»), the Audiovisual Media Service Directive and the recently proposed Regulation on Political Advertising.

[17] Australia's Media Bargaining Code (AMBC) is one relatively ambitious attempt at platform regulation, which led to a controversial service stoppage by Facebook. Bossio et al (2022) note that the AMBC's algorithmic transparency rules were some of its most contentious provisions. D. BOSSIO, TERRY FLEW, J. MEESE, T. LEAVER, B. BARNET, *Australia's News Media Bargaining Code and the global turn towards platform regulation*, in «*Policy & Internet*», 2022, *in press*.

[18] Relevant proposals in the US include the the Honest Ads Act, the Platform Transparency and Accountability Act, the Filter Bubble Transparency Act, and the Dangerous Algorithm Act. At the time of writing, none has been enacted.

[19] S. GUNST, F. DE VILLE, *The Brussels Effect: How the GDPR Conquered Silicon Valley*, in «*European Foreign Affairs Review*», vol. 26, 2021, pp. 437-458.

https://kluwerlawonline.com/journalarticle/European+Foreign+Affairs+Review/26.3/EERR2021036

[20] E. DOUEK, *Content Moderation As Administration. Forthcoming* in «*Harvard Law Review*», vol. 136, 2022. In this piece, DOUEK is responding to earlier

work characterizing platform regulation as a constitutional project. See, e.g.: N. SUZOR, *Digital Constitutionalism: Using the Rule of Law to Evaluate the Legitimacy of Governance by Platforms*', in «*Social Media + Society*», 2018.

[21] Such a principle is enacted in Article 12 of the proposed DSA, on «Terms and Conditions».

[22] Such a principle is enacted in Article 15 of the DSA, on the «Statement of Reasons» for content moderation decisions.

[23] See, generally: E. DOUEK, *Facebook's «Oversight Board»: Move Fast with Stable Infrastructure and Humility*, in «N.C. J. L. & Tech», vol. 21, 2019, pp. 1-79 describing Facebook's policymaking as a «legislative» process.

[24] M. KARANICOLAS, *A FOIA for Facebook: Meaningful Transparency for Online Platforms*, in «St Louis University Law Journal», n. 66, 2021 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3964235

[25] GDPR, Article 15.

[26] J. AUSLOOS, M. VEALE, *Researching with Data Rights,* in «Technology and Regulation», 2021, pp. 136-157, available at https://techreg.org/index.php/techreg/article/view/61; R. MAHIEU, H. ASGHARI, M. VAN EETEN, *Collectively Exercising the Right of Access: Individual Effort, Societal Effect*, in «Internet Policy Review», vol. 7, 2017, available at https://policyreview.info/articles/analysis/collectively-exercising-right-access-individual-effort-societal-effect.

[27] See, generally: D. KELLER, P. LEERSSEN, *Facts and where to find them: empirical research on internet platforms and content moderation*, in N. PERSILY, J. TUCKER (eds.), *Social Media and Democracy: The State of the Field and Prospects for Reform*, Cambridge University Press, Cambridge 2020; N. SUZOR, S. MYERS WEST, A. QUODLING, J. YORK, *What Do We Mean When We Talk About Transparency? Toward Meaningful Transparency in Commercial Content Moderation*, in «*International Journal of Communication*», vol. 13, 2019, p. 1526 ss.; B. WAGNER, K. ROZGONYI, M. SEKWENZ, J. COBBE, J. SINGH, *Regulating transparency?: Facebook, Twitter and the German Network Enforcement Act*', in *FAT* '20: Proceedings of the 2020 Conference on Fairness, Accountability, and Transparency*, 2020, pp. 261-271.

[28] The DSA's reporting rules can be found in Articles 13, 23 and 33. For discussions of the NetzDG's transparency provisions, see: B. WAGNER et al, *Regulating Transparency? op. cit.*; H. TWOREK, P. LEERSSEN, *An Analysis of Germany's NetzDG Law. Working Paper of the Transatlantic High-Level Working Group on Content Moderation and Freedom of Expression*. https://www.ivir.nl/publicaties/download/NetzDG_Tworek_Leerssen_April_2019.pdf

[29] See Articles 27-30 DSA (proposed). On ad archives more generally, see: P. LEERSSEN, J. AUSLOOS, B. ZAROUALI, N. HELBERGER, C. DE VREESE, *Platform ad archives: promises and pitfalls*, in «Internet Policy Review», vol. 8, 2019, p. 4 ss.

[30] P. LEERSSEN, *Platform research access in Article 31 of the Digital Services Act: Sword without a shield?*, Verfassungsblog, 2021 https://verfassungsblog.de/power-dsa-dma-14/; J. AUSLOOS, P. LEERSSEN, P. TEN THIJE, *Operationalizing Research Access in Platform Governance*, AlgorithmWatch, 2020 https://dare.uva.nl/search?identifier=90e4fa77-d59a-49f1-8ccd-57d0725122bd.

[31] The US PATA legislation draws extensively on the work of legal scholar Nathaniel Persily. See, e.g.: N. PERSILY, *Opening a window into tech: the challenge*

and opportunity for data transparency, Stanford Cyber Policy Center, 2021 https://fsi-live.s3.us-west-1.amazonaws.com/s3fs-public/cpc-open_windows_np_v3.pdf

[32] *Ibidem* J. AUSLOOS et al, *Operationalizing Research Access in Platform Governance*, cit., K. DOMMETT, R. TROMBLE, *Advocating for platform data access: challenges and opportunities for academics seeking policy change*, in «*Politics and Governance*», vol. 10, 2022.

[33] C. HOOD, *Transparency in Historical Perspective*, *op. cit*.

[34] I. SAFAROV, A. MEIJER, S. GRIMMELIKHUIJSEN, *Utilization of open government data: A systematic literature review of types, conditions, effects and users*, in «*Information Polity*», vol. 22, 2017, pp. 1–24. https://doi.org/10.3233/IP-160012; G. MICHENER, *Gauging the Impact of Transparency Policies*, in «Public Administration Review», vol. 79, 2019; M. CUCCINIELLO, G. PORUMBESCU, S. GRIMMELIKHUIJSEN, *25 Years of Transparency Research: Evidence and Future Directions*, in «Public Administration Review», vol. 77, 2016. D. POZEN, *Transparency's Ideological Drift*, cit., p. 100; S. BAUME, Y. PAPADOPOULOS, *Transparency: from Bentham's inventory of virtuous effects to contemporary evidence-based scepticism*, in «*Critical Review of International Social and Political Philosophy*, vol. 21, 2018.

[35] See, for instance, the EUs Public Sector Information Directive. Directive 2013/37/EU of the European Parliament and of the Council of 26 June 2013 amending Directive 2003/98/EC on the re-use of public sector information*, OJ L 175, 27.6.2013, p. 1–8.*

[36] See, generally: I. GRAEF, *Data as Essential Facility*, 2016, PhD Thesis. Available in open access at: https://limo.libis.be/primo-explore/fulldisplay?docid=LIRIAS1711644&context=L&vid=Lirias&search_scope=Lirias&tab=default_tab&lang=en_US&fromSitemap=1

[37] E. POLLMAN, *Tech, Regulatory Arbitrage, and Limits*, in «European Business Organization Law Review», vol. 20, 2019, pp. 567-590.

[38] T. BARWISE, L. WATKINS, *The evolution of digital dominance: how and why we got to GAFAM*, in M. MOORE, D. TAMBINI (eds.), *op. cit.*

[39] M. BOVENS, *Analysing and assessing accountability: A conceptual framework*, in «*European Law Journal*», vol. 13, 2007, pp. 447-468. https://doi.org/10.1111/j.1468-0386.2007.00378.x

[40] E. RUIJER, S. GRIMMELIKHUISJEN, A. MEIJER, *Open data for democracy: Developing a theoretical framework for open data use*, in «*Government Information Quarterly*», vol. 34, 2017, pp. 45-52.

[41] C. MARSDEN, *Internet co-regulation and constitutionalism: Towards European judicial review. International Review of Law*, in «*Computers & Technology*», vol. 26, 2012; D. TAMBINI, D. LEONARDI, C. MARSDEN, *Codifying Cyberspace: Communications Self-Regulation in the Age of Internet Convergence*, Routledge, London 2007.

[42] E.g. B. WAGNER, *Free Expression? Dominant Information Intermediaries as Arbiters of Internet Speech*, in M. MOORE, D. TAMBINI (eds), *op. cit.*

[43] BOVENS, M., *Analysing and assessing accountability: A conceptual framework*, in «*European Law Journal*», vol. 13, 2018, pp. 447–468. https://doi.org/10.1111/j.1468-0386.2007.00378.x

[44] E.g. F. BANNISTER, R. CONNOLLY, *The Trouble with Transparency: A Critical Review of Openness in e-Government*, in «Policy & Internet», vol. 3, 2011.

[45] J. VAN DIJCK, M. DE WAAL, T. POELL, *The Platform Society: Public Values in a Connective World*, *op. cit*.

[46] F. PASQUALE, *The Black Box Society: The Secret Algorithms That Control Money and Information*, Harvard University Press, Cambridge, Massachusetts 2016; J. AUSLOOS, P. DEWITTE, *Shattering One-Way Mirrors. Data Subject Access Rights in Practice*, in «International Data Privacy Law», vol. 8, 2018.

[47] Y. BENKLER, *From Utopia to Practice and Back*, in *Wikipedia@20*, 2019, arguing that «*Wikipedia remains a critical anchor for working alternatives to neoliberalism*». https://wikipedia20.pubpub.org/pub/3wt2fy6i/release/2

[48] M. FLYVERBOM, *The Digital Prism: Transparency and Managed Visibilities in a Datafied World*, Cambridge University Press, Cambridge 2019.

[49] I. SAFAROV, A. MEIJER, S. GRIMMELIKHUIJSEN, *Utilization of open government data: A systematic literature review of types, conditions, effects and users*, in «Information Polity», vol. 22, 2016, pp. 1–24.

[50] P. LOURENCO, *Evidence of an open government data portal impact on the public sphere*, in «International Journal of Electronic Government Research», vol. 12, 2016, pp. 21-36 https://doi.org/10.4018/IJEGR.2016070102

[51] M. KWOKA, *FOIA, Inc.,* in «*Duke Law Journal*», vol. 65, 2016, pp. 1361-1437.

[52] P. LOURENCO, *Evidence of an open government data portal impact on the public sphere*, in «International Journal of Electronic Government Research», vol. 12, 2016, pp. 21–36. https://doi.org/10.4018/IJEGR.2016070102; G. MICHENER, *Gauging the Impact of Transparency Policies*, *Public* in «Administration Review», vol. 79, 2019; S. KREIMER, T*he Freedom of Information Act and the Ecology of Transparency*, in «University of Pennsylvania Constitutional Law Review», vol. 10, 2008; J. HAMILTON, *Democracy's Detectives: The Economics of Investigative Journalism*, Harvard University Press, Cambridge, Massachusetts 2016.

[53] E.g. E. RUIJER, S. GRIMMELIKHUIJSEN, A. MEIJER, *Open data work: understanding open data usage from a practice lens*, in «International Review of Administrative Sciences», vol. 86, 2020; B. WILSON, C. CONG, *Beyond the supply side: Use and impact of municipal open data in the U.S*, in «Telematics and Informatics», vol. 58, 2021.

[54] P. LEERSSEN, T. DOBBER, N. HELBERGER, C. DE VREESE, *News from the ad archive: How journalists use the Facebook Ad Library to hold online advertising accountable*, in «Information, Communication & Society», 2021. https://doi.org/10.1080/1369118X.2021.2009002

[55] A. MEIJER, *Transparency*, in M. BOVENS (ed.), *Oxford Handbook on Public Accountability*, Oxford University Press, Oxford 2014.

[56] M. KWOKA, *FOIA, Inc.*, *op. cit.*

[57] D. POZEN, *Transparency's Ideological Drift*, *op. cit.*, p. 100.; D. POZEN, *Freedom of Information Beyond the Beyond the Freedom of Information Act*, in «University of Pennsylvania Law Review», vol. 165, 2017, p. 1097 ss.; M. KWOKA, *Saving the Freedom of Information Act*, Cambridge University Press, Cambridge 2021.

[58] D. POZEN, *Transparency's Ideological Drift*, *op. cit.*

[59] This claim is based on my personal analysis of commercial advertising websites describing their usage of the Facebook Ad Library. The overall scope of this phenomenon has not yet been subject to detailed research.

[60] E.g. S. GRIMMELIKHUIJSEN, P. JOHN, A. MEIJER, B. WORTHY, *Do Freedom of Information laws increase transparency of government? A replication of a field experiment*, in «*Journal of Behavioral Public Administration*», vol. 1, 2018, pp. 1-10; B. WORTHY, P. JOHN, M. VANNONI, *Transparency at the Parish Pump: A Field Experiment to Measure the Effectiveness of Freedom of Information Requests in England*, in «Journal of Public Administration Research and Theory», vol. 27, 2017, pp. 485-500.

[61] M. ZALNIERUTE, *«Transparency Washing» in the Digital Age: A Corporate Agenda of Procedural Fetishism*, in «Critical Analysis of Law», vol. 8, 2021.

[62] The use of machine-learning problems raise its own particular transparency challenges, germane to both platforms and governments. See: M. ANANNY, K. CRAWFORD, *Seeing without knowing: Limitations of the transparency ideal and its application to algorithmic accountability*, in «New Media & Society», vol. 20, 2016; M. WIERINGA, *What to account for when accounting for algorithms: a systematic literature review on algorithmic accountability*, in *Proceedings of FAT* '20: Proceedings of the 2020 Conference on Fairness, Accountability, and Transparency:* https://doi.org/10.1145/3351095.3372833

[63] This concept is drawn from the work of Mikkel Flyverbom. See: M. FLYVERBOM, *The Digital Prism: Transparency and Managed Visibilities in a Datafied World*, *op. cit.* For a relevant case study, see: B. WAGNER, K. ROZGONYI, M.T. SEKWENZ, J. COBBE, J. SINGH, *Regulating transparency?: Facebook, Twitter and the German Network Enforcement Act'*, *op. cit.*

[64] One example out of many is the EU Code of Practice on Disinformation. https://digital-strategy.ec.europa.eu/en/policies/code-practice-disinformation

[65] J. COHEN, *Between Truth and Power: The Legal Constructions of Informational Capitalism*, Oxford University Press, Oxford 2019.

[66] See, e.g. B. WAGNER, *Free Expression? Dominant Information Intermediaries as Arbiters of Internet Speech*, *op. cit.*

[67] One interesting example is the practice of Internet Referral Units (IRUs). These are police teams that flag content for online platforms, in a non-binding manner, for consideration as to whether they might like to remove it. These IRUs have been criticized for failing to provide proactive transparency and also for poor compliance with FOIA requests. See: B. CHANG, *From internet referral units to international agreements: censorship of the internet by the UK and EU*, in «Columbia Human Rights Law Review», vol. 49, 2018.