

## Transparency in internet regulation and governance: arguments and counter-arguments with some methodological reflections

*Transparência na regulação e na governança da internet: Argumentos e contra-argumentos com algumas reflexões metodológicas*

Gianluca Andresani<sup>1</sup>

Natalina Stamile<sup>2</sup>

**Abstract:** The debate on the argumentative turn in Public Policy and Administration (PPA), as reflective of the influence of political-legal theory on the discipline, is reviewed with a thorough and indepth engagement with the Argumentation Theory (AT) literature. The focus in this article is in fact of a methodological nature, since we *argue* that critical scholars - who have contributed to the general and specialized (i.e. political discourse analysis and critical contextualism) literature of AT as well as politico-legal theory - pave the

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- 1 Research Associate and former Director of the Professional and Institutional Ethics Programme, Institute of Applied Ethics, Hull and Researcher in the School of Law, Durham, UK. *E-mail:* gianluca.andresani@durham.co.uk
  - 2 Pós-doutoranda e professora de Teoria de argumentação jurídica do Programa da Pós-Graduação em Direito da UFPR. Professora em Filosofia e informática jurídica pela Universidade de Bergamo (Itália). Doutora em "Teoria del diritto ed ordine giuridico europeo" pela Universidade "Magna Graecia" de Catanzaro (Itália). *E-mail:* natalinastamile@yahoo.it

way to a novel methodology which will be exemplified through the analysis of the transparency concept.

**Keywords:** Argumentation Theory, Internet, Public Policy and Administration, Transparency, Politico-Legal Theory, Regulation and Governance, Methodology.

**Resumo:** O debate sobre a virada argumentativa nas Políticas Públicas e Administração (PPA), como reflexo da influência da teoria político-jurídica sobre a disciplina, é revisado através de um envolvimento minucioso e aprofundado com a literatura da Teoria da Argumentação (TA). O foco do artigo é, portanto de natureza metodológica, posto *argumentamos* que estudiosos críticos contribuíram a uma geral e especializada literatura da TA, notadamente pela análise do discurso político e pelo contextualismo crítico. Tais autores, assim, abriram caminho para uma nova metodologia, que será exemplificada por meio da análise do conceito de transparência.

**Palavras-chave:** Teoria da Argumentação, Internet, Políticas Públicas e Administração (PPA), Transparência, Teoria Político-jurídica, Regulação e Governança, Metodologia.

## 1 Introduction

Our increasingly globalized society seems to be going through a deep crisis. In addition, such globalization is not only a complex phenomenon but it implies an inexorable transformation of our society, characterized by multiculturalism and diversity. This determines a sort of crisis threatening multicultural societies. Social theorists have to analyse these and related questions which arise from this globalization

phenomenon, focusing their attention on a deep renewal of the methods and the (re)definitions of the traditional conceptual categories. But one of the most harmful aspects is the accentuated specialization of academic endeavours that is, contemporary ‘intellectuals tend to see the phenomenon not in its multidimensionality but in its specificity (Ferlito, 2016). Knowledge is reduced to mere “technique” because it is increasingly an instrument in the hands of specialized scholars. For these reasons, in this article we *argue* for the importance of a theoretical position capable of assuming an interdisciplinary perspective. The ultraspecialized point of view is not adequate to analyze normative phenomena that *appear* as different from the past. This particular point of view does not draw knowledge from narrow and “other and different fields of the knowledges” (Ferlito, 2016) but it identifies questions and solutions in themselves; because it is indeed too narrow, and autoreferential. Thus, our aim is to highlight the importance of (re)evaluating a more comprehensive point of view, inclusive of intersectional and different knowledges/*savours*, which instead of excluding each other, it is enmeshed and intertwined in them. Only through this methodological renewal, it becomes possible to understand the revolution imported by the Internet as well as our current information era. The conceptual reflections that this entails will be focused on the specific aspect of transparency. But before undertaking such reflections a discussion of the background disciplinary and methodological controversies surrounding our contribution will be tackled.

## 1 Public Policy and Administration

We are going to first of all to deal with the issue of the academic boundaries surrounding this article. At first sight, the obvious choice would be to refer to the label of Public Policy and Administration (PPA): although that would be broadly correct, some qualifications would still be in order. In what follows, in fact, we will argue that it is more important to focus on the divisions related to the (various theoretical) approach(es) than academic 'labels' per se. To illustrate the usefulness of an explicit consideration of the theoretical differences underlying the various studies concerned with the public sector (including the policy area of Internet Regulation and Governance), we will briefly focus on the differences between Political Sciences, Public Policy and Public Administration as *disciplines*.

The academic study of PPA has traditionally been contended by both Political Sciences and Public Administration (see e.g. Goodin and Klingermann, 1996; Kettl 2015). Starting from the late 60s and mid 70s, Public Policy (which replaced the area labelled 'American, British, etc. Government', originally in the US) increasingly moved away from the 'traditional' Public Administration academic discipline, by creating its own societies and journals (e.g. JPAM) and institutional settings (Public Policy schools).

This also led to the creation of a new field (Public Management) as a spin-off of the implementation and delivery stage of the public policy process to clearly indicate the difference in *approach* from 'traditional' Public Administration (or Social Administration in the UK, see Parsons 2007; Lynn 1996).

Tensions also are noted in the relation between PPA and the 'mother' field of Political Sciences/Studies, which

includes virtually all social sciences such as Economics, Law, Sociology, Organization and Management Studies, Information Technology and Systems, etc. (see Parsons 1995, Andresani and Ferlie 2006) concerned with the study of 'political' phenomena compared to the narrower scope of Political Science in its American version. In this article we will refer to the broader 'label' PPA which has the same meaning of Public Policy and Management, since the words Public Management and Public Administration could be used interchangeably (see also Hill and Lynn 2015; Hill and Hupe 2012). Like Political Sciences (in the plural – as in the European tradition – or Studies – in the UK) PPA is to be characterised as a multidisciplinary field of research. Moreover, the emphasis in this study is on the *normative* side of the field of PPA. PPA has in fact a long tradition of investigations on the normative aspects of empirical studies, originating directly from the Political and Legal Studies sub-discipline(s) of Political and Legal Theory and represented by the practical wisdom tradition in Public Administration, to which we will now turn.

## 2 Practical Wisdom?

Since the Waldo-Simon exchange in the 1950s (see Barzelay and Thompson 2010; Denhardt 2011), two traditions of scholarship have confronted each other ever since in PPA. An example of the debate is Lynn (1994a) and Bardach (1994). Lynn (1994a), echoing Simon's complaints regarding the 'proverbs' of Public Administration, reiterates the appeal for a sounder foundation upon which to build the discipline. He launches his critical straws to the weak empirical base, mainly case studies, of most research being published at the time of writing. Bardach (1994), in his response, challenges

the positivist assumptions underlying Lynn's uneasiness with much of PPA research, by emphasising the legitimacy of qualitative scholarship. It is important to remember that Lynn (1994b) in his rejoinder claims that he has been misunderstood by Bardach, and that he simply wants to sort of rebalance the direction in which the field seemed to be going at that time (as well as ever since) towards 'sounder' empirical (positivist?) research (see also Lynn 1996).

However, Raadschelders (2011) is able to give a more nuanced portrait of the traditions that compete with the positivist one, and were not made explicit in the Lynn v Bardach's exchange. In his review of the field, Raadschelders (2011: ch 6) distinguishes between the practical wisdom and practical experience traditions. These two traditions<sup>3</sup> have a long history and pedigree and must be clearly distinguished in order to understand the contribution made in this article, which is located inside the former but not the latter.

While the latter's aim is to provide useful advice to practitioners, the former, although also being normative in nature, focuses on extricating the value conflicts in studying, designing and implementing public policies. The practical experience tradition is squarely collocated in what Simon (1996) called the 'Sciences of the Artificial' or also 'Design Sciences' (Raadschelders 2011 ch 6; see also Barzelay and Thompson 2010), which have a long history going back to the Human Relations tradition and earlier, and aims at improving the 'craft' of policy advice and delivery.

The practical wisdom tradition instead is clearly linked to the normative study of political and legal institutions that goes back to the birth of philosophy, particularly practical philosophy/reasoning, whose aim is - in the sense to be elucidate fully below - 'normative' (rather than 'prescriptive').

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3 He also lists a forth one, to which belong the relativist theories.

### 3 Arguing in Favour of Argumentation

While in the following sections it is implied that an investigation of the multiparadigmatic foundations of social scientific analysis is required to complement the argumentation one (see also Andresani et al. 2006, 2008, 2009, 2012), it is necessary to clarify our own take on the argumentation approach upon which this article is based. As Raadschnelders (2011) convincingly argues, those scholars working in the practical wisdom (from now on relabelled as the Argumentation) tradition favour an interdisciplinary and multiperspective approach to the study of PPA. He mentions classic studies such as Hood (1998) and Rosebloom et al. (2014)<sup>4</sup>, which approach the study of ppa<sup>5</sup> from different theoretical ‘lenses’ as well as privileging a value perspective, as Raadschnelders (2011) indeed does himself in his work.

An acknowledged key figure in this debate is Christopher Hood, who started his pivotal contribution to ‘clearing the ground’ of long established traditions first in his *Administrative Analysis* (1986) and then in his more influential works *Administrative Argument* (Hood and Jackson 1991/1997) and *The Art of the State* (1998). We’ve been influenced by the latter in our own characterisation of the methodological and theoretical debates in the field elsewhere (e.g. Andresani et al 2006, 2018). Hood and Jackson’s book (1991/1997) has been particularly influential (cf. Barzelay 2001, Hill and Lynn 2015).

Other highly influential works such as Barzelay (2001, 2004) acknowledge also the more policy oriented tradition

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4 Several other works that could be added are Newman 2001; Hill and Lynn 2015; Sørensen and Bogason 2006; etc.

5 We will follow in this article the convention of indicating with small letters the object of study (ppa) and with capital letters the academic field which study them (PPA).

(e.g. Fischer 1980, Fischer and Forester 1993; Fischer 2003; Dunn 2017; see also Fischer and Gotweiss 2013), while Hill and Lynn (2015) only acknowledge Hood and Jackson (1991/1997) and Barzelay (2001)<sup>6</sup>. This is understandable in view of the strong debate Lynn has been engaging over the years with the (relativist) Argumentation tradition(s).

We agree with all the above scholars to call it the Argumentative (rather than practical wisdom) tradition because it emphasises the (practical) 'reasoning' more than wisdom aspect of the approach.

This is also to clearly mark the distance from the 'Design' approach which has been advocated by Barzelay (e.g. Barzelay and Thompson 2010) but resisted by most scholars who subscribe to the 'Argumentation' label (e.g. Fischer and Gotweiss 2013; Hill and Lynn 2015). From as early as Fischer (1980), through studies such as Fischer 1995, 2003, 2009, Fischer and Forester 1987, 1993), Barzelay (2001), Sillince (1986), Hill and Lynn (2015), the Argumentative approach emphasises a rigorous methodology, being influenced by such scholars as Toulmin (1958/2003), Perelman and Olbrechts-Tyteca (1969/1973), Alexy (1989), and Habermas (1986), amongst others. In key works in the literature this approach has also been adopted to analyse argumentation over doctrinal and policy issues (see Barzelay 2001, 2004; Dubnick 2000, Stone 2012).

## 4 The Argumentative Approach

It would seem then that there is really no need in PPA to *argue* in favour of the argumentative turn, since it has *arguably* become one of the mainstream approaches in the field. It would suffice to have a quick look at the fact that

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6 As well as that tradition in Argumentation Studies influenced by Toulmin.



key contenders on the positivist vs post-positivist debate (e.g. Lynn 1999 and Fischer 2003) happily subscribe to the argumentative turn to the study of ppa. Indeed, an influential 'positivist' textbook (Hill and Lynn 2015) focuses on such an approach, while at the same time it is advocated by several post-positivist ones (Dunn 2017; Fischer and Gottweis 2012, etc.). Such an apparent consensus on the usefulness of the method leaves still a gap on the details of which *kind* of argumentative approach is appropriate for the analysis presented in the last section of this article.

From the classic Aristotelian tripartite classification, three perspectives have traditionally studied arguments: from the broad perspective of rhetoric to the narrower one of dialectic and finally to the narrower still of logic (see Eemeren et al 1996, 2014)<sup>7</sup>.

The consensus mentioned above in PPA looks less so when one acknowledges the fact that post-positivists' analyses tend to be carried out by adopting the rhetorical perspective (see Fischer 2003; Fischer and Gottweis 2012) while positivists such as Hill and Lynn (2015) tend more towards the (informal) logical one. Barzeley (2001) builds his argumentative analysis on the work of Douglas Walton (1992; also 1996, 2006: cf. Barzelay and Thompson 2010) as well as acknowledging the contribution of several 'post-positivists' (e.g. Fischer; Bardach, etc.). Now, Walton is an influential proponent of a *dialectical* perspective to the study of argumentation and the work that Barzelay mentions (e.g. Walton 1992) is clearly an example of such a perspective. Such a perspective has broadened the traditional focus on the content (product) of 'good' reasoning (see also Rehg 2009).

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7 A good indicator is that at the International Society for the Study of Argumentation (ISSA) conferences each of the three keynote speakers represent the Informal Logic, Dialectical and Rhetorical traditions.

Post-positivists such as Fischer (2003, 2009) focus instead on the broader context and the ‘effectiveness’ of arguments, which has been traditionally associated with the ‘processual’ perspective which characterises the rhetorical analysis of arguments (but see Fischer 1980, 1995). In argumentation theory, in fact, some scholars, starting from the 1970s, increasingly challenged the narrow ‘formal’ approach typical of the (traditional) logical perspective, advocating – following the pivotal work of Toulmin (1958/2003; see also Fischer 1980 and Eemeren et al 2003) – a more informal one (cf. Walton 1989, 2008). A further development was the move towards the dialectical perspective with its focus on the procedures according to which a conversation *is to* be held (also known as the ‘procedural’ focus, see Blair 2013), to which Walton himself has made important contributions. Several other studies in PPA have adopted broader perspectives by ‘reaching out’, as it were, to the rhetorical one (e.g. Dubnick 2000) and we too agree that the rigid separation between the three traditional perspectives should indeed be challenged<sup>8</sup>.

## 5 Beyond the Argumentative Turn

Overlapping this logic-dialectic-rhetoric trichotomy, following Wenzel (1992) another distinction has become established in the field, that between argument analysed as product, which would be the ‘natural’ object of study of logic (including informal logic), argument understood as a process, to which the norms of rhetoric apply, and finally as procedure, studied by dialectic (cf. Zarefsky 2001; Blair

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8 Although we recognise that it is important to neatly separate the epistemological approach from the informal logic tradition into which it tends to be subsumed (e.g. Eemeren et al 2014), in this article we will ignore such a distinction.

2013). Such a one-to-one correspondence is reductive according to Wenzel (1980, 1990; see also Johnson 2000, Blair 2013), because inside each perspective there is no consensus on how to study arguments, and therefore the ‘product’, ‘process’ and ‘procedure’ labels would not reflect the more nuanced differences in each perspective. Not surprisingly such ‘contestability’ reflects wider debates inside the field of argumentation theory (as well as any other academic field, see for example the often-cited paper by Gallie (1956) regarding *all* politically charged concepts). Our own take on the debate of how to carry out an analysis and evaluation of arguments is to go back to the methodological options presented earlier. From that analysis, it is clear that we take the stance that the specialist area upon which argumentation analysis and evaluation would focus needs to be taken into account in the debate. This article aims to contribute to a particular type of arguments, i.e. the ‘politico-legal’ and ‘normative’ (read *practical*) ones, and analytical and methodological considerations should reflect that. In order to address this latter point, we will now clarify how Jürgen Habermas’s ideas have influenced our own approach to the study of (practical) arguments. It is to this that we will now turn.

## 6 Argumentation Theory and PPA

Adopting an argumentative approach to the study of ppa has to address the criticism that it is reductive: for example, that speech does not necessarily result into action is a common criticism. In fact, several scholars adopting such an approach advocate complementing it with other forms of social scientific analysis. For example, in his book on NPM, Barzelay (2001; see also 2004) advocates complementing the

argumentation with a social (political) scientific analysis. Likewise do Hill and Lynn (2015), Fischer (2003, 2009; Fischer and Gottweiss 2012), Newman (2001), etc., just to mention some influential figures in the field. It is important in our view to acknowledge also that many post-positivists such as Frank Fischer, John Forester, John Dryzek, etc. build their argumentative approach on a refinement of Habermas' work, who himself has built his own academic career on the 'reconstruction' of social science so that theoretical (argumentative and philosophical) perspectives are blend together with social scientific (mainly sociological and legal) ones. Again the approach of Barzelay (2001, 2004) is particularly interesting since he acknowledges the influence of political and legal theory on the argumentative approach overall, as well as on his own. In fact, we will build on Habermas's ideas (as well as those studies that build on his work) to address the weaknesses of an approach focused on language, discourse and arguments.

Habermas's (1984, 1987) contribution to sociological and politico-legal analysis is in fact centred on argumentation theory. Moreover, his approach to the study of arguments has always emphasised the 'normative' aspect (e.g. Habermas 1990), and he has always kept an eye on the wider, social contexts of argumentative events, in order to be able to *complement* any analysis of interactional, face-to-face (read *dialogical*) argumentative exchanges with a focus on the wider, societal contexts. At this point of our argument we want to make clear that we do acknowledge the necessity of complementing the study of arguments with political analyses, but, following Habermas and those who built on his work, it is also necessary to emphasise that any (social) action, including those carried out in the 'political' sphere, must be able to stand to critical scrutiny, i.e. actors should be

able to provide ‘reasons’ for them. This justifies the emphasis given in our own approach to practical reasoning, and it is to this that we will now turn.

## 7 Practical Reasoning and Argumentation

In the previous section, we’ve mentioned the importance of complementing social scientific analyses of ppa with normative ones (i.e. of the necessity of blending them with moral and political philosophical ones). This is particularly important when one studies specific types of discourses, such as the practical/politico-legal ones. In the narrower area to which this study contributes, i.e. PPA, a key influence comes from the sociological study of law and politics, and the contribution of Fairclough has been particularly influential. Norman Fairclough (together with others, e.g. Wodak, Farrell, etc) has developed over the last three decades a highly interesting approach, called Critical Discourse Analysis (CDA). Moreover, his collaboration with Isabela Fairclough (Fairclough and Fairclough 2012) represents a turning point in his position. In fact, while in the past, he tried to combine the work of Habermas with other social theorists such as Foucault and Giddens<sup>9</sup>, in his latest collaborative work with Isabela Fairclough, the Habermasian influence has become prevalent, as it were, by following him from socio-linguistic (and sociological) theory to argumentation and politico-legal theory.

What in their view characterise these three fields of inquiry is a focus on practical reasoning, which makes their work an exquisite example of state of the art work in both argumentation and political discourse analysis. Moreover,

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9 Indeed, this is quite a ‘popular’ approach in CDA, see Wagenaar (2011) for a good summary with applications in PPA.

the Habermasian influence is also evident in their attention to the 'extra-linguistic' and wider social implications of discourse and argumentation analyses, and in their appreciation of the importance of political philosophy and analysis, again in the best Habermasian tradition.

As far as their contribution to the study of arguments is concerned, this 'elective affinity' with the Habermasian tradition is also due to the fact that Isabela Fairclough has been influenced by the Dutch School of Pragma-Dialectics, which is quite close - in spirit - to this tradition (see e.g. Eemeren et al 1996 p. 311: n. 67). Of particular relevance, is that Walton's dialectical/pragmatic approach has also been an influence (see Fairclough and Fairclough 2012). Likewise, in their collaborative work a blend of normative and social scientific analyses are carried out and their applications to political discourses powerfully exemplified. It is necessary to point out that their proposal that political discourse analysis requires the interdisciplinary collaboration of argumentation, discourse (read: socio-linguists) and political theorists is to be highly commended. Finally, together they have contributed to the general debates in PPA (see e.g. Fairclough and Fairclough 2013).

Another contribution that fully (i.e. in a professional manner) engages with the philosophical literature as well as advocating a very similar interdisciplinary effort is that by William Rehg (2009), which he labels 'critical contextualism'. While the Faircloughs, as experts in discourse and argumentation analysis advocate the integration of political theory as well, Rehg, like Habermas himself, is first and foremost a moral and political theorist who has also made important contributions to the field of argumentation analysis as well as keeping abreast (via his former mentor, Thomas McCarthy) with developments and applications (particularly to the

sociological study of science and technology) of that school of sociology (which could also be called socio-linguistics), i.e. ethnomethodology. This move is understandable considering both the influence of his mentor, Thomas McCarthy and others such as Bohman (1994, 1998, 1999, Hiley et al 1991), and the wealth of empirical work on the social study of science and technology from the ethno-methodological tradition. While we share his suggestion of including a socio-institutional perspective as well, we prefer not to follow him though in building such a perspective by drawing upon the socio-linguistic tradition of ethno-methodology. In fact, we found his attempt to combine the latter at odds with our own *reconstruction* of the Habermasian tradition both theoretically and methodologically, due to the incommensurable ontological and epistemological assumptions underlining each tradition. In fact, his approach ends up in a dangerous 'relativist' terrain in modifying the Habermasian approach to argumentation so that the latter can be 'adapted' to the ethnomethodological perspective. Importantly, as well as acknowledging the emphasis on the dialectical perspective peculiar to all Habermasian approaches, Rehg has made important contributions to that burgeoning area of political theory, i.e. deliberative democracy (e.g. Bohman and Rehg 1997, Rehg and Bohman 2002), which has been profoundly influenced by Habermas's ideas and work, thanks also to scholars like himself, Bohman, Dryzek, and many others.

What the Faircloughs and Rehg have in common is then the attention to the nuances and details entailed in the normative and theoretical study of law and politics (and political and legal discourses and *transactions*, see Rehg 2009) as well as a highly developed framework for their empirical analysis. They set the bar quite high for our own contribution and in fact their suggestions and analyses are far superior

when compared to many other otherwise quite interesting works. We will now turn to exemplify this approach through the analysis of the transparency concept.

## 8 The Case of Transparency Regulation and Governance

The concept of ‘transparency’ has received a good deal of attention from lawyers, political scientists, sociologists, psychologists, economists and computer scientists, and only recently from politico-legal theorists (see Dunleavy et 2008, Margetts 2013). This neglect is on the mend, and in this part of the paper we will report on the PPA and politico-legal theory research on transparency in which we and others have been engaging. Some definitional clarification is necessary at the outset. Transparency is used today in several and different senses and for this reason it is considered currently ubiquitous. However, at the same time this is the main cause of its ambiguity. For this reason, it is difficult to present only one definition of the word ‘transparency’ in relation to the political system. This concept is characterized by being vague and flexible.

According to the classical tradition, the most important scholars developed arguments attempting to define what is the transparency concept especially in the public sphere (Arena, 2006; Cerulli Irelli, 2006; Califano – Colapietro, 2014). For example, in PPA and administrative law, the principle of transparency is well established (see e.g. Hood and Heald 2006, Craig 2016). In this respect, it generally indicates all the actions and interventions in the public sphere in order to create, improve and pursue access to information held by public bodies. Our argumentative approach would then start from its linguistic origin. The transparency term derives



from Latin, that is, *trans parere* that means to appear, to let see, to let know. However, it is clear also in the etymological analysis of the word. The 'transparent' term derives from the medieval Latin *transparens*, composed of *trans*,- that means through - and *pareo*, a verb that means 'to see' but also 'to appear' or 'to show'. Thus, transparency is a characteristic of what we see, how we see or how we show ourselves through a filter. In the classical Latin, the transparent adjective was translated with *translucidus*, *perlucidus*, *perlucens*, *liquidus*, *splendidus*, all these adjectives are often referred to water and air and they mean limpid or clear. Nevertheless, it rarely employs the nouns *perluciditas*, *perspicuitas*, *splendor*, to talk about *transparency*: in most cases it was adopted a periphrasis with the *transparent* adjective or with the *light* noun. Thus, to see for transparency is to put something in the light. A similar idea had already been stressed by the Greek language in the following terms. In Greek the transparent adjective is διαφανος, composed of the preposition διά - through - and the adjective deriving from the verb φαίνω, which in its active meaning alludes to showing something in the double sense of letting see and making known. In addition, in its passive form - φαίνομαι - means to appear, come to light, to be visible and manifest. Thus, this verb has an expressly sensorial value, so much that the adjective that derives from it - φαινόμενος - means 'visible to the senses'.

This idea seems to be widely accepted in contemporary, but especially in past, administrative law and governance. For example, one of the aims of the introduction of the legal institution of transparency is that citizens can see how the necessary elements are formed and how they determine the choices of public administration, as well as what are the reasons and justifications of a specific administrative provision. Even if this could be the first and the most common meaning

today, this answer would be hardly conclusive regarding another important issue: globalization and internet. This consideration raises the question if it is possible to make more sense of the use of transparency. Thus, the analysis in this article is suggestive with regard to the possible sources of connections between norms, structures and practices of transparency but in the digital context and in the globalized society. In what follows, the debate on the deep relation and tension between transparency and the internet in the new era of technology in both politico-legal and PPA theory is reviewed.

## 9 Transparency and Internet in the new era of technology

**9.1** Moving from the semantic analysis of the previous paragraph we will now consider some influential arguments. In the second half of the XX century, some analysts, inspired by sociologist Daniel Bell and economist Fritz Machlup, developed arguments attempting to explain what is an 'information society' (Castells, 2001). For example, Daniel Bell says that it is possible to conceptualize this social development as an evolution of society from one dominant form of production to another. Thus, industrial societies were followed from agricultural societies; and were to be followed by post-industrial service societies, and then, arguably, by a form of post-industrialism that was very dependent upon advanced information and communication technologies. As it is clear, the last step is characterized by a strong emphasis on how new computer and telecommunications technologies increased the importance of those services that had the most informational content and value. A similar idea had already been stressed by Manuel Castells in the following terms:

“The network society itself is, in fact, the social structure which is characteristic of what people had been calling for years the information society or post-industrial society. Both ‘post-industrial society’ and ‘information society’ are descriptive terms that do not provide the substance, that are not analytical enough. So it’s not a matter of changing words; it’s providing substance. And the definition, if you wish, in concrete terms of a network society is a society where the key social structures and activities are organized around electronically processed information networks. So it’s not just about networks or social networks, because social networks have been very old forms of social organization. It’s about social networks which process and manage information and are using micro-electronic based technologies”<sup>10</sup>.

According to this new perspective, networks constitute the new social morphology of societies (Castells, 2000) and consequently the diffusion of a networking logic substantially modifies the operation and outcomes in processes of production, experience, power, and culture. But, according to this model, the structure of network society is not completely captured by the reconstruction of genetic relations of the information society. The key claim is that Network society is much more than a pure explicit technology, since it includes implicit cultural, economic and political factors that can logically make up the network society. Thus, influences such as religion, cultural upbringing, political organizations, and social status all shape the network society. Societies are shaped by these factors in many ways. At this point, it becomes crucial to define what is the role played by administrative science and governance and its relation with this context, that is, how all of that could influence the PPA field and especially determinate connections with some traditional administrative concepts such as transparency or a related one. i.e. privacy. This passage will become clear after the following considerations.

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10 See: <http://globetrotter.berkeley.edu/people/Castells/castells-con4.html>

**9.2.** As Giovanni Ziccardi (2015) argues, the new era of technology is characterized by, at least, four fundamental elements: surveillance, control, secret and transparency. Even if, on the one hand, they are perfectly compatible with each other; on the other hand, they always enter in a strong tension with each other but it is precisely this tension that has the merit of showing the most critical problems of defining the changes in society as reflected through the technology field. In the era dominated by Internet and in an ever expanding digital world, to keep a secret or to have an interest/right to be forgotten seems to become almost impossible (Pellicoli, 2016 p. 135). For example, in 2014, the Court of Justice of the European Union (CJEU) in the *Google Spain SL, Google Inc. v Agencia Española de Protección de Datos (AEPD) and Mario Costeja González (C-131-12)* decides that an Internet search engine operator is responsible for the processing that it carries out of personal data which appear on web pages published by third parties, upholding a right of erasure<sup>11</sup>. Firstly, the General Data Protection Regulation (GDPR) was mooted to include a right to be forgotten, but between the draft and the final version this was changed to a right to request erasure for a set of specific reasons. This case is useful to understand how it is difficult not only to affirm the existence of a right to be forgotten but also to describe what it is exactly. For example consider that the memory of human beings are categories that may be applied only metaphorically to the machine because the electronic or digital memory evidently works in a different way and the user sometimes produces the information but then he/she is not be able to control or to remove them (Mayer-Shönberger 2009). Thus, it is undeniable that digital technology has fundamentally altered the way that we approach memory. According to

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11 See: <http://curia.europa.eu/juris/documents.jsf?num=C-131/12>

Mayer-Shönberger it is important not just to explore what has happened to forgetting in the age of the indefinite memory of digital technology but especially “what the potential consequences are for us individually, and for our society, and what, if anything, we can do about it” (Mayer-Shönberger 2009, p. 3). It does not require an accurate background to understand that in this specific context of the digital world, an indiscriminate accumulation of every kind of information and data into servers is facilitated and they can be known and used by the users because found accidentally through random searches. This last aspect opens one of the central problems regarding argument evaluation: truthfulness and reliability. This question is connected to the argument about the *real* necessity of increasing transparency *vis a vis* privacy.

One of the justifications is based on the assertion that transparency is the best ‘disinfectant’ for the public sector and especially for democracy. Particularly, it is important to stress that transparency, in this perspective, is declined in a *radical* sense, that is, in general, without any form of control and specially without the presence of the State because transparency is implemented by private citizens through *ad hoc* platforms through which both public and private organizations may be involved, for example, in corruption or crime (see also Osrecki 2015). But this argument implies a particular attitude of the reader/user, that is, of the ‘sound’ interpretation of the evidence without considering the capacity of understanding and reasoning in a determinate and specific moment (Lessig 2009). Various other arguments are made against the view of a transparent world. Thus, it has been argued that

“How could anyone be against transparency? Its virtues and its utilities seem so crushingly obvious. But I have increasingly come to worry that there is an error at the core of this unquestioned

goodness. We are not thinking critically enough about where and when transparency works, and where and when it may lead to confusion, or to worse. And I fear that the inevitable success of this movement - if pursued alone, without any sensitivity to the full complexity of the idea of perfect openness - will inspire not reform, but disgust. The 'naked transparency movement', as I will call it here, is not going to inspire change. It will simply push any faith in our political system over the cliff". (Lessig, 2009).

This statement (which is critical of transparency) shows how it is fundamental to have an accurate comprehension of technological notions, the status of digital infrastructures and especially the behavior of users connected to them. To take an extreme example, the eleventh of September 2001 undoubtedly marked and changed the relation between privacy and security with the inevitable consequent favoring of transparency. In fact, the US government, in response to the terrorist attacks, implemented a series of legal reforms that came to seriously affect citizens' rights expressly recognized by the constitution and thus emergency legislation became central. Noteworthy of mention are also the WikiLeaks disclosures, the scandal of the National Security Agency (NSA) and Datagate. For these reasons, in some circles, transparency seems to have become a buzzword these days. We are living under increasing pressure to be more transparent globally. On the one hand, various arguments are made in favour of total transparency everywhere, such as in the case of institutional shareholders and regulators, bank and other shareholders needing to monitor corporate financial conditions and managerial decisions, and so on. According to Jay Choy and Heibatollah Sami (2012, p. 4),

"these calls for transparency presume that threat of disclosure could have lessened or deterred some of the financial crises and scandals around the world. Transparency is good because it may offer the promise of accountability and better governance which

may lead to efficient allocation of capital and resources. The calls for transparency extend beyond the corporate sector to non-profit entities and public institutions”

As we have argued above, this argument assumes a high level of democratization not only of the administrative and economic system but also and especially of the social, cultural, political and legal systems. The basic point is the symmetry between more democratic – i.e. less draconian – laws and policies, and more transparency.

On the other hand, the argument for transparency meets an obstacle because of technology or better still the technological evolution and the restrictive approach to cultural heritage in the digital era. Thus, it is possible to argue that the disclosure of transparency is thrown out of *fear* and/or *lack of confidence* in technology. This is the old idea of the *mad scientist*, that is, it is based on the persistence of a collective conscience about the conception of the bad computer science/informatics being portrayed as dangerous and menacing because it is only the prerogative of an *elite* of specialized people. In this way, the digital and technological world is considered an effective instrument to put the individual in a *bad* and *difficult* situation in terms of the development of her social life. In addition, as some scholars have argued, this perspective is compatible with the idea of a society dominated by strict control. Thus, if in the past it was possible to describe a control system characterized by a concealed surveillance (‘Orwellian control system’), today the control system is defined as a ‘Kafkian control system’ because the control and the surveillance has become extremely bureaucratic, fragmented, labyrinthine and complex and one of the claims is to emphasize that ‘vague’ responsibilities are to be attributed, such as the responsibility to internet (service and/or content) providers (Ziccardi 2016, p. 67). This approach se-

ems to highlight the tension between transparency and control. But transparency, viewed in this way, is a multi-faceted, interdisciplinary issue with far-reaching implications, and precisely such considerations would make possible the examination of the various dimensions of transparency. Thus, according to some scholars, it would be possible to read the relation between transparency and control not in terms of a tension but of a hypothetical equilibrium or symmetry. For example, this analysis tries to investigate whether higher institutional ownership is related to better internal controls and whether better internal controls are associated with a higher quality of transparency (Fang Fang and Haiyan Zhou 2012, p. 11ff.). In particular, in this view, the analysis proposes the suggestions on the consequences of increased accounting disclosure and transparency and also the consequences include reductions in information asymmetry as reflected in bid-ask spreads and bond yield spreads in the securities markets (Fang Fang and Haiyan Zhou 2012, p. 14). However, few studies have specifically investigated the link between internal control and transparency recognizing the benefits of effective control and surveillance in enhancing disclosure transparency (Felo 2000). Although the above mentioned studies share a similar nature, the notion of control and disclosure transparency could refer to two different concepts, and the results could not be exhausted by arguing about the hypothetical equilibrium or symmetry between them and simply assuming that privacy would not be negatively affected.

## 10 Concluding Remarks

After reviewing several influential contributions to the study of arguments as applied to practical/politico-legal and



PPA discourses, in the first part of the article we introduced our own take on the debate. We have then developed the framework introduced in the earlier sections and exemplified the approach by analysing and evaluating the specific arguments surrounding the debate on transparency. In this way we have shown how a blended normative and social scientific analysis of ppa requires specific methodological and theoretical choices which are relevant to the study of politico-legal and ppa arguments. Such an approach draws upon contributions from argumentation, discourse, political and legal analysis/theory, as also represented in the best Habermasian tradition.

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*Recebido em 25/09/2018.*

*Aprovado em 10/10/2018.*

**Gianluca Andresani**

*E-mail:* gianluca.andresani@durham.co.uk

**Natalina Stamile**

*E-mail:* natalinastamile@yahoo.it