

London School of Economics and Political Science

Shackling Leviathan

A Comparative Historical Study of
Institutions and the Adoption of Freedom of Information

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Declaration

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Abstract

This thesis is about the origins and development of freedom of information laws. The number of countries with these laws has risen dramatically in recent decades, and now stands at around ninety. This is widely taken as evidence that governments across the world are converging in their institutional arrangements because they face similar challenges and demands. Access to information is increasingly claimed to be a human right, essential to the effective functioning of democracy and fundamental to legitimate public administration in the information age. This thesis seeks to challenge this assumed causal homogeneity by explaining why countries in which these principles were well-entrenched legislated at different times.

The explanation offered here emphasises institutions: the manner in which important political actors are organised, and the structure of authority and accountability relations between them. It shows that differences in these institutional arrangements meant access laws were introduced at different times in different countries because they were introduced for different reasons and in response to different pressures. It supports these claims by conducting a comparative historical study of freedom of information in Sweden, the USA, France, the UK and Germany,

This thesis contributes to empirically-oriented scholarship on a prominent aspect of contemporary government. It provides a framework for further rigorous comparative scholarship. It also provides detailed accounts of how access developed in two countries which have not received much attention in English-language scholarship, France and Germany, and original insights into three others about which more has been written. Whether one is interested in improving actually-existing laws or understanding democratic government in the information age, this study is valuable because it complements visions of why transparency laws are desirable with historically-informed comparative knowledge about why they are introduced at all.

Acknowledgements

Max Weber once wrote that “bureaucratic domination has the following social consequence[...] the tendency to plutocracy growing out of the interest in the greatest possible length of technical training. Today this often lasts up to the age of thirty” (1968b:225). I began researching this thesis on bureaucracy just short of the age when I should have been finishing up and taking my place among the rich and powerful, at least according to one of the founding fathers of my discipline. While waiting to see whether Max got it right about the value of a good education, I would like to offer my sincere thanks to those who have helped me get this far.

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Introduction

If a mother living in Britain in 1980 wanted to read the comments made by her child's teachers and kept on file by the school, her request would probably have been turned down. Schools considered these files to be their own property, and regularly denied that parents had any right to view them. This was despite the fact that their contents could have important consequences for things like the child's employment prospects for decades afterwards (Newell 1982:81-90). Welfare recipients trying to find out the basis on which their benefits had been calculated also frequently met with official refusal (Phillips 1982:196-205). Journalists, for their part, found it extraordinarily difficult to discover all sorts of important information, such as which ministers were members of which Cabinet committees (Hennessy 2000), and were regularly excluded from meetings of local councils despite the existence of laws dating back to the 1960s purporting to grant them access (Harrison 1988:1-2).

Thirty years later, the situation is quite different. Government departments now routinely publish enormous amounts of formerly-secret information, including internal rule-books, guides to corporate structure, contact details for many civil servants, and performance data on operational units (Harrison 1988:29-41; Robertson 1999:141-56). Access to unpublished material held in government files has also become steadily easier, culminating in the introduction of a general right under the *Freedom of Information Act 2000*. This was introduced as part of a programme of constitutional renewal by the Blair government, and was hailed as both a triumph for democracy and a victory for the Campaign for Freedom of Information after sixteen years of lobbying. The Liberal/Conservative coalition government elected in 2010 has built on this with its so-called

“Transparency Agenda”, which includes the pro-active publication of government contracts, salaries, spending and databases. For a country which once enjoyed a well-earned reputation for pervasive official secrecy, this constitutes something of a minor revolution.

It is, however, not yet clear just how profound or permanent this revolution will prove to be. Politicians, academics and civil servants in the UK increasingly emphasise the importance of access to information as an essential principle of good government. On the other hand, this rhetorical shift appears to have had an uneven effect on administrative and political practice. Support within the political élite is far from assured, as Tony Blair’s recent admission he considers the *Freedom of Information Act* to be one of his biggest mistakes demonstrates (Blair 2010:516-7; Kettle 2010). During the period when this thesis was being researched, national security and public finance constituted two prominent areas of controversial, ongoing secrecy in the UK. The combination of expansive police powers to conduct covert surveillance and detain suspects, coupled with restrictions on the right to challenge how these powers are used, were a significant cause of concern among many commentators during the twilight of Blair’s premiership. On-going concerns over access to information were also apparent in controversies over whether the use of privatisation, outsourcing and public-private partnerships to provide roads, hospitals, schools and other public infrastructure undermined accountability over how public funds were spent. On a more fundamental level, many of the structures which underpinned traditional forms of state secrecy remain in place, although their role appears to be shifting as the economic, technological and social environment changes. Despite all the changes to the state over the last thirty years, political authority remains centralised in Cabinet and Whitehall to a very great degree. The infamous *Official Secrets Act* (which criminalises certain unauthorised disclosures of information

by civil servants) remains on the law-books. There are, however, increasingly significant obstacles to exercising the kind of centralised control over official information it envisages, a fact starkly demonstrated in November 2010 when a large number of American diplomatic cables were posted online by WikiLeaks, and several British newspapers subsequently decided to ignore a Defence Advisory Notice and publish reports based on their contents.

Britain embraced the “transparency revolution” relatively rapidly and relatively recently, but its experience is by no means unique. Since the early 1970s, the general availability of information held by most democratic governments has become a prominent matter of debate among politicians, civil servants, academics, activists and even the public at large. Since the mid-1990s a broad consensus has emerged that transparency is a good thing, at least in principle. Just as in Britain, however, the practical effects of this recognition have been neither uniform nor universal. The easing of access to official information has occurred at different rates and to different extents in different countries; some have proved far more resistant than others, and in rare cases official information has become more difficult to obtain rather than less.

The Question This Thesis Seeks to Answer

This thesis grew out of a desire to understand the complex, shifting and often contradictory relationship between secrecy and transparency in contemporary government. The original intent was to examine how changes to normative views about where the legitimate boundary between the two ought to lie produced different levels of “actual” transparency in different countries.

It rapidly became clear, however, that there were two significant obstacles to pursuing the project as originally conceived. The first is that normative factors are a poor basis

for explaining cross-national variation. The rhetoric used to advocate and justify greater transparency is so similar as to be virtually indistinguishable between countries. Advocates everywhere couch their efforts in terms of a syncretism of information economics, liberal individualism and participatory democracy, and emphasise the moral necessity of transparency given the high degree of technological development and social fragmentation prevailing in the late 20th Century. In some countries, opponents of access have also justified themselves with reference to democratic norms. The near-universal prevalence of these norms suggested that an adequate explanation for variation ought to focus less on beliefs and more on the believers: on who thinks transparency is a worthy goal, and the conditions under which they are able to see it enshrined in law. It suggested, in short, a focus on struggles over political power and authority rather than over norms and meanings.

The second obstacle to the project involved measurement of the dependent variable. It has proved formidably difficult to translate intuitive consensus about differing levels of secrecy and transparency into a valid and reliable standard suitable for rigorous analysis. Attempts to compare the secrecy or transparency of whole countries by focussing on the supply of information are hampered by the fact that information is not valuable in the abstract; rather, certain information matters because it allows specific actors embedded in definite social and political relations to pursue particular courses of action. The meaningful measurement of supply-side transparency is predicated on the selection of particular social and political relations for analysis and the rejection of others. The more general the conclusions one wishes to reach using this approach, the more aspects of society one would need to consider, with the logical conclusion being that a truly comprehensive assessment of transparency would require examining the whole of any given society. The practical challenges to this should be obvious.

Demand-side approaches are also limited in significant ways. Evidence of dissatisfaction among requester communities or civil society organisations is problematic, because assessments of whether information can be withheld legitimately vary from place to place despite the prevalence of similar normative rhetoric, and similar practices of disclosure often produce differing assessments of secrecy. Making proper use of this evidence depends, in a sense, on having already understood the very thing this project set out to explain: why transparency varies. Secondly, objectively-measurable demand for official information is usually extremely low, and the available data are surprisingly difficult to interpret. An absence of demand is equally consistent with a high degree of pro-active disclosure (where information does not need to be explicitly sought) and pervasive secrecy (where the unlikelihood of success discourages demands before they are made), not to mention a whole host of other situations including effective intermediary organizations, ignorance, and a rational calculus of negative marginal utility on the part of the voting public. Once again, interpreting differences requires a good deal of precisely the kind of contextual knowledge which a satisfactory explanation might provide.

In order to overcome these problems, this thesis adopts a narrower focus and conducts a comparative historical analysis of the introduction of freedom of information acts in five consolidated democracies: France, Germany, Sweden, the United Kingdom and the United States. The specific question it seeks to answer might be put most simply as: “why did these five countries introduce freedom of information acts at such different times?”.

The adoption of freedom of information was chosen because it permits an investigation of important aspects of the relationship between transparency and its broader political

and cultural context without falling prey to these difficulties. The specific theoretical and methodological grounds for this claim are laid out in detail in Chapter One, but among the most important of these is that the differences between these countries are large and cannot be easily explained within the terms of the existing literature. The general consensus is that the adoption of access laws is an instance of convergence driven by a small number of common causes which are assumed to have arisen at more or less the same time everywhere in the late 20th Century. This thesis seeks to challenge this assumption about causal homogeneity. It shows that countries which faced circumstances often held to contribute to the adoption of these laws reacted very differently: in some, a vigorous political debate over the merits of access rights and campaigns in favour of a law arose quite rapidly, whereas in others these either took much longer to arise or were entirely absent. In some, legislation swiftly followed the onset of putatively-favourable conditions, in others it took much longer or occurred for unrelated reasons, and in others again the contribution of widely-cited causes is revealed to be more limited and contingent than often supposed because they arose after efforts to enshrine access in law were already well underway.

The Answer this Thesis Offers

The explanation this thesis offers for these differences emphasises political institutions, for reasons laid out in Chapter Two. It draws on Max Weber's sociology of bureaucracy and the insights of historical institutionalism to argue that any minimally plausible explanation for why countries adopt access laws at different times must be grounded in an appreciation of how control over the distribution of information constitutes a resource in conflicts over the distribution of political power. It then argues that a study of differences in the adoption of freedom of information should focus on the disputes over information and power which arise within five basic political relationships. These are

discussed in turn in the five empirical chapters, and are as follows: the electoral relationship between voters and politicians, the relationship between individual citizens and the administrative state, relations between peripheral interest groups and the political executive, those between core economic interest groups and the state as a whole, and the dynamics which arise between elected politicians and the administrative bureaucracy. Chapter Two concludes by arguing that the comparative method is the best means of tracing these dynamics, and explains why the five countries identified above are worthy of detailed examination given the constraints imposed by this methodology.

The five empirical chapters show that, within each of these five relationships, attitudes towards information held by the state, the implications of public access to it, and the influence which interested parties can bring to bear on routine disclosure, are all influenced by political institutions. The term “institutions” is understood here to include formal rules which enable and constrain the exercise of state authority, established patterns of interaction which are treated by those involved as if they were formal rules, and the organisational structure the relevant actors take. These chapters show that the relationship between specific institutions and transparency is conjunctural: each of the five countries entered the post-war era with distinctive institutional arrangements, and these facilitated the articulation of different kinds of pressure for reform due to the distinctive way they mediated endogenous effects, demographic change, the emergence of new political imperatives and technological innovation (among other things). It also shows that contemporary rules and practices of disclosure evolve in an historically-contingent and path-dependent manner, in that the resolution of disputes over particular kinds of access was affected by the institutional context in which they were conducted, and transformed the terms on which future disputes were resolved.

The concluding chapter draws these separate analyses together. It shows that the different arrangements of institutions relevant to the politics of information were associated with different historical paths leading to the establishment of legally-protected rights of access to official information in each of the five country-cases. Institutional differences account for a good deal of this variation: freedom of information developed at different times because it developed for different reasons in different institutional environments. This thesis demonstrates, in short, that existing explanations for the adoption of this important law, which emphasise the similarity of causes, are deficient. A more comprehensive and satisfactory understanding of why freedom of information laws exist must take account of country-specific differences in the structure of political power and accountability.

The History of Freedom of Information in the Five Consolidated Democracies

Since this thesis proposes to assess the relative merits of competing claims about the adoption of freedom of information in light of the political and legislative history of five countries, it may be helpful to provide a brief overview of historical events in each here, at the outset.

Sweden is home to the world's oldest continuously-existing access law, the *Tryckfrihetsförordning* (*Freedom of the Press Act 1809*). This law was passed as part of the re-establishment of a constitutional monarchy after thirty-seven years of absolutist rule. It represented a re-introduction of the world's first formal legislative access right, originally introduced in 1766 as part of an attempt by a small number of liberal politicians and luminaries to establish a free press. Sweden's access regime thus pre-dates the modern democratic system by over a century, and in fact forms part of the emergence of its liberal state. It was significantly amended in 1937 and 1949 as a result of the social

and political transformations which accompanied mass enfranchisement in the 1910s and 1920s, and the following chapters largely focus on these more recent modifications. Since then, there have been occasional amendments, the most significant as part of the constitutional reform of 1976. These were all of a routine nature: the idea that the principle of transparency should form a fundamental part of the political system in Sweden has been a matter of widespread consensus for the whole post-war era (Sweden 2001:587).

The USA's *Freedom of Information Act 1966* is among the oldest modern laws, and is often described (especially by Americans) as the impetus for the spread of freedom of information over the post-war era. This Act is often portrayed as the fruit of a long domestic tradition of concern for ensuring an informed voting public, and is thus rhetorically associated with the First Amendment, a Progressive-era line of jurisprudence on privacy, and a scattering of state-level access rights introduced in the early decades of the 20th Century. More narrowly, the *Freedom of Information Act* emerged as a reaction to the failure of access provisions introduced as part of the *Administrative Procedure Act* in 1946. It was significantly extended in 1974 and 1996 to overcome bureaucratic evasion. Unlike Sweden, transparency remains a fairly prominent matter of political debate in the USA, and enjoys a large and vocal supportive constituency in Congress, the media and the legal fraternity. Reflecting this ongoing political prominence, the 2009 amendments put in place under President Obama were partly aimed at improving its practical effectiveness, but also partly undertaken to associate the incoming Democratic administration with support for the principle of transparency-driven accountability.

France's Law 78-753 of 17 July 1978 lies at the cusp of a second wave of access legislation, which began in the late 1970s and also included the Netherlands and the Westmin-

ster countries. This law is something of a conundrum: access to official files has never been a prominent matter of political debate in France, and the law was introduced on the initiative of the parliament in the absence of active support from either the presidency or civil society. It was amended in a minor way in 2000 to address inconsistencies revealed by subsequent jurisprudence, in a move whose inconsequentiality stood in stark contrast with the government's lofty rhetoric about transparency and accountability. It has not developed a supportive constituency in the thirty-odd years since its introduction, and although no figures are available activists and civil servants alike agree that it is almost never used (the *Commission d'Accès aux Documents Administratifs*, which oversees the law, first gained the power to collect such statistics in 2000, and began putting in place the infrastructure to do so in 2005; the only reliable statistics currently available concern appeals against refusals to disclose). French politicians, administrators, civil society organisations and citizens have shown far more interest in special-purpose disclosure laws applying to things like party finances and personal data than to general public rights of access to official information.

The UK was a late adopter compared with the other democracies. The *Freedom of Information Act 2000* entered into force in early 2005, after several decades of campaigning by civil society groups. Calls for an access law first emerged in the 1970s, initially in reaction to the perceived threat to individual liberty and democratic accountability posed by the growth of post-war domestic regulation by a paternalistic and profoundly secretive bureaucracy. As in the USA, access in the UK is routinely framed as essential to democratic liberty and accountability, and it remains a prominent matter of debate with consistent support from diverse constituencies including opposition, backbench and minority-party MPs, journalists, academics and civil society organisations. The Act has not yet been significantly amended, but there have been several attempts to do so.

A restrictive amendment bill, which would have removed Parliament from its scope and created a new exemption for MPs' correspondence with public authorities, was passed by the House of Commons in 2007 but found no sponsor for its passage through the House of Lords. The Conservative/Liberal Coalition's *Protection of Freedoms Bill*, which will extend access to electronic datasets among other things, has passed the House and received its first reading in the House of Lords in mid-October 2011.

Germany also introduced its law – the *Informationsfreiheitsgesetz* – in 2005. Unlike the UK, however, the idea that public rights of access to information might be a contributor to democracy tended to be less prominent than the idea that official secrecy contributes to important goals like ensuring social order, and protecting personal privacy and commercial confidentiality. Its social bases of support are much narrower: its main constituency is the environmental movement, which advocated them as a means of ensuring public participation in decisions concerning planning, pollution control and other large-scale spill-overs from industrial production. The legislative history of access rights in Germany is characterised by far less competition and debate than in the UK or the USA, and its fortunes are closely associated with the emergence and rise to power of the Green Party. The earliest proposals were made by some of the first Green deputies in the *Bundestag* in the mid-1980s, and the law itself was eventually introduced under the red-green coalition which took office in the late 1990s.

Chapter 1: The Importance of Access to Information

This thesis seeks to explain why democratic countries adopted freedom of information acts at different times. It does this by conducting a comparative historical study of these laws in five consolidated democracies: Sweden, the USA, France, the UK and Germany. Its immediate goal is to show that the causes of this phenomenon are more complex than is often claimed: that countries may adopt freedom of information laws for a range of different reasons. In so doing, it also seeks to achieve a broader aim: to illuminate some of the socio-political factors which influence the boundary between secrecy and transparency, and particularly to explain why it lies in different places in different countries. This chapter explains the rationale behind these choices: why variations in transparency deserve attention, why decisions to introduce (or significantly amend) freedom of information acts are likely to yield important insights, and why variations in the adoption of these laws in the consolidated democracies merit particular scrutiny.

Why Variations in Transparency Matter

The use of the term “transparency” to describe the way governments work and the way they ought to work has undergone a meteoric rise in popularity in recent decades. As recently as the 1970s, it was little more than an idiosyncrasy peculiar to academics interested in public sector finance and accounting, especially French political economists studying the European Union (Hood 2006b:3-4). By the late 1990s, it was used so frequently and so approvingly by administrators, activists and scholars alike in so many countries that it is now almost a ritual requirement of writing about public administra-

tion to argue that the legitimacy of administrative authority depends, at least in part, on its transparency (Roberts 2006c:1-2).

This thesis proposes to examine transparency for two reasons related to this normative consensus. First, because public access to information is important, as a great deal of the a large and growing literature on this subject is at pains to point out. Secondly, because this existing literature has tended to focus on establishing the theoretical merits of access at the expense of a serious engagement with why countries differ in their approaches to transparency. The following discussion elaborates on each of these claims in turn.

The Value of Transparency

Transparency deserves scrutiny, and has emerged as a topic of widespread academic inquiry, because official information and the terms on which it is available to outsiders go to the very heart of contemporary democratic politics and public administration. Its pervasive and fundamental importance are clear from the various rationales offered for making information more readily accessible to the public at large. These are now so numerous that it has become something of a sport among scholars to see how many can be identified in the wild. Ben Worthy, for example, found six through an examination of official and academic publications in the UK alone in the lead-up to the introduction of its *Freedom of Information Act* (Worthy 2010:564). Others have found anywhere between twelve and two dozen allegedly distinct rationales depending on the country and the era (Hazell, *et al.* 2010). Some reasons for this tendency towards multiplicity are discussed below, but from a strictly conceptual point of view it is not particularly helpful. Almost all the common rationales are, ultimately, variations on one of four broadly

democratic claims about the positive effect of routine disclosure on relations between individuals and bureaucratic states.

Firstly, access to information is increasingly claimed to be an important precondition for individuals to meaningfully exercise many civil, political and social rights (e.g. Banisar 2005; Birkinshaw 2006a; Florini 2007a). Some authors emphasise it as a functional requirement for the classic liberal communicative rights of freedom of speech and freedom of opinion (Ponting 1987). Others argue that it contributes to the preservation of personal autonomy (Heald 2006:64) by empowering individuals in their relations with institutions and structures of both public authority and private power (Birkinshaw 2006b:56 *et passim*). A cognate concern grounded in anarchist political theory appears to be a significant motivation behind contemporary disclosures by WikiLeaks (Assange 2006). A related claim identifies transparency as a contributor to the enjoyment of a range of social and economic rights by making it easier for people to become aware of their circumstances and entitlements (Belski 2007:5); this claim is especially common in discussions of transparency in the developing world (Darch and Underwood 2007; 2010).

Secondly, transparency is frequently advocated for its salutary effects on democratic accountability. In representative democracies, this is usually framed in terms of improved electoral control (e.g. Relyea 1975:8; Bathory and McWilliams 1977; Bay 1977; Perritt 1997; Relyea 2003; Lott and Wyden 2004; Piotrowski 2007:107-8; Ramkumar and Petkova 2007:283 *et sqq*). From this perspective, transparency is valuable because it improves the capacity of citizens to cast informed, effective votes which ensure the implementation of policies they support and punish officials who misbehave (cf. Manin, *et al.* 1999b; Strøm 2000). The importance of informed public opinion to the operation of ideal-typical representative democracy means that freedom of information is often dis-

cursively linked with other foundational communicative rights like freedom of the press. In transitional democracies, transparency is often also seen as an important mechanism for establishing the normative legitimacy of the new regime and settling accounts with its predecessor (e.g. Treviño Rangel 2007:140-1).

Thirdly, transparency is sometimes advocated on the grounds that it improves government decision-making by facilitating active, ongoing and meaningful public participation (Sunstein 1986:890 et sqq; Bunyan 2000). Participation arguably improves both the legitimacy and the quality of democratic processes in several ways. It is sometimes argued to be more consistent than representation with the idea of democracy as government by the people. It is also regularly advocated on the more practical grounds that widespread active participation addresses the structural problems of control inherent to representative politics far more effectively than strengthening the electoral system can. Critics of representative systems have long remarked that individual citizens often do not understand what their governments do, and hold preferences which are either mutually incompatible or which cannot be reconciled with those of their fellow citizens (including, famously, Schumpeter 1992:Chapter XXI). This presents something of a problem for governments whose legitimacy rests on responsiveness to the will of the people, since it may be quite unclear what any individual person – much less “the people” as a whole – wants; indeed they may want quite contradictory things. Participation is argued to address this by encouraging citizens to learn more about what government is and does (Pateman 1970; Mill 2003). Participation is conducive to individual citizens learning about the contradictions and implications of their own views, and the opinions and preferences of others. At their best, advocates claim, discursive and participatory forms of democracy are preferable because they produce collective policy preferences

which are more coherent, reasonable and reasoned than those which develop under representative systems (cf. Habermas 1984; 1995).

The fourth and final widespread justification for transparency is somewhat newer, and is most common in the literature on public administration inspired by economic analysis of imperfect information (e.g. Stiglitz 1985; 2000; 2003b). Here, access is valued because it encourages public authorities to be responsive, predictable, efficient and effective in the formulation and execution of public policy (Florini 1998:53-6; Finkelstein 2000:6-7; Roberts 2003:14-20; OECD 2005:2; Heald 2006:64). This is often formalised in terms of agency theory: transparency is valuable, so the argument runs, because it discourages graft and corruption while encouraging the rational allocation of public resources (Birkinshaw 2006b:56). Two complementary causal mechanisms are usually held to be at work here: transparency encourages responsiveness in governments by facilitating the articulation of specific demands by affected groups; it also encourages public officials to anticipate those demands and accommodate them before they are articulated (the so-called “law of anticipated reactions”; Maravall 1999:155). This discourse has become particularly popular among international organisations since the early 1990s: it is implicit in the very name of *Transparency International*, an international NGO founded in 1993 which campaigns against corruption, and is also to be found in policy documents produced by the World Bank, the International Monetary Fund (IMF), the Organisation for Economic Cooperation and Development (OECD) and others (Vishwanath and Kaufmann 1996; G-22 1998; OECD 2000:72-4; Stiglitz 2003a; OECD 2005; IMF 2007).¹

¹ These four meta-rationales have been distilled from the literature, and this list is not intended to constitute an exhaustive typology of mutually-exclusive categories. It is, however, fairly comprehensive, and most rationales apparently left out are either different ways of expressing similar ideas or hybrids of two or more of the four. One good example of this is trust: transparency is sometimes argued to be valuable because it increases public trust in

The Imperfect Understanding of Variation

Individually, any of these rationales provides reasonable grounds for welcoming the greater availability of official information and opposing official attempts to withhold it. Collectively, their sheer diversity testifies to a basic shortcoming in much of the existing literature on the subject. This shortcoming was neatly expressed by Christopher Hood in an influential review essay, when he argued that transparency is “more often invoked than defined, more often preached than practiced” (2006b:4).

It is widely assumed that levels of transparency vary over time and between jurisdictions, but these variations have not so far been satisfactorily explained. This is partly because, a great deal of the academic literature on this subject is not primarily interested in explanation at all. Like much of the literature on public administration more generally, many works in this field are written by lawyers, scholars, politicians, officials and activists who are primarily interested identifying “current problems (the present) and desired solutions (the future)” (Raadschelders 2010:253). They are, in other words, intended as advocacy rather than analysis, and focus on establishing the theoretical merits and likely practical benefits of making governments more transparent. The normative consensus outlined above is due in no small part to these efforts, and the sheer diversity of rationales is in part a reflection of the diversity of different disciplinary perspectives represented in this literature.

One result of this predominantly normative focus is a tendency to engage in somewhat instrumental empirical analysis. Within a mode of argument which seeks to build a case

government (e.g. Worthy 2010). Trust, in turn, is argued to have a number of beneficial effects, including increasing compliance with official decisions and facilitating difficult policy choices by allowing governments greater leeway in making trade-offs between private interests. In fact, trust is arguably not a distinct rationale in its own right, but an alternative way of conceptualising the second and fourth rationales. It goes to the heart of how principals exercise control over their agents under conditions of incomplete information, and the conditions under which the principals perceive direct supervision of their agents to be necessary at all. This is elaborated in Chapter Three.

for reform on the basis of its normative desirability, the real world is principally interesting insofar as it provides evidence that there is indeed a problem to be solved (e.g. Meade and Stasavage 2006; Naurin 2006). Even among works which do not adopt this explicitly instrumental approach, it is often assumed that there has been – or, at least, that there ought to have been – a shift towards transparency-in-practice in parallel with the growing normative consensus. Both approaches have the unfortunate side-effect of encouraging empirical analysis which is framed primarily as a search for answers to the question “why are governments less transparent than they should be?” rather than on understanding whether and why they might have become more transparent at all. Shortfalls in transparency are routinely assumed to exist on the basis of assertions by journalists and civil society organizations, and are explained as a result of active resistance from those in power, motivated by an absence of commitment to the ideal and enabled “defective” institutions which block the realisation of self-evidently desirable outcomes (e.g. Prat 2002:2).

There are at least two reasons why this framing is unsatisfactory. The first is that transparency is not the only desirable feature of modern government, and trade-offs between competing goals might be necessary. Systematic recognition of this possibility among scholars has been rare, mostly normative in nature, and usually confined to consideration of the balance to be struck against either personal privacy or commercial confidentiality (e.g. Hazell 1998). David Heald, by contrast, identifies seven closely-related principles which might either be served by or conflict with transparency depending on the circumstances, including effectiveness, trust, accountability, autonomy/control, confidentiality/privacy/anonymity, fairness and legitimacy. From this, he draws the somewhat unorthodox but eminently sensible conclusion that there are many reasons why a society might legitimately choose a level of transparency lower

than the theoretically-possible maximum (2006:60). Dismissing these choices out of hand as failures of commitment is not an approach which is obviously well-adapted to understanding why they have been made or what the implications of alternative choices might have been.

Normative complexity does not simply involve conflicts between transparency and other desirable features of government. Although it is relatively straightforward to define in general terms, transparency has extremely complex and often contradictory implications when applied to concrete situations, and it is possible for different kinds of transparency to be in conflict with one another. The rationales discussed above all seek to empower non-state actors in their dealings with their governments. But each focuses on different beneficiaries, favours the disclosure of different kinds of information, and draws on slightly different overall visions of how politics ought to work. A representative-democratic rationale, for example, privileges the disclosure of the past behaviour of those holding office and the policy platforms of those competing to hold it in future. Financial transparency, by contrast, privileges the availability of timely, accurate, aggregated numerical data on public budgets and expenditures. This sort of information is most useful to those with a financial stake in the state, and is so technical that many voters are incapable of making much practical use of it. Financial transparency is not necessarily incompatible with democratic control. Several scholars have shown, however, that it has proved to be so, particularly since the 1990s, because it has allowed financial interests to resist attempts by elected governments to pursue policies which are popular with the electorate but incompatible with the prevailing neoliberal orthodoxy (Roberts 2003:14-5). For those interested in improving the way governments actually work, these distinctions matter. Indiscriminate use of incompatible rationales may make it difficult to decide in retrospect whether attempts to make governments

more transparent have been successful. It may also have the opposite of the desired effect if socially-determined power relations mean that actors in conflict with one's chosen beneficiaries also benefit from reform. These distinctions are frequently ignored, especially in the activist literature which routinely cites as wide a range of rationales as possible when advocating reform in an apparent effort to strengthen its case (e.g. Sunstein 1986:896-8; OECD 2005:1-2; Carter Center 2010).

A second problem arises from the tendency to explain variation in terms of “defective” transparency institutions. The problem is not that such institutions are irrelevant – far from it! It is unquestionably the case that attempts to obtain official information often provoke self-interested refusals from bureaucrats, and that poorly-drafted laws and weak enforcement mechanisms have frequently made this easier (Roberts 2006b:109-18). Furthermore, differences in operational and enforcement provisions have been shown to influence the frequency with which people make use of their rights to obtain official information: lower fees and simpler procedures are associated with higher request rates (e.g. Hazell and Worthy 2010:358). But the widespread tendency to focus on the specific features of transparency mechanisms is problematic because it has encouraged incomplete and possibly misleading diagnoses. It assumes that the specific aspects of transparency mechanisms which are identified as “defective” really are important, and encourages unduly pessimistic assessments of whether countries are transparent or not because the analyst's attention is drawn to the absence of features which are held to be necessary, while being diverted from practices or alternative institutions which might ensure access to important information in other ways (or render the whole question of access otiose for the purposes of a particular normative justification). There is increasingly widespread consensus among empirically-oriented scholars in this field that attention to social and political context is required for a comprehensive un-

derstanding the operation of transparency mechanisms (Darch and Underwood 2005:77-8,85; McDonald 2006:133; Darch and Underwood 2007; Hazell and Worthy 2010:358). But it is precisely these contextual factors which have usually been neglected as a result of the tendency to focus on specific features of access mechanisms. One of the contributions this thesis hopes to make is to illuminate some of these social and political influences on struggles over public access to official information.

The Challenges of Empirical Analysis

The need to move beyond this strongly normative approach to transparency research has been recognised, but progress in developing alternatives has been slow. One reason for this is that the concept of transparency has proved formidably difficult to measure (Finkelstein 2000:2; freedominfo.org 2005). This, in turn, has made it difficult to translate intuitive consensus about differences in secrecy and transparency into a valid and reliable basis for rigorous cross-case analysis.

The root cause of these difficulties is sometimes identified as the absence of a commonly-agreed definition of “transparency” (Florini 2007b:4), but this is not quite true. Scholars regularly provide definitions which are broadly consistent with each other and common sense. Examples include “government according to fixed and published rules, on the basis of information and procedures that are accessible to the public” (2001:701) and “the degree to which the existence, content, or meaning of a law, regulation, action, process or condition is ascertainable or understandable by a party with reason to be interested in that law, regulation, action process or condition” (Mock 1999:1082).

The problem, rather, lies in the fact that these definitions are surprisingly difficult to operationalise. They apparently suggest that transparency might be measured simply by determining how much official information is “accessible” to – or alternatively “the

extent to which” it is “ascertainable” or “understandable” by – some important group outside government (usually “the public”). This might, for example, be operationalised in terms of the supply and demand of information: the proportion of the administration about which information is readily available, or the proportion of citizens who actually try to obtain information, perhaps complemented by data on the proportion of those attempts which meet with success. This approach is especially appealing for the practical reason that, in many countries, laws designed to encourage transparency require governments to publish data which seem to make these kinds of assessments possible.

Attempts to compare the secrecy or transparency of whole countries by focussing on demand for information are hampered by problems of data quality and availability. Official statistics are the most widely-used source, perhaps because – where they exist at all – they are authoritative and the costs of producing them are borne by the government. Several important countries publish no statistics at all, however, and among those that do the transparency mechanisms, parts of government and specific kinds of requests they cover often vary across time and between jurisdictions. One particularly common difficulty concerns separating (frequent) requests for personal data from (relatively rare) requests for other official documents. In some countries, access to personal information is provided through standalone data protection or privacy laws, and statistics are reported separately; in others, requests are made under freedom of information laws, and are reported in ways which make it difficult to separate out the two kinds of request (cf. United Kingdom 1995:24-5). Some of these difficulties might be reduced by adopting a common set of standards for the collection and reporting of data, but such standards do not yet exist and as a result the existing data are of extremely limited use for cross-national comparison (cf. Vleugels 2009:13-15; Hazell and Worthy 2010:354).

Even if high-quality data did exist, the validity of using them to explain variations in transparency would still be open to challenge on more fundamental grounds. Assessing the effectiveness of transparency laws entails comparing a known quantity against an unknown – and often effectively unknowable – quantity. One common measure is the number of requests as a proportion of the total population, but this produces rates so low that the most rigorous conclusion which can reasonably be reached is something like “no more than a fraction of one percent of the population in any country has ever formally requested access to an official document under a statutory scheme”. These low rates are problematic because they mean that even quite small fluctuations in behaviour can dramatically alter results.² They also mean that the most interesting questions concern the reasons why people do not seek information, and on these questions such statistics are much less useful. Do people not show up in official statistics because they do not know rights of access exist, because they do not know important information is there to be requested, because they consider refusal a foregone conclusion, because they consider the risk of official retaliation too high, because sufficient information is already available (perhaps through third parties such as the press), because they are so satisfied with their government that they see no need to pay it close attention, or for some other reason? In short, are low request rates a sign defective institutions and low transparency, or effective alternatives and high transparency?

Attempts to overcome these problems by focussing on the supply of information are hampered by the fact that information is a non-fungible good. It is not valuable in the abstract, and thus quantity, extent and degree are not a particularly meaningful ways of conceptualising its availability (Bennett 1991:51). Rather, information is a dimension of

² The Scottish Information Commissioner reported in 2010, for example, that the 100% increase in requests by commercial entities was due to a single firm submitting 34 requests to different public bodies (Scotland 2010).

social interaction (Terrill 2000:5-7), and individual “pieces” of information are important because they help people achieve particular goals in the context of specific social and political relations – perhaps by reducing their uncertainty about other actors or their environment (e.g. Arrow 1979:306), or by providing a measure of control over power relations within which they are embedded (e.g. Bok 1982:105-12). Transparency, in short, means different things in different contexts.

Aggregate, quantitative measures are, consequently, most meaningful as part of attempts to assess the availability of particular kinds of information. This, in turn, implies the selection of particular social and political relations for analysis rather than others. Studies which make this choice can often be extremely informative. Large-scale surveys conducted by civil society groups, which rely on carefully designed suites of standardised requests submitted to multiple authorities, have suggested that low request rates in some countries may be at least partly due to problems of supply such as systemic bias against particular socioeconomic groups, rather satisfaction or disinterest (e.g. Open Society Justice Initiative 2006; RaaG and NCPI 2009). There also exists a small number of detailed interviews and ethnographic studies of particular stakeholder groups, usually the press, administrators or politicians, which provide similarly rich accounts (e.g. Hazell, *et al.* 2010).

There are practical and theoretical problems with these studies, however, at least for present purposes. These studies are formidably resource-intensive and time-consuming, and so few have been conducted that data are not yet available for enough countries or requester groups to allow comprehensive cross-national comparison of all possible contributory factors. They constitute one possible source of evidence on which a more general explanation could draw, but they do not themselves provide it. More

fundamentally, they are informative because they are focussed; the more general the conclusions one wishes to reach using this approach, the more aspects of society one would need to consider. This inverse relationship between meaningful results and scope means that a truly comprehensive direct assessment of transparency would require examining the whole of the political system – in the broadest sense of the term – of each society. Even if such data were available, synthesising it would probably pose a near-insurmountable problem on its own.

Why Study the History of Freedom of Information?

It is clear that the question “why does transparency vary between countries?”, however interesting or important it may appear, is too broad to be answerable within a single work – indeed, it may not be answerable in any meaningful sense at all without substantial qualification. This thesis therefore seeks to answer a much more specific and more easily answered question: why did the consolidated democracies introduce freedom of information acts at different times? This section of the chapter explains why treating freedom of information acts as the outcome of interest and studying them from an historical perspective is worthwhile, and the next section discusses the reasons why variation among the consolidated democracies is particularly significant.

The Significance of Freedom of Information

Freedom of information acts provide a “set of rules for framing arguments” about access which embody a general presumption in favour of disclosure rather than official discretion (McDonald 2006:136; Roberts 2006b:121-2). They have four essential elements: they are (1) primary laws (2) providing a general right of access on request (3) to original documents produced by the government in the ordinary course of carrying out its activities, (4) subject to a limited number of specified exemptions which must be ex-

plicitly invoked by officials when seeking to withhold documents.³ Laws which meet all four of these criteria are worthy of attention because their introduction constitutes an attempt to shift politics and administration in a particular society decisively away from secrecy and towards transparency. They are among the most important mechanisms regulating public access to official information, regardless of which of the four normative perspectives outlined earlier one happens to prefer.

If transparency is justified as a means of limiting state power, as most of the normative rhetoric discussed earlier in the chapter suggests, then the most important mechanisms are the ones which are most likely to favour release against the wishes of those in positions of authority. Primary laws are important because they are more likely to be effective than non-legislative mechanisms such as executive orders, internal administrative policies, and the kinds of informal information-sharing habits which often arise between administrators and prominent stakeholder groups. These alternatives can only reasonably be expected to work so long as the government itself considers an exchange of information beneficial; their informality means that particular groups can usually be excluded – or information withheld entirely – without fear of formal sanction if the government chooses.

Freedom of information is also more likely to favour public access to information than laws which do not establish a firm presumption in favour of disclosure to the public at large. The alternatives are generally of two types: those where the requester must demonstrate a specific legally-sanctioned interest in the information in question, and those in which the exemptions are not clearly defined (as is the case with most consti-

³ This definition is consistent with common scholarly usage, although some include the additional requirement of dispute resolution and enforcement mechanisms (e.g. Birkinshaw 2006b; Worthy 2010). This arguably confuses the right itself with the circumstances under which it is exercised, and has been omitted here to the extent that enforceability is not already implicit in the concept of “a legislative act”.

tutional rights of access). Under such regimes, information which the government would prefer to withhold is typically only available through the courts, either by requesters bringing suit on their own initiative, or via discovery, disclosure and cognate mechanisms designed to ensure natural justice in matters already under dispute. Although these mechanisms are beneficial to those who succeed in using them, recourse to the courts is expensive, time-consuming and uncertain in outcome. These regimes establish much higher barriers to reliable disclosure than freedom of information, under which the courts are generally a last resort. Their specifically democratic value is correspondingly lower, especially given the time-sensitive nature of politically-relevant information: governments may be able to render themselves opaque by delaying disclosure through an abuse of requirements to show standing or forcing dissatisfied requesters to go to the time and expense of litigation.

Access to original documents is also normatively more desirable than access to other kinds of information. Original documents constitute the record the government maintains for itself of important matters like the distribution of responsibilities throughout its constituent organisations, the procedures and principles to be applied when making decisions or taking action, the identities of decision-makers, which decisions they made or actions they have taken, and the reasons or factors on which those decisions were based. Access to these documents is important because official files constitute the authoritative record of these matters, in the dual sense that they are often the only attempt at comprehensive documentation of factors relevant to a matter (however incomplete such attempts must always necessarily be), and also because the information they contain directly underpins the exercise of state authority. There are many other ways in which access to this sort of information might theoretically be achieved, such as requirements that the administration answer questions (e.g. when asked by the

press, as under the German *Landespressegesetze*), and requirements that the government collect and publish information relevant to certain policy domains which would not otherwise exist (also known as “targeted transparency mechanisms”; cf. Fung, *et al.* 2007). Required-response laws are normatively less desirable for the same reason as non-legal access mechanisms: they depend on the cooperation of the executive, and hence their reliability in cases of conflict is open to doubt. Targeted transparency and related publication schemes are undesirable on slightly different grounds. By providing access to specific sorts of information, these mechanisms implicitly focus on specific political relationships, policy domains and outcomes. Freedom of information is preferable because it embodies the presumption that requesters should be the ones who determine what information matters.⁴

The Value of Comparative-Historical Knowledge

Freedom of information laws merit attention because they allow an examination of some of the neglected social and political contextual factors which influence broad trends in government secrecy and transparency. Access laws allow this because they are widely understood by direct participants in disputes over access to information - politicians, lawyers, administrators, journalists, activists and academics - to be an important influence on the outcome of those disputes. It is easy to see why: almost every freedom of information act in existence replaced a confusing tangle of limited, and often ineffective, access mechanisms, and explicitly overrode a great many other rules which gave officials a great deal of discretion in what to disclose, when, and to whom.

⁴ It is important to underline one claim which is *not* being made here: that any of these other instruments or practices is irrelevant to understanding transparency. Many will play a crucial role in later chapters, allowing subtle shifts in underlying power relations to be traced with more precision than can be done by relying on a single law alone. The claim here is merely that the alternatives are less desirable than freedom of information as a primary indicator of broad attitudes towards transparency, because they conform less fully to the ideal whose implementation is at stake.

This belief makes these laws a site of intense conflict and negotiation, conducted through formal and semi-formal processes which produce a rich documentary record suitable for historical analysis: official inquiries and reviews, press debates, and high-level negotiations between politicians, bureaucrats and interest groups, not to mention the legislative process itself and subsequent judicial proceedings resolving disputes over implementation. This evidence can be used to identify the identities, goals, tactics, strategies and interpretations of the various competing parties in these struggles, the kinds of information which became the subject of dispute in different countries, the beneficiaries whose interests were invoked to justify disclosing it to the public, the power relations protagonists were aiming to transform, the problems they sought to solve, the manner in which they understood and attempted to resolve the inevitable complex trade-offs with competing goals, and the factors which influenced their success. In short, these laws are interesting because “conflicts over institutions lay bare interests and power relations” (Thelen and Steinmo 1992:27).

A comparative-historical perspective is desirable because it is likely to produce richer insights into this social and political context than can be gained from a study of individual countries at single points in time, however significant those points might be. This is because the context in which laws are embedded is neither given nor fixed; it is a dynamic system whose features at any point are the product of complex processes unfolding over time. Access laws do not sit apart from this system, they are produced by it and form part of it in turn. The fundamental effects they are supposed to have means that these laws are likely to have far-reaching feedback effects, but political systems are complex, and usually evolve slowly and unpredictably. Participants in disputes over access to information, who naturally constitute a major source of evidence for historical and contemporary studies alike, cannot be uncritically relied upon to provide a com-

prehensive picture of the dynamics at work. The disputes to which they are party are almost always confined to particular jurisdictions, and frequently involve information of direct relevance to localised political debates. These actors may not fully appreciate the impact of structural features whose significance might only become apparent when systematically compared with other places or over longer periods of time. Careful comparison which is sensitive to temporal dimensions such as sequencing, duration and interaction is less likely to mistake causes for effects, or to find spurious associations between factors which may be causally-unrelated despite strong normative claims to the contrary.

Although a study of the history of access laws is likely to be informative, it must be recognised that there are some things this approach cannot hope to explain. The existence of a law is not, in and of itself, evidence that any given citizen will find it easier to obtain a copy of a specific document. The forces which produce a law are only one set of influences among many on the way it is used, abused, implemented or resisted once in place. Indeed, they may well be very weak or indirect influences when compared with things like the effectiveness of dispute resolution and enforcement mechanisms, the attitudes of the individuals involved, the immediate significance of the kind of information at stake, and so on. A study of the history of these laws offers the possibility of understanding the macro-level politics of access to information, and of attempts to establish transparency as a broad principle. On its own, it cannot predict the outcome of micro-level attempts to obtain official information; it cannot, in other words, offer a sufficient explanation for the varying effectiveness of access laws, however that might be defined.

Methodological Merits of a Comparative-Historical Approach

A comparative historical study of freedom of information acts also has several methodological advantages. The first is clarity. It uses unambiguous, widely-understood and easily-verifiable data. The existence of a law meeting the four criteria outlined above and the date on which it was introduced or modified can be established by consulting the legislative record of the country in question, or alternatively by using one of several secondary sources on the subject (e.g. Banisar 2006; Vleugels 2009). In this way, it is easy to eliminate the more egregious cases of laws which provide access in name only. Zimbabwe's notorious *Access to Information and Protection to Privacy Act 2002*, for example, is widely understood to constitute a censorship rather than an access regime (Banisar 2006:20,27; Vleugels 2009:16).

A second advantage is cross-case reliability: freedom of information acts are remarkably similar in their four essential respects. They therefore constitute a sound basis for comparison, because it is possible to be reasonably certain that observed differences between cases will not be due to differences in the measure itself. These laws are not all entirely identical, of course, and as noted earlier differences in things like fees and enforcement mechanisms can influence request rates. But once the law is treated as the outcome to be explained rather than a potential cause, these differences can legitimately be ignored as "relatively tangential" (Bennett 1997:217).

The main area in which significant differences might potentially arise concerns the kinds of information exempted from disclosure.

Table 1 documents the common categories of exemption in the laws in the twenty-three consolidated democracies.⁵ It shows that there is a small set of exemptions which are common across all cases, protecting the core interests of state (such as national security and top-level political and economic decision-making) and important third-party interests. The exemptions which appear in every law have been shaded for ease of identification. There also exists a small number of other widespread exemptions covering things like the commercial operations of government and information obtained in confidence. Where exemptions do differ markedly, they often concern matters which need to be protected in a country due to particular institutional arrangements (e.g. communications between the political executive and the royal family in constitutional monarchies), or matters whose exemption is largely idiosyncratic (e.g. many of those subsumed under the heading “Administration – Research Activities”). Although these kinds of information may be perceived as important enough to protect in these countries, they do not undermine the claim that these acts are a sound basis for cross-national comparison.

⁵ The rationale for the selection of countries in

Table 1 is discussed in the next section of this chapter. This table is intended to give an overview of the kinds of information exempted by each access law, and as a result the column headings do not necessarily reflect the exact wording of specific exemptions in each law. In some cases, information is marked here as exempt even though it is not explicitly mentioned in the law. One example is Sweden, where the law only applies to “finished” documents and therefore excludes draft documents by implication. In other cases, several narrow categories from different laws have been combined into a single broader category for the sake of brevity and readability (e.g. “Administration - Research Activities”).

Table 1: Exemptions from Administrative Transparency Laws

	Administration – Commercial Operations	Administration – Effective Conduct	Administration – Internal/Draft Documents	Administration – Personnel Management	Administration – Policy Advice	Administration – Research Activities	Economy – Financial Policy	Economy – Regulation	Economy – Tax System	Intergovernmental – Domestic	Intergovernmental – Foreign Affairs	Justice – Conduct of Trials	Justice – Effective Investigations	Justice – Legal Professional Privilege	Other – Electoral Rolls	Other – Geological and Environmental	Politics – Cabinet Deliberations	Politics – Communications with Sovereign	Politics – Negotiations	Politics – Parliamentary Privilege	Security – Public Health and Safety	Security – National Security and Defence	Third Party – Commercial Interests	Third Party – Education	Third Party – Examination Results	Third Party – Obtained in Confidence	Third Party – Personal Health/Safety	Third Party – Personal Privacy	Generic – Exempt under Other Law
Australia	•	•	•	•	•	•	•	•	•	•	•	•	•	•															
Austria ⁶	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Belgium		•					•	•			•						•				•					•		•	•
Canada				•	•	•	•			•	•			•					•			•				•	•	•	•
Costa Rica ⁷																													
Denmark		•	•	•	•				•	•							•				•							•	•
Finland	•	•	•		•		•				•					•			•		•			•				•	•
France					•		•	•			•		•									•						•	•
Germany	•						•				•								•		•					•		•	•
Iceland	•	•	•	•							•					•						•						•	•
India	•										•						•				•							•	•
Ireland	•				•	•	•	•			•			•			•				•					•		•	•
Israel		•	•	•	•						•										•					•		•	•
Italy				•	•		•	•			•											•						•	•
Japan	•		•	•	•						•											•				•		•	•
Luxembourg ⁷	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Netherlands	•										•					•	•					•						•	•
New Zealand	•			•		•	•	•	•	•	•			•			•	•	•			•			•	•	•	•	•
Norway ⁸		•	•			•					•						•	•				•	○	•	•			•	•
Sweden	•	•				•					•					•						•						•	•
Switzerland		•	•		•	•	•	•			•											•				•		•	•
United Kingdom		•	•		•	•	•	•	•	•	•			•		•	•			•		•			•	•	•	•	•
USA ⁹		•	•				•				•				•							•					○	•	•

Source: National freedom of information laws in each country.

Key: • = law explicitly exempts this information; ○ = law implicitly exempts this information.

⁶ The data for Austria reflects the ambiguous nature of the *Auskunftspflichtgesetz* (Duty to Grant Information Act 1987). It provides no right of access to documents, and Article 1 explicitly preserves existing exemptions and statutory duties of secrecy. From the perspective of requesters, it therefore fails to deliver certainty, and has been shown here as exempting all categories in order to maintain a rough degree of comparability with other regimes.

⁷ These countries do not have access to information laws, and have been presented as if they contained all exemptions exhibited by the other countries listed here, for the same reasons as Austria (discussed above).

⁸ There is no explicit general exemption for commercially-sensitive data in the Norwegian act, but s5a refers to explicit exemptions in other statutes, and a range of specific-purpose laws require officials to maintain the secrecy of financial and other commercially-sensitive information.

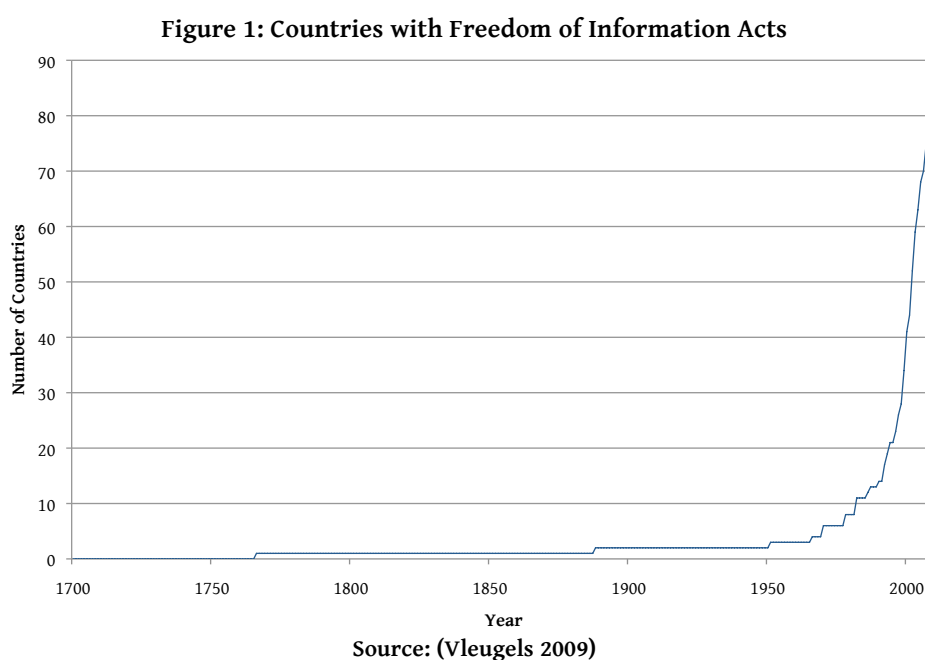
⁹ The USA is listed as partially protecting personal privacy because several exemptions in the *Freedom of Information Act* specifically mention privacy concerns as relevant in particular contexts; a separate law protecting privacy also exists in the USA, but is generally agreed to be weaker than those in other countries (Flaherty 1989:305).

The final methodological advantage is that the law provides a convenient point around which to orient a comparative study of the processes within each country by which official control over information became defined as a problem, by which general public rights of access were identified as the appropriate solution, and by which that solution was put in place. The dates on which different countries adopted their laws constitute points of comparable significance, at which they can reasonably be said to have made similar formal public commitments to transparency; it is certainly a much sounder basis than a single calendar date (e.g. 1976, as used by Bennett 1991). Comparison on the basis of points of common significance makes it possible to examine more rigorously whether countries were all subject to similar pressures for reform (by, *inter alia*, examining whether the causes were actually present, whether they pre-dated the outcome, and whether there is historical evidence to suggest they were relevant), and whether countries experiencing similar pressures were equally sensitive to them (measured, for example, by how much time elapsed after the onset of putatively-favourable conditions for debate to arise and for legislation to be enacted). The legislative process also provides a convenient source of counterfactuals for comparative analysis, in the form of proposals for freedom of information which are rejected. The dates of adoption decisions are useful, in other words, because they allow systematic assessment of the relative importance of different potential contributory factors through attention to sequencing, duration and possible causal relevance.

Why Study the Consolidated Democracies?

The adoption of freedom of information acts around the world is depicted in Figure 1 below. This shows the number of countries with a law in every year between 1700 and 2009. For most of this period, only one country had one: Sweden, which adopted its first

in 1766 and, after a hiatus later in that century, the direct ancestor of its current regime during the parliamentary restoration of 1809. Colombia was the second, in 1888.¹⁰ Finland was next in 1951, consolidating a long-standing tradition of transparent administrative practice inherited in part from the time when it was part of Sweden. A turning point appears to have occurred in the 1960s. Since then, an increasing number of countries have passed laws, and in 2009 the number was just short of ninety (the exact number depends on whether analysts include self-governing territories as “countries”, and whether they count especially “strong” subordinate legislation; both have been excluded here).



The global spread of access laws is interesting because it is explained in very similar terms to the global recognition of transparency discussed earlier in the chapter. Very broadly, if somewhat schematically, these explanations emphasise one of three kinds of

¹⁰The available sources are unclear on the specific rights provided by this law, and also on whether it applied to the whole of Colombia or only the municipal administration of Bogotá. It has been treated as a full access law for the purposes of Figure 1 on the basis that it is often mentioned as such in the secondary literature, but does not feature prominently in the body of the thesis for reasons explained later in the chapter.

factors: ideological change, agency, and transformations in the social and political context in which governments operate.

The adoption of access laws is widely assumed to be at least partly due to the emergence of the widespread consensus about the normative desirability of transparency discussed in the first part of this chapter, and especially its democratic merits (Florini 2007b; Margetts 2011:518). The link between the two is, however, often based more on assertion than on hard evidence. This is especially true of works by activists and practitioners, who routinely portray adoption as a consequence of officials accepting the legitimacy of open government and popular democratic participation (e.g. Archibald 1993:726-8; Relyea 2001; Banisar 2005; Shrivastava 2009). The small number of rigorous scholarly works on this subject tend to emphasise coercive or mimetic rather normative isomorphism. One influential early study emphasised the importance of the diffusion of ideas among policy élites about how to address domestic problems rising from state growth rather than an international democratic consensus (Bennett 1997). Two subsequent studies have downplayed the importance of domestic factors, pointing instead to advocacy by international governmental organisations and the desire by local élites to signal acceptance of particular norms to international markets (Grigorescu 2003; Roberts 2003).

Ideological explanations often overlap substantially with agency-based explanations, and are common in studies of the development of many kinds of political institutions, not just freedom of information. These usually hold that institutions exist because they are consciously and deliberately created by those who benefit from them, and that they persist and evolve because of the ongoing support of those same actors (Thelen 2003; Pierson 2006:105). Activists usually emphasise the agency of domestic political actors.

The introduction of access laws is widely held to be a response to demand from their primary supposed beneficiaries – “the public” and civil society organizations. Cases of surprisingly late adoption are attributed to resistance by government officials motivated by political or institutional self-interest. Scholars, by contrast, have tended to emphasise the agency of international rather than domestic actors, and to be more sensitive to the importance of unintended consequences. An important body of scholarship grounded in international relations argues that transparency mechanisms have spread under pressure from powerful national governments because they represent a cheaper alternative to regulation through coercive inspection and military intervention (e.g. Florini 1998; Mitchell 1998; Finel and Lord 1999; Blanton 2002b; Hale 2004). They are preferable, so the argument runs, given both the increasing interdependence of national economic, political and military networks and the recent generalised shift towards market-based mechanisms for resource allocation. A smaller but growing body of political science literature emphasises the role of donor organisations like the World Bank, cooperative forums such as the OECD, and international civil society organisations like Article 19, Access Info Europe and Amnesty International (e.g. Bennett 1997; Grigorescu 2003).

Third and finally, many works on this subject also emphasise the importance of adaptation to new social, administrative and technological conditions such as the financialisation of the global economy, the development of a free press and the emergence of post-materialist political concerns (e.g. Hood 2006a:214-5; Lord 2006:5-10; McDonald 2006:129; Rely and Cullier 2010). Perhaps the most basic structural contributor of all is the development of the bureaucratic state, since the question of administrative transparency would probably not arise in the absence of official capacity to engage in secrecy (Bennett 1997; Florini 2007b:7-8). Bureaucracy is of enormous importance, and its

influence is discussed at considerable length in the next chapter. By far the most commonly-cited structural factor, among academics and activists alike, is the popularisation of the Internet. By reducing the transmission and reproduction costs of information, so the claim runs, the 'Net has produced new patterns of demand, made possible new patterns of political and administrative communication and collaboration, and thereby rendered traditional, highly rule-bound bureaucratic governance obsolete (Holzner and Holzner 2006; Margetts 2006; e.g. Fung, *et al.* 2007; Margetts 2011:518).

These factors are all plausible explanations for the recent surge in interest in the politics of information among academics and policy professionals, and as subsequent chapters show, many have contributed to recent legislative activity in at least some countries. But as explanations for the differing adoption of freedom of information acts, they are somewhat unsatisfactory. With a small number of recent and partial exceptions discussed below, scholarship on this subject has been framed a search for features shared by adopting countries, and it is routinely assumed that these causes have the same effect wherever they are present. There is, thus, a significant possibility of selection bias in many existing accounts (cf. Geddes 1990). The possibility that the same factors might also be present in countries without access laws is rarely given serious consideration, nor is the possibility that particular causes might only be relevant in some countries or under certain circumstances. This lack of attention to causal complexity means that relatively little serious attention has been given to the possibility that the adoption of freedom of information might be an instance of “equifinality” rather than classic convergence – that the same outcome might be the result of more than one set of causes, and that there might be considerable variation in causes among countries which all share the outcome of interest.

There is good reason to suspect that the causes of freedom of information are indeed more complex than has hitherto been recognised. The presumption of causal homogeneity is inconsistent with the primary and secondary evidence for many countries, which bear witness to a very great degree of causal heterogeneity (e.g. Lasserre, *et al.* 1987; Vincent 1998; Terrill 2000; Higgs 2004; Wegener 2006). One need only consider the fact that at least half a dozen countries had introduced access laws well before the popularisation of the Internet in the mid-1990s, while many have yet to do so almost two decades later, to see that a prominent and widely-cited cause like information technology has had very different effects in different countries. That existing approaches are unsatisfactory is also strongly suggested by the fact that the small number of rigorous, empirically-oriented studies in this field often proceed by rejecting the conclusions of other studies, but then produce results for which they are unable to account – such as that stronger democracy does not seem to contribute to (perceptions of) greater transparency (Relly and Sabharwal 2009:155), that higher numbers of veto players make freedom of information more likely despite theoretical expectations that they should encourage policy stability (Berliner 2010:25), or that different information policies are adopted at different rates despite rapid diffusion of knowledge (Bennett 1997:227-8).

The Evolving Relationship between Democracy and Transparency

This thesis seeks to show that these causes are more complex without necessarily being completely random or idiosyncratic: that cross-national variation can be understood and explained in systematic terms. It does so by focusing on the adoption of freedom of information among the consolidated democracies. This focus has been adopted three reasons. First, the differences between these countries are large. Second, they cannot be easily explained as mono-causal convergence on a highly-participatory, liberal individual kind of democracy, as is often assumed (or occasionally claimed) by existing works.

And third, these differences have been largely neglected even by the small portion of the scholarly literature which has attempted to provide genuinely causal explanations. These countries thus provide an appealing basis for building a more nuanced understanding of the adoption of freedom of information, and of the broader political significance of general public rights of access to information – one which is more sensitive to causal heterogeneity, complexity and equifinality than has so far been offered. The following chapters examine many of the specific contributory factors mentioned above; the following discussion justifies the selection of the consolidated democracies by demonstrating the insufficiency of one of the most widespread explanations of all for the diffusion of freedom of information laws: democracy.

The idea that there might be an association between access rights and democracy is not implausible. Apart from the enormous body of theoretical literature discussed earlier, the earliest modern access laws were introduced in democratic countries.¹¹ On the other hand, the relationship is not nearly so straightforward as might be imagined. In most countries, the attitudes towards access of the major protagonists have been highly variable: not all bureaucrats have resisted access laws with equal vigour, and not all resistance can plausibly be attributed to a lack of commitment to democracy (Robertson 1999:1-7). On an ideological level, democratic accountability has frequently been invoked against access rights, often successfully (Robertson 1999:2), while the relationship between democratic institutions and access laws has also varied between countries and over time.

¹¹ The term “modern” is employed here to distinguish laws passed in the 20th and 21st Centuries, which meet all four criteria outlined earlier, from earlier laws in places like Sweden, Finland and Colombia which met some, but not all. The Swedish law, for example, lacked specified exemptions until the 1930s.

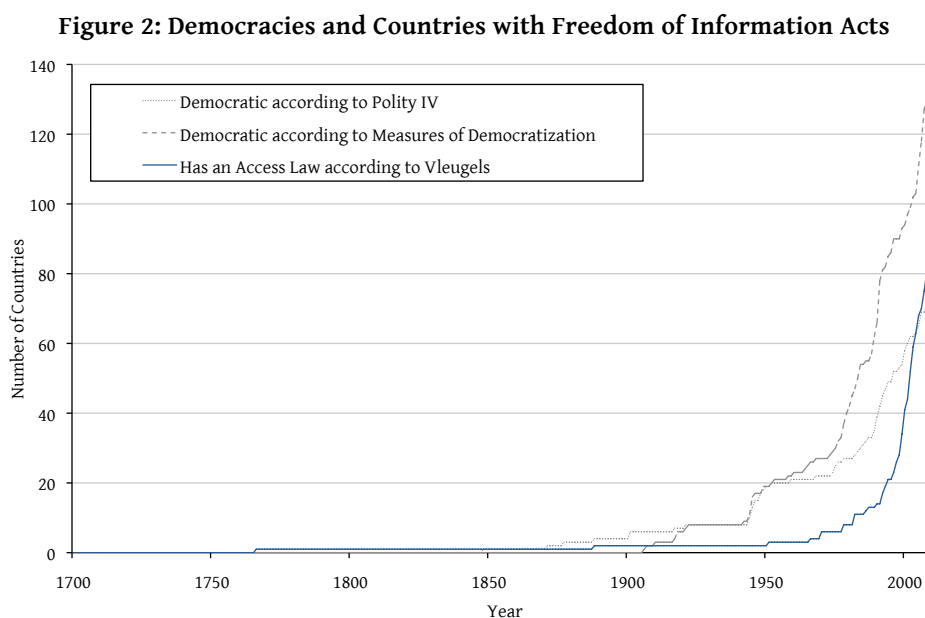
The variable relationship between freedom of information and democracy can be readily demonstrated with cross-national time-series data on political institutions. Several suitable datasets exist, and although none are without shortcomings (Munck and Verkuilen 2002), two of the most widely-used are suitable for present purposes. These are the *Polity IV* data series (Marshall and Jaggers 2009b) and Tatu Vanhanen's (2009) *Measures of Democratization*. *Polity IV* provides coded qualitative data on the political characteristics of 140 major countries from 1800 onwards, and can be used to establish the existence of formal political institutions and practices such as free and fair elections and checks on the exercise of government authority. *Measures of Democratization* provides data on two key aspects of democratic practice – electoral turnout and major-party share of the vote – for 190 countries from 1810 onwards. It shows whether voters had, and whether they exercised, a meaningful choice between viable alternative governments. As might be expected from sources which provide different data and are based on different assumptions, there are some discrepancies. Applying a fairly restrictive set of criteria to *Polity IV* reveals that 71 countries could be considered fully democratic in 2008;¹² according to *Measures of Democratization* there were 130.¹³ The apparent discrepancy of 59 countries is less significant than it appears: 19 are small countries not covered by *Polity IV*, while the focus in *Measures of Democratization* on electoral politics rather than checks on the exercise of executive power means it tends to rate countries

¹² *Polity IV* includes a composite indicator for the institutionalisation of democracy, but it is unsuitable because it adds together values for distinct categorical variables. Since the argument to be developed in this thesis is that different configurations of institutions have different effects, a more specific set of criteria were applied (an approach the authors themselves recommend; cf. Marshall and Jaggers 2009a:14). A country is considered to be democratic here where political participation is widespread and organised around enduring national political organisations, where those in power do not systematically attempt to disenfranchise their opponents by changing the rules of the game, and where power is won through open, competitive elections. These criteria are consistent with definitions used in other influential studies (cf. Rueschemeyer, *et al.* 1991:43-4; Linz and Stepan 1996:7-15). They were applied both to the legislature, and also to the chief executive in countries where that position is separately elected. In terms of the *Polity IV* dataset, the specific criteria were: XRReg=3 and XRComp=3 and XROpen≥3 and XConst≥2 and (ParReg=2 or ParReg≥4) and ParComp≥3. Throughout this thesis, "Germany" refers to West Germany prior to reunification, and the unified Federal Republic thereafter.

¹³ Following Vanhanen's own suggestion (2003:65), the criteria applied to *Measures of Democratization* were Competition≥30 and Participation≥20.

as democratic earlier, and this inflates its total somewhat. The differences between the two datasets are not contradictory, but merely evidence of different emphases.

Figure 2 below shows the same data as Figure 1, together with the number of countries which were democratic in that year and which remained continuously democratic until 2008 according to the two indices.¹⁴ This figure is *prima facie* consistent with Bennett's (1997) claim that democracy was a necessary condition for the development of access rights during the 20th Century, but that it was not sufficient. The number of democracies and the number of countries with access laws have both risen over the course of the 20th Century, and their rate of increase has itself risen over time. If the two exceptionally early cases of Sweden and Colombia are excluded, there were more democracies than countries with access regimes until sometime around 2005 at the earliest, and until the late 1990s every country which had an access law was a democracy. On the other hand, not all democracies have access laws, even today.



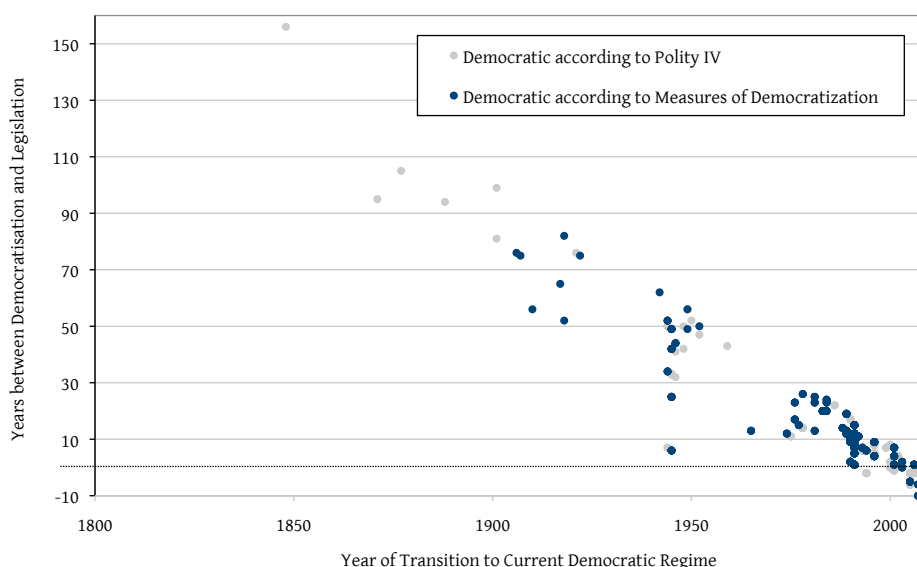
Source: (Marshall and Jaggers 2009b; Vanhanen 2009; Vleugels 2009)

¹⁴ In order to ensure the data are comparable, Figure 2 has been truncated at 2008, the last year covered by all three datasets. Vleugels provides data for 2009.

The relationship between democracy and transparency was more complex in the mid-1990s, although this is not obvious in Figure 2. The dramatic increase in laws during this period was largely the result of activity in countries which had recently democratised. This suggests that the third wave of democratisation occurred at a time when access to information was considered part of democracy, alongside things such as free and fair elections, and rights to free speech and assembly (cf. Roberts 2006a:107-123).

The transformation in the relationship between access rights and democracy can be seen more clearly in Figure 3. Each point on this chart represents a democratic country with an access to information law. The horizontal axis shows the year of transition to the current democratic regime according to the two datasets being used here. The vertical axis shows the number of years after that transition before an access law was introduced. Note that the distance between the points and the horizontal axis becomes shorter as one moves to the right: the period between the transition to democracy and the introduction of a transparency law has become shorter over time.

Figure 3: Gap Between Democratisation and Freedom of Information Law



Source: (Marshall and Jagers 2009b; Vanhanen 2009; Vleugels 2009)

The countries depicted at the far right of Figure 3 suggest that, by the early 21st Century, freedom of information had apparently become more than just an accepted part of what it was to be a democracy.¹⁵ By this time, several countries introduced laws prior to making the transition, and as of 2008 four non-democratic countries had introduced access laws (Pakistan, Tajikistan, Thailand and Uzbekistan). Democracy is apparently no longer even necessary for the introduction of an access law; these laws are, rather, a means for countries to present themselves as democratic despite lacking other essential features of a functioning democracy.

Consolidated Democracies as the Universe of Significant Cases

Scholarly studies of freedom of information have only recently begun to seriously confront the possibility that the relationship between democracy and access is far less straightforward than usually supposed. Most of these recent efforts have focussed on adoption decisions in parts of the world where the case for a democratic explanation is far weaker – whether it be recent adopters in the developing world (Berliner 2010), or parts of the world to which freedom of information has diffused only very unevenly (Relly and Cullier 2010). There persists a largely unexamined assumption that strong democracy favours transparency, and relatively little attention has yet been paid to the considerable differences which exist between the consolidated democracies, where conditions should have been most favourable.

For present purposes, the “consolidated democracies” are defined as those countries which met either the *Polity IV* or *Measures of Democratization* criteria outlined above in

¹⁵To make it easier to see the changes which have occurred over the course of the 20th Century, Figure 3 omits two early outliers (Sweden and Colombia) which legislated a long time before democratising and which should appear well below the x-axis. The four countries which have access laws but are not democratic according to either dataset (Pakistan, Tajikistan, Thailand and Uzbekistan) might be placed just off the bottom right corner, but have not been included because their location is by definition unknown. Similarly, the five countries that have access laws but are not tracked by either dataset (Kosovo, Serbia, Aruba, the Dutch Antilles, and Liechtenstein) do not appear either.

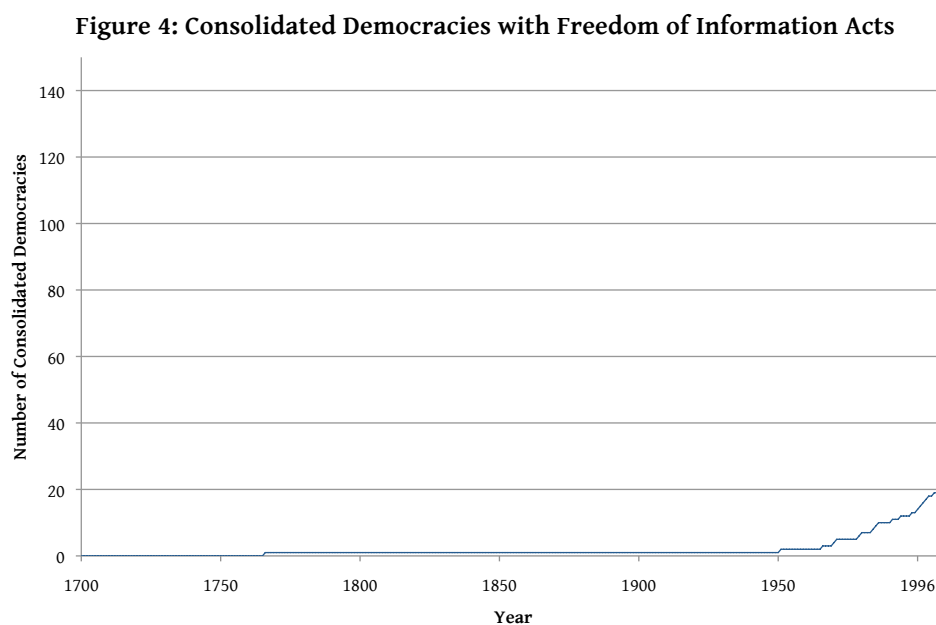
every year since 1955. There are twenty-three such countries: Australia, Austria, Belgium, Canada, Costa Rica, Denmark, Finland, France, Germany, Iceland, India, Ireland, Israel, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Sweden, Switzerland, the United Kingdom, and the USA.¹⁶ Interestingly, although the countries which qualified as democratic under each dataset diverge for other periods, the two are in almost complete agreement here; the only difference is that *Measures of Democratization* counts Iceland and Luxembourg as democratic, whereas *Polity IV* does not provide data on either.

The year 1955 has been chosen, perhaps somewhat arbitrarily, for two reasons. Firstly, it marks the end of the Allied occupation of Austria, and is as good a point as any to mark the end of the disruptions caused by the War to regular self-government. Secondly, this period covers the introduction of access laws in every country except Sweden, Finland (which introduced its access law in 1951 but which shares much of the relevant constitutional, political and administrative history with Sweden), and Colombia (which has been excluded from this study because it was not democratic throughout the post-war era). It thus captures those countries which were already firmly democratic well before the idea of freedom of information became widely-accepted as part of the idea of democracy, and which have remained so continuously to the present.

That there is considerable variation in the timing of their legislation can be seen in Figure 4 below, and in

¹⁶ Of these 23 countries, only France and India failed to qualify as democracies according to both criteria for the entire post-war period. Both experienced severe disruptions to regular democratic government: France with the collapse of the Fourth Republic and the establishment of the Fifth in 1958; India with the Emergency of 1975-77. Despite this, the periods during which they failed to qualify as fully democratic were brief departures from an overall democratic experience; they are, moreover, the only two countries which fail to qualify under only one of the two measures. All other candidates for the title “consolidated democracy” fail to qualify under both at some point.

Table 1 on page 48. A small number legislated before the 1970s, and there was a burst of legislation in the five years between 1978 and 1983. A later, and more sustained period of reform occurred in the 1990s and continued into the new millennium. By 2005, only two countries on this list did not have a regular law enshrining access to information. These are Costa Rica, where proposals have been raised in parliament but no action has been taken, and Luxembourg, where legislation is pending as of early 2011. Two other countries had laws which are sometimes described as freedom of information acts but which failed to meet one or more of the four criteria laid out above for some or all of this period: Italy, which only qualified from 2005, and Austria.



Source: (Marshall and Jaggers 2009b; Vanhanen 2009; Vleugels 2009)

These countries are also worthy of examination because the differences between them cannot be explained solely with reference to the existence or “strength” of democracy. The USA, for example, had been democratic for at least a century according to one of the definitions proposed above before it introduced a functioning right of access in 1966. This is arguably the most influential and widely-used access law in the world, and transparency is both prominent in American political discourse and routinely framed in

terms of popular democratic control. Clearly, even in an environment as propitious as this, the mere existence of a democratic system is not a sufficient explanation. More problematic still are countries like the UK, which had been democratic since 1918, and Germany which was democratic throughout the post-war era. Both were slow to legislate, only doing so in the new millennium once democratic aspirations had apparently become a sufficient condition in countries with far weaker traditions of democracy-in-practice. Why did these countries wait so long, despite the USA serving as a clear example? These are not isolated cases. Switzerland was recognisably democratic for over 155 years according to *Polity IV* before introducing a law at the national level in 2005. Why, if democracy is the explanation, did it take almost forty years longer than the USA? And, finally, can any explanation which works in these countries also be applied to Sweden, a nation which became fully democratic in the 1920s, but which introduced its law a century and a half before full male adult suffrage?

These are, furthermore, all countries in which the rule of law generally prevails, where the bureaucracy is (with certain partial exceptions) well-resourced and professional, and where civil society and the media are free and active. They are, in other words, countries in which differences in adoption cannot readily be attributed to the absence of the material preconditions which might reasonably be expected to ensure an effective access law. Legislation cannot reasonably be explained in terms of governments wishing to appear democratic with no expectation that they will ever be put into practice. Quite the contrary, the fact that access laws are more likely to be effective here than elsewhere means that disputes over their introduction are more likely to be based on and to reveal reasonable expectations on the part of important political actors about their effects than might otherwise be the case.

Table 2: Information Access Rights in Consolidated Democracies¹⁷

	Constitutional Rights	Legislative Rights
Australia	Nil	Freedom of Information Act 1982 [1983,2004]
Austria¹⁸	Art 20(a), Constitution of 1987	Law on the Duty to Grant Information 1987
Belgium	Art 32, Constitution of 1831 [1993]	Law on Transparency in Administration 1994 [2000]
Canada	Nil	Access to Information Act 1982 [2007]
Costa Rica	Art 30, Political Constitution of 1949	Nil
Denmark	Nil	Party Access Law 1965; Act on Access of the Public to Documents in Administrative Files 1970; Access to Public Administration Files Act 1985
Finland	Nil	Freedom of the Press Law 1919 [1951]; Act on the Openness of Government Activities 1999
France	Art 14, Declaration of the Rights of Man and the Citizen 1789 (1970); Art 34, Constitution of 1958 (2002)	Law Number 78-753 of 17 July 1978 [2000]
Germany	Nil ¹⁹	Act to Regulate Access to Federal Government Information 2005
Iceland	Nil	Information Act 1996 [2003]
India	s19(1)(a), Constitution of 1950 (1975)	Right to Information Act 2002 [2005]
Ireland	Nil	Freedom of Information Act 1997 [2003]
Israel	Declaration of Independence 1948 (1953,1990)	Freedom of Information Law 1998
Italy¹⁸	Nil	Law No. 241 of 1990 [2005]
Japan	Nil ¹⁹	Law Concerning Access to Information Held by Administrative Organs 1999 [2003]
Luxembourg	Nil	Nil
Netherlands	Article 110, Constitution of 1983	Act on Public Access to Information 1978; Government Information (Public Access) Act 1991 [2005]
New Zealand	s14, Bill of Rights Act 1990	Official Information Act 1982 [1993]
Norway	Art 100, Constitution of 1814 [2004]	Freedom of Information Act 1970 [1992, 2004]
Sweden	Freedom of the Press Act 1809	Freedom of the Press Act 1809 [1937,1949, 1976]
Switzerland	Nil ¹⁹	Federal Law on the Principle of Administrative Transparency 2004
United Kingdom	Nil	Freedom of Information Act 2000
United States	Nil	Freedom of Information Act 1966 [1974, 1986, 1996, 2008]

Source: (Banisar 2006; Vleugels 2009; Author's own research)

¹⁷Dates in brackets in the column on Constitutional Rights indicate when the relevant provisions were actually put in place, since these were almost always introduced via amendment. Dates in round brackets indicate judicial decisions; dates in square brackets indicate legislative amendment.

¹⁸In some sources, Austria's *Auskunftspflichtgesetz* is described as a freedom of information act (Banisar 2006; Vleugels 2009), but in others it is not. On its face, the law does not grant a right of access to original documents as such, but rather imposes a duty on the administration to answer questions. In this thesis, Austria will generally be treated as "opaque". Similarly, Italy's 1990 law is routinely described as a freedom of information act, but on its face actually provides something like a Common Law right of discovery; it became an access law as that term is defined in this thesis only in 2005, when legislative amendments were put in place to bring the text of the law in line with an increasingly liberal line of jurisprudence (in which the kind of "interest" required was broadened to the point where it effectively meant "any citizen"). Italy is treated as opaque before 2005. Both laws have been included here for the sake of consistency with the quoted sources.

¹⁹The constitutions of these countries refer to something which appears to be "freedom of information", but this has been interpreted by their courts to mean a prohibition on demand-side censorship (i.e. on states punishing citizens for consulting sources which are intended to be publicly available, such as newspapers) not a right to access official files (which are defined as not intended to be publicly available).

Conclusion

This chapter has argued that a comparative historical study of freedom of information acts in the consolidated democracies would make a valuable contribution to scholarly knowledge on a matter of increasing theoretical and practical importance.

Freedom of information acts have, rightly, received considerable attention because they touch on issues which go to the very heart of democracy in the information age. The ready availability of information about what governments do and why is increasingly recognised as an important contributor to the exercise of numerous civil and political rights, and as essential to efficient, responsive, legitimate public administration. These acts are one of many mechanisms by which access to important official information is provided. But, as the mechanism with the broadest scope and the strongest presumption in favour of requesters deciding what they should be able to see, they provide an appealing basis for this study because they come closest of all the alternatives to embodying a legislative commitment to transparency in its broadest sense.

A comparative study of the history of these laws is desirable because most of the existing literature on this subject addresses the theoretical merits of access to information, and the small amount of empirically-oriented work generally focusses on deviations from normative standards. This has left it in a surprisingly poor position to explain why countries make the normative trade-offs they do, and what the actual interests at stake in the politics of access to information might be.

The consolidated democracies are worthy of attention because differences between them cannot be readily explained on the basis of the normative assumptions which underpin most of the literature on this subject. A study of these countries is therefore likely to reveal important influences which have hitherto been neglected.

An historical approach, finally, is appealing because it allows a systematic investigation of the broader politics of transparency which is more sensitive to local context than assessment against predetermined normative framework. Freedom of information acts, like most laws, are the outcomes of long processes of negotiation and conflict. These processes reveal the kinds of information which are understood to be important, the interests which public disclosure serves or disadvantages, and the circumstances which favour attempts to realise these goals specifically through public rights of access rather than other means.

Chapter 2: Hierarchy, Secrecy and Power

The previous chapter laid out an ambitious project: to explain variations in the adoption of freedom of information acts among the twenty-three countries which have been democratic throughout the post-war era. This chapter explains how the rest of the thesis will accomplish that aim.

It begins by justifying the decision, foreshadowed in the Introduction, to explain this variation primarily in institutional terms. It does so on two complementary grounds. The first is that institutions have proved an extremely fruitful basis for explaining cross-national variation in the development of many features of modern democratic politics and government. The second is that information derives a great deal of its value in contemporary democracies from the institutional structure of a small number of political processes, and that freedom of information constitutes an attempt to shift the balance of power in these processes by altering their operation without changing their formal structure.

The chapter then identifies the specific institutional arrangements most likely to be relevant. It does this by building on Max Weber's work on bureaucracy, and specifically his insight that there is a mutually-constitutive relationship between control over the distribution of information, hierarchical organisational structure, and the rules which regulate the exercise of state authority. Through a critical engagement with this and with more recent literature on bureaucracy and democracy, it identifies five institutionalised political relationships common to the consolidated democracies within which qualitatively distinct disputes over public access to official information arise. The

five empirical chapters which follow demonstrate that the manner in which these relations are organised and institutionalised very largely explain when and why different countries adopted freedom of information acts. These relationships are: the electoral bond between voters and politicians; the administrative relationship between citizens and the state; negotiations between peripheral interest groups and the political executive over the formulation of public policy; patterns of interaction between established (economic) interest groups and the state as a whole; and relations between elected political executives and the administrative bureaucracy.

The chapter concludes by arguing that the goal of explaining institutional change in a way which is sensitive to causal complexity using historical evidence strongly favours the use of comparative methods inspired by John Stuart Mill. It also shows how one of the most important shortcomings of these methods, namely the practical impossibility of applying them to large numbers of cases, will be addressed: by focussing on five countries which exhibit considerable variation in their institutional arrangements and adoption of freedom of information, namely France, Germany, Sweden, the UK and the USA. In the course of doing all these things, this chapter also considers those rare works which explicitly confront causal complexity and cross-national variation in transparency, highlighting the strengths on which later chapters draw and the weaknesses which they seek to address.

Why Institutions Matter

Politically-oriented social scientists have become increasingly interested in institutions over recent decades (Thelen and Steinmo 1992; Rothstein 1998; Rhodes 2008), in part because they help to explain differing outcomes in countries facing broadly similar pressures for change. The previous chapter noted several common explanations for the

increasingly widespread introduction of legislative rights of public access to official files. In conceptual terms, these are of three types: the diffusion of ideas about the way government ought to work, changing patterns of political demand, and transformations in the social and technological environment within which governments operate. Each of these might plausibly be invoked as a contributor to the overall trend towards legislating access, but as this and subsequent chapters will show, none is capable on its own of explaining the different position occupied by individual democracies within that trend. It is now widely recognised that interactions between these kinds of pressure and existing institutional configurations propel countries along distinctive national trajectories rather than bringing about rapid convergence on a single common outcome (Thelen and Steinmo 1992; Pontusson 1995; Hall and Taylor 1996; Amenta 2003; Goldstone 2003; Skocpol 2003), and that they do this in at least three ways.

Firstly, institutions mediate between patterns of demand and political outcomes. Institutions governing political competition and the exercise of public authority vary between countries in ways which provide similar groups with different opportunities to pursue their interests. Legislatures and political executives differ, for example, in their capacity to resist pressure from external interest groups for reasons which are related directly to their organisational structure, rules of operation and position in the overall constitutional order (cf. Kitschelt 1986; Dryzek 1992). Within the legislative process itself, the number, identity and interests of players with the capacity to block proposals for reform or resist them once in place also vary from system to system (Tsebelis 2002; Pierson 2006:145-7). Institutions also embody particular conceptions of what constitutes a legitimate political demand in the first place, and of how these demands ought to be made; these can also systematically favour some outcomes over others. Chapters Three and Five show that civil society demand for access rights led fairly directly to

their emergence in some countries, but that campaigners met with success much earlier in some than others due to precisely these kinds of institutional variations.

Secondly, institutions matter because they influence the configuration of interests at stake in disputes (Immergut 1998:18 et sqq). One reason for this is that institutions serve, among other things, to realise particular conceptions of how government ought to work, and serve to balance different normative goals when they cannot all be realised in full – and as the previous chapter showed, this is almost certainly true of transparency. Institutional arrangements vary from country to country as a result of distinctive processes of historical development, with the result that proposals to improve performance against any one normative goal are likely to imply different trade-offs in different jurisdictions. Formally-identical reforms like freedom of information acts can thus have quite different implications depending on the context into which they are introduced (Cain, *et al.* 2003:118). Institutions matter, in other words, not just because they structure the opportunities available to those who seek reform, but also because they help determine whether specific reforms are considered valuable in the first place.

This touches the third important feature of institutions: they tend to exhibit inertia. The reasons for this have been extensively examined by Paul Pierson (2006), who highlights features which are distinctive to the political sphere (including coordination problems, the uncertainty and opacity of political processes, and the fact that institutions tend to entrench the power of particular actors), and those shared by institutions in many spheres (including adaptive expectations, sunk costs and increasing returns). One result of this inertia is that political institutions tend to exhibit “path dependence”: choices made early in the process of institutionalising a particular process, conflict or policy domain tend to reflect a wide range of influences and even a degree of outright

chance (Mahoney and Schensul 2006). But over time, the range of feasible options tends to narrow as choices which are radically inconsistent with existing arrangements become increasingly difficult to make. Later reforms tend to be consistent with existing institutions, and entrench the status quo still further by producing a densely-layered arrangement of mutually reinforcing institutions.

Historical institutionalism is sometimes criticised for explaining stasis at the expense of change, so it is important to note that the concepts of persistence and inertia are deployed here as a means of explaining *variation within an overall trend*. The working assumption here is not that institutions fully determine outcomes or are immune to reform of any kind, merely that radical departures from existing arrangements should be rare because institutions constrain behaviour. Change is still possible because institutional arrangements are never perfectly coherent, and they may evolve in several ways. Arrangements which once existed in a relatively stable dynamic equilibrium might become unstable due to the (unintended) consequences of incremental reforms elsewhere (Thelen 2003:225-8). Indeed, freedom of information itself relies on precisely this effect, as the next section of the chapter discusses. Alternatively, arrangements which are stable under particular social, technological, economic or environmental conditions might become less so if conditions change, thereby making deliberate reform easier to achieve. The effects of destabilisation may not be straightforward, however, because any given change is likely to affect different institutions to differing degrees. Where institutions are densely layered, the effect of new conditions will still be mediated by unaffected institutions.

Historical institutionalism suggests that, even if a group of countries arrive at the same formal outcome and exhibit the same set of broad, theoretically-relevant causal factors,

the precise manner in which they arrive will probably differ significantly from case to case. One implication of pervasive interaction between institutions is that the resilience of any particular institution when faced with a particular kind of pressure for reform may well vary depending on the presence or absence of other institutions with which it interacts. Similarly, particular combinations of institutional structures may only be susceptible to particular combinations of pressure for reform. This so-called “multiple conjunctural causation” implies that there need not be any particular threshold of, say, demand or technological development above which all countries introduce access laws; those which are particularly susceptible to the identification of access rights as a solution to political disputes may well do so at extremely low levels, whereas those with institutional arrangements which are more robust (or which are able to adapt to pressure in other ways) may do so only at much higher levels.

The Institutional Politics of Information

Historical institutionalism is an appropriate paradigm for examining cross-national variations in the adoption freedom of information because these laws are simultaneously the outcome of highly-institutionalised forms of political conflict and attempts to alter the terms on which that conflict occurs. The previous chapter showed that transparency is valued because of its effects on the ways political authority is won, exercised, legitimised, constrained and held to account. These are all highly-institutionalised processes, both in the sense that they are governed by formal rules (cf. March and Olsen 2008:3), and that many of the most important participants in them are collective actors whose existence, structure, capacities and interests are influenced by formal rules (Pierson 2006:104). Freedom of information seeks to achieve the normative goals outlined at the start of the previous chapter by redistributing an important political re-

source rather than by directly altering the formal institutional structure of democratic politics. But the capacity of collective actors to control or make use of information is very largely related to their organisational form, while their attitudes towards disclosing it to or obtaining it from others are highly likely to vary with their position in the overall structure of power. In short, the kinds of information which are seen to be useful, the capacity to make use of them, and the interests which are served by enforced public disclosure are inseparable from the way politics and government are organised and conducted (cf. Robertson 1999:159-60).

The insight that control over the distribution of information is both cause and effect of the institutional structure of government is conventionally attributed to Max Weber (Robertson 1982:19-21), who argued that governments are secretive because they are bureaucratic (Weber 1968b:956 et seq., esp. 992-3). Weber's sociology of bureaucracy forms the basis of the following discussion, partly because it identifies the bureaucratic state as an enormously important contributor to patterns of secrecy and disclosure in politics. This claim is consistent with a great deal of empirical evidence, and has ensured that Weber has been routinely cited by many subsequent academics, campaigners and politicians in this area (Rourke 1957; Moynihan 1988; 1997; Rozell 2002). Historically, the bureaucracy has been the most consistent source of opposition to the introduction of formal access rights in most countries, and once access laws are in place, it is widely agreed that bureaucratic opposition is a crucial determinant of how well they are implemented (Roberts, in Ackerman and Sandoval-Ballasteros 2006:125).

Weber is also useful because his explanation for why bureaucracies are secretive provides a basis for identifying the specific institutional structures which are likely to influence the emergence of freedom of information. The following discussion builds on

Weber's work to argue for an examination of the interactions between four collective political actors: the bureaucracy, elected politicians, the public at large, and organised interest groups. It shows that the various bilateral relationships between these four give rise to different struggles over information. It also argues that differences in the development of legal rights of access in different countries are likely to be the result of the degree of centralised hierarchical organisation prevailing within each of these four, the structure of authority and accountability relationships between them, and the manner in which the actors involved balance the competing demands of the various relations in which they are embedded. These are the hypotheses tested in the following chapters.

The Bureaucratic Sources of Secrecy

Weber's argument about government secrecy employs the term "bureaucracy" in two senses: as a purely technical description of a form of organisation, and to refer specifically to the administrative machinery of the state. The distinction is important because each corresponds with a different source of secrecy: the first is a consequence of the organisational form itself, and is likely to be present in all organisations to the extent that they approximate the ideal type; the second flows from the position of the state bureaucracy in the political system.

Organisational Capacity for Secrecy

Weber defines bureaucracy in ideal-typical terms as an organisation in which authority is distributed hierarchically, whose structure and operations are rationally-ordered, in which official business is conducted on the basis of fixed, impersonal rules and recorded in written documents, and which is staffed by officials employed on the basis of competence and expertise (Weber 1968b:956-958). Bureaucratic organisations are, he argues,

predisposed towards secrecy because they constitute a means of exercising “domination through knowledge” (Weber 1968a:225). Bureaucracies exist to control information and to exercise control *through* information, and are secretive because secrecy is a means to both ends. Four features of the form are conducive to secrecy: hierarchy, the use of written files, authority, and expertise.

All other things being equal, hierarchical organisations tend to be more secretive than “flat” structures (Robertson 1999). This is partly because flatter structures, such as networks, depend on communication to facilitate coordination between their constituent elements, whereas hierarchies rely primarily on authority relations. Hierarchies also tend towards secrecy because the chain of command linking “insiders” with each other also constitutes a clear, natural boundary between them and “outsiders” around which secretive practices can develop; such boundaries are usually less sharply-defined under other forms of organisation. Finally, hierarchies are conducive to secrecy because they constitute an effective mechanism for enforcing discipline on the communicative practices of large numbers of people: senior officials can establish *de facto* secrecy by instructing their subordinates on the kinds of information which can be disclosed, and the terms on which that disclosure can occur.

Instructions governing the disclosure of internal information will only be effective if an organisation is capable of controlling access to information it holds in the first place. The use of written files makes this possible because it means bureaucracies can prevent outsiders from obtaining information in a number of ways. They can deny the very existence of a file, refuse to disclose its contents, use indices which make it difficult to locate relevant information, record partial information, refuse to record some information in the first place, or even maintain parallel sets of files (one for “external con-

sumption”, and another constituting a more complete record). These sorts of tactics were reportedly widespread in Weber’s own time (Weber 1968b:994), and have their modern equivalents today in such (possibly apocryphal) practices as the use of Post-It notes to record sensitive information so that it can be removed before a file is disclosed (cf. Verkaik 2005; Kelly 2006; Woolf 2006; Moss 2007). A further source of control flows from the authority to make decisions which is implied by the very existence of a bureaucracy. Organisations which monopolise decision-making authority in a particular domain can, should they so choose, also engage in secrecy by refusing to allow interested parties to participate in the processes by which decisions are made. This might, for example, take the form of refusing to publicise the existence of meetings, or imposing onerous conditions on participation.

The opportunities for secrecy provided by direct control over files and processes are reinforced by the fact that relations between the bureaucracy and outsiders are usually characterised by profound asymmetries of expertise. An ideal-typical Weberian bureaucracy is staffed by experts with specialised training in administrative law (Weber 1968b:958). Actually-existing public administrations have approximated this ideal type to varying extents (Weber 1968a:224), but the principle of merit selection has always entailed some kind of minimum qualification, and this in turn has favoured the development of a bureaucratic *élite* distinguished from the rest of society by its specialist knowledge. In addition to their specialised training, bureaucrats also enjoy (if that is the word) long-standing familiarity with the administrative process itself. In combination, these two factors constitute a kind of secrecy insofar as they mean that the capacity to make full use of the contents of official files is largely restricted to bureaucrats themselves. Non-expert outsiders, even if they have access to relevant official docu-

ments, confront bureaucracies from a position of ignorance, and are therefore at a disadvantage when examining or criticising their actions and decisions.

Organisational Sources of Variation in Secrecy

Historically, the existence of a bureaucratised public administration has been necessary for the development of demand for formal rights of access to official information (cf. Bennett 1997:228). Given a bureaucratised state, almost all disputes over the availability of official information boil down to disputes over access to documents drawn up or held by bureaucrats. Given, furthermore, that bureaucracies are a quintessentially rule-bound form of organisation, the introduction of formal rules mandating disclosure is a natural way to correct abuses of power over information. There are, however, two aspects of bureaucratic organisation which are far less widespread than Weber imagined, and which deserve scrutiny because their absence suggests actually-existing bureaucracies may not always be so capable of engaging in secrecy as he assumed. These are the loyalty and discipline of officials, and the manner in which the state is organised; each is discussed in turn below.

Weber's account of administrative secrecy appears to have taken for granted that individual bureaucrats would be loyal to the administration and act consistently with its institutional interests. There is, however, a considerable body of scholarship testifying to the fact that maintaining discipline in anything approaching an ideal-typical bureaucracy presents considerable challenges (e.g. Crozier 1965). One indicator of these difficulties is laws criminalising the unauthorised disclosure of official information. These exist in every consolidated democracy, although their scope varies widely and has generally become narrower over the post-war era as access laws have spread. All apply, at minimum, to the unauthorised disclosure of information affecting national security to

hostile foreign powers; some (such as the notorious British *Official Secrets Act* and its offspring elsewhere in the world) apply to *any* unauthorised disclosure of *any* official information. These laws testify both to the pervasive interest in secrecy among bureaucratised states, and to the fact that senior officials everywhere have apparently felt sufficiently unsure of the loyalty of their subordinates to resort to the criminal law as a supplement to internal disciplinary measures. Given Weber's emphasis on social status as a contributor to bureaucratic loyalty, it is perhaps no coincidence that official secrets laws emerged in their modern form in the late 19th Century, a time when the state was expanding so rapidly that bureaucrats could no longer be recruited solely from privileged classes whose loyalty to the state could be taken for granted (United Kingdom 1972a:120-2; Vincent 1998:214).

Weber's account is also incomplete in that it implicitly portrays secrecy as an *outcome* of discipline. In fact, the relationship between the two is more complex than this. Simmel (1906) notes that many clandestine societies impose obligations of secrecy on junior members specifically as a disciplinary measure: secret knowledge is disclosed progressively as a reward for demonstrated loyalty, a practice which encourages stronger internal cohesion and a sharper appreciation among subordinates of their status as "insiders". These practices have parallels in the public sector in many countries, perhaps the most famous being the British tradition of requiring all civil servants to sign a copy of the *Official Secrets Act* on taking up their position and leaving the service (United Kingdom 1972a:19). This ceremony was legally meaningless, but constituted an unambiguous signal that confidentiality was integral to the very identity of the civil servant. These practices suggest that internal discipline is not just a precondition for the exercise of secrecy: secrecy may also contribute in turn to internal discipline; com-

municative practices both construct and reflect internal organisational structure and power relations.

The complex, mutually-constitutive relationship between secrecy and bureaucratic organisation, combined with the likelihood of imperfect internal discipline, suggest that attitudes towards freedom of information should vary *within* bureaucratic organisations. Senior officials should be more uniformly hostile than their subordinates, because access laws undermine one of the foundations of their authority within the organisation itself as well as in its external relations. This makes freedom of information fundamentally unlike most other policies: the state bureaucracy is an influential participant in all policy debates because of its technical expertise and the expectation that it will probably be responsible for implementing whatever policy is eventually chosen. But in debates over access to information, state officials *as such* are also inescapably interested parties because their core institutional interests are doubly at stake.

This leads to the second problematic aspect of Weber's ideal type: the organisation and distribution of authority within the bureaucracy. No state is ever organised into the perfectly coherent hierarchy Weber imagined; authority is usually shared out among departments, agencies, and other organisational units which often have inconsistent missions, overlapping responsibilities and competing constituencies. Just as hierarchy and discipline make it possible for individual organisations to engage in secrecy, so it also seems reasonable to suppose that a state which is organised into a coherent, centralised hierarchy of authority might present a less favourable environment than one which is fragmented or decentralised. This is partly because, even if all bureaucrats share a basic interest in retaining control over the terms on which official information in general is disclosed, the absence of centralised control means constituent units of

less centralised states have more opportunities to develop and act upon idiosyncratic preferences with respect to the disclosure of specific kinds of information (some of the influences on these preferences are discussed below, including the tactical uses of proactive disclosure in negotiations with external interest groups and other departments of state). If a state is sufficiently fragmented, it may prove impossible to impose any coherent information policy from the centre even if political will exists. Central government officials are likely to find it particularly difficult to resist demands for freedom of information when they eventually arise because the presumption that information is generally available will probably already be firmly entrenched in the country's political institutions, culture and practices. Chapters Three, Five and Six suggest that the USA constitutes an example of precisely this phenomenon. Even in states where authority is relatively centralised and coherently organised, fragmentation may still facilitate the development of access rights if it prevails in certain strategic policy domains; examples, discussed below, include environmental management and economic regulation.

Parliaments as Crucial to Overcoming Bureaucratic Secrecy

The role of organisation in the formation and pursuit of bureaucratic interests raises the question why bureaucracies develop a sense of having independent interests in the first place. Weber did not examine this issue in any great depth, but reading between the lines it seems likely he had two separate contributors in mind. Firstly, he appears to have assumed that a sense of identity would develop naturally among bureaucrats due to their elevated social status, disciplined organisation and the role of the state in ensuring social order in a mass society. This can be gleaned from his discussion of the emergence of a caste mentality among bureaucrats, in which he emphasises the esoteric nature of their knowledge, the fact that specialist qualifications typically favour the entry of members of the upper social strata into the bureaucracy, and the prestige at-

tached to holding a position which wields the sovereign power of the state (Weber 1968b:959-63). This strongly reflects the example on which Weber based his ideal type, the German imperial administration of the late 19th and early 20th Centuries; the different ways in which contemporary democratic states relate to those under their authority are considered in a moment. Before that, the second set of incentives Weber identifies must be examined; these flow from relations between the bureaucracy and its political masters:

The question is always who controls the existing bureaucratic machinery. And such control is only possible in a very limited degree to persons who are not technical specialists. Generally-speaking, the highest ranking career official is more likely to get his way in the long run than his nominal superior, the cabinet minister, who is not a specialist (Weber 1968b:224-5).

Weber's analysis is consistent with (although considerably richer than) contemporary scholarship on agency theory, which identifies problems of accountability and control as problems in the distribution of information between principals and agents. Principals face structural barriers to directly observing the behaviour of their agents, a fact which hampers their ability to select the right agents or distribute appropriate punishments and rewards for past actions. Agents, in turn, have systematic incentives to engage in secrecy because it provides them with greater leeway to pursue their own interests rather than those of the principal. Weber assumes that this structural conflict between officials (agents) and politicians (principals) encourages both the development of a sense of independent identity in the bureaucracy, and also a recourse to secrecy to insulate itself from unwelcome external pressure (cf. Weber 1968b:1393 et sqq):

The concept of the "office secret" is the specific invention of the bureaucracy, and few things it defends so fanatically as this attitude which, outside of the specific areas just mentioned [diplomacy and military administration], cannot be justified with purely functional arguments. In facing a parliament, the bureaucracy fights, out of a sure pow-

er instinct, every one of that institution's attempts to gain through its own means (e.g. through the so-called "right of parliamentary investigation") expert knowledge from the interested parties. Bureaucracy naturally prefers a poorly-informed, and hence powerless, parliament – at least insofar as this ignorance is compatible with the bureaucracy's own interests (Weber 1968b:992-3).

Elected politicians remain central to the contemporary politics of information, in part because they are in a uniquely powerful position to exert control over the bureaucracy. Weber himself emphasised the importance of the democratic mandate in contributing to this. His reasoning is subtle and difficult to summarise, but essentially boils down to the claim that winning a popular vote can overcome the bureaucracy's political influence by providing an alternative source of authority to that grounded in technical expertise (Weber 1968b:993 et sqq). By contrast, hereditary monarchs and other autocratic rulers have neither expertise nor a mandate, and have only personal prestige to fall back on – a far weaker power resource. Elsewhere, Weber elaborates on this by arguing that however much influence bureaucrats may be able to bring to policy debates, in the long run they make poor politicians because the dispassionate application of technocratic knowledge which characterises bureaucratic power cannot replace the charisma and personal commitment required to build support for the trade-offs which must always be made in the selection of political ends in any moderately complex society (Weber 1998b:95).

Contemporary scholarship continues to emphasise the importance of politicians in the politics of information, but has generally focussed on the formal powers which the democratic mandate also confers. The most important of these for present purposes is direct personal participation in the legislative process. Other powers which are also relevant to the broader politics of information vary from country to country, but include rights to question officials and obtain copies of official documents, and a measure of

influence over the form and operation of other important institutions such as the budget and the organisational structure of the administrative bureaucracy.

Elected politicians are also of fundamental importance because they have a range of potentially conflicting interests with respect to the disclosure of official information, and under the right circumstances these can find expression as support for general public rights of access. Their role as principals in an agency relationship with the bureaucracy provides a structural incentive to use their powers to force it to disclose information to them, provided this disclosure improves their own capacity to control it. There is some evidence that support for transparency among politicians is partly related to the manner in which they exercise this control: systems where politicians lack organisational or other resources required to effectively monitor the behaviour of the bureaucracy, or where they lack formal hierarchical authority over it, are claimed to be particularly favourable (e.g. McCubbins and Schwartz 1984). Scholarly opinion on whether this intra-government struggle for control has actually contributed to general public rights of access in specific countries is divided, however. One detailed study of the UK argues that since the late 1970s, successive governments have introduced progressively more comprehensive rights, partly as a means (and partly as an unintended consequence) of exerting more effective hierarchical control over the civil service (Robertson 1999). Studies of other countries, by contrast, argue that similar reforms have fatally weakened freedom of information regimes (Roberts 2001a; 2004). This divergence of opinion is so extreme and surprising that the impact of administrative reform will be a major focus of Chapter Seven.

Politicians have conflicting interests because they are not just principals; they are also agents of the voting public, and this provides a set of countervailing incentives similar

in some respects to those under which the bureaucracy operates in its dealings with parliaments. As part of government in the broad sense of the word, politicians may well find it advantageous to restrict the routine public availability of official information. The kinds of information which elected politicians might seek to control is, however, likely to differ with the institutional structure of political authority and accountability. A small but important body of scholarship argues that, where members of the legislature are not responsible to the electorate for the failings of the bureaucracy, the incentives to resist disclosure laws are likely to be lower (Robertson 1982; McCubbins and Schwartz 1984). The ongoing Congressional preference for freedom of information in the USA is widely cited as an example of this (Relyea 1979:328; Archibald 1993:726), and is examined in Chapters Three and Five.

Politicians also need to secure (and re-secure) the democratic mandate on which their authority over the bureaucracy depends. Electoral competition is widely-understood to provide strong encouragement to actively release information which reflects well on past performance, to propose policies which the electorate will find appealing, and to act against their own structural interest as agents in withholding meaningful information (e.g. Lupia and McCubbins 1998:207-9). The possibility that these systemic incentives to engage in managed publicity might lead to support for fully-fledged access rights has sometimes been raised, but remains largely a matter of anecdote and conjecture based on evidence concerning a single case (the USA). The nature and extent of the contribution which electoral competition has made to transparency are considered primarily in Chapter Three, and are also relevant to Chapters Five, Six and Seven.

Institutional Aggregation as a Substitute for Organisation in Electoral Politics

Retrospective electoral accountability looms large in the normative literature on transparency. When democracy is viewed as an agency relationship, transparency is argued to be valuable because it helps to overcome one of the more important barriers the public faces in exerting effective control over its representatives in parliament, and by extension the whole of government: the structural asymmetry of information which arises between principals and agents. Scholars and activists alike frequently assume that this normative position also constitutes a reasonably accurate empirical description: that the public recognises the benefits of information, considers more widespread routine availability of official information as valuable, and actively demands information be disclosed (e.g. Rosendorff and Dozes 2006:100).

Taken at face value, these normatively-grounded claims have a certain appeal, but they are ultimately implausible. The public as such is large and disorganised, and the benefits of transparency are highly diffuse. The costs, by contrast, are borne by a small number of actors, principally the bureaucrats and politicians whose job security and scope for independent action it affects. Furthermore, it was argued earlier in this chapter that hierarchical organisation plays an important role in favouring the development and pursuit of coherent preferences with respect to the distribution of information. Unlike bureaucracies and elected politicians, the voting public is notable for its *lack* of internal organisation, for its relative incapacity to form coherent preferences (Ferejohn 1990:709; Weber 1998a:225-6; Radcliff and Wingenbach 2000), and the difficulties it faces in organising to act on its interests (Olson 1965; Ansolabehere 2006). It must therefore be considered unlikely that the public as a whole will strongly and decisively demand access to information, a hypothesis confirmed by Chapter Three.

This does not mean that public opinion is irrelevant to the development of freedom of information, but it does mean that the terms on which it influences the course of events is likely to be indirect. The influence of public opinion rests on a small number of intermittent institutionalised processes, all of which serve to aggregate the preferences, demands and grievances of its individual members. The single most important of these is the vote, which exerts a crucial influence on the behaviour of elected officials for reasons discussed above. Its effects are considered in detail in Chapter Three. Other important aggregating institutions include administrative and legal dispute resolution mechanisms, as Chapter Four shows. The growth of the administrative bureaucracy in the immediate post-war era implied a number of changes in the way states interacted with their citizens: the increasing breadth and complexity of interactions between the two increased the need for cooperation and posed problems for dispute resolution mechanisms, and encouraged officials and citizens alike to frame these issues in terms of the distribution of information. Chapter Four shows that the extent to which existing mechanisms of administrative control were able to cope with these changes, and the relationship between these mechanisms and the political system, constituted an important additional element in structuring the predisposition of countries towards framing individual disputes in terms of general rights of access to information.

Organised Interest Groups and Negotiated Access to Information

The persistence of unrealistic assumptions about the electoral dynamics underlying the development of transparency is symptomatic of a failure to distinguish adequately between “the public” and the organised groups within it. Although it may not be reasonable to expect public demand to lead straightforwardly to legislation, there is a long tradition of political and sociological literature attesting to the fact that relations between the state and organised interest groups influence the kinds of problems which are

deemed worthy of policy intervention and the kinds of solutions which are proposed in response. Smaller groups do not face anything like the same organisational barriers as the public, and just as for the bureaucracy, their organisational form provides both the means and the motivation to influence the manner in which the state discloses information it controls.

The influence particular actors enjoy rests, to a very great extent, on their capacity to mobilise resources on which others, especially the state, depend (Marsh and Rhodes 1992; Rhodes and Marsh 1992; Rhodes 1996). Patterns of resource mobilisation and dependency are relevant to transparency because the different groups with a stake in any given policy typically coordinate their activities and resolve their differences through sharing information. Patterns of disclosure and secrecy are thus likely to reflect, at least in part, the uneven power relations prevailing between actors in the policy process. Conversely, selective disclosure can also be used as a means of establishing favourable configurations of interest and influencing the conduct of policy negotiations. Senior political and administrative figures are in a particularly powerful position to use selective communication to this end, because of the central role they play in integrating diverse demands into coherent policies. States can encourage the provision of resources they do not control, and favour the articulation of particular demands by divulging their intentions to and consulting with relevant groups.

There are two distinct paths by which interactions between interest groups and the state might influence the development of access rights, and these are discussed in Chapters Five and Six. The first concerns the notion of the network boundary. Although it is currently fashionable in some quarters to attribute the spread of transparency to the increasingly widespread reliance on networked cooperation between states and ex-

ternal interest groups (Nye 1999), networks are really only transparent to those on the inside; to those on the outside, they can seem extraordinarily opaque. Freedom of information might be advocated by groups whose interests are affected by decisions made within a policy network, but who are unable to break into it due to a lack of control over policy-relevant resources or active resistance by the state. The prospects of a country developing freedom of information in response to demands from the periphery of policy networks are likely to depend heavily on the degree of autonomy enjoyed by state officials. Chapter Five considers whether, where the political executive is able to autonomously manage the policy agenda and decide which demands to incorporate into policy without undermining its own perceived legitimacy, the prospects for freedom of information are indeed less rosy. This resource dependency argument implies that the core members of a network probably have a structural interest in resisting general public rights of access in order to hamper the articulation of competing peripheral interests. Chapter Six considers whether the structure of relations between resource-rich groups and the state might provide countervailing incentives, by focussing on relations between states and producer interests in neo-corporatist and pluralist countries.

On the Absence of Diffusion and International Factors

One apparent omission from the preceding discussion which may surprise readers familiar with historical institutionalism is international influences such as other states, international government organisations and transnational civil society (cf. Skocpol 1985:9-11). This omission might seem all the more surprising given the prominence of these factors in the literature on transparency discussed in the previous chapter.

Diffusion and international pressure do not feature prominently in this thesis because they are not particularly relevant to explaining cross-national variation among the

consolidated democracies. Most studies which invoke them are either interested in explaining the adoption of transparency measures at the international level, assume that pressure from international organisations is decisive at national level, or assume that such policies are self-evidently so beneficial that it will be adopted relatively straightforwardly once the idea is introduced from abroad. The first addresses questions beyond the scope of this thesis, while neither of the two other assumptions can be accepted uncritically.

The problem with explaining the adoption of access rights in terms of overt pressure from international sources is that the consolidated democracies tend to be in a reasonably strong position to resist it. As the previous chapter noted, several studies have shown that access rights in newly-democratising countries in Eastern Europe, Latin America and Southeast Asia are correlated with membership of international organisations. These countries generally occupy relatively subordinate positions in the international political and economic system, and their governments may well have felt unable to resist requirements from international donor organisations that they legislate, especially where doing so was a condition of financial aid. The consolidated democracies generally do not occupy quite so subordinate a position (with the possible exception of Costa Rica, which has not yet introduced an access law), and tend not to be the subject of quite the same degree of pressure for reform.²⁰

Explanations for cross-national variation in access rights which emphasise the spread of ideas have two problems: they make unrealistic assumptions about the attitudes of local élites, and are inconsistent with the available evidence. Both are clearly evident in

²⁰ This is not intended to imply that the development of transparency in places like Latin America is solely a result of pressure from international organisations. I am grateful to my colleague Javier Treviño Rangel for reminding me that, in places like Mexico, the state often “accepted” changes suggested by international actors because doing so also served domestic political purposes. The point here is merely that such explanations are even less plausible still when applied to the consolidated democracies.

Colin Bennett's (1997) study of the ombudsman, privacy and freedom of information. He argues that the spread of these three institutions among the consolidated democracies is a result of political élites in each country drawing lessons from the experience of their counterparts elsewhere in solving problems posed by large administrative bureaucracies in democratic societies. He argues differences in timing of legislation are a result of how long it took for ideas to spread between countries, but his own data show variations which cannot be accounted for in these terms. Privacy and data protection laws were adopted by most OECD countries in a period of less than a decade starting in the early 1970s (1997:224), suggesting that there were no serious barriers to the rapid transmission of knowledge about information policies across national borders. Yet despite this, freedom of information acts spread much more slowly than either data protection or the ombudsman. Furthermore, the countries he examined implemented these reforms in quite different orders. Sweden, for example, was an early innovator on all three counts. Germany was an early adopter of privacy legislation, but a laggard on freedom of information and has still not established an ombudsman. The USA has no ombudsman at federal level and a weak privacy law, but was an early adopter of freedom of information. France was fairly early on all three counts. The United Kingdom was one of the earliest countries outside the Nordic world to establish an ombudsman, and was late but fairly thorough in implementing the other two. These differences cannot be explained purely in terms of élite awareness or the normative merits of the policies. Even the very best ideas need powerful supporters if they are to be implemented (cf. DiMaggio and Powell 1983:148-53), especially where the ideas in question collide directly with the institutional interests of those in power (cf. Beckert 2010:152-4). As Bennett himself comes close to admitting (1997:226-8), differences in the adoption of

these policies exist because each interacts with local configurations of power in its own way.

Although diffusion has not yet produced a satisfactory explanation for the varying adoption of freedom of information, excluding it entirely from this study would be unwise. Social-scientific analysis is usually conducted on the presumption that changes in the outcome of interest in any one analytic unit are determined solely by changes occurring within that same unit, independently of changes occurring elsewhere. If this assumption does not hold because changes in one unit diffuse to another, then the boundaries between the units of analysis are weakened. The logical limit “if similarity within a group of systems is [solely] the result of diffusion, [is that] there is only one independent observation” (Przeworski and Teune 1970:52). As it happens, there is reliable historical evidence that the idea of freedom of information had spread among policy élites in many democracies before the late 1970s, and that advocates of reform invoked overseas experience to justify their demands. It is, therefore, at least possible that diffusion might have affected adoption by influencing the attitudes of important domestic political actors, thereby producing similarities between national trajectories which would otherwise be erroneously attributed to some purely domestic cause.

To avoid making unwarranted assumptions of causal independence, the historical analyses in the following chapters take account of two possibilities: that the implementation of a law in one country might serve to convince officials in another that it constitutes a less serious threat than they had originally supposed; and that powerful non-state actors might learn about access rights elsewhere and advocate them at home, possibly for reasons which differ from those which gave birth to the policy in its original context. Domestically, relations between states have largely proved relevant as brakes

on the development of transparency: national security and diplomacy are everywhere recognised as legitimate justifications for the withholding of important information, and every access law contains exemptions recognising this. Interstate relations have occasionally made a positive contribution to the development of access rights where they have been used in an attempt to justify controversial acts of secrecy, and they are discussed in Chapter Three for their effect on domestic electoral competition. The influence of positive pressure for transparency from identifiable international actors is, for its part, examined in Chapter Five, while the importance of transmission of ideas at élite level through mechanisms such as the OECD is relevant to Chapter Seven. All these chapters demonstrate that the spread of ideas about transparency was insufficient to explain the adoption of access laws.

The Case for a Comparative Approach

In his seminal article on social-scientific methodology, Arendt Lijphart argued that the four main methods available to political scientists could be arranged in terms of descending scientific rigour as follows: direct experiments, statistical analysis, comparisons of case studies and single case studies (Lijphart 1971). He also argued that researchers should apply the most rigorous method possible. As a cross-national study of an historical phenomenon, neither the experimental nor the single case study method is appropriate here. This leaves the choice between statistical analysis and the comparative method and – *pace* Lijphart – the nature of the phenomenon of interest in this study, its scope, and the kinds of evidence available all provide sound reasons to choose the second over the first.

In a very general sense, comparison lies at the heart of all social scientific endeavour; the term “comparative method”, however, usually refers specifically to the explanation

of social or political phenomena using the techniques systematised by John Stuart Mill in his classic *System of Logic* (1865). Mill described several different methods of varying degrees of complexity, with the more complex being compounds of the two basic approaches, which he dubbed the methods of agreement and difference:

If two or more instances of the phenomenon under investigation have only one circumstance in common the circumstance in which alone all the instances agree is the cause... of the given phenomenon... If an instance in which the phenomenon under investigation occurs, and an instance in which it does not occur, have every circumstance in common save one, that one occurring only in the former; the circumstance in which alone the two instances differ is... the cause, or an indispensable part of the cause, of the phenomenon (Mill 1865:Book III, Chapter 8, §§1-2; pp430-1).

Strengths of the Comparative Method Compared with Statistical Approaches

One of the main strengths of the comparative method is that it is well-suited to tracing how and why political institutions evolve over time using the kinds of historical data which are most readily available. These data tend to be made up of the documentary by-products of the processes of political negotiation and competition discussed in Chapter One. In some cases, interval-scale datasets exist which make it possible to conduct statistical analyses, but the previous chapter has already showed that this is not the case for transparency or freedom of information: the data which do exist are unusable for various reasons. Many studies seeking to conduct statistical analyses of the causes of transparency thus resort to proxies such as the perception of official transparency among hypothetically-relevant groups such as business leaders (e.g. Rosendorff and Doces 2006; Relly and Sabharwal 2009). These proxy datasets are superficially appealing, but of limited substantive value for this kind of analysis. Even if one ignores the problems of treating reported perceptions as an “objective” measure of an empirical phenomenon, the relevant data have generally only been collected in recent

years, fairly spasmodically and in a limited range of countries. This substantially limits their usefulness in assessing long-term historical trends.

A second strength of the comparative method is its suitability for investigating complex, interactive causal mechanisms. In statistical studies, the purpose of research is to produce models which are both parsimonious and readily-applicable to data other than those with which they were originally developed. This tends to encourage abstraction and simplification: real-world phenomena such as countries are disaggregated into observations of associated measurements of distinct variables (Przeworski and Teune 1970:Chapter 1; Collier 1991; Goldthorpe 1997:1-2). In the models generally employed by political scientists, these variables are assumed to be uncorrelated with each other and to have the same effect on the dependent variable at all points in time and across all cases. These tendencies, and the problems they entail, are clear in one of the very few statistical studies to overcome the lack of data on transparency. Grigorescu's fascinating study proposed several models for the emergence of transparency, which all assumed that the various independent variables he identified combined additively (2003:658-9). He also assumed that freedom of information laws were introduced only one or two years after the onset of pressure for reform (2003:662). This, as he recognised, is not a particularly plausible description of the consolidated democracies, where the duration of the political and legislative process was highly variable but in almost all cases took far longer than twenty-four months (2003:659). This short time-lag is a plausible assumption only when applied to newly-democratising nations which legislated since the early 1990s, by which time there existed an international consensus on the merits of access and on what a good access law should look like. In fairness, it should be noted that Grigorescu is aware of this limitation (2003:660-4), but his rationale for these choices has the aura of an *ex post facto* rationalisation for choices imposed by the func-

tional requirements of the statistical methodology, despite their inappropriateness for the phenomenon of interest.

Comparative work, by contrast, seeks to generate quite different explanations. The fundamental unit of analysis is the case, a far less abstract construct than the observation, and one which usually corresponds more closely with commonplace understandings of political entities. Methodologically, cases are treated as organic, complex wholes whose features of interest might well be the product of complex interactions between multiple causal factors (Skocpol and Somers 1980:178). Thus, causation is often understood to be configurational rather than additive: the effect of a factor may vary depending on the presence or absence of others, and the effect of different factors may vary over time. Comparative research makes no particular presumption that a single phenomenon is the outcome of the same cause (or combination of causes) in every case; in fact, a common purpose of these studies is to identify and explain causal complexity (cf. Coates 2005). A comparative approach makes sense in a study such as this one, which seeks to problematise overly-simplistic approaches to the causes of transparency.

Techniques exist which allow statistically-oriented researchers to take account of endogeneity and pervasive interaction between variables, but these are often difficult to use in explaining the evolution of political institutions. As the causal model grows more complex, the level of detail required by statistical techniques grows dramatically; even a relatively simple interactive model can rapidly outstrip the data available for analysis (Ragin 1987:64-7; Pierson 2006:169). There are two ways of resolving this problem: either limit the scope of the study to a smaller population to which a simpler causal model can legitimately be applied, or increase the size of the population in order to increase the number of observations in the dataset. The first is often difficult to do because the

populations involved in institutional analysis are small to begin with, at least in statistical terms (Ragin 1987:65-6). Reducing them may jeopardise the validity of statistical results, and below a certain limit comparative methods are likely to produce more defensible results. The second approach can easily make the problem worse by increasing the heterogeneity of the phenomena under analysis, thereby requiring ever more complex causal models (Pierson 2006:169-71) or leading to confusing and inexplicable results. This second problem is clearly evident in Rely and Sabharwal's study, cited earlier. As of 2009, there were enough countries with access laws to make a statistical study of the whole population methodologically defensible. Yet, despite this, they reach a fairly important conclusion for which they feel unable to account: stronger democracy does not seem to contribute to (perceptions of) greater transparency (2009:155). The previous chapter has already shown that the relationship between democracy and transparency has changed over time. It seems plausible that this changing relationship might account for both the belief the two should be linked (in that freedom of information developed first in the consolidated democracies, and so is associated discursively with democracy) and also the lack of significant correlation (since the recent uptake in access laws has occurred in transitional countries where democracy is weaker). In seeking to build a sufficiently large dataset, their study has been forced to stretch concepts such as "transparency" and "democracy" to cover situations in which the terms clearly have substantively different meanings, rendering it unable to trace any clear relationship between them. The comparative method, by contrast, is much more amenable to identifying these differences in meaning and tracing their effects because it relies on qualitative data.

Shortcomings of the Comparative Method

Although it may be superior to statistical approaches for the purposes of this study, the comparative method is not without shortcomings of its own. These have important implications for the comparative strategies adopted in the following chapters.

It is commonly argued, especially by those who prefer statistical methods, that comparative studies are flawed because they “select on the dependent variable”: they examine cases in which the outcome of interest exists, or where there is too little variation in outcomes, rather than selecting cases for maximum variance on the outcome of interest to allow the effect of the independent variables to be properly tested (Lieberson 1991; Geddes 2003). Expressed in terms of the comparative paradigm, this is in effect a claim that the method of difference alone produces valid results, and it echoes a comment made by Mill himself to the effect that conclusions drawn from application of the method of agreement should always be considered provisional pending confirmation by some other means (Mill 1865:Book III, Chapter 8, §3).

It is an open question whether this criticism is justified: Przeworski and Teune (1970) considered the method of agreement to be superior to the method of difference, and at least one contemporary theorist has argued that it is appropriate as part of an overall research strategy if used to eliminate unnecessary conditions (Ragin 1997; 2000). To the extent that variation on the dependent variable really is a requirement for producing valid results, it might be thought to present a problem for this thesis, since all but a handful of the consolidated democracies now have an access law. This problem is, in fact, less serious than it appears. The outcome of interest identified in the previous chapter is not the *existence* of a freedom of information act, but the considerable differences between them, conceptualised primarily in terms of the relative dates of their

adoption, but more fundamentally in terms of the different historical processes which led to adoption. When viewed in this way, there is considerable variation on the dependent variable, as the previous chapter showed.

A second criticism focusses on the fact that comparative studies tend to employ deterministic modes of explanation formulated in terms of necessity and sufficiency. This is considered undesirable on two grounds. Theoretically, it purports to explain *all* the variation identified as interesting even though social phenomena are inherently complex and contingent. Methodologically, it may inadvertently lead to the elimination of relevant factors which might have been retained under a probabilistic analysis with a wider scope (Liebersohn 1991:309-15).

This thesis occasionally employs the standard vocabulary of comparative analysis, but does so in a way which is sensitive to these critiques. The terms “necessity” and “sufficiency” are only employed here in a set-theoretic rather than a strictly philosophical sense: they are short-hand descriptions of systematic associations between causal conditions and outcomes which have survived historical and comparative assessment in the population subject to analysis. Secondly, this thesis does not attempt to provide an explanation which completely excludes the possibility of contingency or the importance of non-institutional factors. As a matter of principle, institutions – in the sense of formal rules – never fully determine social outcomes. They are interesting and important because they produce important regularities in collective behaviour by influencing the decisions of human agents who are ultimately free to choose otherwise if they wish. This thesis does, however, seek to show that institutions are fundamental in that they provide the context within which contingency, ideology and rational self-interest operate. The final chapter argues that the importance of non-institutional fac-

tors varies considerably between the countries considered here because of the different characteristics of their institutional arrangements : transparency is more dependent on the operation of rule-bound processes in some, while in others it is more susceptible to contingency and the personal proclivities of particular individuals.

A third cluster of criticisms focusses on the difficulties involved in selecting appropriate cases for comparison. The comparative method may be unable to eliminate irrelevant causes and may produce inconclusive results where the researcher lacks empirical cases exhibiting the appropriate configurations of causes (Sartori 1970): the classic few-cases-many-variables problem. The challenge of case selection is made all the more difficult by the fact that a literal reading of Mill would compel researchers to find cases which resemble or differ from each other in one and only one way. The unlikelihood of doing so when comparing things as complex as whole countries was one of the reasons Mill (1865:Book VI, Chapter 7, §§3-4) was even more pessimistic than Sartori about the usefulness of his methods for the social sciences. These problems are compounded by the fact that the amount of research required to conduct in-depth comparisons of more than four or five using Mill's techniques usually surpasses the capacity of any single researcher, even if more cases *are* available (Ragin 1987:34 et sqq).

Contemporary social scientists mitigate these problems in several ways. The judicious use of theoretical assumptions allows researchers to examine only those potential causal factors which might reasonably be expected to materially affect the outcome of interest in their study. Theory provides a basis for identifying the universe of comparable cases and selecting the best cases within it for generating valid tests of hypotheses despite their apparently irreducible uniqueness (Mahoney and Rueschemeyer 2003:13-4). In addition, it is often possible to eliminate competing explanations and test for multi-

ple causation by combining comparative analysis with a detailed examination of the historical record in individual cases. Any hypothesis which implies the existence of cross-national variation, *ipso facto*, implies the existence of particular factors or processes within the individual countries which produce those differences, and whose effects can be tested against documents and other material traces of the past. These strategies are all employed here.

One of the reasons this problem arises at all is that the comparative method requires relatively detailed evidence which is time-consuming to collect, interpret and deploy in an argument. This evidentiary burden imposes an upper limit on the number of cases which can conveniently be compared in any one study, and the limit is usually around five. This thesis is no exception, and for practical reasons as such is obliged to restrict itself to a consideration of five consolidated democracies out of the twenty-three it might have considered: Sweden, the USA, France, the United Kingdom and Germany. This choice of countries has been made on methodological, practical and substantive grounds.

Methodologically, these five countries exhibit considerable variation in the outcome of interest. They introduced and amended their access laws on different calendar dates, and at very different times in relation to the onset of many potential causes within the five relationships outlined earlier in the chapter. They are also methodologically appropriate in that they display a mix of similarity and difference in the institutional and organisational factors identified earlier as potentially relevant to explaining differences in transparency.

These five countries are also appealing for the very practical reason that sources on the development of access rights in each are relatively easy to access, and in most cases

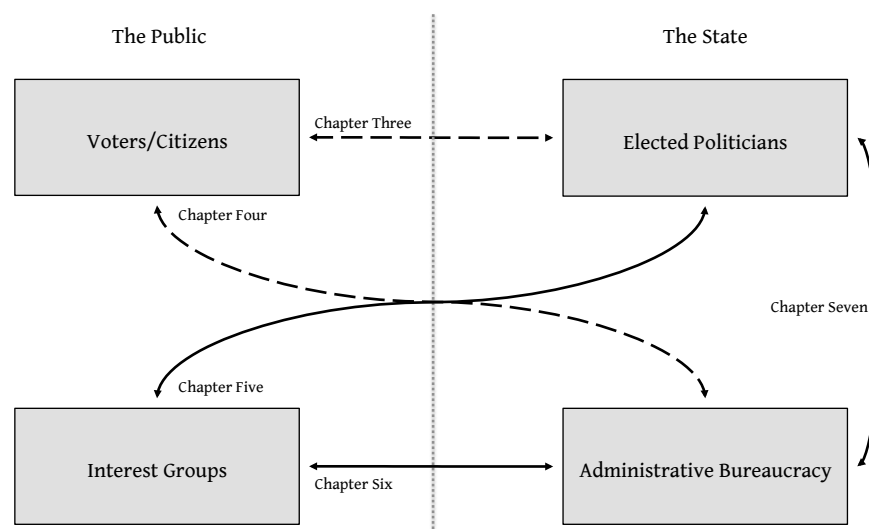
parliamentary, government and press documents are readily available online. Sweden represents a slight exception due to the sheer age of its access law; discussions in following chapters tend to focus on the way it operates at present, and to rely on secondary sources rather more heavily than historians might consider desirable.

Finally, these countries are interesting on substantive grounds. They are prominent exemplars of different approaches to democracy in academic and popular discourse alike, but academic attention to their very different approaches to the routine disclosure of official information has been extremely uneven. They are likely to yield insights of interest in their own right, and provide the opportunity to test existing theories about transparency and freedom of information. The American law is the subject of a vast body of scholarship which generally eschews comparative perspectives, while knowledge of the Swedish law among English-language authors essentially amounts to anecdote and hearsay about its famed effectiveness rather than its origins. Germany and the UK, by contrast, were until very recently understood to be exemplars of official secrecy, with the UK having embraced transparency more wholeheartedly than Germany since the turn of the millennium. The UK has also been the focus of far more scholarly attention, but usually only in comparison with the other Westminster countries. Broader comparative studies are extremely rare, while the English literature on Germany is essentially non-existent. Similarly, France is interesting because its access law was introduced relatively early but has not developed the kinds of supportive constituency most of the literature assumes will follow as a matter of course; the reasons for this failure have not yet been examined in a rigorous fashion – at least by scholars in English.

Conclusion

The previous chapter argued that most of the existing literature on transparency is fundamentally concerned with its normative and ethical implications, and that the small amount of empirical work tends to display an overly-simplistic view of the politics involved. This chapter has argued for a richer, more accurate understanding of how transparency develops, one grounded in an appreciation of what counts as important political information, who controls it and the terms on which that control is exercised. Drawing on Weber's sociology of bureaucracy, it has proposed that a focus on how four collective actors are organised, and the manner in which relations of authority and accountability between them are institutionalised. These are depicted in Figure 5.

Figure 5: A Model of the Democratic Politics of Information



The following five chapters are arranged analytically, and examine different relationships between pairs of the collective actors also shown above. Chapter Three examines relations between the voting public and the political executive, focussing on the different ways in which officials reconcile the competing demands inherent in democratic responsibility for past behaviour with the need to secure re-election. Chapter Four considers the relationship between the bureaucracy and the public, and focusses on the

limits to infrastructural power imposed by the practical need to minimise resistance and maximise cooperation from the subjects of administrative authority. The dashed lines in the figure indicate that these two relations are governed by institutions which aggregate the opinions and preferences of otherwise-disorganised individuals, rather than relatively organised collective actors capable of independent initiative. Chapters Five and Six consider the relationship between organised interest groups and different state actors. Chapter Five examines the ways in which the policy development process is structured through secrecy, and considers whether different ways of integrating policy demands might affect the development of freedom of information. Chapter Six examines patterns of organisation prevailing in the core of policy networks. Finally, Chapter Seven considers relations between the political executive and the bureaucracy, and examines the ways in which disclosure to the public at large can be used as a power resource by one part of the state against another.

An analytic approach has been adopted because it is more likely to allow systematic appraisal of the dynamics at work in each of these distinct disputes over information in different countries. The alternative, which is more common among comparative historical works, is to treat each country as a coherent whole and to examine the interactions between complex sets of institutions and pressures for change in narrative fashion. Although the ultimate aim here is to develop an historically-informed, integrated understanding of how the politics of information plays out in different countries, the narrative approach is inadvisable here. There is a good deal of mythology and received wisdom surrounding freedom of information in the primary and secondary literature alike. This tends to be perpetuated because these sources are mostly narratives relying heavily on a mutually-reinforcing combination of the normative theory discussed in the previous chapter, and anecdotal and impressionistic evidence emphasising similarities be-

tween countries. There is also a widespread tendency to apply explanations developed in one country (especially the USA) to other contexts where their relevance is less obvious. An analytic approach is employed here in order to guard against these biases in the source material.

The empirical chapters all have a similar structure. Each begins by identifying the role played by information and communicative practices within each relationship, and the reasons why they might facilitate the development of freedom of information. Each then identifies institutions that vary among the five country-cases in ways which might encourage or prevent disputes over specific kinds of information developing into calls for public rights of access. These hypotheses are then assessed through paired comparisons of four of the five countries, with the selection of cases being based on practical and theoretical concerns particular to each chapter.

The comparative strategies employed are broadly inspired by Mill's methods, and in particular the method of difference. The goal is to demonstrate that changing political demands, the spread of ideas or the existence of objectively-favourable circumstances which are often assumed to drive the adoption of access laws are insufficient in and of themselves because countries facing similar conditions had different outcomes. It is only possible for this thesis to claim broad inspiration from Mill because the analytic approach adopted here does not treat its cases as coherent wholes as Mill demands, nor does it assume they differ in only one relevant respect. Rather, it employs an inverse method of difference to eliminate insufficient explanations. Combined with historical analysis, this allows it to argue that the mediating effect of multiple institutions, and the combined effect of struggles within the different relationships described above, can reasonably be considered responsible for the different outcomes experienced by the

five countries under review. The comparative strategy actually employed is thus closer to what Skocpol and Somers (1980) dub the *parallel demonstration of theory* (in that it seeks to show that claims about the role of institutions hold true in multiple countries), combined with elements of the *contrast of contexts* (insofar as it seeks to show that these institutional variations affect the working-out of putatively general social processes).

Over the course of five chapters, this thesis builds a substantial body of evidence about the role of institutions in the politics of transparency in a selection of consolidated democracies: why freedom of information emerged when, where and in the way it did. Without further ado, then, let us begin.

Chapter 3: Electoral Accountability or Electoral Competition?

This chapter examines the contribution to the development of freedom of information of struggles over information arising in the electoral relationship. The argument here is divided into three parts.

The first part of the chapter argues against the widespread assumption that electoral politics contributes to greater transparency due to a widespread popular desire to hold governments more effectively to account through the ballot-box. Such a view is inconsistent with the low level of interest most voters show in these laws before they are introduced, or in making use of the rights they provide once they exist. Nor can variations in the development of access laws be plausibly explained on the basis of varying intensity of public support. Rather, it argues that electoral politics is relevant because of the incentives which competition for public office places on those who make the law, especially following revelation of attempts by officials to avoid accountability through secrecy.

This first part of the chapter then argues that the propensity of officials to advocate access rights should be systematically affected by two features of the electoral system. The first is the structure of electoral competition. Two-party systems have lower information costs for rationally-inclined voters interested in basing their decisions on past performance. They are thus more likely to encourage competition on the basis of trust, and hence facilitate the emergence of rights of access as matters of public debate.

The second is the structure of electoral accountability. Where those who control the legislative agenda are also likely to see their own re-election prospects harmed by disclosure, resistance to the introduction of access laws is likely to be greater regardless of how prominent these laws may be as matters of public debate.

These influences on officials produce a two-dimensional typology, which the chapter tests against historical evidence in the second and third parts by conducting a series of contrast-oriented comparisons. The first is between two two-party systems, the USA and the UK. In the former, where the legislative majority bears less electoral responsibility for the behaviour of the executive, the prospects for legislative protection of rights of access did indeed prove more favourable. The second comparison, between the USA and France, suggests that the very different contribution made by crises to debates over access rights is due to the interaction between their presidencies and their different party systems, rather than simply electoral competition. The third comparison involves two countries in which the majority in the legislature bears a significant degree of electoral responsibility for the behaviour of the executive, Germany and the UK. It shows that the late development and low intensity of debate in the former can be plausibly connected with the way parties in a multiparty system negotiate with one another once in parliament.

Bounded Rationality, Information and Electoral Competition

As the previous chapter noted, it is often assumed – and sometimes even claimed – that access rights develop in more or less direct response to popular demand. This is based on plausible conclusions which flow directly from central tenets of representative democratic theory. Such systems are often described as a sort of principal-agent relationship, in which the voting public appoints representatives through the ballot-box to do

the business of governing for it (Spiller 1990:269; Ferejohn 1999:133; Strøm 2000:266-8). Agency relationships have several well-known advantages, including harnessing the specialised skills of agents and allowing principals to pass their (limited) time doing other things (Dahl 1970:1-44). They also have several disadvantages, the most important of which for present purposes is that principals usually find it difficult to ensure that their agents are acting diligently and responsibly. This occurs, in part, because agents typically have technical expertise not available to the principals and also because agents necessarily have direct knowledge of their own actions whereas principals must make special efforts to find out what they are doing.

Voters are assumed to demand access laws because information improves their ability to overcome these disadvantages with agency relationships. The single most important tool which democratic principals have for exercising this control is the vote (Manin, *et al.* 1999a:29). Indeed, according to some it is the only tool: although voters “are free to discuss, criticize and demand at all times, they are not able to give legally binding instructions to the government” except by way of periodic elections (Manin, *et al.* 1999b:3). Broadly speaking, there are two ways in which voters can use this instrument: they can either consider the performance of the incumbents and evict those who fail to deliver – known as retrospective or sanction voting – or they can elect whichever candidate seems most likely to perform well in future – prospective or selection voting (Fearon 1999:56). Right to information laws are beneficial because informed voters are better able avoid the problems which arise from these two approaches: the risk of appointing unsuitable agents (adverse selection) and of not holding incumbents to account for their actions (moral hazard).

The problem with this assumption is not that it is *prima facie* unreasonable but rather that it is inconsistent with evidence about public attitudes. It is one of the ironies of freedom of information that most of the time those who are supposed to benefit show little interest in it. In every country where official statistics exist, they reveal that only a tiny fraction of the general population has ever formally requested access to a government document. In 2009, the ratio of requests to total population was 0.182% in the USA, 0.038% in the UK and 0.002% in Germany.²¹ Anecdotal evidence of the attitudes and the behaviour of elected officials suggests that freedom of information is not usually a crucial determinant of voting behaviour either. Relatively few political parties have ever made prominent electoral commitments to introduce access laws, and only in a minority of those cases have their competitors followed suit (as they might be expected to have done if they were worried about electoral fallout from failure to support a policy of systemic rather than partisan appeal). Moreover, on several occasions parties have been willing to abandon commitments to introduce laws once in office.

This widespread lack of public interest in either using access rights or voting to encourage their establishment is inconsistent with a view of democracy in which the public decides what it wants and officials respond, but it is not fatal to the claim that the development of these rights might still be influenced by electoral politics. A line of argument running back at least as far as Joseph Schumpeter holds that individual members

²¹ These figures are calculated using population data from the World Bank (2010) and reports on requests made to central government departments in the relevant countries (Germany 2009; United States 2009; United Kingdom 2010b). Neither France nor Sweden publish data on requests, but there is no evidence to suggest Swedish rates would be much higher as a proportion of the population than in the USA, and the general consensus is that request rates in France are probably quite low (Rowat 1983; Banisar 2006:73; McDonald 2006:132). It cannot be stressed strongly enough that, even where data do exist, calculations such as these are neither rigorous nor comparable, and should only be used to reach general conclusions along the lines of “very few citizens ever make use of their rights under access laws, even in a country like the USA where they are well-established and prominent features of political life”. The reasons for this were discussed in Chapter One, but a flavour of their consequences can be gained by comparing the figures here with those of the only other readily-available exercise of this type, conducted by Patrick Vleugels (2009:15). His calculations, for which he provides no sources, suggest much higher but still tiny request rates of 0.49% (USA), 0.064% (UK), 0.02% (Germany) and, intriguingly given the absence of official data, 0.003% for France.

of the public are profoundly uninterested in and unengaged with political life (Schumpeter 1992:261-3), and frequently hold opinions which are mutually incompatible when they are not radically indeterminate. Schumpeter argued that the essential core of democracy lay not in direct popular control of the government, but in competition for public office among political élites (Schumpeter 1992:269 et sqq.). Regular elections check, however imperfectly, the tendency of the powerful to seek private gain in public office by exposing them to the risk of punishment if abuses of power are discovered. Competition between candidates provides strong incentives to candidates interested in maximising their vote to transform inchoate public mood into electoral support by making promises which are likely to find widespread favour.

One problem with this élite-centred approach is its claim that access rights develop as a result of deliberate choices made by those to whom they constitute the greatest risk. This problem is, in fact, only apparent. Public disinterest in making use of access laws is compatible with élite competition over the idea of public access, provided one assumes that voters are rationally-inclined but that their rationality is bounded by the cost of information and the organisational challenges they face in developing or pursuing specific policy preferences.

It has been recognised for some time among economists, and increasingly among political scientists, that the information necessary for fully rational behaviour has high transaction and opportunity costs. In politics, one important implication of this is that the marginal benefit of information is likely to be so low that it cannot be assumed rational voters will necessarily seek to inform themselves as fully as they might before deciding how to cast their vote (e.g. Downs 1957:200; Simon 1957:196-200; Coase 1960). If politically-salient information has a low or negative marginal utility, rationally-

inclined voters should generally cast votes on the basis of incomplete information, a phenomenon sometimes known as “rational ignorance” (Somin 1998; Ciepley 1999; Somin 2000). Under these circumstances, it is entirely plausible to imagine that freedom of information might be of little practical value to the average voter despite its theoretical appeal. If so, voters might readily endorse it in principle if asked, but focus on other issues most of the time. There is some evidence that public opinion displays precisely this latent support for freedom of information as a second-order concern. Surveys suggest that, when asked, voters consistently support legislative access rights. In the UK, for example, one survey of MPs and other opinion leaders conducted by Glasgow University (CFOI 1993b:1) found over 90% favoured the introduction of an access law; surveys with samples more representative of the general population have usually found slightly smaller but still solid majorities of around two-thirds support (e.g. Kellner 1985; Rose 1986).

Moreover, although the electoral politics of introducing a right of access do not appear to constrain officials particularly tightly, the politics of repeal do not seem to be nearly so lenient. Only one access law has ever been abolished outright: the original Swedish act of 1766, which suffered the same fate as the whole parliamentary system of government under Gustav III’s *coup d’état* of 1772. No government which has expected to face the voters in future has ever taken this drastic route, and even proposals to broaden exemptions or raise fees have often proved too controversial to carry through. The restrictions to the Irish law which were put in place in 2003 are a notable exception, and the South African government’s attempt to roll back that country’s iconic law – a move which is still underway as of this writing and which has encouraged widespread mobilisation among civil society groups and opposition parties – might perhaps provide another. Governments interested in rolling back disclosure after the introduction of an

access law have usually resorted to more selective and less prominent methods, such as standalone laws mandating secrecy under specific circumstances, introducing onerous procedural requirements, and tying unwelcome requests down in long-running dispute resolution proceedings (Nader 1970; Roberts 2006b:110-8).

Trust as a Measure of the Perceived Electoral Utility of Information

The assumption that voter rationality is bounded by information costs suggests that voters might be most susceptible to appeals based on rights of access if the perceived benefits of political information rise (or the perceived costs fall) sufficiently to encourage them to reconsider their assumptions about the marginal utility of being more fully informed. Significantly, it is not necessary for the “actual” marginal utility of information (however that might be measured) to rise for this to occur, since if voters are ill-informed they will *ex hypothesi* be less able to make accurate calculations of utility. All that is necessary is for the perceived marginal value to change enough to encourage voters to reconsider their strategy. There are many factors which might contribute to this shift. One is a rise in cognitive capacity, perhaps due to education, which might lower utilisation costs and enable voters to make use of a wider variety of more complex data and discourage habitual patterns of voting (cf. Dalton 1984). Alternatively, changes to the activities undertaken by the state or the manner in which it operates might impact on voters in ways which raise the benefits of being informed even if the costs remain high. These are not strictly related to electoral politics, and are considered in later chapters. A third alternative, which is directly related and is explored here, relates to the different ways voters compensate for being uninformed.

Rationally-inclined voters faced with high information costs are likely to take shortcuts in making assessments of who to vote for, relying on “cheaper” information and

employing decision-making heuristics rather than the full-blown cost-benefit assessment of policy platforms and candidate track records assumed by normative democratic theory (Popkin 1991). Voters who are more inclined to select might, for example, choose to endorse an eminent member of the local community who they consider worthy of representing them at the centre of power, or to express solidarity with their family, class or ethnic group, or on the basis of emotional or habitual attachment to a particular party. Sanction voters may well look no further than their own sense of economic security when deciding if the incumbents deserve ongoing support. Other common practices include following the advice of experts, using public opinion polls to leverage the efforts of others, and drawing inferences from small amounts of solid information they can readily observe about candidates and officials (Ferejohn 1990:10-12; Fiorina 1990:336-41; McKelvey and Ordeshook 1990:283; Dunn 1999:59).

Although these heuristics may well represent a satisfactory trade-off between information costs and effective electoral control most of the time, they necessarily carry the risk of adverse selection and moral hazard: voters cannot be entirely sure that their assessments correspond with what their government is actually doing. To the extent that voters eschew deciding on the basis of full information, they must assume that the short-cuts they are employing do not lead to wildly erroneous conclusions, and that those who take office are indeed acting diligently and honestly. In practice, the various strategies mentioned above are not mutually exclusive, and voters are likely to employ several at once in an effort to reduce this risk. They may, for example, use the past as an imperfect guide to an uncertain future while relying on the fact that, even if the cues they pick up on when selecting candidates are misleading, the threat of future sanction is likely to encourage incumbents to be anticipate negative public opinion. Although a mixed strategy may be partly successful, it will always be an imperfect solution: beyond

a certain point, rational ignorance implies uncertainty, and non-rational or heuristic voting strategies give voters little choice but to trust their governments to some degree (or, at least, hope that they are trustworthy).

The inherent limits of electoral control under conditions of bounded rationality are most likely to encourage voters to see the benefits of informing themselves more fully when circumstances come to light which show that this trust has been misplaced. Since the future is inherently uncertain, this is most likely to occur when it becomes apparent that incumbents deserve to be punished for past misbehaviour, and especially when it includes by attempts at concealment in order to avoid accountability. Since voters are in a poor position to make precise calculations of the marginal utility of information, the most propitious circumstance for a decisive crystallisation of public opinion in favour of access rights is, in short, the aftermath of a major political crisis in which secrecy and deception on the part of those responsible was a major contributor.

This proposed inverse relationship between trust and freedom of information is consistent with survey data showing a long-term decline in trust since the 1960s (Chanley, *et al.* 2000; Brooks and Cheng 2001; Frost 2003), which is to say the period during which most access laws were introduced. It is also consistent with claims that access laws are direct responses to this decline, especially in places like Canada and the UK (e.g. Bay 1981; John Ralston Saul, in Gillis 1998; O'Neill 2006). Similar diagnoses are implicit in the increasingly widespread claim that freedom of information acts are valuable because they increase trust (cf. OECD in Roberts 2006b:108). Claims that major crises involving state secrecy have been important contributors to debates over access rights are also widespread, occurring particularly frequently in Canada and Ireland (Kearney and Stapleton 1998:168; Murphy 1999; McDonagh 2003:1-2), and to a lesser extent in places

like Switzerland (Saxer 1993) and the Netherlands (Nillesen and Stappers 1987:496; de Vos 1993:127).

The Influence of Electoral Competition on Public Officials

Candidates might find it in their interests to propose freedom of information laws when trust is declining for several reasons. In seeking support from those (relatively rare) voters who happen to be sufficiently informed to approximate the assumptions of rational theories of voting, candidates should find it in their interests to do so because these voters both understand the benefits of these laws and be in a reasonable position to use them. If (as seems likely) most voters are rationally ignorant or otherwise inclined to employ heuristic shortcuts, proposing an access law might still represent an appealing electoral strategy because of its value as a signal. One shortcut many voters are likely to employ is to treat policy commitments as clues to the characters of the candidates. Proposing an access law constitutes a credible signal of trustworthiness. It suggests that the candidate recognises the importance of honesty in public life, the legitimacy of public control over elected officials, and the right of voters to hold officials to account for past behaviour. Such promises are compelling because they are costly: access laws increase the risk to candidates of losing office at the next election – the risk of eviction – by making it more likely that the public will discover corruption and mismanagement, and by making it easier to hold those in power to account for taking unpopular decisions. Promising an access law is, in short, a powerful signal of personal probity and commitment to democratic principles.

The extent to which access laws represent an appealing basis on which to compete for public office is not solely a matter of how public opinion shifts over time; it is also likely to be influenced by specific institutional arrangements in place in each country. In most

cases, the benefits of transparency principally accrue to candidates competing for office and flow from associating themselves with the principle of public access. The costs, on the other hand, accrue principally to those who already hold office and whose re-election prospects are threatened by the release of unfavourable information. This suggests that politicians should generally be more willing to propose access laws than to introduce them, and that the prospects for freedom of information are likely to vary from country to country with the ways institutional arrangements distribute these costs and benefits among the different actors involved.

The structure of electoral competition is likely to affect the propensity of politicians to compete by signalling their support for access rights. Although there are many combinations of electoral and party systems, most countries fall into one of two broad types: those with competitive two-party systems and those with multiple parties (Lijphart 1999:165-70). Each is likely to produce a distinct set of incentives. Two-party systems present high risks and high rewards, and candidates will be strongly tempted to propose access laws but just as strongly tempted to resist introducing them. Multiparty systems involve lower risk and lower rewards, providing fewer incentives to propose laws, but correspondingly lower incentives to resist if a proposal should arise.

Two-party systems favour competition on access rights, in part, because they make it much easier for voters to identify those formally responsible for official decisions and cast their votes on the basis of past performance. In multiparty systems, the prevalence of coalition governments means that it is much harder to engage in retrospective sanction voting because inter-party negotiations often obscure lines of responsibility, and may even render such an inquiry otiose (cf. Lijphart 1968:8-10; Maravall 2010). The ease of sanctioning under two-party systems is reinforced by the fact that these systems are

often associated with single-member districts and majoritarian voting mechanisms. These present voters with simpler mechanisms for using the vote as a sanctioning tool. The proportional electoral systems usually associated with multiparty parliaments are far more complex, and make this kind of voting more difficult. In Germany, for example, the electoral system uses both multimember districts and a nationwide proportional top-up mechanism which considerably complicates the link between individual voter decisions and the eventual composition of the Bundestag (Dalton 1989:281-5).

Competitive two-party systems are also more favourable to the framing of electoral competition in terms of trust and trustworthiness because they tend to encourage the view that politics is a zero-sum game among interest groups competing for the attention for catch-all parties. Governments in such systems are empirically more likely to ignore opposition voices when implementing policies than multiparty systems, where consensus is commonly held to be widespread (Lijphart 1999:31 et sqq). This, in turn, means that those who supported the losers in two-party elections are less likely to consider incumbent governments as worthy of trust (Anderson and Guillory 1997). It also encourages the opposition to improve its own electoral prospects by emphasising the incumbents' failings, since in a two-party system voting one party out almost always means voting the other party in. It might also be noted that freedom of information acts represent a greater risk in such systems because, in providing access to the public at large, they necessarily open government to the main group with the means and a structural interest in evicting the government – the opposition. In multiparty systems, by contrast, parties do not usually seek to hold office in their own right by gaining support from multiple, potentially competing constituencies. Rather, they appeal to specific sections of society and seek to represent specific ideological positions in parliamentary negotiations. To simplify somewhat, their relationship with their constituents typ-

ically emphasises selection over sanctioning, and their constituencies are not usually available for capture by other parties. In such systems, the incentives to compete on the basis of access rights might be expected to be much lower.

A second set of effects flows from the institutional structure of political accountability. Once candidates are actually in office, resistance to the introduction of access laws should be lower where the information they release is unlikely to affect their electoral prospects (Robertson 1982). In most countries, access laws are principally designed to favour the release of information held by the administrative bureaucracy. Resistance should, as a result, be higher in parliamentary systems than in presidential regimes because in the former the political executive is drawn from the majority in the legislature, and those responsible for introducing the law are the same as those who stand to lose office in the case of unwelcome disclosures. In the latter, on the other hand, the independent mandate of the chief executive means legislators can theoretically afford to be less concerned about the risk of disclosures concerning the executive (Persson, *et al.* 1997), although they may be wary of extending access to the parliament or the parties. One special case arises in competitive two-party parliamentary systems: during the first few months after a change of government, resistance to implementation may well be lower because most disclosures are likely to reflect poorly on the outgoing incumbents; the appeal of access rights is likely to decline rapidly over time as the new government develops a track record of its own on which it can be judged.

These two sets of incentives are analytically distinct, but highly likely to interact in practice. This suggests a four-fold typology of electoral dynamics represented in Figure 6 below, which also shows the expected effects on electoral competition and legislative action. Access rights should develop earliest in Type I countries because conditions are

most favourable to the framing of electoral politics in terms of trust and access to information, and the costs to legislators of actually implementing such laws are lowest. The middle group of legislators should be composed of Types II and III. In Type II countries, the structure of electoral competition provides few incentives to campaign on the basis of access laws, but once the idea does appear on the political agenda legislators face relatively lower disincentives to resist. The idea of access rights should be a prominent and long-standing matter of political competition in Type III countries, but these countries should also be relatively slow to act because the risks for legislators are highest. The precise timing in both is likely to depend on the influence of external factors on the balance of competing electoral incentives identified here. Finally, Type IV countries should be the last to develop access rights if electoral concerns are a significant contributor: these countries provide the fewest incentives to compete on the basis of accountability or trust, while governments face the greatest risks from implementation.

Figure 6: Institutions Affecting the Electoral Politics of Information

		Type of Party System	
		Competitive Two-Party	Multiparty
Type of Legislative-Executive Relations	Presidential	<p>Type I High incentives to politicise access rights, low incentives for legislators to resist legislation</p>	<p>Type II Low incentives to politicise access rights, low incentives for legislators to resist legislation</p>
	Parliamentary	<p>Type III High incentives to politicise access rights, high incentives for legislators to resist legislation</p>	<p>Type IV Low incentives to politicise access rights, high incentives for legislators to resist legislation</p>

Crises and the Politicisation of Information Rights

This section tests the hypotheses related to Types I and III by comparing the USA and the UK, while the next tests those related to Types II and IV by considering France and Germany. With the exception of Type II, the choice of countries is relatively straightforward: each displays the necessary institutional configurations and exemplifies the kind of democratic politics they imply. Type II presents difficulties because none of the five countries examined here displays all the required institutions; France has been chosen because it comes closest. The Fifth Republic is a presidential multiparty system, but the four main parties have historically tended to form two relatively cohesive and competitive blocs. Despite this, the discussion below shows that France still allows some useful conclusions to be drawn about the likely effect of electoral competition and accountability.

The other possible candidate for Type II is Sweden. Despite the fact that it is a parliamentary democracy, Swedish ministers are not formally responsible for administrative implementation of policy, and this has sometimes been argued to produce similar incentives as presidential regimes concerning the disclosure of information (Herlitz 1966; Robertson 1982). Even if this claim were accepted for the sake of argument, Sweden would still be unsuitable because of the sheer the age of its access law. Swedish politics and society in the late 18th and early 19th Centuries were, unsurprisingly, quite different from today, and to the extent Sweden resembled any of the types depicted in Figure 6 it lay somewhere between Type I and Type III. Electoral competition was becoming oriented around two loose groupings with identifiable ideological orientations and distinctive bases of social support (Anderson 1973:422), but parties in the modern sense only really emerged in the early 20th Century with mass enfranchisement. Formally, the administrative state was responsible to the King rather than the parliament, but in prac-

tice parliament was supreme. The *Tryckfrihetsförordning* was one of a suite of measures introduced by an incoming government which were designed to strengthen public accountability in the aftermath of a serious financial and military crisis in which widespread secrecy the politicisation of state policy were prominent sources of grievance (Roberts 1986:106,166). These are no more than passing similarities, however: the sheer number of other differences which would have to be taken into account to conduct a plausible comparison is simply too great. Although this law arose out struggles between political élites, its genesis lies in an attempt to establish a normatively-desirable kind of state rather than as part of an attempt to mobilise mass opinion. Mass democracy was only established in Sweden in the 1920s, and developed in the presence of an existing and well-entrenched regime. As next chapter shows, access is relevant to Swedish political accountability. Its relevance lies, however, in its supporting a particular configuration of authority relations between the political executive, the administrative bureaucracy and interest groups, a configuration which specifically *minimises* the importance of electoral competition.

Two-Party Presidential Regimes: The United States

The USA conforms exemplifies countries with two-party systems in which the legislature is not responsible to the electorate for bureaucratic behaviour. Communicative rights have long been a prominent issue of public debate. Freedom of information was identified and introduced relatively early as a solution to problems of electoral control over government. There is also good evidence that the separation of powers, and to a lesser extent the two-party system, contributed directly to these outcomes.

The USA is particularly significant because it provides one of the clearest examples of a political crisis leading to a precipitous decline in trust, thereby opening the way for a

major consolidation of access rights. The crisis in question was Watergate, referring not just to the break-in at the Watergate Hotel itself but to the whole series of scandals which eventually brought down President Nixon: the legal battle over the publication of the Pentagon Papers, increasingly widespread dissatisfaction with the moral, financial and social costs of the Vietnam War, and irregularities in campaign financing. These provoked considerable disillusionment among many Americans with their government (Clark 1975:750-1; Rourke 1975:2). Nixon's attempts to obscure his own involvement in these unpopular and illegal decisions invited reconsideration of the terms on which those in power might legitimately keep information secret from the citizens to whom they were responsible (Lewis 1974:2-3).

Watergate is widely understood to have been a decisive contributor to the development of the 1974 amendments to the *Freedom of Information Act 1966* (Nader 1981b; 1981a), and their passage was facilitated by a combination of electoral competition and the separation of powers. The amendments were initially vetoed by President Ford, citing concerns over national security (United States 1974b). This was a risky decision, electorally-speaking, since it could easily be construed as an implicit endorsement of the corruption and abuse of power which Nixon's secrecy had facilitated. With an off-year election looming, few members of Congress were willing to run a similar risk, and the bill was rapidly passed a second time with a veto-proof majority. That electoral concerns were a direct contributor is strongly suggested by the fact that the override was passed overwhelmingly by the House, all of which was up for re-election, but by a much narrower margin in the Senate, only one-third of which was due to face the electorate (Archibald 1993:731).

The manner in which Watergate led to these amendments is significant, because it lends support to the claim made earlier that public opinion is not an independent “cause” of transparency, but rather a latent predisposition which proponents may find it easier and more attractive to politicise in some circumstances than others. Even in a country which had experienced one of the most serious political crises of a generation, in which the issue of secrecy was at the forefront of popular consciousness, in which a law purporting to strengthen popular control over government by providing access to information already existed, and in which the idea that communicative rights constitute a fundamental mechanism of popular control is embedded in the Constitution itself, neither public nor elite opinion spontaneously crystallised around the idea of strengthening the *Freedom of Information Act*. This crystallisation was the result of concerted efforts to mobilise Congressional and public opinion by a loosely-coordinated group of members of Congress such as Edward Kennedy, together with journalists and political activists like Ralph Nader (see the list of witnesses to hearings in United States 1974a:4, some of whom were interested in consolidating access rights for reasons only tangentially related to electoral accountability, as Chapter Five shows).

It is also significant that this exemplar of the “crisis explanation” involved amendments to an existing law rather than the introduction of the original law. A comparison with the circumstances under which the original 1966 Act was introduced suggests that the Watergate crisis was useful for transparency advocates, but that amendments may well have been put in place even if it had not occurred. The original bill was drafted by a House Subcommittee founded in 1955 at the initiative of freshman Representative John Moss. This was not the result of a crisis, or even a dramatic decline in public trust, but rather of shifts in the balance of power within Congress, and between it and the Presidency. To the extent that shifts in public opinion facilitated the passage of its bill, they

were very largely brought about by the Subcommittee itself, which spent almost ten years documenting and publicising irregularities in government information handling and disclosure, in an explicit effort to mobilise support for reform.

An historical perspective suggests, moreover, that Watergate itself may not have been an exogenous factor, but rather an outcome of a long-running structural conflict between Congress and Presidency over executive secrecy. This conflict emerged in its contemporary form in the immediate aftermath of World War Two, although it is possible to find historical antecedents stretching as far back as the foundation of the Republic (Hodder-Williams 1987:41-2; Foerstel 1999). The “modern” era of conflict over official secrecy in the USA began with attempts by President Truman and his successors to assert control over official information on two grounds. The first was national security. During World War Two the executive branch developed comprehensive systems for classifying and controlling access to defence-related information. These were retained into the post-war era as a result of the Cold War, and were applied to an increasingly wide range of material of domestic political significance. The second was executive privilege, a claim advanced by Presidents from Eisenhower onwards that they enjoyed implicit authority to withhold information about domestic administrative matters under their Constitutionally-mandated role as independently-elected chief executives (Schwartz 1977:129). Executive privilege was invoked with increasing frequency from the late 1950s onwards as a means of resisting what was viewed as unwelcome Congressional interference in matters such as public works, schools, civil service examinations, gaols and public housing (cf. United States 1959:400).

The invocation of national security has often proved a particularly effective way for Presidents to temporarily blunt Congressional or public demand for information

(Armstrong 1998:171), especially in the aftermath of terrorist attacks and military crises (Lee 2003:120 et sqq; Sides 2006). Over the long term, however, these assertions of Presidential authority have often contributed to the consolidation of open access rather than undermining it, because they have provided the basis for counter-mobilisation among members of Congress and non-government organisations. Perhaps the prime example of this is the foundation of the Moss Subcommittee, mentioned earlier. This was a direct response to executive refusals to provide details on the purging of communists in the employ of the federal administration. Officials had found there were fewer genuine communists available for purging than Eisenhower had promised in his election campaign, and that they had decided to make up the difference by targeting homosexuals and other “undesirables” (Archibald 1979:312; Lemov 2007). The Moss Subcommittee was among the more influential committees investigating government secrecy at this time, but it was by no means unique (e.g. United States 1958c; 1960b). Significantly, the pattern repeated itself around a decade later. Nixon’s attempts to transform executive privilege from a justification for withholding specific documents into a founding principle of the executive branch as a whole can be understood, in part at least, as a further reaction against this increasingly intense Congressional and public scrutiny of the executive branch.

The importance of institutionalised conflict between Congress and the President has tended to divert attention from partisan competition. The *Freedom of Information Act* is usually described as enjoying wide bipartisan support in Congress, and this is true. The Act was introduced with the cooperation of a number of junior Republicans, and support has consistently been high across party lines ever since (see Rumsfeld, in United States 1966; Archibald 1979:317; Relyea 1979:328). It is important not to confuse causes and effects, however, or the involvement of individual Republicans during the

passage of the bill with an absence of partisan competition in ensuring the emergence of the bill in the first place. Freedom of information has been a point of difference between Democrats and Republicans throughout post-war era, with the former generally supporting it and the latter showing far less enthusiasm. The Democrats first committed to improving access to official files in 1952, and incorporated a freedom of information act into their electoral platform in 1956 (Foerstel 1999:27; Piotrowski 2007:22). Commitments to expand it also appeared in the platforms of 1960, 1972, 1976, 1984 and 2008 (Woolley and Peters 2010). The Republican Party, by contrast, has only used the phrase “freedom of information” twice in electoral commitments over that period, both times in a negative sense. The first was in 1980, as part of a promise to relax the prohibitions in the *Freedom of Information and Privacy Acts* against background checks for prospective employees of the federal security services; the second was in 1992, when strengthening the Act was seen as a means of combating perceived “liberal” bias in the system of public broadcasting funding. These quite different views of access rights may, in part, be due to an alignment between institutional and partisan interests (Kennedy 1996): the Democrats enjoyed a majority in both the House and the Senate continuously from 1949 to 1981, with the exception of the period between 1953 and 1955. The party’s interests were, in a sense, those of Congress. The Congressional Subcommittee which drafted the original *Freedom of Information Act* was formed shortly after the Democrats regained control of the House in 1955, at a time when the Presidency was held by a Republican and not long after Senator McCarthy’s fall from grace. Its foundation was thus facilitated not just by Congressional dissatisfaction with the executive branch, but by *partisan* Congressional dissatisfaction. The fact that the Subcommittee’s supporters still felt the need, years later, to emphasise its bipartisan nature might thus be taken as tacit

acknowledgement of this partisan aspect as much as a statement of fact (Archibald 1993:727).

Majoritarian Parliamentary Regimes: The United Kingdom

A comparison between the UK and the USA suggests that the earlier adoption of freedom of information in the latter was indeed at least partly due to the separation of powers. As in the USA, official control over information has been a long-standing matter of public debate in the UK, due in no small measure to the highly competitive nature of its party system. But unlike the USA, the *Freedom of Information Act 2000* only entered into force after some thirty years of piecemeal reform, a phenomenon which can very largely be traced to the position of Cabinet at the head of both the executive and the parliamentary majority.

The late implementation of access rights in the UK cannot plausibly be explained by differences in the level or nature of discontent with official control over information, which were similar to those in the USA. Calls for greater transparency grew out of widespread discontent with the UK's notoriously-pervasive regime of official secrecy, and did so in two separate ways. The first was a largely élite debate which arose in the 1960s over whether Britain's administrative apparatus was appropriate for the domestic tasks it was being asked to undertake in the post-war era. The effects of the changing administrative relationship between the state and its citizens are considered in their own right in Chapter Four. They are relevant here because they became an electoral issue as a result of repeated, often heavy-handed attempts by successive governments to prevent the press from printing politically-embarrassing stories, usually about defence and diplomatic matters. These foreign policy controversies spilled over into debates about domestic administrative arrangements because the legal foundation of the

government's actions were the same in both cases: the infamous Section 2 of the *Official Secrets Act 1911*. Prior to its amendment in 1989, this criminalised any unauthorised disclosure of government-held information by any public servant. It symbolised, and was widely understood to constitute the foundation of, a pervasive "culture of secrecy" (e.g. Newspaper Publishers Association, in United Kingdom 1972d:42).

Nor can the late implementation of freedom of information in the UK be explained by greater reticence among the parties to compete with each other on the issue of secrecy; if anything, the partisan competition was greater. While in opposition, both the Conservatives and Labour proved perfectly willing to exploit scandals over the use of official secrecy to discredit the government. Partisan competition began to focus on domestic matters following the review of the civil service conducted by the Fulton Committee, which recommended rolling back official secrecy. This met with equivocal support within the Labour government. Some, including Prime Minister Wilson, were supportive of the idea in principle, but the consensus position embodied in its White Paper *Information and the Public Interest* (United Kingdom 1969) was that wholesale reform was both undesirable and unnecessary (Wraith 1979:187-8; Marsh 1987:253). Despite claiming that there was no "problem" of official secrecy stifling public access to important information, less than a year after the publication of this White Paper the Attorney General brought charges under the *Official Secrets Act* against four *Sunday Telegraph* journalists for leaking a confidential report into the Nigerian-Biafran civil war. This, together with Labour's failure to seriously respond to the Fulton Committee's recommendation, encouraged the Conservative opposition to make a commitment to do so at the 1970 general election (Theakston 2004:19-20). The *Telegraph* Case jury's decision in 1971 to acquit, combined with the trial judge's harsh criticism of Section 2, provided the newly-elected Conservative government with the ideal opportunity to exploit its elec-

tion commitment to maximum partisan gain. It did so by establishing the Franks Committee (Seymour-Ure 1977:161), whose report described the *Official Secrets Act* as “a mess” and recommended fundamental reform (United Kingdom 1972a; Winslow and Dwyer 1988). Although the Franks Committee stopped short of calling for a freedom of information act, it opened the door to this debate by explicitly drawing attention to the Swedish and American laws as possible models for reform (United Kingdom 1972a:Appendix IV; Jaconelli 1973:70). The effect of this recommendation can be gauged by the fact that Labour’s October 1974 general election manifesto included an explicit commitment to replace the *Official Secrets Act* with a “a measure to put the burden on public authorities to justify withholding information” (Wilson 1974), a promise which was complemented by an announcement in the Queen’s Speech to the effect that, henceforth, it would be government policy to publish background information following major policy announcements (Marsh 1987:253).

Neither of these commitments were translated into law, a fact which can be at least partly attributed to electoral risk inherent in governments giving up control over official information. One implication of the classic Westminster system in which ministers are theoretically responsible for the actions of the bureaucracy is that almost all official information is relevant to the electoral decisions of voters (Robertson 1999:1-8). The politicisation of access rights in the 1970s appears to have occurred despite the better judgment of party officials, if the reticence of Cabinets to follow through on election commitments is any guide. The Labour Party was so visibly reluctant to act on its 1975 commitment that no fewer than three private members’ bills were presented between 1977 and 1979 – two by Labour backbenchers and one by a Liberal – and proponents even managed to force the adoption of a *more* ambitious policy at the Party conference of 1978. This last proposal remains, in some ways, the most radical to be formally en-

dorsed by a political party in the UK. None were implemented before the fall of the government in 1979, and primary and secondary sources suggest this was due, in part, to the lack of support among senior party officials (United Kingdom 1972d). The only concrete action the government took was to issue an internal memorandum (the “Croham Directive”) instructing authorities to release more background information after policy decisions had been announced.

The Conservatives under Mrs Thatcher were overtly hostile towards the idea of general rights of access to central government files (CFOI 1993a), and displayed an unusual willingness to use the criminal law to reinforce centralised control over the distribution of information (Johnson 1987). Despite a concerted effort conducted by the Campaign for Freedom of Information, which employed a similar repertoire of techniques to mobilise public opinion as those which had proved successful in the USA, the only general reform to occur during the 1980s was an amendment to the *Official Secrets Act*. This was presented as a liberalisation, but actually improved the ability of the government to secure convictions for the unauthorised disclosure of information relating to the classic affairs of state. The reasons for this different attitude were not purely electoral, as later chapters show, but nor are they inconsistent with the electoral argument being developed here.

This electoral explanation for the late introduction of access rights has one weakness which deserves consideration: if the centralisation of political and administrative authority in the Cabinet provided those in power with such strong incentives to resist, it is not obvious why the *Freedom of Information Act* should have been introduced at all. Successive governments might theoretically have gone on making limited concessions more or less indefinitely, especially if party officials were right in believing that the

electoral risks of reneging on promises to do so were minimal – that there were “no votes in the issue” (Michael 1980:102; Worthy 2007b:83). Part of the explanation for the eventual adoption of the UK law lies in the fact that, by the mid-1990s a significant number of senior officials had genuinely come to believe in the value of transparency due to changes in the British state and its relations with society. These are examined in later chapters. But part of the explanation also lies in the fact that, for a crucial period surrounding the election of the first Blair government in 1997, electoral competition had positive effects which outweighed countervailing concerns. The release of the Scott Report into the Matrix Churchill affair in 1996 encouraged Labour to compete with the Conservatives on trustworthiness by promising to put in place mechanisms to combat secrecy and reinforce Ministerial accountability. Although Blair subsequently came to regret this tactic (Blair 2010:516-7), at the time he argued that the Scott Report “made the case for a freedom of information act unanswerable” (Blair 1996; Frankel 1999). Support for access was never universal within the Party, but a combination of euphoria and the prime minister’s personal support made possible the rapid release of an ambitious White Paper (United Kingdom 1997d) and the start of work drafting a bill. It is open to question whether Blair was ever as profoundly committed to freedom of information as he had made out prior to the election; he certainly appears to have either lost interest in it or been influenced by opponents within Cabinet at a relatively early stage (Frankel 2010). This resurgent resistance was reflected in a Cabinet reshuffle in July 1998, which resulted in the transfer of responsibility for the Act to Home Secretary Jack Straw, and from the Cabinet Office (which had been responsible for open government initiatives since at least 1992) to the Home Office (which was responsible for the Police, the Security Services and Immigration) – which is to say from supporters to those much more inclined to believe that access “brings nothing but pain for governments”

(Worthy 2007b:147). It is likely that an increasing number of senior government figures would, by this point, have preferred to abandon legislation entirely, but that the election commitments and the White Paper had produced so much momentum that this was considered too risky. Thus, although the kinds of electoral concerns outlined above were never truly absent, the existence of the *Freedom of Information Act* suggests that the cyclical effects of electoral competition can sometimes its long-term effects.

Transparency without Crises

The USA and the UK share an important characteristic: official control over information has been a long-standing matter of public debate and a relatively regular feature of partisan competition between established parties. This section compares these countries to France and Germany, countries in which access rights were a much less prominent matter of debate. It reinforces the claims of the preceding section by showing that the absence of electoral competition can be explained, at least in part, on the basis of their differing structures of electoral competition and accountability.

Sporadic Partisan Competition in France

At first sight, the development of access rights in France conforms with expectations about multiparty presidential regimes. In contrast with both the USA and the UK, these rights did not develop in response to a specific crisis (Errera 1987:120), nor have there been serious attempts by either politicians or civil society organisations to encourage a widespread perception that abuses of executive power might be solved by access to official files. This is consistent with the claim multiparty systems should be less likely to encouraging competition on this issue. Moreover, the inclusion of a right of access under Title I of the excitingly-named *Law of 17 July 1978 on Diverse Measures to Improve Relations between the State and the Public and Various Provisions of an Administrative, Social and*

Fiscal Nature, represented an unusual degree of parliamentary initiative. When this omnibus bill was first presented by the government to the *Assemblée Nationale* it did not provide a right of access. This was added in committee a mere twenty minutes before the bill's final consideration on the floor of the house (France 1978:1324). This is sometimes held out as a rare example of a law being passed under the Fifth Republic despite not having been introduced by the government (i.e. the Presidency; cf. Lasserre, *et al.* 1987:72-4; Moderne 2003:40).

France is also consistent with expectations in that this lack of partisan competition is clearly not for want of crises around which an Anglo-Saxon style debate might have developed. Revelations in the mid-1970s of the State's use of the *Compagnie Républicaine de Sécurité* and wiretapping against its own citizens did not produce calls for greater access to government information, despite leading to the resignation of ministers and the termination of controversial surveillance programmes (Brasz 1977). Earlier, the near-collapse of the Fifth Republic in 1968 produced only scattered calls for public access to official files (e.g. Moulin 1968), despite the prevalence of radical anti-authoritarian, anti-bureaucratic critiques of French government and widespread demands for more meaningful public participation in politics. Such calls for access rights as were made had no direct impact on the development of the access law ten years later.

This lack of politicisation is noteworthy for its persistence: unlike the USA, the French law has not formed the basis of subsequent attempts at framing problems of popular political control in terms of access to information. The term "transparency" has gained currency since 1998 with the introduction of laws to address corruption in party and electoral financing. These mandate the declaration of interests by elected officeholders; they are not designed to provide access to official files, and nor have they giv-

en rise to a general debate about the need for such laws. Those few laws which do provide access are narrow in scope, and have not been framed as relevant to retrospective electoral accountability but rather the defence of individual rights against the bureaucratic state – an indicative case being the strengthening of access to medical files following revelations in 1993 of the knowing use of infected blood by public health authorities (France 1995b:47).

The French case is not entirely consistent with expectations, however: despite a general lack of politicisation, its access law was introduced after an uncharacteristic and brief period of inter-party competition in the mid-1970s (Errera 1987:89; Moderne 2003:40). The first proposal was tabled in the lower house by the (opposition) Communists in December 1975 (France 1978:1379), and essentially related to freedom of expression rather than access to government-held information (France 1976). This was followed in June 1976 by a proposal from a broad left-wing coalition of Socialists and Radicals providing a right of access (France 1976). At the same time, the centre-right UDR tabled propositions of its own (France 1976; France 1978:1379). In November 1977 the Communists once again tabled a proposal, this time for a fully-fledged right of access (France 1977).

This departure from the normal course of French politics is somewhat unexpected, and deserves explanation. One important contributor was the election of early 1978. This occurred during a serious economic downturn, and was widely-expected to deliver a victory to the parties of the left for the first time under the Fifth Republic. It was, moreover, an extremely close election, and the outcome was expected at the time to turn on the support of socially-liberal members of the middle classes who were dissatisfied with the *status quo* but hesitant to embrace radical programmes such as those offered by the Communists (Wright 1978). That access laws were considered likely to appeal to these

voters can be gauged by the fact that the government responded to the opposition proposals outlined above by running on a platform of administrative reform which included an access bill (France 1978:1326; Errera 1987:91-2).

Although historical context undoubtedly played a role, it is also essential to take account of the unique interaction between legislative coalitions and the separation of powers in France. The Fifth Republic uses a unique electoral system with both proportional and majoritarian features and complex effects. Some have argued that it favours the persistence of multiple smaller parties (Duverger 1968), a claim which appears to be borne out in practice: twelve won seats in the 2007 elections, and this was by no means unusual. More recent scholarship has suggested the system actually has non-linear disproportional effects, disadvantaging weak parties while encouraging alliances between a small number of larger parties but not their fusion into a two catch-all parties (Blais and Loewen 2009:357). The result has usually been an *Assemblée Nationale* dominated by four main parties forming stable and often competitive two-party blocs on either side of the left-right material-distributional cleavage.

Most of the time, the imperatives of the presidential system have meant that ruling coalitions in France have been highly-cohesive (Sauger 2009); There are, in particular, few incentives for coalition partners to either propose or support alternative mechanisms of executive oversight (Lazardeux 2009). It is significant, then, that the politicisation of the mid-1970s was not just in response to unusual economic circumstances, but also in the context of a breakdown in discipline within the ruling right-wing coalition. These relations were somewhat uneasy: President Giscard's party was not the dominant member of the majority coalition, and the more influential right-wing parties

were uncomfortable with his social liberalism. The relationship is perhaps best summed up by the fact that the leader of the largest party, Jacques Chirac, was simultaneously Giscard's political rival and, until he resigned in 1976, his prime minister. After Chirac's resignation, Giscard appointed Raymond Barre, an academic economist rather than a member of parliament, and a figure who therefore lacked a political base from which to impose himself on the *Assemblée*. Consequently, the months leading up to the 1978 election were characterised by an unusual degree of disharmony and even rivalry within the government, at least by the standards of the preceding decades. They resembled what would subsequently come to be known as *cohabitation* (where the President and the majority in the *Assemblée* are from opposing parties). The widespread politicisation of access rights in the mid-1970s must partly be understood as a partisan tactic to discredit the President prior to the March 1978 elections in a manner which exploited a temporary and unusual lack of presidential control over the majority coalition (Errera 1987:92; Lazard 2009).

The presidency was an important contributor to the politicisation of access rights in other ways as well. Legislators undoubtedly drew inspiration for their access law from sources such as the recently-amended American law (Riley 1983a:85), the Council of Europe's Directive 77-31 on the protection of individuals against administrative acts and the recently-enacted German administrative procedure law (Holleaux 1980:192). But the most direct influences lay within the French state itself. At the political level, Giscard and Barre were both at the socially-liberal end of the conservative political spectrum in France, and as mentioned earlier had committed themselves to lightening the "bureaucratic burden" at the 1978 election (France 1978:1324-5; Thyreau and Bon 1981). The bill into which the French access regime was inserted was introduced in fulfilment of this, and although the intent was not to introduce a right of access, opposi-

tion to the *Assemblée's* initiative was dampened by the fact that several government committees had identified the need for something like an access law at different times over the preceding decade. Indeed, the Prime Minister himself was known to be favourable towards the idea of access rights (Aurillac 2003:56): in 1977 he had established a committee to facilitate the pro-active publication of pre-approved official documents, and this had concluded the opposite approach of indicating which should be kept secret was the only feasible possibility (France 1981:60). This recommendation was made on the eve of the election itself, and may well have influenced the specific form taken by the political opportunism discussed earlier. This suggests that the origins of freedom of information in France lie substantially within the state itself, and that parliament was only a catalytic factor in their development, a possibility explored in more depth in the next chapter.

Multiparty Parliamentary Regimes: Germany

Germany, a multiparty system in which the political executive controls the legislature, is consistent with expectations in that freedom of information only became a prominent matter of political debate relatively late, and was enshrined in law even later still. As recently as the 1970s, contemporary observers noted the lack of domestic pressure for reform (e.g. United Kingdom 1979a:44). Neither of the two main parties – the Social Democrats (SPD) or the Christian Democrats (CDU) – ever showed conspicuous enthusiasm for competing with each other on the issue. Indeed, the *Informationsfreiheitsgesetz* was only put in place in 2005 over their resistance (albeit passive resistance in the case of the SPD, which was then governing in coalition with the Greens, who were the main advocates of the law). It cannot be conclusively shown that this was solely the result of the electoral factors hypothesised above, in part because it is difficult to establish the causes of a non-occurrence. But some indirect sources of evidence which support this

claim, and others allow competing explanations for the lack of politicisation to be eliminated. In conjunction, these suggest that electoral considerations were an important contributor.

The lack of political competition around access laws cannot be attributed to the absence of propitious crises. The Federal Republic has experienced several which, elsewhere, might have been expected to lead to calls for greater transparency. It was apparently widely-accepted by the late 1970s that Adenauer had “allowed” political opponents to be trailed by the secret service (Reese 1977:228), yet debate over political control over this sensitive aspect of coercive state authority was not framed in terms of widespread calls for greater popular accountability as occurred in the aftermath of Watergate. In the so-called *Pitsch* case, a member of the *Verfassungsschutz* (Office for the Protection of the Constitution) leaked details of wiretapping operations to the press, for which he was suspended and prosecuted. His conviction was eventually overturned by the Federal Court on the grounds that the original wiretaps were illegal (Reese 1977:220-1), but this had no appreciable effect on the reluctance of the parties to compete over access rights. Earlier still, the publication in 1961 of defence plans by *Der Spiegel* led to the temporary detention of half its editorial staff on suspicion of breaching official secrecy laws. No convictions were recorded, the actions were eventually overturned as *ultra vires* by the courts, and Adenauer was forced to ask for his minister’s resignation, but this did not lead to calls for transparency as occurred in the UK following prosecutions of the press under the *Official Secrets Act* in the 1970s and 1980s.

The closest thing to a genuine “crisis” contributing to the development of freedom of information in Germany was the emergence of a debate around perceptions of corruption in the early 2000s (Redelfs 2005:1). This followed the publication of surveys by

Transparency International, which suggested that Germany had “fallen behind” other nations like Finland, Sweden and New Zealand – all countries with access laws. The issue was taken up by the press (Financial Times Deutschland 2000a; 2000b; Bolzen 2002; Meyer 2002; Rademaker 2002; Associated Press 2003; Kulick 2003; Associated Press 2004), and appears to have had particular resonance because it arose at a time when the CDU was embroiled in a major scandal involving undisclosed irregularities in its finances. Advocates of freedom of information used this debate to overcome parliamentary resistance when the access bill stalled in the Bundestag (Berliner Zeitung 2004). It is significant, however, that this only occurred once a bill was already well on its way through the *Bundestag* – this crisis arose, in other words, partly due to the campaign for an access law rather than the reverse.

The historic absence of competition cannot, secondly, be attributed to a lack of awareness at élite level of the existence of access rights elsewhere, or to its potential as a basis of inter-party competition. For a brief period during the early 1980s, there were attempts by public interest lawyers and academics to encourage the parties to take up the issue. This campaign met with some success: the Free Democrats (FDP) included a promise to introduce an access law in their election platform for 1980 (Schaar and Diederichs 1996, quoting *Der Tagesspiegel*, 12 January 1980), while a few factions of the SDP and CDU also called for reform (per officials quoted in Riley 1983b:11).

This early period of élite agitation proved to be a false dawn. Neither the SDP nor the CDU formally adopted proposals for an access law, although they were not averse to occasionally engaging in opportunistic politicisation. In 1983, for example, the opposition CDU asked the FDP Parliamentary Secretary for the Ministry of the Interior how the government was responding to the Council of Europe’s 1979 recommendation that all

member-states establish a right of access to official documents (cf. Council of Europe 1979; 1981). This question appears to have been designed to force the FDP to choose between commitment to its earlier electoral promise and its interests as a member of the governing coalition. In the course of his reply, the Secretary revealed that freedom of information had been discussed by a group within the Federal Ministry for the Interior working on amendments to the *Bundesdatenschutzgesetz* (the Data Protection Act; see Schöler, in Germany 1981:2633). He would later go on to commission a report from the Max Planck Institute concluding that access rights in Germany lagged behind in France, the Nordic countries and the USA. These efforts did not produce substantive reforms.

It does, however, seem possible to attribute the late development of debate over freedom of information at least partly to self-interested resistance by the parties themselves (Riley 1983b:11). This is suggested by the fact that the main proponents of the *Informationsfreiheitsgesetz* were the Greens, who advocated it as part of a broader strategy of using transparency to disrupt established inter-party relations. One prominent feature of the German multiparty system is relatively stable relations between the main parties and their bases of support. These ties are particularly strong in the case of the two main parties, which are allied to highly-organised economic groups, and they matter for two reasons. Firstly, as Chapter Six shows, they encouraged these supporters to oppose access rights out of strategic self-interest. Secondly, and more importantly for present purposes, it encouraged the development of a sectionally-based cooperative style of opposition within parliament, in which influential opposition parties sought concessions for their supporters through negotiation, rather than by attempting to take government themselves. The Greens represented interests which were systematically disadvantaged by this “cartel” arrangement, and sought to overturn it by adopting an adversarial approach which relied heavily on the opportunities for publicity provided

by things such as parliamentary questions on notice, press conferences and membership of parliamentary committees (Frankland 1988:110-16).

That the prevailing tendency towards secrecy which the Greens sought to overturn arose from the structural imperatives of negotiation in a multiparty parliament rather than solely from ideological commitment is clear from the way the Greens' approach to transparency changed over time. When they first won seats at Federal level, their commitment to radical transparency also led them not to hold all their caucus meetings in public. They were forced to abandon this practice when it became clear that it was weakening their bargaining position because the other parties knew in advance what their position would be (Frankland 1988:108).

Conclusion

One of the theoretical benefits of freedom of information is that it strengthens the accountability of democratic rulers to the citizens over whom they rule. Since the competitive election for public office is one of the most important mechanisms by which this is achieved in these countries, and since those who make the law in representative democracies are all elected, it would be very surprising if the development of these laws was not influenced by the costs and benefits disclosure might bring to elected politicians.

This chapter has argued, on the basis of a series of comparisons between the USA, the UK, France and Germany, that electoral politics is indeed relevant to the development of freedom of information, but not for the most commonly-assumed reason. In none of these countries was an access law the result of an independent crystallisation of public opinion around the need to exercise more effective electoral control. All experienced circumstances which might objectively have been expected to produce this, but debate

over the need for access laws only arose in some, and legislative action followed swiftly in but a few. Indeed, shifts in public opinion were most decisive where they were least independent of the political system. On several occasions in the USA and the UK, the identification of access rights as a desirable response to particular circumstances was the result of deliberate attempts at framing by politicians and politically-connected groups.

This chapter has argued that the variable propensity to politicise access rights can plausibly be connected with the institutional incentives provided by competitive two-party systems. These systems encourage those seeking office to mobilise electoral support by attacking the trustworthiness of their opponents, and by signalling their support for strong retrospective sanction voting through support for access rights. Multi-party systems do not necessarily prevent the emergence of partisan competition on this issue, but the manner in which coalition building and parliamentary negotiations have developed in the countries examined here tends to discourage it. As a result, the advocacy of access rights was associated with *disruption* to established patterns of interparty relations in the cases considered here, rather than their normal operation.

Evidence has also been presented that the structure of political accountability contributes to the likelihood that access rights are introduced once they emerge as a topic of debate. Germany and the UK were both slower to introduce access laws than France or the USA, and this can be traced, at least in part, to electorally self-interested resistance by executives who control legislatures. Presidential systems, by contrast, provide an institutionalised space within which executive assertions of the right to control the distribution of information can be disputed – albeit only under certain conditions. These differences cannot be easily explained in terms of the ideological predisposition of

those in power. Freedom of information is, admittedly, broadly aligned with the political left in the USA, but this is at least partly because the Democrats controlled the Congress for a long period in the middle of the 20th Century, while the Republicans tended to be more successful in winning the White House. Moreover, freedom of information always had important supporters on the right, while parties on both left and right were willing to politicise the idea in the UK and, sporadically, France. In at least one country – Germany – the introduction of a Freedom of Information Act occurred despite the obvious unwillingness of both major parties to compete with each other on the issue.

This chapter has, finally, touched on several issues which will be examined more fully later. The comparison between France and the USA suggested that party discipline might have affected the influence of presidential systems. This is examined in Chapter Five. Secondly, while the attitudes of public officials are influenced by electoral considerations, the comparison between France and the UK suggested that attitudes and behaviour were also influenced by the terms on which elected officials control the administrative bureaucracy. This is examined in Chapter Seven. Thirdly, although this chapter has focussed primarily on the actions of elected officials, these are not the only actors with an interest in mobilising public opinion around transparency. Organised interest groups might also do so, either as an end in itself or as a means to other ends entirely. Chapter Five argues that these groups might even be *more* important in influencing the development of access rights than elected politicians. Finally, the whole discussion in this chapter raises the question of why widespread calls for formal access rights should only have arisen in most consolidated democracies in the post-war era. After all, electoral competition has existed in many countries for much longer than this. This chapter has provided evidence that, in some countries at least, the causes lie in changes to the kinds of information which states were attempting to control during this period.

In countries already susceptible to the politicisation of access rights – the USA and the UK – disputes frequently arose in the context of official attempts to withhold information on the grounds of national security. But instances of this can be found at least as far back as the mid-19th Century (Vincent 1998:Chapter 1), so this cannot be a sufficient explanation on its own. The underlying change, one which also contributed to reform in France, was the expansion of the administrative state and its increasing influence over domestic family, social and economic life. This is the subject of the next chapter.

Chapter 4: Addressing Citizens' Grievances with the Welfare State

This chapter examines the impact on the development of access rights of changes in the relationship between administrative bureaucracies and the individuals subject to their authority. Although most works on freedom of information are primarily framed in terms of the electoral concerns discussed in the previous chapter, this relationship is worthy of attention for several reasons. Firstly, it features disproportionately among the small number of serious, historically-informed academic works on the subject: legal scholars and social scientists alike have argued that freedom of information is part of a response to discontent arising from increasing bureaucratic intervention in the lives of ordinary citizens (Lasserre, *et al.* 1987; Bennett 1997; France 1998b; Gillis 1998:143; Terrill 1998; Robertson 1999:67-78; Terrill 2000; Kirby 2003; Pollitt and Bouckaert 2004:242; Shroff 2005). This response, which will be referred to here as “new administrative law”,²² is composed of reforms which seek to encourage bureaucratic responsiveness to citizens' concerns through the disclosure of official information: the ombudsman, privacy protections, requirements that the administration consult with affected parties before making decisions and that it provide written statements of the reasons behind those decisions afterwards, more liberal rules on discovery in court proceedings, and the review of administrative decisions on their merits rather than merely for strict compliance with the law. The claim that freedom of information is part of the new administrative law is also worthy of attention because it is supported by

²² This term has been chosen because it is in common use in Australia, the author's home country; the terms used in other countries vary, and have sometimes changed over time.

some historical evidence. Freedom of information was introduced in countries like Canada, Australia, Norway and Denmark at the same time as these other reforms, and was often understood by those involved to constitute part of the same attempt at addressing friction between states and their citizens. This evidence is not conclusive, however: in some countries – notably Germany – similar reforms are understood to have *delayed* full access rights.

This chapter assesses whether freedom of information is an outcome of the growth of the bureaucratic state in three stages. It begins by arguing that the relationship between popular discontent with large, public bureaucracies and the adoption of freedom of information is far more contingent than most of the existing literature allows. The former should only be expected to produce the latter where the overall structure of administrative accountability and control favours the framing of individual discontent as an instance of broader failings in collective, political mechanisms of control over the state as a whole. This claim is tested and given initial confirmation in the second part of the chapter. It compares two countries which introduced freedom of information in the early 2000s, but which did so on the basis of quite different historical experiences of state-society relations: Germany and the UK. The third part of the chapter then compares these cases with two others. The first is France, a country which introduced access rights relatively early despite institutional arrangements which ought theoretically to have delayed it. The second is Sweden, where the original 19th-Century access law was transformed into a fully-fledged modern act in the early 20th Century, prior to the development of the welfare state but in anticipation of the problems it might cause.

Benevolent Surveillance and Administrative Control

Given the prominence among academics of state growth as an explanation for the emergence of freedom of information, it is somewhat surprising that the only attempt to seriously examine its impact using cross-national data *rejects* it. Colin Bennett's study, discussed in Chapter Two, argues that there is no single point above which governments become so "big" that information rights are inevitable. He does this by measuring size in terms of public expenditure as a proportion of GDP in 1975 (1997:220-2), when some countries with very large states had not adopted laws (Germany) but others with comparatively smaller states had already done so (the USA). Thus, he argues, the existence of a large public bureaucracy may be necessary, but it is insufficient as an explanation. The sources of cross-national variation must lie elsewhere (specifically, he claims, in the diffusion of ideas among policy élites).

Bennett's rejection of the state as an explanation for variation is overly hasty, and partly an artefact of the way he operationalises the concept. He is right to claim (1997:220) that the "size" of the state is difficult to measure, but it would be more correct to say that this is not particularly relevant. The proportion of economic activity taken up by the public sector is appealing because it is easy to measure, but at best only tangentially relevant to the issues at stake. The new administrative law is not a response to large state budgets; The relevant historically-oriented country case-studies employ the term "size" metaphorically to refer to a series of changes to the structure and operations of the administrative bureaucracy which made the contents of official files a matter of greater sensitivity to individuals, and consequently of greater political significance for officials.

The changes to the state on which these claims about new administrative law are based occurred in most of the consolidated democracies in roughly the first third to half of the 20th Century. The nature of these changes can usefully be conceptualised in terms of a shift from the sporadic exercise of despotic power to the regular, ongoing use of infra-structural authority (Mann 1984). Prior to the 1930s, few states attempted to implement a comprehensive, integrated social and economic policy, although the first foundations were already in place in some of the richer countries by the 1910s. By far the most developed state agencies with domestic responsibilities prior to that were those charged with maintaining social order, such as the police. Their interactions with citizens were episodic, and often relied either directly or indirectly on the state's monopoly of legitimate physical violence. Where domestic administrative regulation occurred, it generally constituted a response to local conditions which impacted directly on the state's capacity to compete with other states (i.e. in military matters, diplomatic affairs and – to a lesser degree – trade). By the late 1940s, however, most of these states were engaging a broadly similar range of activities based on comprehensive administrative regulation of domestic society, including the provision of social insurance, education, healthcare, housing and other forms of welfare, and systematic domestic economic development and planning.

None of the specific policies which made up this general trend was entirely unique to the post-war era; the differences were largely matters of comprehensiveness and intensity. As Hugh Hecló has put it (1995), this was an era of consolidation rather than innovation. Hitherto, social services had usually been residual, intended as a temporary safety net for those who could be temporarily unable to provide for themselves, and were provided on a piecemeal, private or voluntary basis. Henceforth, transfer payments and welfare services were usually provided on a compulsory and comprehensive

basis, often funded through central taxation, and were integrated with other initiatives as part of an overall effort to ensure social and material progress.

State Growth and Public Perceptions of Official Information

These changes are argued to have contributed to the development of access rights by affecting public attitudes toward official information in at least three ways. The extension of bureaucratic management into domestic affairs necessarily meant the collection of a far wider range of more detailed information on subject populations than ever before. Once again, this was not entirely new: some authoritarian states had engaged in large-scale “surveillance” (Lyon 1994) in the 19th and early 20th Centuries. The difference was that it now occurred in a far more comprehensive and intensive manner. The informational impact of these changes can be appreciated by considering their effect on taxation. This has been a central driver of bureaucratic development in Europe since at least the Middle Ages, if only because kings needed to pay their armies (Mann 1988; 1993). Traditionally, the organisation and effectiveness of tax regimes, like that of the armies they supported, varied considerably from country to country and over time. In the contemporary era, however, the financial burden of providing comprehensive welfare services stimulated the development of similarly large bureaucracies in each country (Davidson and Lowe 1981:264), all capable of identifying individual economic actors, assessing their wealth and extracting the state’s share more effectively than ever before. This increase in surveillance was not limited to taxation: social and economic policy also required the more comprehensive collection of data on individual and collective characteristics such as educational qualifications, employment status, spending habits, overall health, nutrition, reproductive behaviour, housing, levels of consumer debt, spending patterns, industrial productivity and a whole host of others.

Secondly, the growth of surveillance provided favourable conditions for citizens to see problems in their relations with administrative authorities in terms of information. Comprehensive, publicly-funded transfer payments and networks of schools, hospitals, housing, roads and other infrastructure meant more regular contact between the two as officials made more decisions with a direct impact on people's lives (Higgs 2004:168). It also meant that, by the late 1960s, every citizen of a rich country was likely to be the subject of at least one official file. Citizens cannot have helped but be aware of the existence of these files and the fact they contained personal information, if only because even the simplest and most banal processes required a form to be filled in: from birth, death and taxes to obtaining a driver's licence (Lenoir and Prot 1979:35; Higgs 2004:168). These developments made it more likely that the contents of official files would become matters of explicit concern, as citizens became aware of the fact that they could be used to enable decisions and actions which were either incompatible with their own aims, or at least not undertaken primarily with those aims in mind.

Thirdly, the increasing use of information technology by the state, starting in some places as early as the late 1960s, is claimed to have accentuated concerns about the relationship between surveillance and the erosion of individual liberty (e.g. Lowi 1977; Flaherty 1989; Lyon 2007:172). Rapid and accelerating advances in digital computing and communications vastly increased the volume of data which could be affordably collected and stored, and the speed with which it could be processed (Arrow 1979; Evans 1979; Noyce 1979). This made it possible to take an increasing number of routine decisions affecting matters of direct personal interest to individual citizens without significant human intervention. It also made it easier for officials to engage in "data matching" –combining information collected from different sources into more comprehensive datasets, thereby improving the capacity to draw inferences about individuals and

making it far more difficult for those individuals to rely on a lack of coordination between agencies to escape unwelcome regulation. In short, increased surveillance and information technology laid the groundwork for the identification of information *per se* as critical to relations between citizens and the state.

Problems of Surveillance, Cooperation and Control for Officials

These shifts in public attitudes towards the state and official information are usually argued to have caused at least three problems for officials. Firstly, they put in place conditions favourable to a dramatic increase in the number of citizens who were actively dissatisfied with administrative decisions. This was partly because state regulation now affected matters of far more direct, personal relevance to the individuals concerned than the traditional “affairs of state” (Vincent 1998:214-7). The spread of secondary and tertiary education almost certainly contributed by making the public less tolerant of government secrecy and more willing to dispute official decisions. Education improves the capacity to understand use the kinds of detailed information on which bureaucracies rely, and to identify relationships between different facts, implications and domains of experience (Popkin 1991:36). To employ the rationalistic language of the previous chapter, it lowers the cost of using complex political information. Education also served to encourage disputes by eroding the social bases on which the authority of the bureaucracy traditionally rested: the technical expertise and the elevated social status of members of the bureaucracy, both of which were at least partly grounded in the superior education of bureaucrats as a group.

Secondly, officials themselves increasingly became aware that information constituted a resource on which they depended but could not fully control (cf. Lenoir and Prot 1979). In many of the new fields into which public administration expanded during the

middle of the 20th Century, the timely availability of accurate data depended on cooperation from the subjects themselves. This cooperation could be secured with relative ease when citizens interacted with the state in order to obtain valuable goods and services. Here, the provision of information could be made a condition of service. Where “mutually beneficial” exchange could not be relied upon, an obvious alternative was to compel citizens to divulge information. Under conditions of increasing public unease with surveillance and social control, however, this might easily prove counter-productive by encouraging disputes. The imperative of ensuring timely access to accurate information became more pressing as states made increasing use of technology. Both data processing and data matching depend on information being correct and correctly recorded in a standardised format. For any but the smallest of datasets, verification can easily prove prohibitively expensive in the absence of cooperation from the data subjects themselves. The informatisation of public administration thus made the state particularly vulnerable to new forms of resistance through the provision of incomplete, incorrect or incorrectly coded information.

Thirdly, the expansion of domestic administration was associated with several changes within the state that provided new bases on which to challenge official decisions, and made it more difficult for those responsible to address public dissatisfaction when it did arise. Prior to the 20th Century, the piecemeal nature of domestic regulation was reflected in the organisational structure of most states, which were composed of a heterogeneous collection of boards, agencies, departments and cooperative arrangements with external organisations like churches. In most of the consolidated democracies, the need to ensure the coordinated and consistent operation of the expanding welfare state led to the functional integration of many of these into centrally-organised bureaucratic departments (Schick 2002:36-8). One consequence was that those at the apex of the bu-

reaucratic hierarchy were responsible for an increasingly wide variety of interactions with the public. In addition to undertaking an increasingly wide range of activities, the state was also employing large numbers of professionals with the technical expertise required to carry out the centralised management of society. This affected both internal and external authority relations. An ideal-typical Weberian bureaucracy is staffed by clerks with expertise in law and the internal processes of the organisation itself. Here, formal authority and expertise are aligned, and senior officials enjoy straightforward authority over their subordinates. The employment of those with professional expertise drove a wedge between these two founding principles of Weberian organisation. Practically, supervision and control now required command of increasingly detailed and technical knowledge, often coupled with professional standards of judgment which were grounded in normative and ethical standards controlled by epistemic communities outside the state rather than senior officials (Wieland 2000:98-99). The employment of experts simultaneously complicated the process of administrative control, and provided a new normative basis for outsiders to challenge the decisions of the state.

Explaining Cross-National Variation

The development of new administrative law is sometimes – as in Bennett’s article – portrayed as a dispassionate, technocratic process by which the obvious solutions to these problems were put in place. The underlying assumption is that officials readily recognised new administrative law as effective in mitigating the unintended negative consequences of state growth. Specialist tribunals, discovery rules, merits review of administrative decisions and the ombudsman address problems of internal control by relieving senior officials of the need to become directly involved in investigating operational failures or resolving disputes concerning complex technical matters (Robertson 1982:196; Robertson 1999:Chapter 4). Privacy laws, for their part, concede a degree of

control over how information is used in return for encouraging cooperation with its collection and use. They may even assist in maintaining the accuracy of (increasingly large) government databases: most data protection laws include provisions allowing data subjects to amend or annotate information they consider incorrect (Robertson 1999:77).

Freedom of information is assumed to form part of this overall trend on the grounds that each of the other reforms rely on disclosing particular sorts of information, that collectively they serve to expand the proportion of official information to which citizens have access. Full rights of access to official files represent the logical conclusion of a linear process (cf. Robertson 1999:67-78): they become more likely as limited forms of access become more numerous, either because the need for harmonisation between different limited regimes grows, or because they encourage citizens to become gradually more aware of the importance of information in general.

Although this argument has a certain conceptual appeal, the historical record suggests that the identification of problems and the selection of aspects of the new administrative law as solutions was the outcome of (often quite fierce) political disputes. Even the more limited reforms were almost always opposed by sections of the bureaucracy, usually because of reluctance to give up the power which control over information provided (cf. United Kingdom 1978:52-88). Unsurprisingly, freedom of information was opposed more strenuously still. This differential resistance can be seen most clearly in those countries where freedom of information was formally proposed as part of wider reform which included other aspects of new administrative law. In countries such as Australia, Denmark and Norway, things like the ombudsman and detailed administra-

tive procedure laws were adopted fairly quickly; freedom of information, however, was resisted more strongly and often delayed by decades.

In practice, the relationship between state growth and the development of freedom of information is likely to vary with the pre-existing structure of administrative dispute resolution and control. This is because the new administrative law is a response to the failure of existing systems of administrative supervision and dispute resolution to address individual grievances. It is also because this need must be balanced against officials' desire to retain their control over information, a control which is itself a product of institutional structure. Existing structures thus define, to a very great degree, the nature of the problem itself. Moreover, to the extent that some systems prove less susceptible to these problems in the first place, or better able to adapt, they will also have a significant effect on the solutions which are devised.

The main argument of this chapter is that freedom of information is more likely to develop out of discontent with the administrative state where elected politicians play an important role in supervising the bureaucracy. In ideal-typical terms, one might distinguish between four approaches to administrative dispute resolution: appeals to higher officials, appeals to politicians, adversarial dispute resolution (i.e. courts and tribunals), and mediation (e.g. the ombudsman). In practice, most countries provide a mixture of all four, but all differ in their emphases and effectiveness. There are at least two reasons why countries which rely heavily on elected politicians are likely to be particularly favourable to the development of access rights. Firstly, their systems of dispute resolution are more likely to break down when faced with an increase in the volume and complexity of individual complaints. Politicians have many demands on their time beyond those of looking after the concerns of individual constituents, and it is

usually more difficult to increase the number of politicians in the legislature than, say, to increase the number of courts or expand the ombudsman's staff. Secondly, the prominence of politicians in these systems means their breakdown is also more likely to be framed as failures of political control, and so the solutions are more likely to be framed in terms of access to information relevant to collective, political decision-making, rather than just to the defence of individual rights and entitlements.

Political and Legalistic Administrative Justice

This second section of the chapter shows that these claims about different mechanisms of administrative control are consistent with the experience of two countries which had quite different experiences of state growth and freedom of information: the UK and Germany. At first sight, the contrast-oriented approach may not seem appropriate, since these countries' laws entered into force within months of each other in 2005 and 2006. In this case, a simplistic reliance on the date of legislation is misleading, because Germany has a much longer history of bureaucratic surveillance and social control than the UK. If we begin with the establishment of a comprehensive social insurance under Bismarck and Attlee, the introduction of the German access law occurred perhaps as much as seventy years after the UK; even if Asquith's reforms of the early 1910s are used as a reference point, Germany was still at least two decades later. By either measure public rights of access became a political issue much earlier in the UK, and grew directly out of concerns over domestic social and economic regulation, while there was no comparable process of politicisation in Germany.

The third section considers France and Sweden, for reasons which are discussed below. The USA is not examined in this chapter. This is not because the kinds of concerns about state intervention outlined above were absent. Quite the contrary, the two earli-

est phases of access legislation – the *Administrative Procedure Act 1946* (APA) and the *Freedom of Information Act 1966* – were either drafted or passed under the presidents responsible for the most significant growth of domestic bureaucracy and socioeconomic regulation in 20th Century America: Roosevelt and Johnson. The USA is not discussed here because these concerns found political expression through relations between members of Congress, public interest campaigners, economic groups and the state, rather than through direct state-citizen relations. Some of the issues have already been discussed in Chapter Three; the rest are examined in Chapters Five and Six.

The Difficult Birth of Transparency in the United Kingdom

The UK constitutes a clear example of state growth contributing directly to the development of access rights. The previous chapter indicated that the most prominent instances of overt political competition over access arose in response to government attempts to withhold information relating to high matters of state. It also suggested that these scandals enjoyed the impact they did because they touched on deeper concerns about privacy and the spread of administrative regulation in the fields of social policy and planning (United Kingdom 1979b:8-9). The following discussion shows that the prominence of parliament within the political system played a vital role in facilitating the framing of freedom of information as a solution to these problems, and in ensuring it remained prominent despite resistance from senior political figures.

The establishment of comprehensive social and economic policy occurred over a roughly thirty-year period beginning in the 1910s. The earliest initiatives concerned social insurance, and were the outcome of pressure from trade unions, increasing awareness of the inadequacy of voluntary private insurance schemes, and concern within the Liberal government of the potentially serious consequences for imperial policy of working

class poverty and malnutrition (Hecló 1974:158-78). Even so, there was considerable resistance to the ideas embodied in the *National Insurance Act 1911*: politicians, civil servants and even prominent reformers opposed on the basis of the unacceptable degree of bureaucratic surveillance and control over workers and employers it entailed (Hennock 1981:84-9). Another contributor was the general consensus among policy élites in favour of “free trade, the gold standard and minimal public spending” (Skidelsky 1981:167), which limited the resources available to fund large bureaucracies. The shift from this traditional liberal approach is conventionally traced to the Second World War, which provided a positive experience of centralised administration to both civil servants and the general population, encouraged a sense of social solidarity, and lowered resistance to the actual establishment of an administrative apparatus which could readily be adapted to Keynesian management once peace returned (United Kingdom 1942:6-7; Harris 1981:247-9,259-60).

Discontent with the administrative state began to emerge as early as the mid-1950s (United Kingdom 1968:96), and by the late 1960s it had crystallised into a series of criticisms which were expressed most comprehensively in the report of the Fulton Committee on the Civil Service. This report was a major contributor to the emergence of official secrecy as a topic of debate, thanks largely to its finding that “the administrative process [was] surrounded by too much secrecy, [and that] the public interest would be better served if there were a greater amount of openness”. (United Kingdom 1968:91). It recommended that the *Official Secrets Act* be reviewed, and it was in fulfilment of this that the Conservatives established the Franks Committee discussed in the previous chapter.

The Fulton Report was also significant for the clarity of its diagnosis. It identified official secrecy as problematic because it contributed to poor policy-making and widespread public dissatisfaction with government. The *Official Secrets Act* was originally introduced as a means of reinforcing discipline within the civil service (United Kingdom 1972a:120-2), but the Report noted that it had come to constitute an important mechanism by which the civil service insulated itself from those it was supposed to serve. Other symptoms of this lack of openness included a failure to consult on proposed policies, or to employ those with substantive policy-relevant expertise in numbers sufficient to ensure the successful implementation of the government's chosen policies (United Kingdom 1968:95-6).

Consistent with the claims made earlier, pervasive secrecy became more difficult to maintain once the state eventually did start employing experts, many of whom supported more liberal disclosure practices. According to Vincent (1998:228-30) support was strongest among members of nascent epistemic communities in areas which depended on cooperation with subject populations, such as child protection and social work. Their advocacy served two purposes: it formed part of a process by which they established professional legitimacy, the better to compete for influence within the state against older professional groups like medical doctors; the development of clear professional standards also served as a means of encouraging cooperation among the clients of their services. The employment of experts also contributed to the weakening of official secrecy because professional expertise was not monopolised by government: there were now outsiders with the expertise and authority to question official decisions on their merits. This provided an impetus for demands for access to the basis on which decisions were being made, demands which were accommodated only slowly and with apparent reluctance through a series of half-hearted commitments by governments to

release more comprehensive background information on policy decisions (e.g. United Kingdom 1969:5; United Kingdom 1979b:9).

The combination of parliamentary supremacy and a parliamentary executive in the UK meant that the consequences of state growth were almost immediately experienced as problems of political control. This is because these changes challenged one of the legitimating myths of the Westminster system, ministerial accountability. As the Fulton Committee noted, the idea that ministers could actually accept personal responsibility for administrative error on the grounds that they had personally failed to exercise sufficient control had ceased to serve as anything more than a convenient fiction within two short decades of the war ending (United Kingdom 1968:93-5). The perceived failure of traditional mechanisms of political accountability was, from the outset, one of the major drivers of freedom of information in the UK; it remained prominent during debates on the eventual law in the late 1990s (United Kingdom 1997c), and continues to dominate popular and academic literature on the subject today (cf. Flinders 2000; Hogwood, *et al.* 2001)

The centralisation of authority in Cabinet also meant that problems at the departmental level tended to be interpreted in terms of political interference. Indeed, this concern often combined with the one discussed above: several scholars have argued that the adoption of new administrative law in the UK was driven by the view that politicians were not just increasingly unable to supervise the bureaucracy, but that their partisan interests meant they could not be trusted to do so and required supervision themselves (e.g. Flinders 2001). This suspicion, although partly structural in origin, was not unreasonable. The Ministry of Agriculture and Fisheries' inquiry, conducted in the 1950s, into the compulsory acquisition and subsequent disposal of farmland at Crichel

Down in Dorset, is a seminal example. This revealed pervasive administrative incompetence and failures of communication in the absence of corruption or personal dishonesty (e.g. United Kingdom 1954:32), and is conventionally seen as the first significant post-war instance of the activities of a minister in carrying out the executive functions of government coming under close public scrutiny. Its immediate consequences included a ministerial resignation and reforms including the establishment of the Parliamentary Commissioner for Administration (Wong 1973; United Kingdom 2010c).

The fusion of administrative authority and electoral accountability in Cabinet also meant that the way politicians responded to this dissatisfaction reinforced the view that limited measures were put in place in an attempt to head off the introduction of more comprehensive reform; they encouraged demand for more general rights of access rather than satisfying it. Ministers from Attlee onwards resisted the introduction of almost all the elements of new administrative law on the grounds they would undermine the authority of parliament, and in so doing reinforced the view that the root causes of these problems were failings at the political rather than administrative level. In the early 1960s, judicial review emerged as a response to emerging problems in the review of immigration applications, housing, environment, education and social services (Sunstein 1992:145-52). It was favoured, in part, on the grounds that it was preferable to more radical attacks on ministerial control such as the ombudsman, dedicated administrative tribunals or freedom of information (Wong 1973:141 et seq). The eventual establishment of the Parliamentary Commissioner is conventionally portrayed as a straightforward response to the problems revealed by Crichton Down, but this is an oversimplification: it was initially resisted by the MacMillan government, which justified its position on the grounds that the office would interfere with ministerial accountability to Parliament (United Kingdom 1962). This was much the same argument as would later

be used against freedom of information (United Kingdom 1979b:¶56); it is ironic that the Parliamentary Commissioner was itself later offered as evidence against the need for an access law, on the grounds that it provided access to information on terms more compatible with the principle of ministerial responsibility to parliament (United Kingdom 1979b:6).

Perhaps the strongest evidence that the access provided by other new administrative law reforms were not considered alternatives to freedom of information but, in a sense, lesser forms of it concerns access to personal data. Like the *Freedom of Information Act*, the *Data Protection Act 1984* was only introduced after a series of white papers, several private members' bills (Michael 1981:267-8), at least one official inquiry explicitly calling for the establishment of a Data Protection Authority (United Kingdom 1978), a European Union directive and significant pressure from firms worried at losing business in European countries where laws were already in place (Warren and Dearnley 2005). Unlike Germany, data protection was not routinely invoked as a reason to oppose access; it was itself resisted. The *Data Protection Act* was not conceived by officials as an alternative means of satisfying demands for freedom of information, and nor did it have this effect in practice. Quite the reverse: data protection *contributed* to the emergence of freedom of information in the UK in a number of ways (Hazell 1998; Robertson 1999:67-78; McDonald 2006:130-1). The Campaign for Freedom of Information successfully pursued a strategy of campaigning for access to specific sorts of personal data as a means of maintaining momentum in the face of Cabinet opposition to full access rights in the 1980s (Tant 1990; CFI 1993a). This strategy was successful, insofar as these laws appear to have made citizens and officials alike more used to the idea of access; today requests for personal data are almost always the least controversial from a bureaucratic point of

view, which is to say they are dealt with quickest and most likely to be granted in full (United Kingdom 2008).

Rechtsstaat, Privacy and Resistance to Transparency in Germany

Several crucial differences between Germany and the UK support the claims that large administrative states only contribute to freedom of information where systems of dispute resolution and administrative control are favourable, and not simply as a matter of course. By any reasonable measure, comprehensive social and economic policy were established far earlier in Germany than in Britain. Moreover, Germany did not simply introduce freedom of information much longer than the UK after the onset of objectively-conducive circumstances; it also differed in that concerns over the surveillance and social control which welfare implied were absent from debate over freedom of information once it did arise.

In one sense, it is no surprise that Bismarck's original reforms did not immediately lead to widespread calls for access: his was an authoritarian regime which introduced them in order to control workers and weaken support for radical and socialist movements; there was, at best, only a pretence of democratic accountability at the time. It is somewhat surprising, however, that debate was also absent after the re-establishment of a strong administrative bureaucracy and comprehensive social and economic regulation in the late 1940s, since Germany was then a democracy. Although it is difficult to offer a truly conclusive explanation for this non-occurrence, it is possible to make a plausible case, through a combination of positive circumstantial evidence and elimination of alternatives, that the relationship between politics and administrative control was an important contributor.

The different course taken by Germany cannot be plausibly attributed to any lack of concern at the implications of state intervention and control over information for individual liberty. Privacy concerns are, if anything, even more prominent there than in the UK. The protection of the individual from “bureaucratic domination” was a central concern of those who drafted the *Basic Law* in the 1940s, working as they were in the immediate aftermath of the Nazi regime. Awareness of the role which control over information had played in facilitating totalitarian government led to the establishment of a number of constitutional rights, among which were the right to privacy (Article 10) and the right to consult, without interference from the authorities, sources of information intended to be available to the public (Article 5). A concern with regulating the use of personal information in order to protect individual self-determination is pervasive in German administrative law, and as in the UK the increasing use of information technology within government from the 1970s onwards heightened sensitivity to these issues still further. Unlike the UK, however, Germany was an early and comprehensive adopter of privacy legislation, and its administrative law privileges privacy over both administrative convenience and collective control (Wieland 2000:90-1).

The late adoption of freedom of information in Germany cannot be attributed to the absence of suitable limited forms of access around which support for full access might have been mobilised, or of attempts to actually mobilise public concern on this basis. There was clearly awareness at élite level of the conceptual similarities between the various elements of new administrative law from the 1970s, which is to say at more or less the same time that freedom of information was emerging as a distinct policy proposal in the UK. The FDP co-sponsored a conference on privacy in 1979, the same year in which it proposed one of the first general rights of access to official files. This was followed by attempts within the CDU and SPD to have commitments to access rights

included in their election platforms, discussed in the previous chapter, which appear to have been motivated in part by concerns over privacy and the use of automated data processing (Riley 1983b:10-11). Not long afterwards, opposition to the 1983 census crystallised into a movement which brought a successful suit in the Constitutional Court. The Court held that “informational self-determination” was an important contributor to personal freedom and human rights (Schraut 1996). This, in turn, encouraged the Greens to propose an amendment to Article 5 of the *Basic Law* introducing a right of access overseen by an information commissioner (Germany 1993:3). This was a largely opportunistic move by the party, which had been campaigning for access rights for other reasons – discussed in following chapters – for close to a decade. But it was not the Party’s only attempt to leverage limited disclosure in this way: a bill submitted to the Bundestag in late 1997 (Germany 1997) sought to introduce general public rights of access by way of amendments to the data protection and administrative procedure laws (Germany 1998:19579-85). The significant thing about all these efforts is that none was successful: privacy did not help German proponents of freedom of information, as it did the Campaign for Freedom of Information in the UK.

The differences between these countries are consistent, however, with claims about the importance of different ways of structuring relations between the political and administrative spheres. These are perhaps most concisely revealed in the differences between the founding principle of the German system – *rechtsstaat* – and the phrase usually used to translate it into English – “the rule of law”. The English term means, broadly, that the sovereign power is no more above the law than its own subjects, or to put it another way that the government must obey the law even though it also has the power to make it. Within the sphere of actions which are not expressly forbidden or required, “the rule of law” accepts both the possibility and normative legitimacy of administra-

tive and ministerial discretion. *Rechtsstaat*, on the other hand, implies that the actions of the administration should be prescribed by a detailed body of positive law, and embodies a normative presumption *against* the exercise of discretion or political calculus in operational matters.

The late development of freedom of information is, arguably, at least partly due to the decision made at the founding of the Federal Republic to re-establish the principle of *rechtsstaat*. The emphasis on detailed legal codes as a means of excluding political influence has deep roots in German administrative practice, having emerged in the late 18th Century as a means of protecting the middle classes from the arbitrary power of the police under absolutist regimes. It was consciously reinstated in the 1940s as a means of satisfying several competing imperatives. These included the need for a state which was strong enough to undertake the reconstruction of Germany's shattered social and economic infrastructure, but sufficiently limited to prevent it from engaging in the extraordinary and systematic abuses perpetrated under the Nazis. They also included the need for a democratic system which was sufficiently responsive to popular will to be perceived as legitimate, but sufficiently insulated from it to avoid the chronic instability of the Weimar Republic or the persecution of political minorities under a tyranny of the majority. These priorities were balanced by establishing a system in which political power was divided among multiple actors, each circumscribed by a complex set of institutional checks and balances comprehensively defined in law. The direct, ongoing influence of the legislature and the political executive over the bureaucracy was limited by the systematic exclusion of discretion implied by the explicit reference to *rechtsstaat* in Article 20 of the *Basic Law*, and also by the existence of a Constitutional Court with jurisdiction over the constitutionality of primary legislation. The establishment of pow-

erful administrative courts to control the bureaucracy offered individuals protection from abuse by the state.

The re-establishment of *rechtsstaat* delayed the development of freedom of information in at least two ways. It legitimised the re-establishment of a long-standing tradition of official secrecy in the form of a comprehensive duty of discretion on public officials, legitimised with reference to the need to protect individual privacy and the democratic system from the state's capacity to misuse information (Reese 1977:225; Bullinger 1979:217-9; Perritt and Rustad 2000:408). In other words, the same norms which facilitated the emergence of freedom of information in the UK had the opposite effect in Germany because of the means chosen to realise it.

Secondly, where this discretion proved problematic, the highly-legalistic German approach proved far better able to adapt than the UK. A specialist system of administrative courts under the Federal Administrative Tribunal was established in 1952, and a uniform code of procedure for hearings promulgated in 1960. These courts enjoyed far more extensive powers to review and amend administrative decisions than their British equivalents. Although disclosure rules in both countries became increasingly favourable to plaintiffs over the 1970s, they were consistently more favourable in Germany. Revisions to the *Federal Administrative Code* in 1976-7 were noted at the time for their effectiveness (Bullinger 1979:219-20; Holleaux 1980:192); by contrast, the liberalisation of discovery in the UK under landmark decisions such as *Conway v. Rimmer* (1968) occurred over the opposition of the government (Spencer and Spencer 2010). In comparative context, the German solution to administrative control and dispute resolution lowered the barriers to the introduction of effective mechanisms of addressing individual griev-

ances, and in so doing removed the impetus for framing them as problems of collective, democratic control.

Disputed Control and Early Transparency

The preceding comparison between Germany and the UK is consistent with claims that the way systems of administrative dispute resolution coped with the growth of domestic administrative bureaucracy influenced the development of freedom of information. But a number of questions arise when attempting to apply this to other countries. This last section of the chapter considers two cases of relatively early transparency which exhibit features that might be expected to have delayed its introduction. The first of these is France, where the bureaucratic state dominates the political sphere and where administrative dispute resolution procedures fuse judicial and executive power. The second is Sweden, which consolidated its access regime in the early 20th Century, even earlier in the development of the welfare state than France or the UK, despite the existence of an administrative system which also seeks to limit political influence in important ways.

Stillborn Freedom of Information in France

It may not be immediately obvious why France presents a problem for the explanation being offered here, since the emergence of its access law is consistent with many claims made earlier about how state growth affects public and official attitudes towards information. Although France has a long tradition of state-led economic development, the adoption of comprehensive, modern social and economic policy occurred slightly later than in the UK. Social insurance was first introduced in the 1930s, while the Fourth Republic instituted some welfare and economic development programmes. These were consolidated into a comprehensive modernisation programme under the Fifth (Jobert

1991), along with what became one of the more generous welfare regimes in the OECD by the 1960s (Ambler 1991:2-4).

If concern at the growth of the state were a sufficient explanation, it would not be surprising that France was a relatively early adopter of a general right of access to official files: the first signs of dissatisfaction can be seen in the 1960s, focussing on the imbalance of power which had developed between the bureaucracy and its citizens (France 1978:1329-31). These concerns crystallised in the early 1970s into a debate in the press and among prominent political figures over the lack of bureaucratic responsiveness to the needs and concerns of individuals (Cornu 1978; Degez 1978; Drouin 1978b; 1978a; Frances 1978; Le Monde 1978b; 1978a; Plantey 1978). This contributed, in turn, to Prime Minister Barre's 1975 "Blois Declaration", which proposed a programme of reforms designed to streamline the bureaucracy and make it more responsive (France 1978:1324-5; Thyreau and Bon 1981). The law into which the *Assemblée Nationale* inserted the right of access, under the circumstances discussed in the previous chapter, was presented in partial fulfilment of this programme.

France deserves closer consideration because it challenges the arguments made earlier about why countries should differ in their willingness to adopt such laws. Neither its system of administrative dispute resolution, nor the relationship between the state and the political sphere, were nearly so conducive to development of freedom of information as they were in the UK; in fact, the constitution of the Fifth Republic specifically sought to *weaken* political control over the Presidency and the bureaucracy. The late adoption of transparency in the UK can arguably be explained in terms of self-interested resistance by a parliamentary executive motivated by political concerns, but this still leaves the problem of explaining *early* adoption in France.

Under the Fifth Republic, administrative supervision and dispute resolution is complex, but is undertaken almost entirely by the executive branch itself. The regular courts have no jurisdiction to rule on matters involving purely public law, and the legislature has relatively weak powers of supervision over the President, ministers and the departments of state (Peyrefitte 1976:169). Dispute resolution is also insulated from political influence *within* the executive branch: it is undertaken by a hierarchy of administrative tribunals culminating in the *Conseil d'État*, a body which is formally subordinate to the President but which enjoys a significant degree of *de facto* independence by virtue of its age and prestige (Auby and Fromont 1971). The institutional structure of the Fifth Republic reflects a deliberate attempt by de Gaulle to insulate the state from party politics, and should consequently not be particularly favourable to the articulation of individual grievances as problems of broader political control. It is, perhaps, slightly more favourable than Germany, in that a directly elected chief executive is formally responsible for the behaviour of state officials, but certainly far less favourable than the UK.

The unexpectedly early implementation of access rights in France is best explained in terms of the government temporarily losing control over the political agenda due to the peculiar contradictions and complexities of the political system. It is fairly clear from the available sources that the government had no intention of introducing American-style freedom of information in 1978. Liberalisation of access was only ever envisaged as being limited in scope, and was identified merely as one possible solution to a range of problems of internal administrative coordination rather than as a means of strengthening external democratic accountability.

The loss of control was, in part, the result of the temporary conjuncture of favourable party-political circumstances described in the previous chapter, but it was also made

possible by the fact that the state itself had already identified secrecy as a problem and freedom of information as a possible solution. By the 1970s, there was growing realisation among senior French civil servants of the managerial challenges posed by instinctive bureaucratic secrecy in an increasingly large, diverse administrative apparatus (Moderne 2003:32-3). Freedom of information was identified independently as a possible solution at multiple points within the state. Starting in the early 1970s, a number of official committees composed principally of members of the *Conseil d'État* reviewed the French government's information management practices. The original impetus for this work was a desire to ensure systematic archival procedures, and rationalise the publication of official documents – while if possible establishing them on a profit-making basis (de Baecque 1991:9; France 1995a:195). This naturally led to the questions of what constituted a “publication”, and hence what should be made available to the public as a matter of course. The cost and difficulty of compiling and maintaining a list of documents authorised for release, especially given the size and complexity of the state and the sheer number of documents it published, quickly led the officials involved to advocate the opposite approach – elaborating the kinds of documents which should be kept secret – on the grounds of efficiency and effectiveness. They recommended, in effect, something very like a freedom of Information act (France 1981:60).

Similar conclusions were reached separately within the *Commissariat du Plan*, which had been considering the administrative and political uses of information and expertise in economic planning since the late 1960s (Lenoir and Prot 1979:16-17). The *Commissariat* concluded that sharing information – albeit in highly structured ways – might improve the development of coordinated economic policy with outside parties (Auby and Fromont 1971:253-4). This, it appears, then crystallised discontent among the regional field offices of central departments and the economic development agencies in the *ré-*

gions and the *départements*, who had come to feel that the central government's "cult of secrecy" was hampering their efforts by preventing local planners and businesses from planning effectively for local circumstances (Auby and Fromont 1971:244-5; See also the synthesis of debate between members of local administrative units in France 1981:25 et sqq). The Commission's Seventh Report, issued in 1976, called for the introduction of a right of access to government documents (Errera 1987:89).

The fact that members of the *Conseil d'État* led this process meant that proposals for administrative transparency could not be lightly set aside by the government once they had been taken up in parliament. The Council is not just the ultimate court of appeal in the hierarchy of administrative tribunals, it is also an independent source of policy advice and plays a prominent role in advocating administrative reform and renewal (Crozier 1965:197-8). It enjoys a considerable degree of *de facto* authority and independence from the rest of the administrative hierarchy, and it has been a consistent – albeit cautious – advocate of greater access to information in both its judicial and administrative guises (Boulard 1979:171; France 1996; Banisar 2006:72).

The claim that the early implementation of access rights in France was the result of exceptional circumstances is consistent with the manner in which relations between states and citizens have been handled since. The French state has historically been quite willing to grant limited access rights to specific information in order to ensure equality of treatment by the state and protections from abuse of power by officials. This was already clear prior to the 1970s, when citizens enjoyed comparatively extensive rights of access to information which had legal implications (Boulard 1979:155). These covered matters such as public budgets, the terms and conditions of public tenders, the procedures of public examinations, the right of access to files in certain kinds of dispute

(e.g. deportation, expropriation and taxation), and the requirement that administrative decisions or actions likely to affect fundamental rights be published before they were legally binding. A number of other reforms were introduced in the 1970s with full government support to address the concerns discussed earlier, including a right to written reasons for decisions and an ombudsman (the *Médiateur de la République*). Since then, the increasing collection and use of personal data, and especially the tendency to digitise and match data from various social services for the purposes of law enforcement, have been more prominent concerns than general access (Flaherty 1989:166; Moderne 2003). Most of the (rare) debates on public access to general files in France have arisen out of concerns with personal data, and the state has proved far more willing to grant limited rights and protections in this area: a general data protection act was passed in January 1978 with full support from the executive. This was preceded by special-purpose legislation in 1970 (covering a database of driver's licences), and followed by laws in 1983 and 1996, both of which applied to the use of police and judicial files.

The early introduction of France's access law meant the introduction of more limited rights could not contribute to the introduction of full transparency as it did in the UK. But it is telling that neither the subsequent introduction of limited rights of access nor the ongoing prominence of privacy concerns contributed to more widespread use of the existing freedom of information law. The French equivalent of the UK's *Data Protection Act* remains far more prominent in popular discourse than its equivalent of the *Freedom of Information Act*, and appears to be implemented far more willingly by the administration. Moreover, even thirty years after its passage it has developed no significant constituency in civil society. This is despite persistent institutionalised support from both the *Médiateur de la République*, which first called for access rights in a report published in 1975 (Errera 1987:88), and the *Commission d'Accès aux Documents Administratifs*. France, in

short, represents a case in which problems of administrative dispute resolution have been successfully framed in individual terms, and in which interest in access more generally remains weak, despite the fact that freedom of information was introduced in the context of efforts to address precisely these grievances.

“Apolitical” Transparency in Sweden

The final case considered here is Sweden, which transformed its 19th-Century access law into a modern freedom of information act through major amendments in 1937 and less extensive but no less significant changes in 1949. The circumstances surrounding these amendments are consistent with the claim that the growth of the administrative state and the threat it poses to individual liberty are important contributors to access rights. They challenge at least two important aspects of the explanation for cross-national variation being advanced here, however. In Sweden transparency, far from being facilitated by a system of administrative dispute resolution in which political and administrative forms of control overlap, underpins a system which aims to exclude political influence and hierarchical authority as mechanisms of administrative control. The second is that the consolidation of freedom of information apparently occurred in anticipation of, rather than a response to, the growth of the modern welfare state. Sweden, like its Nordic neighbours, thus constitutes a partial exception to the claim that large states are strictly necessary preconditions for the development of the instruments of administrative accountability mentioned above (Bennett 1997:221). Although primary sources for this period are not readily accessible, it seems likely that both these unexpected features of transparency in Sweden can be explained in terms of the prior existence of a functioning access regime, and the particular configuration of political interests which prevailed in the early decades of the 20th Century.

In very broad terms, the establishment of the welfare state occurred in Sweden at a similar pace to the UK. Although Sweden had a much longer tradition of administrative intervention in domestic economy and society than Britain, prior to the late 19th Century its welfare system essentially focussed on providing poor relief. The first compulsory, modern programmes to be implemented were social insurance schemes, put in place under Liberal governments in 1913 and 1918 (Flora, *et al.* 1987:454). Over the following decades, these were gradually expanded, and culminated in the establishment of a comprehensive social and economic policy under the Social Democrats in the 1930s and 1940s which was comparable to, if not more comprehensive than, the Beveridge reforms in the UK.

The expansion of domestic regulation also had similar effects on broad public opinion as elsewhere, giving rise to concerns over data protection and privacy at more or less the same time as Germany and France. By the late 1960s, there is evidence of widespread discontent with the increasing use of information technology to collect, process and above all link datasets within government. If anything, these concerns arose slightly earlier than elsewhere, a fact which can largely be explained by the early and comprehensive adoption of computers as a cost-saving measure in a country with a relatively large and, hence, expensive bureaucracy (Flaherty 1989:98). As in Germany, controversy over the census was a particular flashpoint, in this case in 1970 (Flaherty 1989:94-7), and led to the establishment of an official committee whose 1972 report on computers and privacy formed the basis of the world's first national data protection law a year later.

Measured against the development of the welfare state and the emergence of these concerns, the introduction of a modern regime of access rights occurred far earlier in

Sweden than elsewhere. This can partly be attributed to the fact that it already had a relatively well-entrenched access law in place, and that the consequences of state growth were thus experienced as threats to existing entitlements rather than as inchoate discontent waiting to be given shape. The potential threat posed by administrative growth to Sweden's traditional right of access to official documents had been clear from as early as the 1890s, when a series of amendments excluded aspects of the emerging state administration from its scope, including defence secrets, tax information and some social and economic programmes (Anderson 1973:422). As early as 1912, the Chief Justice of the Administrative Court had been asked by the government to report on whether there were problems with the law of sufficient severity to require amendment (Anderson 1973:422 note 12; Hirschfeldt 2008). A series of official commissions starting in 1924 were tasked with preparing proposals for updating the right, and these eventually led to the 1937 amendments mentioned above.

Concerns over the expansion of the administrative state were clearly contributors to these amendments, and were reflected in the text of the law itself (Östberg and Eriksson 2009:114). Coverage was explicitly extended to local government authorities, which were the main providers of expanding welfare services. Provision was also made for appeals over denials of access, suggesting that dissatisfaction with refusals was sufficiently widespread to require formal mechanisms of resolution. The 1949 amendments were ostensibly a response to widespread dissatisfaction with restrictions on press reporting which the 1937 act had also imposed in order to placate the Nazis, and thereby protect Swedish neutrality. They must also be understood in the context of a broader re-examination of the protection of civil liberties in the face of state growth, a process which began in 1941 when the Social Democrats established a royal commission on the need to update the bill of rights included in the 1809 Constitution (Stjernquist

1992:135). 1949 is conventionally understood to mark the end of debate over the principle of freedom of information in modern Sweden (Sweden 2001:587).

The second distinctive feature of the Swedish system of administrative transparency is that it did not develop in response to a failure of political control over the bureaucracy, but rather appears to have been part of a pre-emptive effort to keep direct political influence over the bureaucracy to a minimum. It seems likely that this was, at least in part, a result of growing concern among conservatives at the turn of the Century over the need to protect traditional property rights in the face of the growing power of the labour movement and its demands for parliamentary sovereignty and mass enfranchisement. This concern led to the establishment of a number of other institutional protections, such as judicial review of legislative acts (Stjernquist 1992:134), the adoption of proportional representation, and the establishment of a supreme administrative court.

Whatever its origins, the principle of transparency remains essential to the functioning of a system of administrative accountability and dispute resolution which not only operates independently of the political system, but continues to actively exclude it (Anderson 1973:427 note 40). In certain respects, it resembles the German system, a fact which makes the contrasts between the two instructive. In both countries, the vast majority of civil servants are individually responsible to the law as well as to their superior officers and, eventually, ministers. Responsibility to the law is even more important in Sweden than in Germany, because ministers are formally barred from directing public servants on how to apply the law to particular cases.

Despite this, Sweden differs in several crucial respects from Germany. Swedish bureaucracy is less centralised and less hierarchical than the German, and its internal mecha-

nisms of appeal and control less well-developed. Public law tends to be less detailed and prescriptive, and although administrative decisions and actions can be appealed to the courts, administrative control tends to be accomplished in ways which rely less on adversarial processes. Perhaps the most crucial point on which the Swedish and German systems of administrative justice differ, apart from the existence of freedom of information itself, is the ombudsman. These two institutions have enjoyed a mutually-reinforcing relationship in Sweden since the late 18th Century, having been introduced together in the 1770s and reintroduced in 1809 with the re-establishment of a constitutional monarchy. The ombudsman has also proved remarkably well-suited to coping with the increase in volume and the increasingly technical kinds of disputes which arose due to the expansion of the welfare state: the number of staff in the ombudsman's offices in these countries grew significantly between the 1950s and the 1970s in direct response to the pressures identified in the first part of this chapter, and the offices themselves were reorganised internally to allow for greater specialisation in dealing with particular parts of the administration. The ombudsman has also proved crucial to ensuring that access to information is a real right, rather than a merely formal one (Einhorn 1977:263). Its role in mediating disputes between citizens and the state is vital in enforcing rights in specific cases, while its role as an investigator and advisor on the improvement of public administration means it has frequently constituted a significant institutionalised source of support for the principle of access. Although the late development of freedom of information in Germany cannot simply be attributed to the absence of an ombudsman there, the comparison with Sweden suggests it may be a contributor; it is, at any rate, a small but significant difference solving the problems of administrative control between two countries which share many similarities.

Conclusion

This chapter sought to show two things. Firstly, that the establishment of comprehensive social and economic policy which occurred in the middle of the 20th Century in most consolidated democracies was a major contributor to the development of freedom of information, because it gave rise to broad public discontent with bureaucratic intervention. Secondly, that this contribution was contingent on the role played by the political system in the pre-existing systems of administrative dispute resolution.

Considerable historical evidence has been provided in support of the empirical claim which underpins the first of these arguments. In all four of the countries examined here, the growth of comprehensive welfare and economic regulation gave rise to concerns over individual liberty, and to an increase in grievances held by citizens against their states. The same is arguably also true in the USA, although evidence for this has not yet been presented. State growth thus offers a plausible explanation for an aspect of freedom of information which the previous chapter identified but was unable to explain: that freedom of information has only become a matter of widespread political debate since the middle of the 20th Century. Access rights are - at least in part - an attempt to shackle the leviathan that is the welfare state.

The second claim has also received some support, although the mechanisms at work have proved to be more complex than originally claimed. The comparisons undertaken here suggest that the institutional structures governing the relationship between citizens and their states affect the likelihood that general public rights of access to government files will be identified as the appropriate response. But they also suggest that these structures are not sufficient on their own to explain the development of access rights, and that they matter for the way the grievances they produce are mediated by

politics. In France, popular discontent and official recognition of the problems of coordination posed by administrative expansion became relevant only under a particular conjuncture of interparty relations and state policy development; once this conjuncture subsided, the traditional approach to addressing these concerns re-emerged. Germany is sometimes described as a late adopter due to its emphasis on privacy, but the importance of privacy in the UK suggests this is simplistic. It was a late adopter because its post-war settlement emphasised legalistic rather than political settlement of disputes with the administration, and provided forms of access which, although limited in scope, were so effective they undercut the demand for more general access discussed in this chapter.

In countries where politicians play a prominent role in administrative supervision and control, such as the UK, the situation is more complex. These systems facilitate the politicisation of access rights, but may also delay their implementation if political considerations encourage resistance among lawmakers for other reasons. This suggests that countries in which the two systems are separate may be less likely to develop access rights early, whereas those in which they are fused might be more diverse in their timings. The importance of understanding the broader context in which discontent with the welfare state is embedded was underlined by the Swedish case. There, the attitudes of important, organised interest groups towards the emergence of a welfare state were an important factor in establishing a system of dispute resolution which is both apolitical and transparent. Taken together, this chapter and the last have shown that functioning electoral systems and large, bureaucratic welfare states were important contributors to the adoption of freedom of information. Although these may be necessary conditions, as Bennett claimed (Bennett 1997:123), they are not sufficient. Politics matters, and it is to this that we now turn.

Chapter 5: Centre-Periphery Relations in Policy Networks

The two preceding chapters examined the ways in which different institutional structures governing the relationship between governments and the general public influenced the introduction of freedom of information. Both concluded that institutions matter because they aggregate the preferences and actions of individuals, and in doing so transform inchoate discontent into identifiable problems for politicians and bureaucrats. Both were, however, unable to provide an entirely satisfactory explanation for why these conditions only produced laws in some countries, and especially why countries where these pressures were weak also eventually legislated. One reason for the unsatisfactory quality of these explanations is that these chapters have emphasised the agency of government officials. These are the very actors to whom these laws constitute the greatest threat, and almost all the sources not written by officials themselves agree that they are the primary source of resistance to access rights. Even under the most propitious of circumstances, officials identify freedom of information as the solution to problems of secrecy only when others go to considerable lengths to persuade them.

This chapter and the next build towards a more satisfactory account by focussing on these “others”. This chapter considers those organised non-state groups which have tried to convince politicians and bureaucrats to introduce access laws. It identifies their bases of support, reasons for advocating access to information and the structural factors which explain why they were more successful in some countries than others. The

next examines the impact on general attitudes towards transparency of patterns of interaction among interest groups which already enjoy influence over the state.

This chapter argues that freedom of information, insofar as it is the outcome of interest group pressure, constitutes an attempt to open the policymaking process which is more likely to succeed in countries where openness already prevails. It is divided into three parts. The first uses the literature on policy networks to show why support for freedom of information is likely to vary inversely with influence over the policy process. It argues that the single most important determinant of “openness” is whether any party or coalition effectively controls a majority of seats in the legislature. The second part compares the USA with Denmark and Norway (standing, for reasons made clear below, as proxies for Sweden). It shows that there are at least two distinct patterns of open policymaking which favour the early introduction of access rights. In the first, weak party discipline means senior officials cannot prevent peripheral groups from gaining influencing the legislative agenda. In the second, single-party minority governments routinely identify and incorporate social interests and movements, but thereby find themselves unable to reject unwelcome demands made by these incorporated interests. The third part of the chapter contrasts Germany and the UK with both the USA and the Nordic Countries. It suggests that Germany’s late adoption of access may well be due to its tendency towards the passive exclusion of peripheral interest groups, while the introduction of access rights in the UK was delayed by the government’s autonomy setting the legislative agenda and structuring relations with external interest groups.

Freedom of Information and the Policy Process

Those interested in freedom of information have been somewhat unsystematic in their examination of organised groups and the relations between them. Many scholars in the

field are, as Chapter One showed, primarily concerned with evaluating legal texts against liberal democratic norms which emphasise individual autonomy and state accountability to the public as a whole. Within this tradition, organisations *per se* are often either ignored as unimportant, or explicitly criticised as crystallisations of sectional interests which distort the democratic process (e.g. Rousseau 1968). Scholars of freedom of information usually only take organisation seriously as a source of secrecy even then only within states and firms. States are regularly portrayed as monolithic and reflexively secret, eternally engaged in a Manichean struggle against an undifferentiated public and its desire to hold those in power to account. The fact that politicians and bureaucrats alike routinely share considerable amounts of information with outsiders, albeit on a highly selective basis, is generally only acknowledged in order to support claims that legally-enshrined access is desirable because otherwise officials favour special interests at the expense of the common good. Businesses, for their part, are frequently portrayed as opponents of freedom of information for reasons of convenience and profit: secrecy protects the close relations which many producers are able to develop with regulators, and prevents the commercially-sensitive information they provide to regulators from being disclosed to competitors or hostile interest groups.

The possibility that organised interests might make a positive contribution to the development of freedom of information, or that they might not all be equally harmful, is nowhere explicitly denied but has not received systematic attention. It is widely acknowledged that civil society organisations play an increasingly important role in raising awareness of access laws, lobbying for their introduction, and ensuring their effective implementation. Examples at the international level include Article 19 and Privacy International; two prominent national-level organisations discussed in more detail below are the UK's Campaign for Freedom of Information, which was especially

active in the 1980s and 1990s, and the campaign conducted in the USA by the American Society of Newspaper Editors in the 1950s and 1960s. But organisation *per se* is usually treated as an incidental strategy in these accounts, appropriate where the state pursues its institutional interest in secrecy with particular vigour but not important in and of itself. The possibility that secrecy might persist for reasons other than a lack of commitment to democratic ideals, that some groups might legitimately consider freedom of information harmful without necessarily being antidemocratic, or that access might stand a better chance of being introduced under some configurations of interest group interaction than others has been largely ignored.

There are two exceptions to this lack of attention to organisation. Much of the secondary literature assumes that the press is a significant contributor to the development of freedom of information. This claim is, however, based less on recognition of its self-interest or organisational capacity than on its normative role in supporting mass democracy by ensuring an informed voting public. The actual contribution of the press to the development of access laws is far more variable than is often supposed, especially when viewed in organisational terms. Individual journalists have often been dedicated campaigners, and individual media institutions have periodically given vocal support. But the press as a whole has only very rarely mobilised, and even then usually only to support campaigns which are already underway. The historical sources testify more often to the frustration of rights campaigners at the weakness of this support than to satisfaction with its strength.

The other exception to prevailing inattention to organisation is a small body of scholarship from the late 1970s concerned with explaining government secrecy. Of particular interest is Itzhak Galnoor's invocation of the market to explain patterns of voluntary

disclosure of politically-salient information (Galnoor 1975:34; Galnoor 1977). Selective disclosure was, he argued, an attempt by officials to “purchase” cooperation from influential outside interests. Secrecy is therefore not pathological, but inherent to the policy process in pluralist societies. The metaphor of the market is not without problems, not least its tendency to downplay the existence of unequal power relations and the extent to which these inequalities both influence and are reproduced by the communicative process itself. But Galnoor’s basic insight about the structured nature of communication and cooperation is also latent in more recent literature on policy networks which *does* take these factors into account.

Policy Networks, Power Resources and Information

The policy networks literature provide a basis for identifying the kinds of organisation which might campaign for freedom of information and the structural features which are likely to contribute to their success, without making any particular assumptions about the merits of their substantive or normative goals. Its relevance rests on a number of inter-related insights about the distribution of politically-salient power resources and resource dependencies. The first is that it is extremely rare for any government – or, *a fortiori*, any part of government – to control everything required to successfully develop or implement policy in any given area. Important resources such as formal authority, expertise, money, the perceived legitimacy of policy intervention, knowledge, and infrastructural capacity are usually controlled by many actors including politicians, departments of state, semi-independent public bodies, organised interest groups, social movements, firms and even – under the right circumstances – the public at large (cf. Rhodes 1988:90-1 in Saward 1992:78). Although governments could, theoretically, require most of these groups to comply with their wishes, in practice explicit reliance on despotic power is rare, especially in democracies. Opinion is often di-

vided within the state itself, and it is often easier and more effective to negotiate with those external parties who control important resources (Peters 2001:189 et sqq). Doing so forms a (Rhodes and Marsh 1992:23).

The second insight is that, within any given policy network, resources are almost always distributed unevenly, which means that the influence different groups can exert also varies (Leone 1972:49-50; McFarland 1987; Rhodes and Marsh 1992). Some non-state groups routinely enjoy disproportionate influence across a range of networks, by virtue of their control over strategically-important resources. Examples include professional bodies (which act as guardians of expert knowledge, and can often crucially influence the perceived legitimacy and practical effectiveness of policy interventions), and producer associations (which wield disproportionate economic influence). Influence is likely to be unevenly distributed within the state as well: those who can block decisions (e.g. members of cabinet or minor parties who hold the balance of power) are in a far better position to extract concessions in return for their cooperation than those who do not (e.g. individual rank-and-file members or opposition parties). Within the bureaucracy, the relative influence of departments, ministries and agencies also varies– the Treasury is usually among the most influential for obvious reasons, but line agencies may also hold considerable sway under the right circumstances. This uneven distribution of influence means that networks are often characterised by a “core”, composed of members who are highly involved in negotiations with each other because they control resources deemed essential to policy success. This is surrounded by a “periphery”, composed of those who wield less influence because their cooperation is less important (Marsh and Rhodes 1992:255-7).

Policy networks are relevant to freedom of information because, as Galnoor claims, patterns of resource dependency are likely to produce structured patterns of disclosure. Negotiation and coordination are fundamentally communicative processes; indeed, policy networks are sometimes defined in terms of the degree of mutual communication among their members (e.g. McFarland 1987:146). Practices of disclosure are likely to reflect the unequal power relations because those who control access to the most important resources will probably be courted by those seeking to negotiate favourable terms. Negotiations are, in other words, likely to be most frequent and detailed among core members of a network, and less so between core and peripheral members.

The distribution of information is not just likely to *reflect* power relations. Information is a resource in and of itself, and deliberate decisions about who to communicate with can influence those same relations. Information about the network itself – the identities, intentions and bargaining positions of other participants – is likely to be particularly valuable. Knowledge of whether interests combine in a zero- or positive-sum fashion is important for choosing the most appropriate negotiating strategy, for example. All else being equal, under zero-sum conditions information about the positions and goals of others becomes more valuable as it is less widely-known, because those who do know are in a better negotiating position than those who do not. Under positive-sum conditions, on the other hand, this information becomes more valuable as it is shared, because it allows parties to identify opportunities for mutually profitable cooperation.

Overall, selective disclosure is likely to reinforce pre-existing asymmetries of power rather than undermine them, because the value of network-relevant information is likely to vary with the importance of the actor concerned. Actors who control policy-relevant resources are in a better position to affect the bargaining position of others through

selective disclosure than those who do not. Members of the political executive and senior bureaucrats are usually in a particularly strong position, because information about the intentions of the state is especially valuable. As Martin Smith has shown in his study of Britain (1992), although states may often be quite profoundly dependent on external resources in any given policy domain, these patterns of dependency only exist by virtue of official decisions to regulate in the first place. This decision provides a measure of control over the terms on which regulation will occur: it affects relative standing of different interest groups by making some resources more important to policy success than others. Once a network develops, the role of the state in formalising and implementing most policies means that information on the attitudes and intentions of officials continues to be valuable, allowing them to selectively disclose their intentions and offer opportunities for direct consultation in exchange for things like cooperation and public expressions of support. Official responsibility for these decisions constitutes, in Smith's account, a form of power akin to Lukes' second and third "dimensions" (cf. Lukes 2005), and implies that the state potentially enjoys a significant degree of autonomy from external demands even while it is apparently dependent on them.

Patterns of Policymaking and Variations in Freedom of Information

The close relationship between patterns of resource dependency and communicative practices suggests that the attitudes of different actors towards freedom of information should vary systematically with their position in a policy network.

Core actors are unlikely to be strongly in favour: their control over valuable resources and their strong negotiating position means they are likely to receive information relevant to their interests in the normal course of events, and that they will have relatively little need for legally-protected access. In fact, hostility to formal access rights should

increase with proximity to the core, because the absence of these rights limits the influence of more peripheral groups competing for the attention of policymakers. Freedom of information is likely to be least popular of all among bureaucrats and members of the political executive, not just for the reasons identified by Weber and discussed in Chapter Two, but because it threatens both their relations with core members of particular networks, and also their capacity to use selective disclosure to structure power relations across the policymaking process as a whole.

For much the same reason, freedom of information is likely to find greatest favour among organised groups whose interests are affected by policy decisions but who find themselves on the periphery of the relevant networks. These groups are likely to enjoy relatively little privileged access to information because they do not control relevant resources, and cannot easily jeopardise outcomes by threatening to withdraw. The introduction of formal rights of access is likely to appeal to these groups precisely because network cores almost always include bureaucratic departments or agencies, and official files constitute a relatively rich source of information to which access can be assured through legislation.

A policy networks approach suggests that, although freedom of information is often justified as strengthening *ex post* democratic accountability, its development is likely to be influenced by the opportunities available to peripheral groups seeking to exert *ex ante* influence over the policy process. Given the fundamental importance of the law to this strategy, and the likelihood that officials will be less than supportive, it seems reasonable to assume that freedom of information should be least likely to develop in countries where the government's ability to block unwelcome legislation is strongest.

This claim has clear affinities with the sociological literature on political opportunity structures, which conventionally distinguishes between “open” and “closed” (Kitschelt 1986), or “inclusive” and “exclusive” (Dryzek, *et al.* 2003), patterns of policymaking (Tarrow 1998:82). Expressed in these terms, the central argument of this chapter is that “open” and “inclusive” political input structures should favour the development of freedom of information. The language of political opportunity structures can only be adopted with caution here, however. There is no consensus on what makes up an “open” opportunity structure, and scholars have employed the term with varying degrees of precision (Rootes 1999). Furthermore, when the concept is defined precisely, freedom of information is usually considered a contributor to openness. In order to employ opportunity structures to explain how these laws come into being in the first place, it is therefore necessary to first specify exactly which *other* institutional arrangements are likely to be relevant and why.

This chapter argues that the nature and extent of control which parties exercise over the legislature is a crucial determinant of how responsive a country is to interest-group pressure for a freedom of information act. This is by no means the only set of arrangements which might affect the executive’s control over the legislative agenda. Chapter Three identified the separation of powers, while Chapter Four suggested accountability institutions like the Ombudsman and the *Conseil d’État* might also be relevant; another is a strong upper house employing a different electoral formula (cf. Lijphart 1999). Fortunately, there is no need to catalogue or investigate the effect of each of these so-called “institutional veto players” (Tsebelis 1995), because the comparison between France and the USA conducted in Chapter Three suggested that their they were of secondary importance compared with the role played by parties. Both these countries have presidential systems, but the separation of powers was a significant, ongoing contributor to

the politicisation of access rights only in the USA; it became relevant in France when discipline within the right-wing coalition was particularly weak. As Duverger put it (1968:394): “executive and legislature, government and parliament are constitutional façades; in reality the party alone exercises power”.

Party control over the legislature has two separate but related dimensions: the degree of discipline which parties exercise over their parliamentary members, and whether a majority of seats in the legislature is routinely controlled by a single party. Where both apply, the climate for access rights is particularly unfavourable (unless senior party officials have some other reason to support it). Single-party cabinets concentrate the political costs and risks of freedom of information, discussed in Chapter Three, on those with the ability to resist their introduction. Senior party officials in these systems are in an extremely strong position to prevent unwelcome proposals from being made by altering the determine the composition and terms of reference for parliamentary committees, and through their control over the agenda in the house as a whole. In the last resort, party discipline can be relied upon to ensure any proposal which cannot be blocked in this way is voted down. The situation is similar where majority coalitions are the rule, although the extent to which they approximate the behaviour of a disciplined single-party cabinet will depend on the stability of the coalition itself. Under minority government, by contrast, the prospects for freedom of information are somewhat brighter. Opposition parties are in a better position to demand access rights in exchange for support for the rest of the government’s programme, and more likely to actually do so inasmuch as access laws are a kind of insurance against secrecy-based exclusion from future policy debates.

Fragmented and Cohesive Paths to Early Transparency

One of the striking things about advocacy of freedom of information is that, in all countries where the impetus came primarily from domestic groups, mobilisation occurred in two phases with similar constituencies and tactics. Freedom of information has typically drawn its earliest and most consistent support from professional groups whose responsibilities made them sensitive to problems of official secrecy, and whose professional position provided easy opportunities to agitate for transparency. Primarily, these were journalists, relatively junior members of parliament and academics. From the 1970s onwards, an additional source of pressure came from groups advocating participatory politics as a means of solving the spill-over effects from large-scale industrial manufacturing. This second wave shared a concern with their predecessors at the implications of bureaucratisation, but their targets were broader: not only public officials working in planning departments, or public health and welfare agencies, but also private corporations which distorted popular sovereignty through their influence over policymakers, regulators and the media. The distinction between these two phases of mobilisation provides a means of distinguishing between early adopters of freedom of information – where governments responded to pressure from the first phase – from late adopters – where governments only responded to the second phase, if at all. This second section of the chapter shows that there are at least two distinct paths to the early adoption of access rights by examining the USA on the one hand, and Denmark and Norway on the other. The justification for examining Denmark and Norway rather than Sweden as in the rest of the thesis is that Sweden already had a well-entrenched access law before the development of modern interest-group politics, making it difficult to separate cause from effect in this case. As the discussion below shows, however, Norway and Denmark were early adopters, for reasons which can be traced in very large part to in-

stitutional structures they share with Sweden. They show, in short, what the influence of interest group politics might have been had Sweden not introduced its access law long beforehand.

The third section of the chapter further supports the relevance of party control over the legislature by contrasting these countries with two late adopters: Germany and the UK. France is not examined here because civil society interest in access is so weak as to be non-existent. An explanation for the absence of mobilisation lies beyond the scope of this thesis, but the conclusion of the chapter offers a few speculative comments based on the insights gained in the intervening discussion.

The Congressional System in the United States

The development of freedom of information in the USA demonstrates the favourable conditions presented by a fragmented policymaking process. Consistent with expectations, the social bases of support for reform lay among groups which were either peripheral to established policy networks or represented interests that were excluded from them, and their support was an instrumentally-motivated attempt to overcome their lack of influence. That pressure from these groups led fairly quickly to legislation can largely be explained by the fact that the parties exert only weak control over the legislature. Over the long term, this absence of control has produced a self-reinforcing pattern: legislative gains in one period have facilitated further reform by opening the political system to influence from a wider range of groups, making information an increasingly valuable resource in the policy process channelling dissatisfaction among peripheral groups into calls for stronger legal rights.

The first explicit advocacy of formal access rights in the USA began in 1946 when the American Society of Newspaper Editors (ASNE) founded a committee on freedom of in-

formation. Through a combination of reporting and commissioned research, it sought to portray two emergent trends as dangerous to popular democratic control of government: official secrecy and the increasing complexity of the state administrative apparatus. These issues have already been addressed in earlier chapters, but their particular significance for the press is worth underlining here. The difficulty of providing accurate, informative reporting posed by the complexity of the state was compounded by the increasing tendency of officials to withhold information which had hitherto usually been available (Cross 1954:214 et sqq). One contributor to this shift was the political context of the early Cold War, and particularly the widely-feared threats of communist infiltration of the USA itself. These fears provided a ready justification for the maintenance, and indeed the extension, of official secrecy to new areas, even under circumstances where it seemed to serve little purpose other than administrative convenience. The ASNE campaign was grown out of discontent with this situation, and was precipitated attempts to convert the state's internal security classification system into a comprehensive censorship regime (Cross 1954:preface).

ASNE gained an important ally with the foundation of the Congress Special Subcommittee on Government Information in 1955. In addition to the proximate causes discussed in Chapter Three, this was also a response to broader concerns about the consequences of state growth and *de facto* expansion of official secrecy for popular sovereignty, Congressional control of the executive, and the preservation of personal liberty in the face of extensive bureaucratisation in both public and private spheres.

It might seem naïve to argue that the head of a Congressional subcommittee and the editors of some of the most important newspapers in the country were “peripheral” to the American policymaking process, especially since their efforts resulted in the pas-

sage of the *Freedom of Information Act* itself. It is important, however, to distinguish the advantages they enjoyed due to the openness of the American political system from at least two structural weaknesses which these advantages offset.

Firstly, policy domains are not all equivalent, and influence in one may not translate into influence in another. The literature on policy networks usually takes as its frame of reference the development and implementation of substantive policy in areas such as agriculture, national security, environmental management and healthcare. It is assumed that the various members of these policy communities participate because their interests are directly affected by the outcomes. Freedom of information is not a substantive issue in this sense; it a procedural matter which cuts across substantive domains. In a sense, the freedom of information policy domain is itself peripheral; the press was certainly a peripheral player in the substantive policy domains where concerns over official secrecy first arose, where it had nothing to offer in exchange for access but the promise of sympathetic reportage. Policymakers were far more interested in cooperating with groups controlling more important resources: military officers, industrial producers and administrative departments.

Secondly, it is certainly true that Moss was the head of a Congressional subcommittee, and was therefore not fully excluded from the policy process, but committees are not all equal Moss was only recently elected when the Subcommittee was formed, and was a peripheral player within Congress insofar as he had not yet developed a reputation, connections or sufficient seniority to constitute an influential figure in his own right. The foundation of the Subcommittee occurred not because of his personal influence, but because the political circumstances discussed in Chapter Three encouraged the House Majority Leader and the Chair of the Government Operations Committee to allow

it. Once founded, the Subcommittee occupied a peripheral position within the committee system, and had to struggle against a mixture of indifference and outright hostility from the rest of Congress: one of its own staffers later recalled that its only real supporters during the early years were its own immediate members (Archibald 1993:727).

The Subcommittee provided advocates of openness with considerable opportunities to pursue their goals within Congress. Committee chairs enjoy wide scope to undertake own-motion research, and their ability to subject the executive to scrutiny is arguably without peer among parliaments worldwide (Gleditsch and Hogetveit 1984:29). The Moss Subcommittee used these opportunities to good effect. It compiled comprehensive data on the arbitrary nature of official information practices through a combination of hearings and questionnaires sent to all departments and agencies (Archibald 1993:727). It then produced voluminous reports (e.g. United States 1956; 1957; 1958b; 1958a; 1959; 1960a; 1961b; 1961a) detailing the inefficiencies, abuses and irrationalities this secrecy made possible, and the self-serving ways in which bureaucrats interpreted existing provisions of the *Administrative Procedure Act*. This fed directly into the electoral politics discussed in Chapter Three.

This strategy met with success, in part, because weak party discipline meant that the executive's institutional interests were not a significant influence on other members of Congress, even when the President was a member of their own party. It is fairly clear from the way the executive branch reacted to the proposed *Freedom of Information Act* that, had it been able to block the Subcommittee's work earlier it would have done so. The bill was opposed by all executive departments, and although President Johnson made much of democratic principles in his signing statement (Johnson 1966), his private view was very different and he had to be "dragged to the signing table" (Moyers

2002). The bill appears to have rapidly gained the support noted in Chapter Three because it resonated with the normative justification for Congress as a check on the executive, and even a President such as Johnson, whose influence over Congress was legendary, was unable to prevent it from passing the legislature as UK governments did in the 1970s and 1980s.. Intriguingly, there is some evidence that party discipline, although weak, was not entirely absent or irrelevant: Johnson's decision not to veto the bill was, in part, motivated by the fact that it had been put forward by his own party (Archibald 1979:312). The party system was, it seems, strong enough to influence strategic calculations of senior party officials, but not strong enough to prevent Members of Congress from supporting projects which diverged from the interests of their nominal superiors in the party. The second phase of mobilisation began in the USA in the late 1960s, and contributed to the 1974 amendments to the *Freedom of Information Act*. Chapter Three showed that this was a propitious time for attacking official secrecy for reasons unrelated to the policy process. But it also showed that the relationship between Watergate and legislation was contingent; events were exploited opportunistically by groups interested in consolidating access rights for reasons unrelated to Nixon's behaviour. These groups were principally composed of public interest campaigners interested in issues like product safety, human health and industrial pollution. They emerged as a political force in the mid-1960s, as part of a wave of social movement mobilisation which emphasised individual self-determination, participatory democracy and greater attention to quality-of-life in the face of increasing bureaucratisation in public and private spheres (Kitschelt 1990:179-80).

The public interest movement was peripheral to the policy-making process in the USA in two senses. It sought, firstly, to further interests which were peripheral – albeit often due to passive exclusion. Prior to the 1970s, many of the most important policy net-

works in the USA were primarily concerned with material-distributional issues such as labour market regulation and the management of industrial and agricultural production. The core of these networks was composed of representatives of a relatively narrow range of players working in almost exclusive cooperation with each other; stereotypically, these were Congressional committees, government departments and producer groups, whence the name “iron triangles”. The exclusion of consumer and other public interests was partly due to consensus among core members that issues like participation and pollution were of secondary concern where they were not actually a threat to profitability. It was also an outcome of the underlying organisational weakness among the beneficiaries of these goods (Leone 1972:51).

The public interest movement itself was peripheral to most American policy networks for two reasons. It was, from the start, suspicious of bureaucratic organisation *per se*, resisted the formation of internal hierarchies and preferred to remain outside established networks for fear of cooptation (Kitschelt 1990:179-80,191). It also controlled few policy-relevant resources in its own right. Unlike unions, the public interest movement does not seek to directly organise its constituents, and is thus rarely able to credibly threaten a strike. It is also in a far weaker financial position than professional or producer associations, who represent the interests of profit-generating enterprises and who can therefore rely on the self-interest of their members to secure funding.

The public interest movement’s interest in official information was integral to its attempts at overcoming these structural weaknesses. Consistent with its fundamentally anti-bureaucratic stance, it sought to mobilise by encouraging the development of group consciousness and political sophistication among their constituents rather than through direct organisation (Reich 1970:1096-7). One early and widely-adopted ap-

proach was to provide accessible, authoritative research and advice (Evan Hendricks, one-time editor of *Privacy Times*, in Bollier 2004). The intent was to empower individuals to exert pressure directly on corporations and government through the free market and the electoral system (Mueller 1969). This technique was widely employed by the consumer movements in many countries at least as far back as the early 20th Century (Marcus-Steiff 1977:88), not least because it was less resource-intensive than widespread mobilisation through direct organisation, and could be offered as a selective incentive in the form of publications sold to members.

The shift from a focus on distributing information as a mobilising strategy to freedom of information as a policy goal occurred through a process exemplified – and, indeed, led – by Ralph Nader. Nader had a profoundly ambiguous relationship with government authorities. His researchers were significant requesters under the 1966 Act, using it to obtain information in support of particular technical claims they made in their consumer reports (Mueller 1969:980). This was, in other words, an attempt to harness the power of the state to compensate for the structural weaknesses of his own movement. On the other, Nader was an outspoken critic of regulatory agencies such as the Federal Trade Commission, which he alleged had become unaccountable to any constituency apart from those they were nominally supposed to be regulating (Leone 1972:55). They had been captured by, and ended up protecting, the very interests from whom they were supposed to be protecting the public (Mueller 1969:979).

Nader's goal of breaking industry capture of regulatory authorities led him to eschew the impartiality preferred by earlier consumer advocates in favour of the unabashedly polemic use of prominent negative publicity campaigns. This approach unsurprisingly provoked resistance to his routine information requests: officials attempted to protect

themselves and favoured insider groups by exploiting loopholes in the *Freedom of Information Act* to withhold information (Mueller 1969:982). His response was to conduct an investigation into the administration of the act itself, and to issue a report which opened with the claim that its democratic promise was being “undercut by a riptide of bureaucratic ingenuity” (Mueller 1969:982; Nader 1970). This report, and the Freedom of Information Clearing House he founded in 1973, were of decisive importance in the passage of the 1974 amendments to the *Freedom of Information Act*: they provided the impetus and organisational core of a campaign to convince Congress that amendments were both an appealing way of responding to the Watergate crisis and acting on a broader agenda of popular empowerment (Bollier 2004).

The enduring importance of the structural factors identified above is strongly suggested by the fact that, despite addressing different substantive concerns and involving different actors, the process leading up to the 1974 amendments resembled that leading up to the original 1966 enactment in several important respects. Congress had become more open to influence by small groups between 1966 and 1974, due among other things to the introduction of elected primaries for selecting candidates from the two major parties. These had existed in some states since the early the 20th Century, but became the norm nationwide in the period after the 1968 Democratic convention when they were introduced for presidential races. Elected primaries weakened the power of the party hierarchy in two ways. By placing candidate selection in the hands of registered voters, they reduced the capacity of whips to discipline elected members with the threat of losing party endorsement at the next election. They also encouraged candidates to be even more receptive than they had been to lobbying efforts from outside groups, especially where the issues might prove popular with their constituents.

A further similarity was the importance of alliances between external interest groups and individual members of Congress willing to exploit the opportunities offered by the committee system. On this occasion, Senator Ted Kennedy played a leading role through the Senate Committee on the Judiciary. These alliances were not just important at particular moments in the development of freedom of information – they were crucial to increasing sympathy within Congress to the use of transparency more generally as a tool of public empowerment and regulation. Supporters of the original access law remained active; Moss himself played an instrumental role in the passage of key consumer protection measures, including the *Consumer Product Safety Act*, the *Motor Vehicle Information and Cost Savings Act*, the *Toy Safety Act*, the *Poison Packaging Prevention Act* and the *Toxic Substances Control Act*. These all relied on disclosure to achieve particular policy goals (Kennedy 1996; John Moss Foundation 1999). Finally, both campaigns exploited the widely-perceived failure of an existing law as a means of mobilisation: the *Freedom of Information Act* in 1974, and the *Administrative Procedure Act* in 1966. Both laws constituted a clear set of standards against which official behaviour could be compared as part of a negative publicity campaign (Leone 1972:55) and also, if necessary, disputed in court. The *Freedom of Information Act* also provided access – however imperfectly – to official files containing evidence that official behaviour frequently fell short of those standards, evidence which Nader used systematically as part of his broader public interest campaigns. Access rights thus contributed to their own consolidation. They formed a point around which otherwise-disorganised groups could mobilise, provided a means for peripheral groups to gain access to the policy process, and in lowering the barriers to disorganised participation in politics contributed to the very processes of fragmentation which made access rights desirable in the first place.²³

²³ It is interesting to note that pre-existing access laws at state level do not appear to have provided a similar basis for

Diffusion from Sweden to the Nordic World

The Nordic countries took a very different route to freedom of information than the Americans, but also arrived early. Their bureaucracies are large and coherently organised, their political parties are capable of successfully disciplining their own members, and their constitutional structure is not nearly so fragmented as the USA. The opportunities for external groups to impose access on reluctant officials ought, in principle, to have been far fewer, and these countries might therefore have been expected to be late adopters. Sweden's historic law is so old, and it was transformed into a fully modern law with codified exemptions and effective enforcement mechanisms so early, that the contribution of interest group politics is difficult to assess (although the suggestion in the previous chapter that the Social Democrats strengthened the law in the 1930s as part of a bid to placate conservatives worried at the expansion of the state is, at least, consistent with the arguments about resource dependency advanced at the start of this chapter). In order to examine these processes by comparing sufficiently similar cases, this section focusses instead on Denmark and Norway, which legislated only a few years after the USA, and which resembled Sweden in many important ways but differed crucially in that they did not have pre-existing access regimes.

One major problem for any claim that Denmark and Norway represent what Sweden might have been in the absence of the 1766 and 1809 laws regards diffusion. The Swedish model of administrative dispute resolution and *ex post* control, discussed in the previous chapter, was known in its Western neighbours no later than 1929. In that year,

mobilisation at federal level, despite being extensively surveyed in Cross's seminal study (1954:337 et sqq.). Louisiana passed its *Public Records Act* in 1912, providing greater rights of access and enforcement than the Swedish law (Anderson 1973:445-6). California's *Brown Act* followed in 1952, and is called by some the first "modern" freedom of information law (Singer 1979:310). In the mid-1960s others adopted similar laws, including Arkansas and Colorado. Although state-level laws have developed local constituencies and constitute a long-standing field of fruitful academic research (Piotrowski and Van Ryzin 2007), the main drivers of federal reform were, at least in the 1950s-1970s, specific to the federal level.

Swedish delegates to a meeting of the Nordic Association for Public Administration proposed it as a solution to the anticipated problems of state growth (Nilberg 1929; Holm 1975:160-1; Holm 1979:77). The idea was, reportedly, received relatively favourably (Anderson 1973:436-7 note 92).

Although officials in Denmark and Norway were aware of the *concept* of freedom of information before the War, this appears to have had little direct effect on later events. Familiarity among cabinet ministers and senior civil servants did not translate into positive support; they were less enthusiastic about the idea than legal academics and junior civil servants (Holm 1975:160-1), and made no serious effort to implement it prior to the emergence of civil society pressure after the War. Once demands did arise, there were clear signs of official resistance motivated by much the same concerns as in the USA, UK, Germany and France (Einhorn 1977:260-3; Holm 1979:77-8,104 note 3).

Similarly, the character of domestic mobilisation in favour of access rights does not appear to have been much affected by the prior existence of access rights in Sweden. In all three countries – as in the USA – the first groups to mobilise in the 20th Century were journalists, lawyers and academics concerned about the threat to individual autonomy and democratic control of a growing state, followed in the 1970s by environmental and consumer rights campaigners. In all three cases, this mobilisation also led relatively rapidly to legislation: in Sweden, to the 1937 and 1949 amendments; in Denmark and Norway, to limited rights of access to files relevant to formal dispute proceedings in the mid-1960s, followed by full freedom of information acts in 1970.

The distinctive feature of the Nordic countries, in comparison with the USA, is that early adoption did not occur despite the existence of a strong, well-organised executive with the capacity to influence over the policymaking process, but because of it. Nordic

governments were active participants in the broader processes which gave birth to freedom of information, even as they sought to resist this specific outcome. Many of the underlying institutional structures which produced this strange and apparently contradictory situation also existed, or had functional equivalents, in all three.

Swedish politics has been described as “deliberative, rationalistic, open, and consensual” (Anton 1969:94) – a trait that appears to be common to the rest of Scandinavia, where phases such as “problem-solving, bargaining and self-governance” are used (Olsen, Roness and Sætren 1984:47, in Einhorn and Logue 1989). This does not imply an absence of forthright or even bitter public debates about policy; these authors are all at pains to distance themselves from stylised portraits of the Nordic countries as entirely lacking political conflict. It only implies that these conflicts are resolved in a particular way, relying on two potentially contradictory elements. First is an emphasis on scientific evidence, embodying a presumption that “sensible people with a sufficiently long-term perspective will support policies that are both in the general interest and in their particular interest” (Einhorn and Logue 1989:139). Second is widespread direct participation by interested parties, consistent with the view that the principles of universalism, legal security and due process require all those whose interests are affected to have a chance to express their views (Pierre 2001:137).

This style of policymaking is described in the political opportunity structures literature as “actively inclusive” (Dryzek, *et al.* 2003:Chapter 2), and “open and strong” (Kitschelt 1986). Both draw attention to the crucial importance of the state in identifying emergent conflicts, facilitating negotiation between interested parties and integrating the various positions into coherent policy (Einhorn and Logue 1989:137-8). The manner in which this occurs varies slightly from country to country, but there are sufficient simi-

larities to make it possible to speak of a single approach. In Sweden there is frequent recourse to a formal mechanism of consultation known as *remiss* (Einhorn and Logue 1989:120-1). In the narrow sense, this refers to the requirement under Article 10 of the *Instrument of Government* that all matters submitted to the King in Council for approval be prepared by seeking advice from relevant administrative offices. This need not imply any more than a purely formal request for advice issued by a ministry to another administrative body, although it often involves comprehensive and pro-active consultation with affected interests. Even where consultation is limited, *remiss* often serves as a mechanism for alerting outside interests to policy proposals, because requests for advice are generally available to the public under the *Tryckfrihetsförordning* (Anderson 1973:428). Another common mechanism is the committee of inquiry, especially in places like Norway where *remiss* is less used. The role of these inquiries is to identify and integrate the various competing interests into coherent policy proposals, and to that end they often include formal participation from non-government experts and affected groups. Their role is very different to the Anglo-Saxon world, where inquiries often serve as means of bestowing political independence on examinations of past policy failure (United Kingdom 1979a:9-10).

The early adoption of access rights in the Western Nordic countries is largely a result of state reliance on these mechanisms and the pro-active incorporation of the first wave of mobilisation. In Sweden, this occurred through the establishment of a Committee of Press Experts under a process of constitutional review which was already underway. This Committee delivered a report in 1944 containing a draft bill that eventually became the *Tryckfrihetsförordning* (Sweden 2001:583-4). This law, as already noted, completed the consolidation of Sweden's historic regime which had begun in 1937. The integration of experts in this way was not an isolated incident: concerns over the implica-

tions of new technology and privacy were also accommodated through active inclusion in 1960 and 1966, and subsequently as part of the major constitutional review in the early 1970s (Anderson 1973:423-4 and notes; Wennergren 1983:17).

In Denmark, several committees established immediately after the war considered the need for access rights. The first was the Commission on Public Administration, founded in 1946, which failed by the narrowest of margins to recommend in favour of access as a means of protecting individuals from administrative action (Anderson 1973:437; Holm 1975:161-2; Holm 1979:77). This report revealed a stark divergence of opinion between officials and expert outsiders, and encouraged the Prime Minister to establish a Publicity Commission in 1956 to “report on the question of whether, and in the affirmative case to what extent and in what manner, publicity can be carried out in state and local administration” (Anderson 1973:437-8). Composed of 20 members including judges, lawyers, journalists, civil servants and politicians, its 1963 report once again narrowly recommended against transparency (Holm 1979:78), but proposed extending access to files for parties to administrative disputes as a compromise. Once again, the minority was composed entirely of members of the press and outside experts. They saw this compromise recommendation as a tactical victory, in that it provided a basis on which to build public support for a right of general access (Anderson 1973:438); included in the minority report was a draft of what eventually became the *Law on Publicity in Administration* 1970 (Holm 1975:163-4).

The process in Norway was similar. The first official recommendation in favour of access was made by the Wold Royal Commission, established in 1951 to “investigate the question of more adequate procedures for public administration” (Anderson 1973:432). Its 1958 report called for the introduction of transparency in public administration by a

margin of ten to three, but this was rejected by the government, provoking a decade-long debate on the issue – a point to which we will return in a moment (Anderson 1973:432-3). By 1964, inaction on this issue had provoked sufficient dissatisfaction that the Labour government felt compelled to establish a second commission, which again narrowly recommended against access rights. It did, however, propose greater access to files related to administrative disputes as a compromise which formed the basis for the eventual introduction of the *Law on Transparency in Administration 1970* (Einhorn 1977:261).

Pro-active cooptation and consultation did not entirely eliminate resistance among senior officials in any of these countries, but it did reduce the incentives to resist and restrict the opportunities to do so successfully. Consultation relied on pro-active dissemination of information, and also served as a functional equivalent of the Congressional committee system in that it provided opportunities for otherwise peripheral groups to make claims in ways which could not easily be dismissed or rejected by the executive. Here, the “inability” to exclude was more a matter of reluctance than the absence of capacity or institutional barriers, and was grounded in the presuppositions and strategic aims of the whole system of compromise and cooptation itself. This system, it has been argued, evolved as a response to the prevalence of minority governments in these countries. In all three, post-war parliaments have been dominated by Social Democratic or Labour parties which, although larger than any of their rivals, have only rarely commanded an absolute majority of seats in the legislature in their own right. The political right, by contrast, has been composed of several right-wing parties which have only rarely been able to form stable coalitions. Pro-active consultation developed as a strategy by which the left could govern in its own right while only constituting a minority in parliament: it helped them to obtain the support they required to pass their

legislation on a case-by-case basis by ensuring their proposals had support from at least one of the right-wing parties before they were introduced into the house (Einhorn and Logue 1989:86-9). It also formed part of a broader strategy of incorporating potential opponents as a means of insuring against repeal should they ever lose power to a right-wing coalition (Grønnegaard Christensen 2001:119).

Despite its strategic merits, active inclusion had the signal disadvantage of making it far more difficult for governments, once they have begun a consultative process, to openly reject whatever proposals for inconvenient policies which this consultation might produce. To do so might compromise the willingness of the other parties to enter into negotiations in future; in the case of freedom of information it also ran counter to the whole spirit of consultation, based as it was on open communication of policy plans. Norwegian and Danish governments alike attempted to resist the implementation of full access throughout the 1960s by granting limited rights, referring bills to committees and delaying the tabling of legislation. They did not, however, block the bills which the right-wing parties eventually tabled out of frustration with government refusal to follow the recommendations of their own official commissions discussed above (Einhorn 1977:260; Holm 1979:104 note 3). The exception to this is Norway in the 1950s, where the Labour party was the majority party and thus felt itself able to reject the Wold Commission's recommendation in 1958. It is no accident that the shift in its attitude towards access corresponds with the onset of minority government in the early 1960s.

The early success of the first phase of mobilisation in the Nordic countries meant that access rights were already firmly entrenched by the time the environmental and consumer rights movements arose. As in the USA, the prior existence of these laws benefit-

ed these groups, although less as a basis of mobilisation than as a practical aid. In a comparative study of the environmental movement in four capitalist democracies, Dryzek *et al.* argue that dissatisfaction with official sensitivity to environmental concerns was directly responsible for increasing interest in access to information in the USA and Germany in the late 1970s and 1980s. In Norway, however, this dissatisfaction was absent, due to an early positive official response to environmentalism which was itself partly a result campaigners' effective use of access and their rights formal incorporation into the formal policymaking process (cf. Dryzek, *et al.* 2003:172, *inter alia*). As in the USA, although for different reasons, the interaction between entrenched access rights and the rise of new social movements thus served to reinforce the prevailing pattern of open policymaking.

Autonomous Executives and Late Transparency

This final section of the chapter examines two countries in which the influence of peripheral interest groups over the legislative process has been limited. It shows that, in both Germany and the UK, this was a direct contributor to the late development of freedom of information.

Passive Resistance in Germany

A comparison between Germany and the American and Nordic cases, suggests that the institutional structure of the policy process can significantly influence the development of access rights simply by virtue of their effect on the attitudes of campaigners and perceptions of appealing strategies for political reform. These conclusions are further supported by the significant points on which Germany resembles these other cases, which tend to eliminate possible alternative explanations.

Perhaps the most significant point of similarity between all these countries is that mobilisation in Germany occurred in two phases of comparable composition, organisation and strategic goals as in the USA and Scandinavia. The first phase involved a small group of academics and human rights lawyers concerned at the conduct of surveillance and covert operations against domestic social and political movements by defence and national security forces. These concerns led to the foundation of the Institute for Civil Liberties and Public Safety by academics at the Free University of Berlin in 1978, and a joint campaign with the Humanist Union to advocate freedom of information as a check on the use of coercive state power. This activism was a significant contributor to a false dawn of party-political debate which occurred in the early 1980s discussed in Chapter Three.

The first phase of mobilisation in Germany differed from those elsewhere in two significant respects: it occurred later, and did not involve the press in any significant way. Given the importance of journalists to campaigns elsewhere, it seems possible that this early lack of success might be at least partly due to differences in their bases of support rather than opportunity structures.

It is worth considering, however, why the German press should have been so conspicuously absent, particularly given the active involvement of the German Journalists' Association and the Journalists' Union in the second phase two decades later (both were thanked by Green deputies following the vote; cf. Germany 2005:13948). One explanation is that the constitutional and legal protections the German press enjoyed substantially mitigated the development of grievances similar to those felt by journalists in the USA, without providing a lightning-rod for mobilisation as in Sweden. From as early as 1948, the Policy Committee of the committee responsible for drafting the Basic Law de-

bated the merits of a provision which would have provided the media with a right to official information (Wegener 2006:18 and note 57). This particular proposal was rejected on grounds later used by other governments to oppose freedom of information; the fact it was raised at all demonstrates the sensitivity among officials of the need to make a break with Nazi information policy, and their recognition of the contribution a free press makes to a healthy democracy (Kaiser 1979:134). These concerns were eventually accommodated in other ways. Article 5(1) of the *Basic Law* enshrines the freedom of the press and protects the right of citizens to read publicly-available material. In addition, since the 1960s the State press codes have all included provisions quite similar to those left out of the Basic Law, requiring public authorities to respond to questions from the press (Bullinger 1979:226; United Kingdom 1979a:44). Even as recently as the late 1970s, these codes were routinely praised for their protection of access by the media to officials and their absolute prohibition on censorship (Kaiser 1979:134). They certainly compared quite favourably with Britain's nominal openness circumscribed by informal censorship under the *Official Secrets Act* and the D-Notice system. In short, although the weakness of mobilisation in Germany may well account for the late adoption of its access law, the weakness itself arguably has an institutional explanation.

The second wave of mobilisation began in Germany in the mid-1980s, but really only became a significant consideration for parties at federal level in the mid-late 1990s. This phase was rooted in the environmental movement, which had identified access to official files as a means of facilitating public deliberation and participation in planning decisions and pollution control, especially concerning the construction of nuclear power plants. The Greens began to submit bills on the issue from the moment they entered the *Bundestag*, more as symbolic gestures than in the hope of meeting with substantive success. One was submitted in 1985, followed by another in 1990. Real success at federal

level only came once the Greens entered government in coalition with the SPD, as discussed in the next chapter.

The Greens did not find it easy to have the *Informationsfreiheitsgesetz* passed, but in contrast with the first phase these difficulties cannot plausibly be explained in terms of any weakness in their support. Like the USA, Germany experienced a general wave of progressive social mobilisation which started in the late 1960s among students. It flourished in the 1970s, and saw the establishment of myriad new movements representing a wide range of post-materialist concerns including, but by no means limited to, the environmental movement. At national level, 1969 saw the election of a Social Democratic government under Willy Brandt, the first of the post-war era after two decades of CDU rule. This indicated a major shift in political opinion, and provoked serious reflection at élite level on the nature of political accountability and control – not least because the new government was anxious to assure itself of the loyalty of a bureaucracy which had become accustomed to serving its political opponents (Reese 1977:221-3). At a local level, there was an increased emphasis on participatory politics and so-called citizen-orientation. This led to a range of reforms, some of which were designed to facilitate participation in existing political processes through the provision of information and rights of access to many official meetings (Holleaux 1980:192-3).

Nor can the lack of progress in the 1980s and early 1990s be attributed to either organisational weakness or the absence of laws around which to mobilise. The German green movement was far larger and better organised than Nader's public interest campaigns. The false dawn of rights activism in the early 1980s was precipitated, in part, by the Council of Europe's recommendations (1979; 1981) that all member-states establish rights of access to official documents. The American *Freedom of Information Act* also pro-

vided inspiration, but in the absence of any legal or normative requirement to harmonise German law with the American its influence was minor. State-level access laws, which already existed in Brandenburg, Berlin, Schleswig-Holstein and North Rhine-Westphalia, were not so much inspirations for the Federal bill as different outcomes of the same set of pressures: they were usually the result Green proposals, and their early introduction in some places was largely due to the fact that Greens entered government earlier there than at Federal level. The instrument which *did* prove important both as a focal point for mobilisation and as a political resource for overcoming executive resistance was the *Access to Environmental Information Act (Umweltsinformatiionsgesetz)*, which came into force in 1994 in response to a European Directive. This Directive came into existence despite German resistance, due to international politics within the EU which cannot be adequately examined here (Knill and Liefferink 2007:132-3). The introduction of the *Umweltsinformatiionsgesetz* was introduced under similar circumstances to the *Informationsfreiheitsgesetz*: it was supported by the Greens, and opposed by the main parties and the state (Redelfs 2005:4-5). In this case, however, resistance was muted by the fact that a commitment to European integration is fundamental to the German post-war political consensus, and the Directive could not simply be ignored without serious political risk. Once in existence, the *Umweltsinformatiionsgesetz* provided a point around which advocates of freedom of information could rally (Germany 1991:4581-2), since it constituted a partial recognition of access to information in domestic law, and made it far more difficult to ignore calls for the harmonisation of German law with the emerging international consensus on general access rights.

The imperatives of harmonisation with EU norms are important, but they should not be overstated: the introduction of access to environmental information did not fundamentally transform the politics of access, and Germany has been found by the European

Court of Justice to be in breach of its obligations under the Directive on several occasions (Banisar 2006:78). It still took a further decade before a full general access law was passed; this delay must still be explained, and to do so it is essential to take account of the structure of the relations between parties in the parliament.

German parties are more centralised than their American counterparts, which means that senior party figures exert greater control over their members and individual MPs have less to gain by publicly campaigning for special causes over the opposition of their colleagues. The *Bundestag* committee system, too, offers far fewer opportunities than for the representation of special interests – their composition generally reflects the balance of power among the parties in the house as a whole – or for the use of publicity as a tool of intra-Congressional politicking – around 90% of committee meetings have historically taken place behind closed doors, compared with only 10% in the USA (Dalton 1989:305). German parliamentary committees are better understood as mechanisms by which the main parties resolve conflicts of detail with minor parties and bureaucrats on policies whose main lines are already determined. These are examples of the arrangements which the Greens' use of disruptive publicity, discussed in Chapter Three, was designed to overturn.

In contrast with the Nordic countries, cabinets in Germany have routinely been composed of minimal winning coalitions centred around the CDU/CSU on the one hand, and the SPD on the other (with the FDP, and more recently the Greens, holding the balance of power). Incentives to pro-actively engage with emergent interest groups in order to ensure the passage of legislation are thus largely absent. The control of the majority over the legislative agenda is clearly evident in the origins and fate of bills during the post-war era. Most are proposed by the government, with a small and shrinking pro-

portion of private members bills. Moreover, around 80% of executive proposals become law, while around 40% of private members' bills do so (cf. Dalton 1989:307-13). It is no accident that the *Informationsfreiheitsgesetz* was passed only when its active supporters became part of the government; this was, arguably, the only way it could have done so.

Cooptation and Active Exclusion in The United Kingdom

The United Kingdom presents several informative contrasts with the countries discussed above. Like Germany, it was a late adopter of freedom of information, passing a law only in 2000. Unlike Germany and the Nordic countries, this delay was largely due to the active efforts of senior officials and members of the political executive, who successfully isolated and undercut its proponents. A comparison with the USA confirms that centralised authority in formal institutions and the parties was a vital contributor to this autonomous control of the policy agenda.

In the UK, as elsewhere, the first to explicitly advocate freedom of information were journalists and members of parliament (especially Liberal Democrats and backbench members of the Labour Party), progressive lawyers and academics. Although the intensity of support varied everywhere inversely with the degree of organisation among these constituencies, and with seniority in those organisations, in the UK these tendencies were much more pronounced. Many individual lawyers were extremely supportive of thoroughgoing reform, but the British branch of the International Commission of Jurists' 1978 report in favour of access embodied the "minimalist" approach (Marsh 1987:279). Similarly, the press was criticised by campaigners for not pursuing the cause of access as forthrightly as they might have done (CFOI 1989b; 1989a), but this criticism appears only partly justified in retrospect. It is certainly true that the press as a whole did not pro-actively organise to campaign for a right of access, but on the other hand

there is a long tradition of individual political reporters giving prominent support, and the editorial lines taken by the *Times* in the late 1970s and the *Guardian* in the late 1990s were also distinctly positive.

The grievances which lay behind this early mobilisation were essentially the same as elsewhere. As in America, the British government retained and extended wartime mechanisms for controlling official information. The two cornerstones of this system were the *Official Secrets Act* and the Defence Notice system. Officially, D-Notices were a voluntary arrangement by which the government made the media aware of national security concerns which should not be the subject of reporting (Defence, Press and Broadcasting Committee, in United Kingdom 1972b:241-2). This was reflected in joint administration by representatives of the media and government through the Services, Press and Broadcasting Committee (Winslow and Dwyer 1988). Outside officialdom, it was nevertheless considered a means of covert censorship from at least the late 1960s onwards (Wraith 1979:204-5). Dissatisfaction ran particularly high among journalists, for reasons which ranged from high democratic principle to self-interested suspicion that claims of national security were being used to justify withholding information merely to avoid political embarrassment (e.g. Editorial Liaison Committee of the Newspaper Society, Guild of British Newspaper Editors and Newspaper Conference, in United Kingdom 1972b:246 et seq; Press Council, in United Kingdom 1972d:194 et seq).

First phase campaigners successfully established freedom of information as a topic of debate in élite circles, but were far less successful in achieving concrete reform than their counterparts in the USA and Sweden due to the greater control which the party hierarchies have exercised over the institutional opportunities on which they relied. The high degree of discipline in both main parties throughout the post-war era means

that the parliamentary committee system in the UK has usually served as a mechanism for the formalised approval of policy decided in advance by the executive; parliament usually plays a very limited role in the development of policy or the integration of external demands in the normal course of events. Discipline ensures that the nature and composition of the committees and their subcommittees is under the control of the parties, rather than that of the Committee chairs or the House in its own right. The consequence was that an access law was extraordinarily unlikely without the support of at least one of the two major parties. It is no surprise, that the earliest activists began by campaigning within the Labour Party to have it adopted as formal policy, as noted in earlier chapters, rather than by setting up an independent campaign organisation as in the USA. Nor is it particularly surprising that these efforts focussed on Labour rather than the Conservatives. Although both parliamentary parties are usually highly-disciplined, within the broader party organisation the Labour central executive exerts less control over the formulation of the party programme than its Conservative counterpart due to the greater emphasis on democracy in its constitution. Resolutions adopted at the Labour Party Conference, for example, become part of the party's official programme (Kingdom 1991:229-38).

Widespread use of private members' bills, which stand far less chance of success as a matter of course, only really began in the late 1970s once it became clear that the Labour party hierarchy was unwilling to follow through on the commitments it had been obliged to adopt. Here, too, discipline in the (parliamentary) party was a significant contributor to slow progress. Three freedom of information bills were brought forward between 1977 and 1979, and the closest any came to being passed was the last (which received a second reading but was still in committee when the government fell). Senior labour party figures such as Callaghan had made their lack of sympathy for access clear

over the years, and the executive's control of the Commons agenda meant it could use procedural mechanisms to avoid being forced into explicitly voting against proposals with strong democratic credentials and considerable popular appeal (Times 1976; Hennessy 1978).

Mobilisation broadened in the early 1980s, much as they had done in the USA in the mid-1970s. Peripheral members of political-professional groups were now joined by a range of public interest groups concerned with the impact of official secrecy on the effective regulation of pollution, consumer health, housing and food safety (Seymour-Ure 1977:174-5). The Campaign for Freedom of Information, founded in 1984, was symbolic of this demographic shift: the initiative came from the public interest movement (United Kingdom 1998a:71), but it was very much an alliance rather than a takeover, and members of the earlier groups remained important.

The public interest movement in the UK supported access rights for similar strategic and tactical reasons as in the USA: it was a means of reforming the policymaking process in a more participatory direction, and of overcoming its exclusion from certain policy domains due to industry capture of regulators. This concern can be seen in the substantive focus of the Campaign: defence and high affairs of state were discussed (Goldberg 1987:45), but were essentially used as a means of raising the organisation's public profile (Wilson 1984). The real focus was asymmetries of information and power in routine interactions between citizens and administration. The Campaign's real targets were waste, maladministration and even outright corruption in areas such as local administration, housing and planning (Bailey 1984), threats to self-determination which flowed from secret files held by schools, universities and health providers (Frankel 1984a), and the role of secrecy in allowing industry to pollute by preventing

prevented the market from identifying polluters and factoring these costs into its valuations (Frankel 1984b).

The Campaign for Freedom of Information was an important contributor to the introduction of the *Freedom of Information Act 2000*, but its impact was determined by the prevailing attitude of Cabinet. Its relative lack of success in the 1980s, compared with the public interest movement in the USA certainly cannot be plausibly attributed to having adopted different tactics: the founding members of the Campaign were directly inspired by Nader and were, if anything, even more willing to use publicity ; founding Chair Des Wilson was disparagingly described as more of a media campaigner rather than a true environmentalist by colleagues in other organisations (Weston 1989:88). On the specific issue of freedom of information, the frosty reception the Campaign received from the Thatcher government has already been discussed. Its response was to pursue piecemeal reform via private members' bills (CFOI 1993a), and although the Campaign benefited from a singularly good run of luck its success was also a result of the government's willingness to let these bills pass after extracting concessions to protect the its own power (Tant 1990). That the government was willing to resist proposals for relaxing the governments' control over information in general was abundantly clear: Richard Shepherd's bill proposing to narrow the scope of Section 2 of the *Official Secrets Act* was defeated in 1988 on a three-line whip (Lewis 1989), while Mark Fisher's Right to Know Bill was "talked out" (filibustered) in 1993. . In a similar manner to the German Greens, the Campaign only began to meet with substantial success when it became an insider, for reasons which have already been touched upon in Chapter Three and which are further discussed in the next two.

Conclusion

This chapter has discussed mobilisation in favour of access rights by domestic non-governmental actors in four consolidated democracies. It has shown that the substantive success of movements in four countries depended to a very large extent on the underlying openness of the policy system rather than the strength of mobilisation or the tactics adopted by advocates. In all the four, supporters were drawn from similar professional groups, had similar aims, adopted similar strategies of using media and publicity campaigns to compensate for their relative resource poverty, and were often able to point to failings in existing laws as justifications for their positions. Despite these similarities, however, legislation followed at different rates in different countries. Where institutional conditions were particularly sympathetic, as in the USA and the Nordic countries, advocates met with early success without needing to establish formal campaign organisations. In these countries, success beget success: the importance of information as a means of coordinating an increasingly complex policy process led to the development of well-entrenched lobbies advocating amendments to keep pace with changing circumstances, and opposing repeal. Where politicians were able to ignore or resist outside pressure, even highly-organised campaigns with widespread support met with little success until the attitudes of Cabinet ministers became more sympathetic. In the case of Germany, this was because the Greens themselves took office; in the UK, it was the result of changes within the Labour party.

France has not been examined here because civil society pressure for reform was practically nonexistent, but the available evidence suggests it does not contradict these claims. As the previous chapter noted, the 1978 law was made possible by a temporary loss of presidential control over the legislative agenda due to a breakdown of discipline within the ruling right-wing coalition, combined with advocacy of access from within

the state. That this opportunity was not exploited by civil society cannot be attributed to the absence of potential advocates, or a lack of awareness of the uses of information in general as a tool of mobilisation. Academics had been writing on administrative secrecy since before the war (Moderne 2003:19-20), and an active consumer rights movement had existed since the early 20th Century, which explicitly sought to empower consumers by distributing product information (Marcus-Steiff 1977). It seems possible, however that this lack of interest might be the result of adaptive expectations to the lack of opportunity which generally prevails in France. The Fifth Republic offers few avenues for civil society organisations to articulate policy demands which officials find unwelcome (Kitschelt 1986). The Constitution was designed both to protect the executive from parliamentary scrutiny and to give it an unprecedented degree of control over the legislature (Keeler 1993). This lies atop a long tradition of *étatist* or “heroic” policymaking in which officials impose policies then negotiate with affected interests during implementation (Schmidt 1999). Furthermore, studies of official secrecy often argue that French interest groups tend to accept official secrecy because they rely heavily on the state, not just to integrate various competing demands but to provide resources with which they overcome the challenges of internal collective organisation (Manor 1977:238). Consistent with this pattern of dependence, it’s the state’s relations with civil society only appear to have been relevant through scattered official concerns at the way state secrecy affected its ability to coordinate economic policy with unions and businesses (Boulard 1979:167; Rowat 1983:36). State-economy relations are the subject of the next chapter.

Chapter 6: Relations between the State and Core Interest Groups

The previous chapter considered how the unequal distribution of policy-relevant resources influences the development of freedom of information. The concept of the policy network was used to argue that support for access is likely to be strongest among peripheral groups, and that the ability of the executive to control the legislative process is an important determinant of whether laws are passed. It showed that there have been two main sources of civil society pressure for change: well-connected professional groups with a personal stake in official information, and new social movements interested in harnessing the power of the state to solve the environmental and political side-effects of large-scale industrial production.

This chapter²⁴ builds on the previous one in two ways. Firstly, it continues to examine relations between the state and external interest groups. Here, however, the focus is on the effects of differing structures at the core of policy networks rather than relations between periphery and core. Secondly, it builds on the insight that conflict over relations between the state and producer interests were a major focus of the second wave of civil society mobilisation. It considers the implications for freedom of information of seeing that the consolidated democracies are not just democratic, they are also capitalist, and capitalist interests are at the core of many of the most important policy networks.

²⁴ An earlier version of this chapter was published in the October 2010 edition of *Government Information Quarterly* as *Who Pays the Piper? The Political Economy of Freedom of Information* (McClean 2010).

This chapter is divided into three parts. The first argues that, in principle, the neo-corporatism (the formal integration of comprehensive, centralised economic interest groups into the policy-making process) should delay the introduction of access laws. The second shows that this prediction is consistent with two archetypically-contrasting real-world political economies: the USA and Germany. The third uses two apparently divergent cases – Sweden and the United Kingdom – to consider the limits of political economy as an explanation, and how these factors might interact with the more straightforwardly political factors which are usually invoked to explain the development of information rights.

The Economic Value of Transparency

The idea of invoking political economy to explain why the capitalist democracies have adopted on freedom of information at different times might seem a little surprising to those familiar with the historical sources. These mostly describe its origins in the political terms which have been the focus of the previous chapters: struggles by democratically-inspired civil society campaigners, journalists and the occasional politician against a bureaucracy clinging resolutely to its traditional habits and privileges. This account is not to be discarded lightly, for all the reasons which have already been explored, but nor should it be accepted uncritically.

The invocation of political economy may be rare among protagonists, but it is not completely without precedent in the academic literature. The diffusion of freedom of information to Eastern Europe and to South-East Asia during the 1990s has been explained as a response to pressure from transnational financial interests and the functional requirements of increasingly integrated international markets (Blanton 1995; Florini 1998:56; Blanton 2002a; Lord 2006:5-10; Florini 2007b:5-10 et sqq.). One promi-

nent recent example is the introduction of various reforms in China as part of its accession to the WTO (Economist 2007; Horsley 2007). Economic factors have also been linked to the development of information rights in the consolidated democracies, but there is less consensus on the nature of the relationship or its effects. The diffusion of data protection is at least partly a result of pressure on laggard governments from businesses eager not to lose opportunities for the cross-border transfer of personal information (Bennett 2001; Warren and Dearnley 2005). This suggests that the influence of economic interests is at least possible in the case of freedom of information, perhaps through a “spill-over” effect (Aaronson and Abouharb 2011:381), but since this policy affects the core interests of the bureaucratic state in ways which data protection does not, the mechanisms involved must be specified and justified in their own right. There is considerable evidence that economic norms and the defence of private commercial interests have regularly served as justifications for resistance among officials to the implementation disclosure laws once they are in place (e.g. Roberts 2006a), but the question of whether this illuminates their origins has not yet been explored.

The Political Power of Capital

The claim that political economy is relevant to the development of freedom of information is predicated on two assumptions: that economic groups have an interest in public rights of access to official information, and that they enjoy sufficient influence over the policy process to act on that interest.

The idea that capitalist interests influence democratic governments is widely-accepted, although the precise manner in which this power is exercised has been the subject of long-running and heated debates. The subordination of the state to the needs of capital in general, identifiable capitalists in particular, or both is central to the various strands

of Marxian political thought (see, for example, the famous debate between Miliband 1969; and Poulantzas 1973; for a more general overview see Jessop 1977). This debate is voluminous enough in its own right, and it is only one part of a literature too vast to be addressed here. Happily, there is no need to do so; for present purposes, one need only accept that producers enjoy two distinct, mutually-reinforcing advantages in their relations with democratic states. Firstly, individual producers or producer groups are in a strong position when they are forced to compete with others for the attention of policymakers due to the financial and human capital at their disposal. (Lindblom 1977:175-7). Secondly, producer interests occupy a position of considerable structural power which means their needs may well be taken into account without the need to organise or resort to explicit campaigning at all (Lindblom 1977:170-188,189-200). This is partly because capitalist states depend on the private economy for revenue to fund their operations. Although individual firms may not be particularly powerful in their own right, in aggregate their decisions on investment, employment and production determine the size of the government's tax base (Jessop 1977:336). It is therefore difficult for governments to consistently act against the interests of major producer groups; in fact, the mere threat that firms will stop investing may well be enough to induce changes in policy. The likelihood of substantial, long-term divergences between government policy and the collective interests of firms is particularly remote in democratic countries, where the prospects of a government's re-election often largely depend on recent economic performance.

Predictability and Control under Capitalist Democracy

The idea that producers might have an interest in controlling the state is likewise hardly controversial. Weber himself argued that the development of capitalism and bureaucratic public administration were mutually-reinforcing phenomena in Europe in the

early modern era, and that this was partly due to the specific requirements of large-scale industrial production oriented towards a mass market:

Industrial capitalism must be able to count on the continuity, trustworthiness and objectivity of the legal order, and on the rational, predictable functioning of legal and administrative agencies. Otherwise those guarantees of predictability are absent that are indispensable for the large industrial enterprise. They are especially weak in patrimonial states with a low degree of stereotyped operations; conversely, they exist at an optimum under modern bureaucratism (Weber 1968b:1095).

This basic interest in predictable government is likely to have become more pressing over the course of the 20th Century, and to have expressed itself specifically in terms of access to official information, due to several changes to the state which occurred during this period. The first of these is the dramatic expansion of administrative regulation examined in Chapter Four. Firms have a similar interest to citizens in accessing official information: it helps to defend themselves against administrative capriciousness and error. Like other interest groups, firms also have an interest in obtaining favourable policies in areas such as the regulation of industrial production, labour relations and product markets, and the implementation of investment programmes and macroeconomic financial management. Predictability is particularly important where production requires considerable up-front investment, since investors are likely to be sensitive to sudden reversals of government policy which affect the profitability of past investments. Advance notice of regulatory changes makes it easier to protect against this risk (Grønnegaard Christensen 2001:119).

Although most of the broader literature on the power of capital focuses on its influence over politics, access to information specifically about administrative behaviour has arguably become particularly important over this period, due to the manner in which state expansion was accomplished. Most governments have made widespread use of so-

called “framework” legislation, which sets the broad parameters of policy and delegates power to flesh out the specifics to administrative authorities. Delegation has increased the importance of departments and agencies as first-order participants in the policy process, and hence the importance for producer groups of being able to understand and influence them. . In addition, large interventionist states are costly to run, and provide numerous opportunities for corruption and mismanagement. Officials who know their decisions and actions could be scrutinized at any time by outsiders are likely to anticipate criticism and act to avoid it by (Prat 2006). This so-called “law of anticipated reactions” is often argued to make governments more efficient by discouraging waste, and more honest by increasing the risks of corrupt behaviour. Even if corruption sometimes benefits individual firms which are able to establish favoured relations with regulators, an honest, transparent state is usually understood to be in the interests of the capitalist class *as a whole* insofar as it reduces the uncertainty of what must be paid in return for reliable government service.

The Institutional Sources of Variation

The influence of capitalists and their interest in predictable government could easily combine to produce widespread, decisive support for freedom of information, but the extent to which this occurs in practice is likely to vary considerably. Individual firms may well benefit from being able to protect or further their interests by obtaining official information. But the appeal of general, legal access rights is likely to be offset by the fact that increasing state regulation of the economy means that sensitive information about firms which appears in official files may be exposed to competing or hostile interests. The previous chapter identified environmentalists and public interest campaigners as competitors in the policymaking process, and showed that they advocate access rights precisely because they assist in pursuing aims which are hostile to the

basic interests of industrial manufacturers. Competition is not just political, however, it is also economic – firms may be harmed by the exposure of information collected by the state to competitors operating in the same market, to suppliers, or to those operating in different sectors with conflicting structural interests.

The manner in which firms as a group are organised is likely to be of considerable importance in determining whether they consider the benefits of freedom of information to outweigh the costs, whether they can reach consensus on the issue, and whether they are able to exert significant influence over public officials in pursuit of that consensus. To demonstrate why, it is convenient to adopt the conventional distinction in the literature on comparative political economy between coordinated, organised or neo-corporatist economies on the one hand, and disorganised, liberal or pluralist economies on the other.

Perhaps because the distinction between pluralism and neo-corporatism has been so widely-employed for so long, there exists a range of different views on how it should be drawn (Schmitter 1981; Lehmbruch 1984; Maier 1984; Regini 1984; Crouch 1993; Archer 1995; Hall 1999; Soskice 1999). There is, however, broad agreement that the relevant criteria are the manner in which economic actors are organised collectively, and the degree of formality in their relations with the state. Neo-corporatism is characterized by the existence of “a limited number of singular, compulsory, non-competitive interest groups which are granted a representational monopoly in their functional areas by the state in exchange for control of their members’ demands and support for the political system” (Pallesen 2006:133 paraphrasing Schmitter 1979). Under pluralism, interest

groups are multiple, voluntary and compete with one another for the attention of government, and official grants of monopoly over representation are absent.²⁵

The main claim of this chapter is that, all other things being equal, neo-corporatist countries should be slow to introduce freedom of information acts. This is partly because mechanisms of economic coordination provide alternative, institutional means of balancing the need for predictable, responsive government with the risks of exposure to hostile or competitive interests entailed by exposure to the state. In these countries, policy relevant to economic interest groups is developed through formal, ongoing negotiations between their representatives and officials. These negotiations provide opportunities for the participants to exchange information about intentions, preferences and attitudes; indeed, this exchange is sometimes cited as one of their principal benefits (Meijer 1969). Furthermore, government participation in these negotiations represents a commitment, even if only implicit, to honour, facilitate and (if necessary) enforce the agreements which are reached by all the parties. Indeed, bargains between employers and unions in highly coordinated economies frequently include commitments by the government to introduce laws, policies or programmes which facilitate cooperation between purely economic actors. In a sense, these negotiations serve not merely to make government action more predictable but more controllable, a significantly greater benefit.

²⁵ The arguments developed in the previous chapter and this one are similar in many respects. It is worth noting that they are not, however, strictly of the same order. “Neo-corporatism” and “pluralism” are generally applied to macro-political structures, while the concept of the policy network developed out of a critique of the generalisations this entails, and is self-consciously a meso-level construct. Nevertheless, there are obvious similarities between the concepts: neo-corporatism shares much with the concept of the “policy community” – a network with a dominant core – and pluralism with the “issue network” – a network in which the core is either weak or entirely absent. One might define neo-corporatism in the language of policy networks as the situation which obtains when the most important economic networks are communities with rigid and exclusive cores composed of highly-organised actors with officially-recognised representative status (cf. Offe 1981).

Neo-corporatism should not merely obviate the perceived need for legal rights of access, it should actually make the most powerful interest groups more hostile to its introduction while simultaneously placing them in a better position to act on that hostility. One reason for this was touched on in the previous chapter: holding an officially-designated representational monopoly places employers and unions firmly in the network core, thus placing them at a significant advantage compared with peripheral interest groups when it comes to influencing many policy decisions. The knowledge of and access to government which these negotiations provide is a scarce, and hence valuable, power resource, and its beneficiaries have an interest in resisting liberalisation of access where it would dilute their own influence compared with those who do not enjoy it. These beneficiaries include, most obviously, the firms and unions who are represented in negotiations and whose interests bargaining is ultimately intended to serve. But it applies more strongly still to the peak industry associations which do the actual representing, because direct access to government constitutes as a power resource in their relations with their own members as well. Since peak bodies are the conduits by which members obtain the privileges of neo-corporatism, access is contingent on membership, and the associations can use it as a selective incentive to discipline members and discourage defections.

In addition to their effects on economic interest groups, neo-corporatist arrangements are likely to be associated with particularly strong resistance to access rights among public officials. The relatively greater difficulty which non-producer groups face in obtaining information about important policy decisions may officials by reducing the range of different demands to which they are exposed, and to which they are obliged to respond – a benefit explicitly mentioned in Pallesen's definition cited above. In addition, close ongoing cooperation between producer groups and the state will probably

encourage the development of a sense of shared perspective, and a blurring of perceptions of where the interests of officials stop and the producers begin; officials may mistake the interests of capital for their own, and capitalists come to share the bureaucracy's propensity for secrecy.

The hypothesis that neo-corporatism should delay the introduction of freedom of information has at least two possible corollaries. The first is that most of the early adopters should be pluralist.

It might be wondered why a pluralist economy should encourage freedom of information rather than the establishment of coordination mechanisms which would provide firms with privileged access. One possible answer lies in a combination of institutional inertia, complementarities and adaptive expectations on the part of the interested parties, which together lead to these two varieties of capitalism forming dynamically self-sustaining wholes. The clearest contemporary version of this argument is made by the *Varieties of Capitalism* school, which posits that firms in an idealised capitalist economy face problems of collective coordination in five domains: industrial relations, vocational education and training, corporate governance, supply and product markets, and employee relations (Hall and Soskice 2001; Thelen 2001:6-7). In each of these domains, they can solve these problems in one of two ideal-typical ways: market competition or formal negotiation. It is logically possible for firms, either individually or collectively, to adopt different strategies in each of these domains, but they usually adopt similar strategies in any given domain, and complementary strategies across different domains – perhaps because doing so lowers transaction and coordination costs. This has two implications, which are effectively specific instances of the more general predictions of historical institutionalism discussed in Chapter Two. The first is the existence of only a

few distinct varieties of capitalism rather than a plethora of different models displaying the full spectrum of possible combinations of coordination strategies. The second is the persistence of cross-national distinctions over time, even if their specific features evolve, since firms are likely to react to new stresses in ways which minimise disruption to their investments in existing arrangements in unaffected domains. This suggests that policy innovations are more likely to succeed where they make incremental modifications to – and are consistent with – existing arrangements.

With this in mind, one reason a pluralist economy may encourage a positive preference for formal, general rights of access is the greater degree of uncertainty which prevails in relations between the state and economic interest groups. The absence of a formal representational monopoly means that neither individual firms nor industry associations are able to reliably influence the development and implementation of specific policies to the same degree as their counterparts in neo-corporatist countries. Public officials still have compelling structural reasons to pay attention to economic concerns, of course, and may still seek advice on specific proposals. But they do so because it represents sound politics rather than out of any formal obligation, and from the perspective of firms there is no guarantee this will occur. When favourable policies are put in place in these countries, their future is often also uncertain because the government may subsequently change its mind or fall under the influence of hostile interest groups. The greater unpredictability of public policy in pluralist economies means firms tend to be much more wary of entering into long-term commitments with the state, especially commitments which require them cede autonomy over economic decision-making. Legal rights of access to information are more likely to find favour because they meet the need for making the state predictable without requiring this sacrifice.

A second reason why pluralism should favour the emergence of formal legal rights derives from the greater degree of competition between firms themselves. Although firms under pluralism are generally wary of entering into binding commitments with the state, it is by no means uncommon for close informal ties to develop between regulators and the regulated. This is particularly common in sectors where the state is a major economic actor in its own right, such as defence where government departments are often by far the most significant purchasers. It is easy to imagine how tacit collusion of this kind could be seen by both the producers and regulators involved as mutually-beneficial. The greater degree of economic fragmentation and political competition implied by pluralism means, however, that these arrangements are also likely to exclude at least some producers in addition to the consumer and non-economic interest groups discussed in Chapter Five. From a systemic point of view, freedom of information should arise earlier in pluralist countries because it represents an acceptable compromise between self-interest and risk in this situation. Transparency does not provide the same degree of influence over government as informal collusion, at least for those lucky enough to be on the inside of such arrangements. It does, however, serve to make government more predictable while mitigating some of the effects of collusive arrangements arising between the state and one's competitors.

The second corollary of late adoption among neo-corporatist countries is that pluralist countries, as a group, should exhibit greater variation in their adoption of freedom of information than neo-corporatist countries. This is partly because competition and the absence of strong peak associations, although they may be more favourable to the development of a positive preference for freedom of information on the part of individual firms, are paradoxically less favourable to the development of coherent collective policy positions among firms as a whole. It is also because the absence of formal integration

into the policymaking process weakens their capacity to decisively influence policy outcomes, no matter what their preferences may be. In pluralist countries, the relationship between economic interests and freedom of information is likely to be weaker, and more contingent on other factors such as constitutional structure, prevailing political circumstances and the strength of competing interests.

Pluralist and Corporatist Exemplars

In the literature on neo-corporatism, the USA is usually described as the archetypal pluralist economy, while Germany is an exemplar of neo-corporatism (Thelen and Kume 1999:479-83; Hall and Soskice 2001:19). The timing of legislation in these two countries is consistent with the predicted differences between these two types of economy. The USA was one of the first to adopt a comprehensive access law, while Germany was one of the last consolidated democracies to do so. More importantly, in each case the history of attempts to introduce access laws, and the processes by which this right was eventually established, support the claim that this difference is attributable to the preferences and actions of firms as mediated by the institutional structure of the political economy.

Neo-corporatism in Germany

In Germany, highly-organized employer associations and unions negotiate with each other and with a federal state which, in its sphere of constitutionally-defined responsibility, is coherent, centralised and enjoys a well-deserved reputation for expertise, professionalism and effectiveness.

Consistent with expectations, the German federal government has historically proved quite willing to share considerable amounts of information with designated representa-

tive associations (Reese 1977:231). This structured approach to the distribution of politically-salient information at the national level is complemented at firm level by the presence of worker representatives on supervisory boards, a system which effectively addresses many local economic issues separately from the political system.²⁶ Strictly speaking, both industry associations and worker representatives have a duty to preserve the secrecy of confidential information they receive through these channels, but it appears to be widely-accepted that their role as representatives implies communication with their constituents (Bullinger 1979:224,29-30). The trend since the 1990s towards a loosening of national coordination and greater variation between the bargains in each sector (sometimes called “lean corporatism” or “network governance”; cf. Traxler, *et al.* 2002:303) has not radically affected the role of these structures as privileged mechanisms of communication. In fact, if anything, the importance of neo-corporatist arrangements as privileged conduits for information, and hence as facilitators of coordination and consensus between unions, employers and the state, is increasing even as the degree of variation between arrangements reached in different sectors also increases (Culpepper 2002:776-9).

Also consistent with expectations, the close relationship between firms and the federal state was associated with the late development of a range of access rights in Germany. Official resistance to a whole range of information rights was attributed concern that it would not only compromise personal privacy, but damage important economic principles like commercial confidentiality (Bullinger 1979:219-22; Wieland 2000:98-9; Capitant 2003:169-70). This cannot simply be dismissed as bureaucrats defending their own interests by invoking of whatever justifications were likely to be most convincing: there is

²⁶ Industrial democracy, in the form of works councils and employee representation on supervisory boards, has been present in some German industries – notably coal and steel – throughout the post-war era. The Co-Determination Law (*Mitbestimmungsgesetz*) of 1976 made this a requirement for all companies with more than 2,000 employees.

a good deal of evidence that economic interests, and pressure from industry associations, were important independent contributors. Press reports suggest, for example, that corporations and representative associations opposed several specific-purpose disclosure laws covering environmental and consumer information during the 1980s and 1990s, on the grounds that these laws would have laid them open to more effective direct pressure by social movements (e.g. Ten 1994).

The importance of relations between producer interests and the state in underpinning resistance to access can also be seen in the discourse and strategy adopted during the second phase of mobilisation discussed in Chapter Five. The earliest formal proposal for an access law was made by the Greens soon after emerging as a significant force in the *Bundestag* (Germany 1986a). The ostensible purpose of this bill was to increase public participation in decisions about pollution management (Germany 1986b:19097). In the German context, this constituted a dual attack on economic interests, since it targeted both polluters and the neo-corporatist system as a whole. It was strongly resisted by important sections of the business community including the insurance industry (Germany 1986b:19097), and its effect on relations with employers was specifically cited by the CDU government as a reason for opposing it (Germany 1986b:19099). This first bill was referred to the *Bundestag*'s Home Affairs Committee and never re-emerged, but it set the pattern for debates over subsequent proposals. The bill which eventually became the *Informationsfreiheitsgesetz* began as a ministry draft rather than a party proposal; it was widely-criticised by activists for its extensive protection of business secrets (cf. Schwanitz 2005), and by the Department of Commerce and the Ministry of Economics and Technology on economic grounds (Redelfs and Leif 2004:22-3). The insurance industry appears to have been a particularly consistent opponent (Redelfs 2005:30), lobbying the government to have the bill removed from the *Bundestag* agenda at the

last minute (Grimberg 2005). In the final vote, the CDU opposed it on similar grounds to those it had invoked nearly twenty years earlier, although since it was in opposition at this time, it did so to no avail.

The *Informationsfreiheitsgesetz* was eventually passed over the combined resistance of the bureaucracy and important sections of the business community, which clearly shows that neither are all-powerful even in Germany. The context within which this occurred are worthy of attention, because it too tends to support the claim that the close, cooperative relationship between economic interests and the state delayed the law.

It is significant, firstly, that the law passed following a period when German neo-corporatism was under considerable pressure. In the face of increasing international competition, a rift opened between small-to-medium enterprises and large manufacturers in the 1990s, with the latter strongly supporting the continuation of high-level collective bargaining but the former calling for mechanisms which were cheaper and provided greater flexibility at a local level. Outright defections from employer associations were rare and short-lived, and there was never any serious prospect of a shift to Anglo-Saxon style pluralism (Thelen and Kume 1999:487-492), but this dissensus was nevertheless indicative of a system under strain.

At more or less the same time, the state itself came under increasing pressure from several quarters. The cost to of reunification, increasing international capital mobility, and a reduction in the state's margin of fiscal manoeuvre under the terms European monetary union provided fertile soil for critiques of the German public sector and the German model more generally (Blanton 2002a). To this was added pressure from international government organizations such as the OECD and the EU for Germany to "modernize" its administration and "harmonize" with international norms. This included,

among other things, introducing an access law (Wieland 2000:92 et sqq). In response, the CDU adopted a largely rhetorical program of reform in the early-mid 1990s which was broadly inspired by New Public Management (discussed in the next chapter); this was adapted and adopted in form by the SPD under Schroeder from 1998 onwards.

The partial loosening of the ties that bound the German political economy together do not appear to have seriously affected the attitudes of the main producer groups towards the privileged channels of communication and influence they enjoyed with government. They do, however, go some way towards explaining why Greens were successful in having the *Informationsfreiheitsgesetz* passed in the 2000s when they had not been in the 1980s or 1990s. To be sure, a major contributor was the fact that they entered government as a partner in the Red/Green Coalition. But the SPD was widely-understood to have been less than enthusiastic (Redelfs 2005:34), and it still needs to be explained why it eventually supported the 2004 law. The mere fact that the Greens insisted on commitments to freedom of information in the coalition agreements does not appear to have been a factor (SPD-Bündnis 90/Die Grünen 1998; 2002). Despite the existence of several model laws in earlier Green bills, negotiations between the parties dragged on for six years, during which one bill was rejected by the Home Affairs Committee, and work on the second was almost abandoned due to the 2002 general election (Germany 2005:16953).

The SPD's "enabling state" reform agenda, one which implied reforms that would move Germany in a pluralist direction - is a possible explanation for its eventual support for freedom of information. As the next chapter shows, similar reforms were contributors to the introduction of freedom of information in other late adopters, notably the United Kingdom. Within Germany, the other major constituency supporting freedom of infor-

mation was composed of advocates of neoliberalism. Chief among these was the Bertelsmann Foundation, which is widely seen within Germany as the main proponent of neoliberalism (Lietz 2003). Access rights were thus, somewhat paradoxically, supported by two groups at opposite ends of the political spectrum while being opposed by the centre. This strange alignment of interests was not the result of chance political circumstances; it reveals the fundamental, long-standing importance of the kinds of economic structures targeted by neoliberal reform in underpinning German resistance to access rights. The Greens themselves had once advocated freedom of information as part of a proposal for administrative reform which adopted language strongly reminiscent of New Public Management on at least one occasion prior to entering government (Germany 1994). That similar ideas may also have been at work within the SPD is suggested by the fact that its representatives felt it necessary to defend themselves against charges of neoliberal zeal in the debate over the final bill (Germany 2005:13946), and to claim they represented a revival of a long-standing commitment of their own: access rights had appeared in a defunct project of constitutional reform from the early 1990s whose disappearance had hitherto not been widely mourned (Germany 1993; Redelfs 2005:5).

Pluralism in the United States

In contrast with Germany, the American economy is not centrally-coordinated, and businesses are not formally organised into strong hierarchical associations. Consistent with expectations, legally-protected public access to government files were introduced relatively early, and the issue has always enjoyed greater support among businesses in the USA than in Germany. That said, the attitudes of capitalist interests have also tended to be more varied, and the correspondence between these attitudes and law has depended far more on the existence of favourable political circumstances. The process by which access rights here developed occurred, as noted in earlier chapters, in at least

three distinct phases. In each of these, the attitudes of important players and the issues at stake differed substantially. Economic interests were not the only influence during any of these phases, but a good case can be made that they were important structural influences, and particularly that they were direct contributors to its early development.

Economic interests were central to the establishment of the first law purporting to provide a right of access to official documents. This was not the *Freedom of Information Act* 1966, but rather the so-called “public information” provisions in Section 3 of the *APA*. These required authorities to give advance notice of their intention to make regulations, to accept submissions from affected parties, and take these submissions into account before making new rules. They were also required to provide access to official files, although the wording of this requirement was so ambiguous it was easily evaded by the bureaucracy. The Act was part of a compromise reached between New Deal democrats and their political opponents after more than a decade of fierce political struggle over the legitimacy of the rapidly-expanding federal bureaucratic apparatus, how it was to be controlled, and how those subject to its power were to be protected from it (for detailed accounts, see Gellhorn 1986; Shapiro 1986; Shepherd 1996).

Although the justification for the *Administrative Procedure Act* was formally couched in terms of the democratic rights of private individuals, it is fairly clear that the specifically economic concerns of private enterprise were fundamentally what was at stake (e.g. United States 1946:7-8). The rapid expansion of economic regulation which began in the 1930s was not welcomed by many parts of the business community. Regulation of the labour market, industrial relations, production processes and financial markets (among other things) meant that decisions made by bureaucrats had a far greater impact on the profitability of private enterprise than ever before. In addition, several important piec-

es of New Deal legislation – notably the *National Labor Relations Act 1935* – created an unprecedentedly favourable environment for union mobilisation. Unions in the USA have never enjoyed the same coverage, centralised organisation or influence over policy-makers as their equivalents in Germany. The period between the late 1930s and the early 1950s was, however, the high water mark of their membership and arguably also their direct political influence, both of which were perceived as a threat by businesses.

These factors alone would probably have been sufficient to produce considerable dissatisfaction; they were compounded by the manner in which increasingly intrusive administrative regulation was carried out. Many New Deal initiatives took the form of framework legislation which delegated both rule-making and rule-enforcing authority to bureaucratic authorities. A major source of discontent was the complexity and incoherence of the regulations which this delegated authority produced (House Committee on the Judiciary 1939, in United States 1946:9-10; Cross 1954:223). This was partly a consequence of Roosevelt's tendency to establish multiple competing agencies within the federal administration, rather than adapting existing organisations to new tasks, and appears to have been a deliberate strategy designed to overcome bureaucratic inertia and to preserve the authority of the President by preventing the emergence of a unified administration (Williams 1987; Pfiffner 1994:51-3).

The fact that these problems led to the adoption of freedom of information rather than the establishment of alternative mechanisms of coordination can partly be attributed to the manner in which – and the context within which – this increasing state intervention occurred. The historical fragmentation of the American economy along geographic and sectoral lines meant that businesses usually confronted regulatory authorities from a position of individual weakness rather than collective strength. Moreover, they did

not confront a single coherent state, but rather a patchwork of opaque institutions of varying degrees of effectiveness and with overlapping and ill-coordinated responsibilities. This arguably made the task of establishing centralised coordination far more difficult and thus far less appealing, even without taking account of the lack of sufficient organisational capacity among businesses. The problems this incoherence posed were compounded by a tradition of administrative secrecy which – although not enshrined in law and not often recognised by contemporary scholars – was the equal of any in continental Europe.

It might seem that this argument about state incoherence undermines the claimed importance of organisation among non-state economic groups, but the similarities between state structures in the USA and Germany tend to militate against this. Both are described as having “weak” political output structures (Kitschelt 1986), meaning that at a constitutional level state authority is circumscribed and divided in ways which provide similar opportunities for disaffected interests to block the implementation of government decisions after they have been taken. Both are federal systems in which state governments retain considerable rights and powers. Both have written constitutions, and courts which are empowered to assess legislation and administrative activity for conformity. Germany is, perhaps, slightly less prone to fragmentation because it has more disciplined parties and lacks a separation of powers between executive and legislature, but nevertheless it seems reasonable to conclude that enough similarities remain to discount checks and balances as a sufficient explanation on their own.

Administrative fragmentation should, rather, be understood as an outcome of the way differing levels of organisation among firms were mediated by these constitutionally-fragmented states. In Germany, a historical legacy of highly-organised economic inter-

est groups persisted into the post-war era. There was no pressure from economically-divided groups which might have operated though the checks and balances imposed on the Federal Republic by the Basic Law to prevent either the re-establishment or the maintenance of coherent administrative structures in the later 20th Century. In the USA, by contrast, efforts at centralised economic regulation have historically been resisted by a wide variety of entrenched interest groups (Steinmo 2010:149-206). A good example of this is financial regulation. In the earliest days of the Republic, for example, local commercial interests resisted centralised control of the financial system, which originally meant a Federal bank. When the national Office of the Comptroller of Currency was finally established in the 1860s it confronted a well-entrenched system of state-based regulation which had grown up in the meantime (Peretz and Schroedel 2009). The ease with which entrenched opponents could block reform efforts through the courts or Congress encouraged reformist presidents to create entirely new institutions to deal with specific problems rather than modify existing structures and risk a confrontation with their entrenched constituencies. These new institutions, in turn, encouraged the development of constituencies of their own, became entrenched over time, and so fragmentation begat further fragmentation (Busch 2009:72-74). As a result, American banks are currently subject to overlapping and somewhat inconsistent oversight from the Federal Reserve, the Federal Deposit Insurance Commission, the Office of the Comptroller of Currency, the National Credit Union Administration, specialised units of the Federal Treasury such as the Office of Thrift Supervision, and a patchwork of state-based regimes (Busch 2009:49-55). From this perspective, Roosevelt's tendency to fragment rather than consolidate regulatory authority was not unique: it conformed to and continued an established pattern of governance, one which arose out of interaction be-

tween a disorganised, regionally-fragmented, competitive economy and a fragmented state.

Although economic interests were central to the establishment of the APA, they were far less significant influences on the transformation of its public access provisions into the *Freedom of Information Act 1966*. The Moss Subcommittee was obviously aware of the potential conflict between capitalist and democratic concerns, because the Act explicitly exempted “trade secrets and commercial or financial information obtained from a person and privileged or confidential”. But neither it nor Congress as a whole appears to have given much serious thought to the matter: the exemption was rapidly recognised as poorly-worded and difficult to apply (Davis 1967:787-92; United States 1967:32 et sqq). Interestingly, its very existence appears to have been a response to disquiet within the administration at the harm an overly-expansive disclosure law might do to its relations with private enterprise (e.g. Feldesman 1966; Freeman 1966). Unlike Germany, there is little evidence of concern among firms at this stage. Quite the contrary, Moss himself claimed the support of the American Chamber of Commerce when recommending the bill to Congress (United States 1966). Furthermore, the bill would not have existed without the active support of one very specific business interest: the press (Kennedy 1996). It is, of course, important to recognise that the press is not simply an economic interest group like any other; it also has a vital democratic role to play, one which is specifically protected in the USA by the First Amendment. It is difficult – and arguably not particularly meaningful – to disentangle the economic and normative motivations for the American Society of Newspaper Editors’ decision to campaign against government secrecy (cf. San Francisco Chronicle 1997; Lemov 2007). That the two concerns were actually present is inescapable, however: the editors who directed the cam-

paign considered executive assertions of control over information to threaten both their commercial and political interests (cf. Rourke 1960:685).

During the third phase, which culminated in the 1974 amendments, organisation among business interests contributed in the negative sense that its absence was associated with the inability to effectively resist consolidation of a law which was increasingly recognised as a threat. Chapter Five has already shown that relations between industrial producers and regulators were an important underlying driver of these amendments, even if most public debate focussed on Nixon's abuses of executive privilege. The activities of the public interest movement naturally made businesses far more aware of the potential risks associated with public access to files held by an interventionist state (Mezzacapo 2006): it had already allowed considerable amounts of commercially-sensitive information to fall into the hands of what were euphemistically called "frivolous" requesters (i.e. competitors and external pressure groups; cf. Feldesman 1966), and had led to a good deal of negative publicity in the automobile, food and pharmaceuticals industries. The emergence in the 1970s of so-called "reverse-FOIA" suits, by which businesses sought to prevent the disclosure of sensitive information to third parties, testifies that the risks were judged to be sufficiently serious to make legal action appealing despite its cost and uncertainty (United States 1978:15-21).

The basic configuration of interests which emerged during this period was similar to that which prevailed in Germany throughout the post-war era: administrators shared a hostility towards public rights of access with an increasing number of businesses. The USA differed, however, in that this alignment did not form the basis of decisive opposition to the extension of transparency. This is partly because close relations between regulators and regulated in the economic sphere were never widely considered to be

normatively legitimate; they were always susceptible to being characterised as collusion rather than cooperation by those they excluded. “Iron triangles” and other similar arrangements were denounced as a kind of corruption, one which justified the need for more rigorous disclosure laws. Furthermore, the attitudes of businesses were far more ambivalent than in Germany. Although those whose competitive position was at risk due to disclosure tended to oppose access requests (United States 1978:6-7), the mid-1970s also saw the emergence of commercial organisations who relied on requests to obtain a variety of commercially-exploitable information about regulators and competitors alike. This included details of internal business processes, the terms government tenders and trends in regulatory activity (United States 1978:5-11; Thomas 2000:406-7). The commercial threat to legitimate businesses who merely happened to have divulged information to the state was acknowledged to be problematic, but did not lead to concerted opposition partly because the attitudes of businesses *per se* were divided in ways which encouraged entrenchment of freedom of information rather than radical reform.

Partial and Early Routes to Non-Conformity

There are at least two significant countries which do not appear to conform to theoretical expectations about political economy and the timing of freedom of information: the United Kingdom and Sweden. Close examination suggests that, although they do actually conform in many important respects to the expectations of the approach outlined at the start of this chapter, they also demonstrate the limits of what can be achieved by a narrow focus on political economy.

Entrenched Transparency in Sweden

Sweden appears to present problems for the hypothesised link between neo-corporatism and opacity. If coordinated macroeconomic structures really do hamper

freedom of information, then how can this country, with its highly centralised unions and employer organisations and its system of comprehensive coordinated bargaining, have consistently provided the paradigm case of transparent public administration, possibly surpassing even the USA?

It is important to be clear on exactly what an examination of Sweden can contribute. Germany, the USA and the UK are interesting because the establishment of access rights occurred after the consolidation of their forms economic coordination, making it possible to examine the effect of these structures on the emergence of transparency. In Sweden, the question cannot be put in these terms because public access to government files existed before the establishment of modern mechanisms of neo-corporatist economic coordination; indeed, the regime entirely pre-dates the emergence of a modern industrial capitalist economy, which only began in the mid-19th Century (Meijer 1969).

A study of Sweden cannot, in other words, help to explain the effect of economic coordination on the *origins* of freedom of information - although a good case can be made that the nature of relations between the state and private enterprise were a major contributor to the Swedish law of 1766. The small group of liberal politicians who advocated, drafted and introduced it were clearly motivated by a desire to overturn decades of collusion between their political opponents and mercantile interests, collusion which had contributed to pervasive corruption, endemic financial mismanagement and eventually outright bankruptcy of the treasury (Roberts 1986:106,155-66). The *Act on the Freedom of Pen and Printing Press* was, in part, an attempt to transform the relationship between political and economic spheres, to prevent ministers from using the power of the state to favour the businesses of their associates. To the extent that the aim was to prevent certain styles of decision-making and certain sorts of decisions from being

made, this law displays certain very broad parallels with the British experience described below. These parallels should not be pushed too far, however: any attempt to explain the origins of Swedish transparency in terms of late 20th Century political economy runs the risk of serious anachronism.

Modern Sweden deserves attention because it provides the opportunity to examine the conditions under which – and extent to which – transparency can be maintained under economic circumstances which proved to be unfavourable to its introduction elsewhere: why did neo-corporatism not prevent the transformation of Sweden's 18th-Century access regime into its modern one, and why did neo-corporatism not weaken access rights even once they were in place? After all, the processes of investigation which led to the 1937 and 1949 amendments took place during precisely the same period as the Social Democrats were putting in place Sweden's emblematic system of tripartite economic concertation: the Saltsjöbaden Agreement which formed the basis of subsequent concertation was concluded in December 1938 (Einhorn and Logue 1989:233). Moreover, these amendments were no isolated incident: since then, as previous chapters mentioned, access has continued to form a central element in Swedish public administration, undergoing at least one major refurbishment as part of the constitutional review process of the late 1970s, and numerous minor updates to keep pace with changing technology and Sweden's place in the wider world.

One obvious explanation for this apparent lack of contradiction between neo-corporatism and access is that Swedish businesses were less hostile because they did not have any privileged access to lose in the 1930s. The consolidation of access was not opposed because its benefits were available to businesses as well as other groups. Many of these benefits have been touched upon in earlier chapters, but they are worth reiter-

ating here. Not least is its importance within the system of administrative dispute resolution, where it is sometimes described as being the single most important institution in ensuring affected parties are able to defend their interests against bureaucratic error in the implementation of existing policy (Anderson 1973:427 note 40). Transparency also contributes to a policymaking culture which is responsive to the needs of external interest groups, a culture which manifests itself especially in widespread pro-active consultation during the early stages of policymaking discussed in the previous chapter. This pro-active consultation might theoretically represent a cost to businesses, insofar as it also benefits competitors and therefore reduces the influence the former might expect to exert. This particular cost is substantially mitigated by the emphasis on rational, evidence-based policymaking common to all the Nordic countries. This systematically advantages those interest groups whose interests are primarily distributional, which can formulate their policy positions in terms susceptible to rational cost-benefit analysis, and with the resources to provide research justifying their claims. Producers are in a far better position to do this than most other groups, with the possible exception of unions. It is no accident that these two are often the main contributors of policy-relevant expertise apart from the bureaucracy itself (Einhorn and Logue 1989:53).

A second explanation for the apparent lack of resistance to transparency is that it is only apparent: the highly-centralised system of tripartite concertation has, in fact, led to the establishment and maintenance of a very high degree of secrecy in certain crucial areas of the political process. It is certainly true that policy development begins in Sweden with an extremely open process of consultation, and that implementation is also remarkably open. But the process by which particular policies are chosen, and by which political bargains are struck, is just as closed as in Germany. Indeed, it almost seems to have been designed specifically to avoid disclosure under the *Tryckfrihetsförordning*. As

in other countries, Sweden's law mandates the disclosure of documents rather than information. No minutes are taken at the regular top-level meetings between political leaders and the representatives of economic interest groups. As if in an effort to preempt the charge that minutes should be taken and documents should be created, all participants are at pains to present these meetings as unofficial: they are routinely described as "informal information-sharing sessions" rather than formal negotiations (Anton 1969; Einhorn 1977:264-6). The secrecy of political negotiations extends well beyond meetings over economic concertation in the narrow sense, and covers much of the general process of political bargaining. By convention, party archives and the deliberations of parliamentary committees (where most of these deals are actually struck) are private, and neither reports nor minutes are routinely released to the public (Einhorn 1977). This remains the rule despite a recent trend towards more frequent open committee meetings (Arter 2008:208-215).

This secrecy benefits those organisations which have established ties to the political parties – the unions in the case of the Social Democrats, and to a lesser extent business groups in the case of the right wing parties – to the detriment of others. Interestingly, this pervasive tendency to avoid creating documents has parallels within the ministries responsible for policymaking, where there apparently exists a culture of oral decision-making designed to circumvent disclosure rules by exploiting the same strict definition of a "document" in the law. It is reportedly routine to destroy all draft documents and working papers which are not required to be made available to the public before files are closed and fall under the ambit of the Act. Similar tendencies are present in other countries, but there is evidence that they are far more pervasive in Sweden, with the result that official files often contain very little information which has not already been pro-actively released anyway (Einhorn 1977; Östberg and Eriksson 2009:115-21). In

short, although the Swedish access regime largely survived the introduction of economic concertation, the tripartite system has nevertheless found ways of preserving a space for privileged discussion and political negotiation protected from publicity.

Late Transparency in the United Kingdom

The United Kingdom is, at first sight, a particularly egregious outlier in any attempt to explain the adoption of freedom of information in the terms proposed here. Its *Freedom of Information Act 2000* was one of the last to be introduced in a consolidated democracy, yet the UK is typically classified as pluralist by comparative political economists (e.g. Hall and Soskice 2001:19). A close examination suggests that this country in fact demonstrates the limits of what economic factors can explain on their own, and that the autonomous role of the state must also be taken into account.

In fact, the United Kingdom only partly deviates from the expected behaviour of pluralist countries because it has not been unquestionably pluralist until relatively recently. It is certainly true that British firms have always been far more disorganised than those in Germany, and neither unions nor peak organisations have ever enjoyed the same degree of formal influence over government (Crouch 1993:194-5,220-1,250-1,275). But prior to the reforms undertaken by the Thatcher government in the 1980s, unions enjoyed considerable informal influence, especially when Labour was in power. There is some evidence that these relations contributed to reluctance on the part of the Labour party leadership to embrace freedom of information despite pressure from the backbench: E. P. Thompson (1980) reports that Wilson found official secrecy to be particularly useful as a means of balancing the competing imperatives of loyalty to the movement and political responsibility for economic management during the national seamen's strike of 1966

In addition, British pluralism – such as it was – was complicated by the fact that the state owned many significant industries including coal, electricity generation, water, public transport infrastructure, shipbuilding, aerospace and car manufacturing. Although these were not neo-corporatist arrangements, in that the government was owner rather than negotiating partner, the formal nature of the relationship and the fusion of interests appears to have encouraged a preference for secrecy among the parties involved. Evidence given to the Franks Committee’s 1972 investigation into official secrecy suggested industry representatives were guardedly sympathetic to the general need to improve communication with society at large – it could hardly have been otherwise, given the political realities implied by the very existence of the Committee – but executives in nationalised industries were nevertheless discreetly but firmly in favour of confidentiality in their own particular cases (e.g. United Kingdom 1972b:173 et sqq.). These arrangements appear to have encouraged a similar attitude in the civil service, although their justifications for secrecy were often couched in terms of “good government” rather than the imperatives of profitability and economic stability (e.g. Department of Trade and Industry, in United Kingdom 1972c:29 et sqq).

Significantly, a high degree of secrecy also prevailed in relations between the state and private industry in the UK despite the absence of formal corporatist arrangements (cf. the Confederation of British Industry, in United Kingdom 1972d:351 et sqq). This proved remarkably persistent, partly because it constituted a benefit to both parties as it made possible a pervasive recourse to informal modes of regulation. A good example is the enforcement of pollution and product safety standards, in which regulators systematically avoided litigation and negative publicity as enforcement mechanisms, preferring instead to have a “quiet word” with offenders on the assumption they would make efforts to avoid particularly egregious breaches in future. By this means, regulators and

industry alike benefited, not merely because adversarial dispute resolution proceedings were costly, but above all because they were risky: convictions were obviously likely to be costly to businesses, while regulators faced considerable reputational costs from failed prosecutions, and the establishment of formal proceedings provided a focus for public interest campaigns. Not surprisingly, these arrangements were criticized by those same campaigners as coming at the expense of effectiveness and the public interest (Frankel 1984b:43 et sqq; Winder 1986).

The pervasive presence of official secrecy in economic affairs in the UK is not obviously consistent with the first claim about pluralist countries: that they should be over-represented among early adopters. It is, however, consistent with the second claim: that a lack of organisation among firms suggests their preferences should be less decisive overall (or, to put it another way, that under pluralism, the timing of freedom of information is more likely to be due to other factors). In Britain, secrecy cannot primarily be explained in terms of the influence which economic interest groups had over the state, but rather the reverse. Political and administrative authority is far more centralised in Britain than in the USA, and this allowed the state to establish a set of opaque relations with (disorganised) capitalist interests which, in the final analysis, reflected its own interests.

That British secrecy was primarily an outcome of political rather than capitalist imperatives is further suggested by the fact that these secretive arrangements were dismantled as part of a thorough programme of *administrative* reform under Thatcher and Major, without significant resistance from the business community. Pluralist capitalism was not irrelevant, however. As the following chapter shows, transparency in various forms constituted a fundamental part of a programme which explicitly sought to trans-

form Britain into a pluralist political economy by eliminating direct state intervention and restricting the influence of special interests (above all the unions) over the state. Moreover, although neither Thatcher nor Major were particularly supportive of freedom of information *per se*, it was nevertheless an unintended outcome of reforms designed to establish a specifically pluralist set of relations between economy and state, reforms which were undertaken with the support of key producer groups. Thus, while the persistence of secrecy in the UK suggests the factors identified in the first part of this chapter are not a complete explanation, the circumstances under which freedom of information was introduced suggests they are merely incomplete, not fundamentally incorrect.

Conclusion

This chapter has examined whether the manner in which influential interest groups are organised affects the development and adoption of freedom of information by considering relations between producer groups and the state. The four-way comparison undertaken between the USA, Germany, Sweden and the United Kingdom has broadly confirmed that their propensity to favour formal access rights and their influence over the state both vary with the institutional structure of their relations with the state.

As a general proposition, individual firms favour the disclosure of information which makes government more predictable and amenable to their influence. On the other hand, they generally oppose public access to files containing commercially-sensitive information which they have divulged to the state where access would result in disclosure to third parties.

On the specific question of freedom of information, the extent to which these competing demands express themselves as successful resistance to legislation or not depends

on the structure of relations between state and market. Under neo-corporatism, firms are highly organised, which facilitates the development of a coherent set of preferences with respect to information rights and dramatically improves their capacity to articulate those preferences as a group. Furthermore, the representational monopoly enjoyed by peak industry associations strongly favours a preference for ongoing secrecy, especially at the point of choice between alternative policies. Privileged access constitutes a power resource for these groups as they compete to influence the policy-making process by making it much more difficult for other interests to organise and press their claims on the state. It also constitutes an internal power resource by which the hierarchy can discipline its own members. The more competitive conditions prevalent under pluralism, by contrast, are structurally favourable to the development of a positive preference for general public rights of access, but this selfsame lack of organisation is also less favourable to the development or decisive articulation of any coherent set of preferences. As a result, pluralism is structurally more favourable to the influence of other, non-economic factors, and such countries exhibit greater variation in the timing of access rights despite their common economic structure.

The importance of pluralism for the development and successful articulation of calls for access is further supported by the circumstances under which most neo-corporatist countries eventually introduced access rights. Whether it be because of diplomatic pressure to remove barriers to equal participation in domestic markets, the challenges of financial and fiscal management in an age of increasing capital mobility, or the diffusion of models of government at elite level, most of these countries undertook programmes of administrative reform starting in the late 1990s. In almost all cases, these involved the weakening – although rarely the outright dissolution – of established structures regulating the political economy in favour of more fluid and competitive ar-

rangements. This almost always coincided with a shift in opinion among officials towards greater support for access rights, even if this support did not always translate into decisive action. For this reason, it is to the question of government attitudes in general, and the effect of public sector modernisation in particular, that we now turn.

Chapter 7: Transparency as a Tool of Public Sector Governance

This chapter examines the effect on the introduction of freedom of information of relations between the elected political executive and the administrative bureaucracy. It argues that political executives are most likely to support freedom of information where the administrative bureaucracy operates at arm's length, because such arrangements mitigate the incentives for executives to engage in secrecy inherent in classic Weberian hierarchical modes of control. It also shows that active support for freedom of information typically emerges where prevailing political conditions make it an appealing response to the problems of democratic legitimation and administrative control which devolved, autonomous or semi-independent authorities pose.

The first part of the chapter shows that the institutional-political approach proposed here is preferable to existing studies of the administrative politics of information. Contemporary activist accounts and scholars of public administration often assume that freedom of information forms an unproblematic part of a trend towards the use of transparency as a tool of public sector management in the information age. They tend to under-emphasise the importance of institutional variations on the interests at stake, and assume that the shifts towards transparency can be explained in ideological terms. Studies of freedom of information are much more sensitive to the interests of the parties involved, but generally see relations between executives and administrators as sources of resistance to access rights. Support from members of the political executive is usually explained in terms of other considerations overwhelming the imperatives of

administrative control. Individual deviations from this pattern have been studied as isolated cases, but there has not yet been any attempt to systematically identify influences on attitudes towards freedom of information.

The second and third parts of the chapter support these claims about the combined importance of institutional structure and political strategy, and the relative unimportance of purely ideological change, by conducting a series of paired comparisons. The second part examines two countries in which a highly-ideological rhetoric of reform was a prominent feature of political discourse in the 1980s and 1990s, and in which substantial alterations to the structure and operations of the state were put in place, but in which their effects on freedom of information are understood to have been quite different. In the United Kingdom, New Public Management and New Labour's Third Way contributed to the introduction of rights of access in 2000. In the USA, by contrast, reform is widely claimed to have made access more difficult. Although some of this divergence can be attributed to differences in the historical sequencing of access rights and reform, a comparison suggests that structures of political accountability are also important.

The third part of the chapter examines two countries with divergent experiences in which reform was pragmatic rather than ideological. The first is Sweden, where whatever corrosive effects reform may have had on pre-existing mechanisms of transparency were offset by the political uses elected governments made of an entrenched separation between centralised policy development and transparent, devolved public implementation. It concludes by examining France, where an access law also existed prior to the onset of reform. Here, the conducive institutional structures identified as relevant in the UK and Sweden were – and remain – largely absent, and the adoption of a dis-

course emphasising transparency and accountability at senior political level led to an amendment act which essentially did nothing to extend existing rights of access.

Isomorphism and the Administrative Politics of Information

The relationship between political executives and career bureaucrats has been central to studies of the politics of information since at least Weber's day, and following Weber the consensus has been that institutional structures are contributors to secrecy rather than transparency. Weber himself provided the seminal analysis of the bureaucratic interest in secrecy, which was discussed in Chapter Two. Subsequent scholars, activists and commentators have generally assumed that the political executive takes on this structural interest, and only supports access rights when other considerations overwhelm the imperatives arising specifically from the administrative relationship.

Most explanations for why political executives and bureaucrats might support access rights despite these institutional interests emphasise what sociologists of institutional change call "normative isomorphism". This holds that the structure and operation of organisations in a single field come to resemble each other over time because some alternatives are perceived by those in charge to be more legitimate or appropriate than others, rather than because of they are more efficient or effective (DiMaggio and Powell 1983:152-3). As Chapter One showed, freedom of information activists have devoted considerable efforts to building consensus around the (democratic) merits of access laws. Their attempts to have access rights adopted on the grounds of their consistency with overarching principles have benefited enormously from the recent development of a consensus among administrators and commentators that certain transparency mechanisms are effective and widely-applicable mechanisms of public sector legitimation and control (e.g. Flinders and McConnel 1997; Scott 2000; Stirton and Lodge 2001;

OECD 2002b; Hood 2010). By the start of the new millennium, this consensus was so pervasive that there were even attempts to frame public sector management *per se* in terms of information management (e.g. OECD 2002a; Flinders 2004; Dunleavy, *et al.* 2005; 2007).

Freedom of information has been incorporated into this discourse, and is now often described in similarly technocratic terms as an unproblematic tool of public sector management. This incorporation is due, in no small part, to the actions of international government organisations. Starting in the mid-1990s, the OECD, EU, United Nations and IMF among others began to these laws as an essential institutional support for transparency (Roberts 2006a:110). As Chapter Two noted, this pressure is often argued to have contributed to the adoption of access rights in the developing world, and it is at least possible that the imperatives of harmonisation and the emergence of an international consensus might also have favoured advocates of access rights among the consolidated democracies.

Empirically-oriented studies give reason to doubt normative isomorphism as a significant influence on the introduction of freedom of information acts, however. An important body of scholarship documents the opportunities which the rhetoric and practice of reform has given bureaucrats and politicians in North America to legitimise their standing interest in avoiding disclosure (Roberts 1998; 2000; 2001a; 2004; 2006c; 2006b; Piotrowski 2007). This conclusion is not unanimous, but variations between countries do not obviously correspond with the prominence of reformist ideology. Kenneth Robertson argued that freedom of information would not have been introduced in the UK were it not for the Thatcher and Major reforms (Robertson 1999:142), and Ben Worthy's PhD thesis argued that freedom of information was an integral feature of New Labour's approach to governance and public administration (Worthy 2007b:103-123). There is

reason to think that public sector reform might have made a positive contribution outside the UK as well, including in Italy (Cain, *et al.* 2003:120-2) and Germany (for reasons discussed in the previous chapter). Thus far, however, explicitly comparative work on the link between access and reform has largely focussed on the similarity of experience in the English-speaking countries. There has not been any broader, empirically-oriented effort at understanding why the attitudes of executives appear to have differed so dramatically from country to country, or why freedom of information fared differently in countries with similar political climates and histories of reform.

There is good reason to think that the observed relationship between reform and access rights might be better explained by the influence of existing institutional structures on politicians and officials (cf. Thelen 1999:386; Hall and Soskice 2001:17 *et sqq.*; Beckert 2010:157). Robertson's earlier (1982) work on secrecy, one of the very few comparative studies in this field, showed that the regulation of official secrecy varied cross-nationally with institutional structure. He argued, on this basis, that the supervision of a bureaucracy by a unified executive encourages a preference for secrecy for at least two reasons. Electoral accountability provides strong incentives for prime ministers and presidents alike to retain control over the disclosure of information relevant to their re-election prospects, as a point already discussed in Chapter Three. Hierarchical authority provides a second reason which has not yet been discussed: the right to command the bureaucracy is one of the reasons politicians seek public office, and this benefit is diluted by the introduction of access rights, since they expose the bureaucracy to direct pressure from outside parties.

If Robertson is correct in identifying unified, hierarchical political authority over a Weberian bureaucracy as a reason political executives and bureaucrats alike prefer official

secrecy, then it seems reasonable to expect the prospects for freedom of information to be most favourable where such arrangements are absent. Where the bureaucracy operates at arm's length, the political executive will have few reasons to resist the introduction of access rights because the electoral risks will be lower, and the private benefits of holding executive office which access undermines will be absent. Indeed, there may be positive benefits in supporting access rights under these circumstances. Autonomous public bodies sit outside the democratic chain of responsibility which normatively justifies the existence of the administrative state. Practically, devolved institutions still need to be directed and held to account despite their autonomy. Transparency – insofar as it provides an alternative means of ensuring responsiveness to external stakeholders – may provide alternative means of achieving both ends. Under devolved systems, public authorities may also find it in their interests to be transparent, both as a means of legitimising their own existence to the public at large, and as a strategy for building supportive constituencies (although the impact of constituency relations is likely to vary with the factors examined in the previous two chapters).

The implementation of New Public Management (NPM) reforms in the 1980s and early 1990s provides a suitable opportunity for testing these competing explanations. NPM is appealing because it incorporated a strongly ideological component which varied in intensity in different countries, and whose origins and development can be identified with confidence. NPM emerged out of a strain of New Right economic thought which identified bureaucratic control over information, among other things, as a source of the pathologies of late 20th Century public administration (e.g. Hayek 1945; Niskanen 1971). The influence of New Right thinking was particularly prominent in mainstream political discourse among the early adopters, especially in the Anglo-Saxon world. It tended to diminish over time and as NPM spread to other countries, leaving behind a relatively

technocratic discourse about information technology and rules governing disclosure as tools of public sector management. The consensus about transparency mentioned earlier is a direct descendant of this earlier discourse on information as a tool of governance, albeit one couched in the language of a democratic reaction to some of its unpopular technocratic consequences (cf. Roberts 2010:10-16). New Public Management is preferable to more recent alternatives for present purposes because its core beliefs were actually invoked by political executives and the administrative bureaucracy to justify reforms undertaken in many countries, and not just by academics or non-government advocates of reform.

NPM is also appealing because it was not just an ideological phenomenon: it was associated with a suite of concrete public sector reforms which varied from place to place and evolved over time while still remaining recognisably part of the same broad trend (Hood 1991:4-5; Osborne and McLaughlin 2002; Ansell and Gingrich 2003). The “menu” of NPM reforms is usually divided into three groups of policies (cf. Hood 1991:4-5; Schedler and Proeller 2002:168-70; Pollitt and Bouckaert 2004:247-51). First, privatisation (the sale of public sector assets and the transformation of public bodies to private companies). Second, modernisation, a kind of catch-all term for the use of private sector financial, personnel and management techniques within the public sector. Examples include the use of contracts rather than hierarchical control, the separation of responsibility for policy development from service delivery, and a reliance on performance management (assessment of outputs and outcomes against pre-determined standards) rather than detailed legal codes. Third, marketisation: the use of competition and market-like pressure to improve the efficiency of public-sector organisations. These reforms are useful here because they share a basic concern with official practices of communication, but each seeks to favour the disclosure of different kinds of infor-

mation and to empower different recipients. More importantly, each has different implications for the direct supervision of the bureaucracy by the political executive. Some kinds of modernisation, for example, are quite compatible with leaving intact or even reinforcing the institutional structures which Robertson identified as conducive to secrecy, while marketisation and other kinds of modernisation require disclosure to the public at large. Careful attention to the effects of different kinds of reform in countries with similar degrees of ideological rhetoric provide the opportunity to test the claims made earlier about the greater importance of institutional factors.

Divergence among Neoliberals

This first section of the chapter seeks to demonstrate that the support among political executives for freedom of information was influenced by the institutional structure of their relations with bureaucrats, even where public sector reform was advocated and carried out in a highly ideological context.. It does this by comparing the UK and the USA. These are two countries in which similar suites reforms were advocated on broadly similar ideological grounds, but in which they appear to have had quite different effects on freedom of information due, in part, to the institutional structure of relations between the political executive and the bureaucracy.

Reform and Transparency in the UK

The United Kingdom constitutes a paradigm case of New Public Management contributing to the establishment of freedom of information by transforming the institutional basis of political authority over – and accountability for – the administrative state. This occurred in three phases, corresponding with the Thatcher, Major and Blair eras. The distinction between these phases matters: freedom of information only gained the ac-

tive support of the political executive in later stages, but this support was in large part due to changes which had occurred earlier.

The claim that Mrs Thatcher contributed to the development of freedom of information might seem strange given the resistance she showed the Campaign for Freedom of Information. It is important to distinguish between her attitude towards this specific policy, which is sometimes portrayed as a doctrinaire reflex, and her general attitude towards information as a policy tool, which was actually quite nuanced. In fact, her maiden speech The Conservative Party which came to power in 1979 was firmly convinced that the public service had succeeded in insulating itself so thoroughly from its political masters and the public at large that it was contributing a cause of Britain's economic and political malaise rather than the solution (Willman 1994:74). Its response emphasised a combination of privatisation and modernisation: a reduction in direct public service provision and a tightening of political control over what remained of the public sector. This second element aimed, specifically, to restore a traditional Westminster system of Cabinet authority and parliamentary supremacy, and with it came a reassertion of traditional Westminster official secrecy: full access to central government files was opposed as incompatible with both accountability of officials to ministers, and ministerial accountability to parliament (Tant 1993; Flinders 2000:424).

As Chapter Four noted, however, Mrs Thatcher did not oppose laws granting access to information which did not threaten this traditional structure of authority Furthermore, many government-sponsored reforms during this era displayed a keen awareness of the usefulness of enforced disclosure in *reinforcing* Cabinet authority. Two of the earliest were piloted in the Department of the Environment: an electronic budgeting system called MAXIS was introduced in 1981, followed in 1982 MINIS, a system designed to fa-

cilitate cost-cutting by providing ministers with comprehensive and up-to-date information on operational matters (United Kingdom 1989). Although MINIS was not rolled out more widely, systems similar to MAXIS were in use throughout central government by 1984. MINIS and MAXIS were quickly followed by the *Financial Management Initiative* (United Kingdom 1982), which called for the use of outcomes frameworks, performance management and the devolution of responsibilities for budgeting. In 1988, the so-called “Next Steps” reforms proposed that “executive functions of government, as distinct from policy advice, should be carried out by units clearly designated within Departments, referred to as ‘agencies’” and that agencies be given managerial autonomy within the parameters established by the political executive (United Kingdom 1988; 1989).

Although Mrs Thatcher resisted the introduction of freedom of information itself, these structural reforms laid the groundwork for the first formal moves towards their introduction under John Major. Major’s distinctive approach to public sector reform and public access to information is sometimes explained in terms of his personal beliefs and proclivities (Worthy 2007a:5,7). This was undoubtedly a factor. Major’s personal attitude towards public disclosure of official information was unquestionably more liberal than Mrs Thatcher’s (cf. United Kingdom 1993:2), and as prime minister he could rely on the authority of office to impose his own views on reluctant Cabinet colleagues and civil servants alike. But personal preferences only account for so much, and he was by no means the only Cabinet minister in favour of more liberal disclosure laws. His reforms were, moreover, evolutionary developments rather than revolutionary departures from Thatcher’s, and were in many ways responses to unanticipated contradictions and limitations which began to emerge from them in the early 1990s. The *Financial Management Initiative* and Next Steps reforms were attempts to divest the political executive of responsibility for operational decisions by devolving them onto civil servants.

They did so, however, by centralising control over the flow of information about those decisions in the Cabinet. As a result, they strengthened political control over the bureaucracy even as they purported to devolve authority. In combination with Mrs Thatcher's repeated insistence on Parliamentary supremacy, this effectively meant that Cabinet remained electorally responsible for the bureaucracy, despite the aim of devolving responsibility onto it (the House of Lords remarked on the failure to acknowledge these contradictions in United Kingdom 1998b:¶65). Secondly, Major was also among the first senior Conservatives to recognise a difficulty with the other major component of Thatcher-era public sector reform: there were some parts of the state which could not be privatised, even if only for political reasons (Major 1999:247-8).

Major's contribution to freedom of information was the *Citizen's Charter*. This self-proclaimed "policy plan for the 1990s" (Timmins 1991; Major 1999:245-6) was launched in 1991, and contained over 70 detailed proposals for the marketisation and modernisation of public administration in ways which overcame these contradictions in Thatcherite policy. According to Major himself (1999:246-6), the *Charter* sought to improve the quality and efficiency of the public service by taking advantage of the opportunities offered by new technology to subject it to more effective external scrutiny. Specific reforms included requirements for service-level agencies to publish standards and performance reports, the systematic devolution of responsibility for managerial decisions and the establishment of independent inspection bureaux to confirm the accuracy of reporting.

The emphasis on publicity in the *Citizen's Charter* had two sources. The first was its goal of transforming "citizens" into individual "consumers" or "customers" (cf. Timmins 1991; Birkinshaw 1997:29; Major 1999:262,253) who would subject public bodies to mar-

ket-like pressure to improve their performance (cf. Major 1999:255). This led to the pro-active publication of a good deal of information, most of which was factual and intended to enable these citizen-consumers to choose between the different service providers available to them, or make complaints if service fell below expected standards. The *Citizen's Charter* was, thus, not intended to allow citizens to exert direct influence over decision-making in central government; it was an attempt by the central government to harness the power of public opinion in order to impose financial and operating discipline the public sector (Robertson 1999:147).

The second source was slightly more democratic: the belief that one of the reasons for the failure of the bureaucracy to provide good service was its habit of using official secrecy to hide mismanagement and poor decision-making (cf. the discussion of schools and league tables at Major 1999:400). To overcome this, in 1994 Major also introduced a *Code of Practice on Government Information* (the most widely-cited edition of this is the second, United Kingdom 1997a; see also Flinders 2000:423). This mandated the pro-active publication of a range of information which had hitherto been kept confidential, including the membership of cabinet committees, the reasons for administrative decisions, and background information on past policy decisions (Hennessy 2000). It also included a regulatory right to request other information from government departments, subject only to specified exemptions.

The *Code of Practice* was unquestionably a step towards freedom of information rather than a full access regime in its own right, and it was perceived as such at the time. It received a lukewarm reception from the Campaign for Freedom of Information (e.g. Frankel 1995; Robertson 1999:141) on the grounds that it was regulatory rather than legislative, and applied to information not documents. The Campaign appears have

feared that it represented another attempt at heading off fundamental reform through partial concessions, and that it allowed the government too much leeway in deciding what would be released. There is some evidence that MPs and journalists used it in their dealings with the administrative government (Timmins 1991; 1996), but the general consensus is that lack of awareness that it existed, departmental resistance and lack of political support resulted in a low number of requests (United Kingdom 1995:3) and the release of less information than might ideally have occurred (United Kingdom 2005; Worthy 2007a:7-9).

Nevertheless, the *Code* represented a major advance. It was clearly a major advance in its own right, in that it constituted a positive and public commitment to the principle of access by the political executive. It was also understood, in retrospect, to have facilitated the eventual introduction of the Freedom of Information Act, in part by easing traditionally secretive departments into the idea of establishing a more open relationship with their constituents (United Kingdom 2005:34). The *Code's* effects were not just cultural, however. By allowing appeals to the Parliamentary Commissioner, Major (perhaps inadvertently) allowed the Commissioner to play a similar role to his counterparts in other jurisdictions as a major source of institutional support for increasing access to information. His decision that requests for information under the *Code* should usually be met by providing documents (United Kingdom 1997b:12), for example, effectively transformed it into a regulatory freedom of information act. More than this, the decision to allow appeals to the Parliamentary Commissioner effectively transformed its associated Parliamentary Select Committee into a platform within parliament from which advocates of more fundamental reform could conduct their campaign (Feintuck 1996:349; Robertson 1999:148). Its 1996 report on the *Code*, entitled *Open Government*,

called for a freedom of information act (United Kingdom 1996)– the first time a Select Committee in the UK had done so.

Chapter Three showed that the introduction of the *Freedom of Information Act* owed a great deal to electoral politics, but this was only part of the story: it also owed a great deal to the way New Labour built on the favourable structural conditions put in place by the Conservatives. Under Major, “outlying” parts of the civil service were made partly transparent as an alternative way of addressing dysfunctional bureaucratic administration where the preferred cure – privatisation – was not feasible. Under Blair, full transparency became a fundamental principle of government in the information age, and was the freedom of information act was introduced as part of a widespread reliance on the devolution, not just of responsibility for implementation, but of whole areas of policymaking to autonomous administrative units working in coordination with external stakeholder groups.

Organisations which operate at arm’s length from the political executive have been a long-standing feature of the British administrative landscape, for a range of political and practical reasons (Flinders 2004:884). Since the 1970s, they have also been an increasingly controversial feature, in part because they are difficult to accommodate within the normative framework of Westminster democracy: administrative autonomy implies that the elected executive exercises less ongoing, direct control over their operations (cf. Majone 1997). One indicator of this is that both the main parties have regularly promised to reduce the number of autonomous bodies when in opposition (Flinders 1997). Significantly, however, neither has followed through with this commitment when in office. The Conservatives’ use of the agency model under *Next Steps* was a variation on this old theme. Labour expanded the practice still further, delegating

policy development, specialist advice, regulation of industry, the provision of local services and regional development and a range of other activities to quasi-autonomous organisations (Skelcher, *et al.* 2000; Flinders 2004:887).²⁷

The proliferation of quasi-autonomous government organisations gave rise to widespread concern over democratic accountability and policy coherence (Flinders and McConnel 1997; Harden and Marquand 1997), often expressed as complaints about secrecy. Prior to the introduction of the *Freedom of Information Act*, standards of disclosure and rights of public access to documents controlled by these bodies were unclear: a survey by the Parliamentary Select Committee on Public Administration found that almost all those with executive functions published annual reports and accounts, while about four-fifths maintained publicly-accessible registers of members' interests (United Kingdom 1999). Under two thirds were subject to annual independent audits, only fifteen percent were required to hold public meetings, one tenth were obliged to allow the public to inspect minutes, and under one twentieth to make their agendas or meetings public.

Under New Labour, freedom of information served two purposes. It was, firstly, a means of pre-emptively addressing these concerns. But it was also, and more importantly, a founding principle of what was claimed to be a new model of interaction between state and citizens which would overcome the shortcomings of traditional representative/bureaucratic government (Worthy 2007b:103-123). This new form, now sometimes called "distributed public governance" (OECD 2002a), emphasised pervasive collaboration and communication between interested non-state actors and specialised state bod-

²⁷Estimates of the number of autonomous administrative bodies differ, even within government (Flinders 2004). A 1994 report estimated that there were 6,500, of which 5,521 were actively engaged in policy development and service delivery (as opposed to being merely advisory). Of these, 4,732 were engaged in providing services at a local level (Weir and Hall 1994).

ies whose main purpose was no longer the direct provision of services or the maintenance of markets, but the regulation of relations between interested parties. This model required a far more radical kind of transparency than had hitherto existed in the British state (cf. Worthy 2007b:118-20): it was a structural necessity, serving both as a means by which the state organised its relations with its constituents and coordinated policy among its component parts, as Tony Blair himself recognised at a speech to the Campaign for Freedom of Information's annual awards not long before his election (Blair 1996).

The mutually-reinforcing importance of distributed governance and freedom of information was not always recognised at the time by commentators, many of whom still understood freedom of information primarily in terms of electoral control over ministers rather than as a founding principle in a new kind of intra-executive control (e.g. Flinders 2004). This is not entirely surprising, as the two principles are difficult to reconcile within a traditional Westminster framework, and even today the British state remains highly centralised in important respects. Yet the fact remains that freedom of information was explicitly advocated by leading theorists and political figures in New Labour prior to its election in 1997, at a time when the Party was abandoning many of its other long-standing policy commitments, due in no small part on its usefulness as a means of legitimising and reinforcing the independence of the autonomous institutions of which the British state is increasingly composed.

Reform and the Legitimation of Opacity in the USA

It has already been noted that neoliberalism grew out of specific critique of public administration. This developed in the USA in the 1950s and 1960s, and it is hardly surprising that New Public Management subsequently became a prominent feature of Ameri-

can political and administrative discourse. The USA shared more than this common ideological foundation with the UK: NPM came to prominence as a definite political programme at more or less the same time, and was implemented in two stages of similar emphasis to the Thatcher and Major eras, corresponding roughly with the decades of the 1980s and the 1990s.

Ronald Reagan was elected to the presidency in 1981 on a platform which explicitly identified the federal bureaucracy as both an economic burden and profoundly dysfunctional. This view was exemplified by the oft-quoted comment in his inaugural address that “government is not the solution to our problem; government is the problem”. Although Reagan tended to emphasise the prominent streak of liberal individualism in American political culture, and was not always quite so explicit about the intellectual roots of his position as Mrs Thatcher, his platform drew just as heavily on New Right economic and political thought. It included tax cuts, reform of the budgetary process and a wide-ranging programme of privatisation in order to reduce the cost of the state and its impact on the lives of its citizens. Like Thatcher, Reagan also believed that the executive should be relatively free from institutional constraints in areas of core responsibility like defence, national security and law enforcement. Consistent with this, he was distinctly hostile towards freedom of information, and in a move with certain superficial similarities to Mrs Thatcher’s 1989 revisions to the UK’s *Official Secrets Act*, he successfully sponsored amendments to access which extended the scope of exemptions covering law enforcement and other security matters (Relyea 1983:26; United States 1996:10).

The election of Bill Clinton in 1993 marked the start of a second phase of reform, one which displayed a number of similarities with the Major government’s approach. The

counterpart of the *Citizen's Charter* was the *National Performance Review*, launched under the direction of Vice-President Gore in March of that year. This aimed to make “the entire federal government less expensive and more efficient, and to change the culture of our national bureaucracy away from complacency and entitlement towards initiative and empowerment” (United States 1993b:350). The review continued throughout the Clinton/Gore era, and produced a veritable library of background papers, recommendations, status report and other documents. For present purposes the most interesting and important of these is the initial report, *From Red Tape to Results* (United States 1993a). This laid out four key principles for reform: “cutting red tape”, “putting customers first”, “empowering employees to get results” and “cutting back to basics”. The concrete reforms which flowed from these principles were similar to those proposed under the *Financial Management Initiative*, *Next Steps* and the *Citizen's Charter*, although they tended to emphasise operational modernisation rather than structural change. They included performance-based budgeting, reporting and auditing, the devolution of managerial decisions within the bureaucracy, the greater use of outsourcing to reduce direct costs, and the establishment of service charters and publication of reports on performance in service-oriented agencies to encourage efficiency and responsiveness.

Despite the similarities in the tempo and ideological underpinnings of reform in these two countries, opinions differ on their effects. Where Mrs Thatcher's reforms laid the groundwork and Major's *Code of Practice* represented a significant step towards full access, Reagan's reforms had no equivalent unintended consequence, and the Clinton/Gore reforms are often claimed to have undermined the *Freedom of Information Act* rather than contributed to its consolidation. Nor is the USA the only country in which this is said to have occurred: similar views about the negative impact of New Public

Management are also expressed in and of Australia and Canada (Bell and Watchirs 1988; Nilsen 1994; Roberts 1998; Terrill 1998; Roberts 2000).

Freedom of information is argued to have suffered as a result of administrative reform in the USA in several ways, all of which share a common foundation: that the *National Performance Review* provided opportunities for officials to legitimise and pursue their long-standing lack of enthusiasm for public access to documents.

One opportunity was presented by the imperatives to “cut back to basics” and demonstrate efficiency and efficacy. As Piotrowski shows (2007:45-58), this was used to justify cutting back on staff responsible for processing requests and charging fees at cost-recovery levels (for a similar argument on Canada, see Roberts 2000). The logic here is that it is difficult to portray “responding to freedom of information requests” as a core function of any public authority, its de-prioritisation was readily justifiable within the terms of the *National Performance Review*. This approach had the additional advantage, from the bureaucracy’s perspective, of obscuring its own effects: it rendered the Act less effective without requiring it to be openly repudiated. In some Departments, such as Defence, State and Justice, “responsiveness to freedom of information requests” was included among the measures of customer service performance against which administrators were assessed, and performance did not suffer greatly (Piotrowski 2007:65). But these were isolated examples, and the net effect of performance management on access rights is judged to have been negative.²⁸

²⁸ This somewhat surprising commitment to freedom of information among authorities usually associated with official secrecy in its classic sense is also apparent in the UK. In discussion with the author, officials have suggested it is part of a strategy by these departments to be “good citizens” by faithfully implementing the act in respect of those parts of their operations which are not exempt on the grounds of national security, the administration of justice and so on.

A second line of argument emphasises the opportunities presented by subcontracting (Piotrowski 2007:82-88), reliance on state-owned corporations (Roberts 2001a), and the introduction of managerial autonomy into the public sector through the adoption of private-sector institutional forms (Roberts 2001b; Roberts 2006b:171). This argument holds that modernising reforms blurred the boundaries between the state and the private realms to such a degree that it was often extremely unclear whether many organisations providing public services were public or private. This presented a problem for requesters, because freedom of information is a public law whose normative rationale rests on the democratic accountability of the state to the people. The Act does not apply to private corporations, because they are not normatively accountable to the democratic public (notwithstanding the efforts of the public interest campaigners discussed in Chapters Five and Six).

The ambiguity which many modernising reforms introduced made it possible, so the argument runs, for officials to resist disclosure by arguing that information could legitimately be withheld because its release would adversely affect “private” interests, even though the organisations in question were public authorities “masquerading” as private companies (Roberts 1998; 2000). Significantly, the question of whether these claims were strictly accurate in law was often less important than whether they were plausible enough to be arguable before a court. The time and cost involved in appealing refusals and establishing the invalidity of the grounds on which they were based often proved sufficient to deter disappointed requesters from disputing all but the most egregious of claims. These organisational changes, combined with the time-sensitive nature of much political information, thus provided an alternative means of reducing the effectiveness of the American access regime in practice, without repudiating it in principle.

There are two reasons why New Public Management had differing effects on access rights in the UK and the USA. The difference is, in part, merely *perceived*, and produced by the fact that access preceded reform in the latter but not the former. Close examination shows that most of the effects identified by commentators in one country were also present in the other, and that their experiences were therefore much more similar than the existing literature might suggest. This is only part of the story, however: there were also substantive differences in the reforms themselves and the context into which they were introduced.

That the different experiences of the UK and the USA are, in part, merely perceived is suggested by the fact that the UK *Code of Practice* and *Freedom of Information Act* suffered from similar problems to those identified in the USA and Canada. Politicians, journalists and scholars alike have criticised the long delays produced by under-resourcing, both within the departments and agencies responding to requests and the Information Commissioner to whom appeals are directed (Hazell and Worthy 2010:356). Public authorities' invocations of commercial-in-confidence exemptions have also proved a long-running source of controversy. One particularly prominent early case concerned the Skye Bridge. This was constructed under a private finance initiative drafted in 1995, and replaced a ferry service linking the Isle of Skye with the British mainland. Controversy arose when the private operator began charging what was described as "the highest toll per mile of road in the world" (Monbiot 2004). The island's residents sought access to the contracts between the government and the construction company in order to establish whether the toll bore any reasonable relationship with the costs the company was incurring, but this was refused on the basis that release would harm the interests of a third party – the construction company to whom the tolls were being paid. The Skye Bridge controversy arose before the introduction of the *Freedom of Information Act*, and

debate over where the appropriate boundary between commercial secrecy and public interest disclosure lies in the UK has moved on considerably since then. It is relevant here because it constitutes a prominent example, contemporary with the Gore/Clinton reforms in the USA, of the government exploiting the ambiguous boundary between public and private to justify secrecy on what were widely understood as political grounds.

Despite these problems, the *Code of Practice* was experienced as a positive step towards openness because it provided a coherent and relatively comprehensive right of access. However many problems it may have had in practice, the *Code* was far easier to understand than the patchwork quilt of mechanisms which preceded it, most of which were of extremely limited scope and did not cover central government. In the USA, by contrast, there was no need for Clinton to introduce a *Code of Practice* because the *Freedom of Information Act* already existed. This had two consequences: it meant that the negative effects of reform appeared to be more prominent simply because they were not counterbalanced by the introduction of access rights; and secondly, it meant that there was already a large, established community of requesters and scholars in place who would be more likely to experience these negative effects and complain about them.

Conversely, while the order in which reform and access rights were introduced may have encouraged negative assessments among American commentators, many of the *National Performance Review* reforms relied on publicity in the same way as did the *Citizen's Charter*. Published standards and performance audits were clearly intended to assist citizens in making informed choices in their relations with public bodies, and also to discipline the bureaucracy through fear of the negative publicity and budgetary implications of with poor performance. Secondly, although Clinton did not need to create

new rights in order to empower citizens to take up their grievances directly with civil servants, he did strengthen pre-existing rights: an executive order (United States 1995) reversed Reagan's policy, instructing agencies to pro-actively declassify information and respond positively to access requests. The sponsor of the *National Performance Review* was just as personally sympathetic to access as his counterpart in the UK.

Although historical sequencing can account for a good deal of the perceived difference between the UK and the USA on this issue, there were some small but significant differences in the reforms themselves which must also be taken into account. Like the *Citizen's Charter*, the *National Performance Review* emphasised the goals of efficiency and value-for-money over democratic participation (Aberbach and Rockman 2001). Unlike the *Charter*, however, the *Review* was not followed by a wholehearted embrace of full freedom of information as a means of restructuring relations between state and society or of legitimising that new structure. As a result, the contribution of reform to access was the release of specific, often technical information useful for imposing financial discipline on a state which was – as previous chapters have showed – already characterised by a high degree of administrative and political decentralisation. The tendency of the bureaucracy to use austerity as an opportunity to legitimise secrecy was, thus, not counterbalanced by a wholehearted embrace of transparency at the political level to anything like the same extent as in the UK under Blair. The absence of a fundamental commitment to pervasive transparency within the executive is, if anything, confirmed by the fact that Congress subsequently passed the *Electronic Freedom of Information Act* 1996. This ensured access to electronic records, and put in place new pro-active publication requirements for frequently-requested documents. It was a Congressional rather than a Presidential initiative, a reaction to discontent with falling responsiveness to requests caused by agencies treating their obligations under the Act as secondary rather

than as core responsibilities (United States 1996:13-4). This amendment act was, in other words, a re-assertion of a mechanism which had evolved in response to the pre-existing distributed nature of administrative authority in the American state, and the constitutionally-mandated arm's length relationship which exists between Congress and the administrative state, rather than an attempt by the executive to impose or legitimise a new internal structure of authority and responsibility.

Low-Intensity Reform and Structural Transparency

The comparison between the UK and the USA suggests that the mere presence of a prominent reform movement emphasising transparency as a tool of public sector reform is unlikely to lead to the consolidation of full access rights in and of itself. In both the USA and the UK, political support for access rights was contingent on administrative structures which effectively devolve authority within the state, and on deliberate attempts by the political executive to use disclosure to the public at large as means of legitimising and controlling that devolved structure. Unfortunately, although the comparison between the USA and the UK suggests the rhetoric and ideological foundation of reform may be less important than is often assumed, the USA is not an ideal case for testing the specific claim about institutional structure because its complex political and administrative apparatus displays several intersecting kinds of disaggregation and autonomy. The federal system and the separation of powers are, as Chapter Six noted, associated with a vast and often quite inconsistent array of institutions with different, and sometimes competing, lines of accountability. The relative lack of control exercised by the President over the legislative agenda complicates assessments of the influence of intra-executive politics on legislated access rights.

Of the three other countries on which this thesis focusses, the most appropriate for testing the specific effect of administrative structures are Sweden and France. Both undertook reasonably extensive public sector reforms in the 1980s and 1990s, but in both cases these were pragmatic and only superficially connected with New Public Management ideology. Both, moreover, resembled the USA in that they had access rights in place before the onset of . In Sweden, these rights were deliberately reinforced for structural and political reasons. In France, by contrast, amendments to the access law in 2000 amounted to little more than legislative housekeeping, and the absence of substantial reform can be connected directly to the lack of propitious institutional conditions.

Sweden and the Political Uses of Decentralisation

In common with many of the advanced capitalist democracies, Swedish governments undertook several waves of reform over the 1980s and 1990s. Sweden is interesting because, although the ideological foundation of these reform was moderate by Anglo Saxon standards, the Social Democratic government legislated in 1987 to reinforce access to certain important kinds of information. Furthermore, although the reforms themselves resembled those of the USA in important respects and although Sweden also had a well-entrenched access law long before the onset of reform rooted in a highly-decentralised administrative structure, whatever negative effects reform may have had on access were offset by deliberate attempts on the part of the central government to exploit this entrenched link between transparency and devolved public administration. Divergences from both the UK and US experience can be attributed to the institutional structure of the relationship between the political executive and the administrative state.

The reinforcement of access rights in Sweden can only be attributed to the kind of ideological consensus identified at the start of this chapter with difficulty, because the intellectual foundations of public sector reform in Sweden were far less doctrinaire than in the Anglo-Saxon countries. Neoliberalism is not entirely absent from mainstream Swedish political discourse, but its main bases of support have historically been narrow, lying mainly in a few central government agencies such as the Agency for Administrative Development, the National Audit Office and the Ministry of Finance (Pierre 2001:139). The early 1990s represented the high water mark of explicit neoliberal thinking in Sweden, thanks to advocacy by the OECD and the election of the first Conservative prime minister since 1930. This influence faded after the re-election of the Social Democrats in 1994.

Consistent with this ideological moderation, the reforms which were actually undertaken in Sweden were incremental modifications of long-standing domestic reform traditions, and were taken largely in response to two local conditions rather than in conformity with an emerging international consensus (Premfors 1998:148-52). The first was local contributor the budget deficit, which had been a problem for governments since the oil shocks of the 1970s (Premfors 1998:152-3), but became particularly acute in the early 1990s with the development of a financial crisis sparked by the bursting of a commercial property bubble (Pierre 2001:132-6). The recourse to privatisation was largely intended as a response to this problem, and was particularly prominent during the brief periods during which the Conservatives held power. The actual extent of privatisation was, as in the USA, relatively modest, not least because of relatively low levels of direct state ownership of readily-privatisable assets. The second contributor to reform was partly a consequence of the first: during the 1980s and early 1990s, the Social Democrats had the unusual experience of being in opposition on several occasions,

and this encouraged them to re-evaluate their image and policy platform. They appear to have come to the conclusion relatively early that their close association with the welfare state – which had long been an electoral asset – could also be a liability under conditions of public dissatisfaction with a bureaucracy which was seen to be both expensive and too insulated from popular democratic control (Pierre 1993; Pollitt and Bouckaert 2004:264). In response, they adopted a programme of administrative modernisation emphasising management by objectives (*målstyrning*) and steering towards results (*resultatstyrning*) at the central level, and increased democracy and public participation at the local level (Gustafsson 1987). Although some aspects of this programme resembled New Public Management in its emphasis on the desirability of managerial autonomy (Pierre 2001:135), overall it is best understood as part of a long-term tendency to reduce the importance of elected politicians for operational decisions in favour of governance through direct interaction between the administration and external social interests (Pierre 2001:138).

The differing impact of reform on access rights cannot reasonably be attributed to the peculiarities of the reforms themselves, since despite contextual and ideological differences they were fairly similar to those undertaken in the USA. Although privatisation provoked discussion of whether the shifting boundary between public and private would adversely affect the existing transparency regime, these concerns were offset by the central government's reinforcement of the pre-existing system in the parts of the state which remained public. This reliance was clearly evident in the most significant structural reform which occurred in this period: the radical decentralisation of financial, political and administrative authority in the late 1980s (Premfors 1991; OECD 1997:152-8; OECD/PUMA 1997:403,9,11). As part of this, the Social Democrats amended the *Administrative Procedure Act* in 1987 to require local authorities to pro-actively dis-

seminate information concerning individual rights and entitlements, even as they forced these authorities to choose which services to cut back (Gustafsson 1987:185-7).

Decentralisation thus encouraged the government to strengthening the “publicity principle” which has long played a vital role in legitimising the existence of pervasive, devolved administration in Sweden – a system which resembles that put in place in the UK over the 1990s and early 2000s in several important respects. Since the late 19th Century, Swedish public administration has been characterised by an institutional separation between policymaking on the one hand and implementation and service provision on the other which is functionally similar to aspects of modernisation. The former has traditionally been carried out by relatively small ministries located in central government, whereas the latter is carried out by a mixture of countrywide boards, regional and local government authorities and state-regulated co-operatives (Flinders 1997:66; OECD 1997:93). All of these service providers operate under legal rules established at national level, and are subject to supervision by national agencies like the Auditor and Ombudsman. They are not, however, under the direct authority of individual ministers; Chapter 11, Article 7 of the *Instrument of Government* formally forbids them from directing boards on how they are to apply general rules in specific cases (OECD 1997:93; Pollitt and Bouckaert 2004:264). Within this context, transparency provides a partial substitute for direct electoral accountability, and ensures that officials of all kinds are responsive to public preferences as a matter of practice (Wennergren 1983:15-6). The reforms mentioned above reinforced these structures, in part, because the Social Democrats were genuinely interested in responding to grassroots demands for greater public participation and administrative responsiveness to local conditions. But executives also strengthened access rights because they provided a means of shifting the political costs of unpopular decisions about how budget cuts were to be implemented onto regional

and local governments and autonomous boards (Grønnegaard Christensen 2001:126-7; Pollitt and Bouckaert 2004:263).

Formal Transparency in *Étatist* France

The final country examined here is France. Its 1978 access law was amended in 2000 by the Jospin government, which was also championing a programme of reform couched in the late-stage New Public Management discourse linking public sector transparency and accountability. Despite this coincidence between rhetoric and legislative activity, the French case actually supports the claim that normative consensus is unlikely to have a positive effect on freedom of information in the absence of conducive structural relations between bureaucrats and politicians. Although the structure of political authority in France has changed significantly over the last 30 years, it has not been accompanied by the establishment conducive institutional structures of the kind found in the UK or Sweden. Consistent with this, the amendments to the access law which were put in place were largely cosmetic, involving legislative codification of existing jurisprudence rather than the transformation of authority within the state.

That France's transparency law was introduced in a period of weak executive control, as noted in previous chapters, is entirely consistent with the claims made at the start of this chapter about the institutional influences on attitudes among senior officials towards access. The French state is far more centralised, than, say, Sweden, and hence far less conducive to the use of transparency as a means by which politicians control the administration. French thinking about the state is dominated by a "Jacobin" tradition which emphasises the unity of the state, the desirability of its playing a pro-active role in social and economic regulation, and the normative value of legally-guaranteed equality of service to all citizens. This perspective enjoys widespread legitimacy among civil

servants, and is reflected in dominant traditions of political theory on both the left and the right (Elgie 2003). It is, moreover, associated with a relative under-reliance on independent administrative authorities (France 2001). There are only a few dozen of these even today, and the *Commission d'Accès aux Documents Administratifs* which is charged with administering the access law, was one of the first to be established (France 2011).

France has also proved notably resistant to New Public Management (Pollitt and Bouckaert 2004:227-8), especially when the term is used prescriptively to designate a programme grounded in a particular ideology about the superiority of markets and private-sector norms over states and the public sector. This is partly ideological: the dominance of the Jacobin tradition is often invoked by both the French and outsiders to explain the absence of serious attempts at marketisation or performance management techniques borrowed from the private sector (Clark 1998:111; Guyomarch 1999:171-2). It is also partly social. Civil servants and politicians alike see NPM as a fashion of the Anglo-Saxon world with little intrinsic appeal or local relevance (Guyomarch 1999:189). This view is undoubtedly underpinned the lack of differentiation between the roles of bureaucrat and politician in France, where the two groups are drawn from similar milieux and attend the same institutions of higher education (such as the famous *École Nationale d'Administration*); moreover, the two career paths are closely intertwined, with individuals moving between political and administrative roles at various points in their careers. All three of the reforms discussed in the first part of the chapter are predicated, in one way or another, on a functional distinction between these roles, with the result that “for a French political executive, engaging in administrative reform is the best way to shatter the system upon which its claims to legitimacy²⁹ rest” (Bezes 2001:60).

²⁹ “Legitimacy” is to be understood here in its normative and its Weberian sense.

Whatever its sources, this resistance has meant that public sector reform, which has been a prominent matter of political debate since at least the early 1980s, has differed significantly from elsewhere.

Broadly, there have been two phases of public sector reform in France since the start of the 1980s. The first occurred in the early-mid 1980s under François Mitterrand, and involved two distinct aspects. The first aspect is less relevant to the present discussion, since it would not have been expected to affect transparency in any case: a wave of nationalisation followed soon after by a wave of privatisation under right-wing Prime Minister Chirac during Mitterrand's first period of *cohabitation*. The second was decentralisation, and is relevant mainly for the manner in which it differed from that undertaken in Sweden and the UK. In France it was accomplished by restricting the supervisory authority of the representatives of the central state – the *préfets* – over elected bodies at local and regional level (OECD/PUMA 1997:199; Rohr 2003:49-50). It involved, in other words, a removal of centralised administrative control over a decentralised political system, rather than an attempt to shift political responsibility for operational decisions onto devolved administrative authorities. *Décentralisation* had little immediate effect on the structure or operations of the senior civil service or of political authority, both of which remain largely centralised in Paris (Thoenig 2005). The *Assemblée Nationale* and the Presidency retain their monopolies over law-making and the promulgation of regulations, and the lower levels of government are both formally dependent on and subordinate to them. Decentralisation was, in particular, not intended to institutionalise a split between (centralised) policy development and (decentralised) service delivery, although there are some indications it may have exacerbated pre-existing tensions between the “politico-administrative élite” in Paris, and the field offices of ministries and regional authorities on the other (Pollitt and Bouckaert 2004:228,37).

The second phase of reform, which coincided roughly with the 1990s and early 2000s under Mitterrand and then Chirac, and emphasised various kinds of modernisation rather than privatisation or decentralisation. Prime Ministers Rocard, Juppé and Jospin each undertook programmes of reform which adopted, to varying degrees, language similar to that found in New Public Management. Significantly, their success was inversely proportional to the extent to which they adopted an explicitly ideological stance inspired by the Anglo-Saxon model.

The modernisation undertaken by Prime Minister Rocard in the late 1980s was managerial without being neoliberal. His reforms are usually understood to be the most successful of any in the modern era when measured against their stated objectives (Bezes 2001:48), largely because they did not significantly disrupt existing practices and institutions. Rocard emphasised communication, education and mutual appraisals among civil servants, but left intact the *grands corps* which underpinned the collective identity of the politico-administrative class (Guyomarch 1999:172-5) and did not seriously challenge the dominant Jacobin tradition of thinking about the state.

The efforts of Juppé in the mid-1990s were the most explicitly neoliberal of the three, and also the least successful. Although nowhere near as hostile towards the state *per se* as, say, Mrs Thatcher, Juppé explicitly identified the civil service as exercising an unjustifiable monopoly over the reform agenda and the political process more generally. He attempted to put in place a number of solutions to these “problems”, including the implementation of a separation between centralised policy development and decentralised service delivery within the ministries, and the use of contracts and performance management (Clark 1998:106-7). He also established a separate “Civil Service Ministry in charge of State Reform, Decentralisation and Citizenship” which was intended to force

change on a public sector presumed at the outset to be unwilling to reform itself. The use of the word “citizenship” was criticised at the time as little more than a rhetorical flourish taken from Major’s *Citizen’s Charter* (Bezes 2001:57). That said, these reforms deliberately sought to reform inter-executive relations, and, had they been successful, transparency might have become much more important as a principle of administrative control in France. As it happens, Juppé’s effort collapsed in the face of a series of general strikes, and failed to achieve long-lasting institutional or procedural change (Bezes 2001:51).

As noted earlier, the French access law was eventually amended in 2000 under Jospin, who was also pursuing a public sector reform agenda which bore rhetorical similarity to late-stage New Public Management. It is probable that Jospin’s emphasis on the transparency and accountability of the state, and his advocacy of some of the less controversial aspects of performance management, facilitated the passage of these amendments. But like Rocard’s, Jospin’s overall reform programme essentially left the structure of the civil service untouched. Within this, the substance of his transparency reforms were strikingly similar to those of Giscard d’Estaing and Barre two and a half decades earlier: the term “transparency” referred primarily to the clarity and accessibility of the laws which the state was charged with implementing rather than to access to files, and formed part of a broader effort to lighten the burden which bureaucracy imposed on individual citizens rather than an effort to improve accountability or participation. Consistent with this, the revisions to the access law which were brought by the Minister for Public Service, State Reform and Decentralisation (France 1998a) primarily involved the codification of jurisprudence developed by the *Commission d’Accès aux Documents Administratifs* and the *Conseil d’État* to overcome inconsistencies and ambiguities of the original law (France 1999:05097). Their purpose was far less radical in substance than

those of any the key political figures in the countries discussed above. They did not seek to use disclosure as an alternative mechanism of bureaucratic discipline or control; to the contrary, this law *reinforced* the pre-existing and fundamentally juridical framework of relations between citizen and state (Clark 1998:111). Significantly, and in stark contrast with both the UK and Sweden, these amendments were neither particularly prominent matters of political debate (cf. France 1999), nor do they appear to have had much of an impact on the broader reform agenda or the right of access itself since their passage. The *Commission* continues to identify a low level of awareness of – and sympathy for – access among civil servants as the major barrier to their implementation (France 2000:44-7), suggesting that traditional structural interests remain very much in place.

Conclusion

This chapter has conducted a study of the effects of administrative reform in four countries, as a means of identifying the structural features of the relationship between political executives and bureaucrats which are most likely to encourage support at among political executives for freedom of information. It began by noting that there are two broad bodies of opinion on the effects of this relationship, corresponding roughly with scholars of public administration who identify information in rather technocratic terms as a tool of public sector governance, and scholars of freedom of information who are more sensitive to the power interests at stake in disclosure. It has shown that neither of these approaches is entirely correct. The political executive is neither likely to embrace freedom of information simply because it recognises the instrumental value of public disclosure of some information about the state, nor will it always have an interest in allowing bureaucrats to exploit the organisational ambiguities of structural reform and avoid disclosure.

This chapter has shown that Robertson's (1982) argument about the institutional determinants of official secrecy can also be applied to freedom of information: support for access rights among political executives in the countries studied here has been shown to be a function of organisational structure –and specifically the prevalence of public authorities operating at arm's length from the political executive. Three out of the four countries examined here now rely widely on autonomous public authorities. These are also the countries in which access laws enjoy greatest support from senior politicians, and where they work reasonably well. Moreover, in one of the three – the UK – access rights were introduced as an integral part of a governance agenda which relied heavily on administrative autonomy. The fourth country is France, where relevant aspects of the state remain far more highly-centralised, where legislation exists despite the attitudes of the political executive, and where subsequent amendments have not substantially extended access.

This chapter has also shown that the effects of public sector reform on freedom of information depend on the goals of the political executive, rather than on ideological or rhetorical commitment to information-based administrative control. It has identified two basic reasons why elected executives might support access rights: as a means of pro-actively transferring responsibility to the bureaucracy, and as a means of legitimising the existence of a devolved public administration. Where the goal of legitimisation alone is present, reform is likely to be superficial because it suggests existing power structures remain in place. France is an example of this: reform under Jospin was essentially undertaken because the temper of the times favoured reforms which could be presented as promoting transparency and accountability. Where the aim was solely a (limited) transfer of responsibility as part of an attempt to harness the power of public opinion as a means of exerting control over the bureaucracy, as in the UK under Major

and the USA under Clinton and Gore, there were important changes to patterns of disclosure but the kinds of information and the recipients involved did not necessarily correspond with full freedom of information. Where the goal was to transfer a greater degree of responsibility *and* to legitimise that transfer, as in Sweden or the UK under Blair, full rights of access prospered.

Chapter 8: The Institutional Foundations of Freedom of Information

We live in an age obsessed with information. The popularisation of technologies such as the personal computer, the World-Wide Web and satellite television has effectively eliminated many costs once associated with obtaining, storing, processing and diffusing information. These innovations have made possible the development of social, economic and political habits and patterns of organisation which depend on swifter access to larger amounts of data than ever before (Castells 1996; Keohane and Nye 1999). With these new practices have come expectations that information will be available, whether it be from businesses, governments or other organisations (Margetts 2011:518). The transition from industrial to post-industrial capitalism is argued to have both driven and been driven by these technological changes (Castells 2001). The shift in productive activity towards symbolic and financial rather than physical capital, the establishment of fluid and unstable patterns of material production, and the rhetorical privileging of consumer choice in a range of economic, social and political contexts have all served to raise the value of “information” in the abstract (Piore and Sabel 1984; Lash and Urry 1993). In the political sphere, the collapse of the Soviet Union was widely hailed, at least in the 1990s, as leaving liberal democracy – normatively founded on individual electoral choice and requiring widespread public access to information (Dahl 1989) – uncontested as the sole legitimate form for government (Fukuyama 1992).

The widespread adoption of freedom of information laws over recent decades is often framed as an instance of convergence driven by these profound transformations. Yet

there remain considerable differences in the timing and manner of adoption of these laws among the consolidated democracies, where there exist reasonably strong domestic constituencies, and where ideological and material conditions should have been most favourable. It is these differences that this thesis has sought to explain, and it has done so by arguing that the adoption of access laws is not the result of straightforward convergence driven by a small number of common causes, but rather equifinality driven by different causes in different countries.

This thesis has argued that these differences are primarily due to the institutional structure of politics, and has made its case by conducting a comparative historical study of the origins of access laws in five countries. It has showed that adoption is not the outcome of adaptation to the informatisation of society, dispassionate technocratic harnessing of the power of information, demand from beneficiaries in civil society or ideological progress towards a fixed, uncontroversial goal of “greater democracy” (whatever that might mean). During the 20th Century, Sweden, the USA, France, Germany and the UK all faced a range of circumstances which proved conducive to the emergence of access rights in some but not others. These circumstances generally grew out of the interaction between bureaucratic public administration and democratic politics, but manifested themselves in different ways: as concern over electoral accountability, over the need to protect individual liberty from bureaucratic error and capriciousness, or over access to the policymaking system and struggles for control and legitimacy within the state itself.

That these putatively-relevant circumstances did not always contribute to the development of freedom of information has been traced here to the institutional arrangements governing the getting, keeping and using of political power in each. These insti-

tutions mediated these pressures in different ways. In so doing, they affected the processes by which aspects of the modern bureaucratic state came to be defined as problematic, by which official control over information was identified as a cause of that problem, and by which laws mandating public access to it were adopted as the solution.

This final chapter does three things. It begins by drawing together the discussion of the preceding chapters and summarising the findings in relation to the specific organisational and institutional arrangements which were identified as relevant. It then shows how these combined in the five countries which formed the main object of analysis to produce their very different approaches to freedom of information. This second part is important because the main empirical chapters focussed not on whole countries, as is standard practice in comparative historical studies, but on five political relationships present in each of them. There were sound reasons for this, laid out in Chapter Two, but it means that the thesis has yet to synthesise its specific claims into coherent explanations for overall variation among the countries it has examined. The chapter then concludes with a somewhat more speculative discussion of the broader significance of this study, and the possible avenues of future research it might inform.

Institutions and Transparency in the Five Cases

This thesis began by arguing that cross-national variation in transparency could not be explained simply in terms of its theoretical merit. Rather, following Weber's study of bureaucratic secrecy, it should be grounded in an appreciation of how organised power relations affect the value of information and the conduct of disputes over it. It also noted that information is only meaningful in the context of concrete social relations, and argued that bilateral relations between four important political actors were particularly worthy of attention. Finally, it identified factors as likely to be particularly important:

the internal organisation of these collective actors (understood largely, but not exclusively, in terms of the extent of hierarchical authority relations prevailing within them), and the position of each of these actors in the overall structure of political accountability and authority. The empirical chapters examined the impact of organisation and institutional structure by focussing on different political relationships. The following discussion identifies the specific factors which were revealed to be important, and then summarises the ways they were shown to interact in the five country-cases.

Hierarchical Organisation and the Tendency towards Secrecy

Several empirical chapters identified the importance of a widespread, if complex, distinction between two different sorts of collective political actor: those within which hierarchical authority relations are strong, and those where such relations are either weak or absent. Hierarchical organisation commonly has two effects, which become more pronounced as the organisation approximates Weber's ideal-typical bureaucracy: it encourages a preference for secrecy, and it means an organisation's preferences are more likely to be politically-consequential. Disorganised groups, by contrast, tend to be more diverse in their preferences, and relatively less capable of ensuring their preferences are enshrined in law.

Groups displaying strong, centralised and hierarchical authority relations generally enjoy greater political influence for two reasons. These relations tend to facilitate the development of shared and coherent preferences among their members. This may occur either because senior officials actively suppress divergent views (as arguably occurs within highly-disciplined political parties, as discussed in Chapter Five), or by providing opportunities for the development of genuinely shared perspectives among their members (as arguably occurs among firms in highly-coordinated economies, discussed in

Chapter Six). These relations also tend to favour the active pursuit of these more coherent preferences through direct action, largely because highly-organised groups are in a better position to deploy the political resources of their members to greatest effect.

Bureaucratic organisation is frequently associated with a preference for secrecy for several reasons. Bureaucracy is, *per* Weber, a form of organisation with inherently secretive predispositions inasmuch as it is designed to control information and to dominate through information. Internally, information and rules concerning disclosure are mechanisms by which those at the summit discipline their subordinates, as Chapters Two, Six and Seven discussed. Externally, information is useful as a strategic resource in managing relations with other powerful actors, as Chapters Five and Six showed. Bureaucratic groups, thus, often have the capacity to keep secrets, and an interest in opposing general public rights of access to them.

Members of groups which are weakly organised are, by contrast, both more likely to support freedom of information and more dependent on favourable circumstances to realise that preference. These favourable attitudes have two sources. They are, firstly, an artefact of the absence of internal discipline: the preferences of members of these groups are likely to be more diverse, and consequently more favourable on average than those subject to hierarchical authority relations. More precisely, the absence of internal discipline means the preferences of disorganised groups are more likely to be influenced by concerns other than the interests of the group as such, as the discussion of weak party discipline in Chapter Five showed. Secondly, the absence of coherent organisation can encourage a positive preference for formal rights of access under the right circumstances.

A positive relationship between a lack of organisation and transparency is sometimes posited on the functionalist basis that networked coordination requires transparency whereas Weberian bureaucracy does not (Fountain 1999; Nye 1999). This thesis has proposed a different explanation on the basis of its historical analysis. It has suggested that disorganised groups lack the capacity to pursue the collective interests of their members, including ensuring access to politically-important information. Members of these kinds of groups include independent members of parliament (and some backbench or junior members of parties), firms in liberal market economies, and public interest groups on the periphery of important policy networks. These kinds of actors are more likely to find themselves excluded from negotiations between more powerful and better-organised actors which affect their interests. It does not matter whether these negotiations occur between political parties, members of a policy network or within the bureaucratic state: from the perspective of excluded stakeholders, they are all opaque. Support for freedom of information is, as Chapters Five and Six showed, encouraged by real or perceived status as an outsider, and it appeals because it helps to overcome exclusion in a way which does not depend on possessing greater organisational capacity or other political resources.

The Institutional Structure of Authority and Accountability

The five empirical chapters of this thesis also showed that the development of freedom of information laws varies cross-nationally with the institutional structure of the five key relationships identified in Chapter Two. These chapters identified several institutions as relevant: electoral competition for legislative office, the structure of relations between the legislature and the executive, the balance of power within the legislature, the organisation of interest groups, and the relationship between the political execu-

tive and the administrative bureaucracy. The following discussion focusses on each in turn, before demonstrating how they interacted in the five main country-cases.

Chapter Three showed that the manner in which parties compete for office is of crucial importance to the development of freedom of information. A competitive two-party system is more favourable to the politicisation of access rights than a multiparty system (and, implicitly, a non-competitive two-party system). This is largely because there is a simpler, more direct relationship between the vote in a two-party system and the character of the government which must eventually assume responsibility for official decisions and actions. Multiparty parliaments usually require the building of coalitions, a process which is both more difficult under conditions of transparency and which does not give rise to similar expectations of retrospective accountability. Coalitions are much rarer in two-party parliaments, while the simpler electoral mechanisms with which they are elected make it easier for voters to at least imagine they are holding identifiable elected officials to account for their actions. In combination, these provide greater incentives for candidates in two-party systems to compete with each other by signalling their support for the principle of retrospective democratic accountability.

Chapters Three and Four showed that the relationship between the legislature and the executive is also an important contributor. This is partly because the separation of powers and the electoral cycle can, under the right conditions, encourage legislators to introduce access laws despite their electoral risks. In presidential systems, parliament legislates knowing the risk will mainly fall on the president; in parliamentary regimes, support for access rights among incumbents is generally high for the brief period during which most disclosures are likely to discredit the outgoing government. The importance of the structure of political accountability was further examined in Chapter

Four, which showed that countries where elected officials are considered to be directly responsible for the behaviour of the administrative bureaucracy are particularly susceptible to the politicisation of access. This is especially true of Westminster systems, where the centralisation of legislative, executive and administrative power in the Cabinet tended to encourage the politicisation of individual matters which were resolved judicially in Continental Europe. This tendency towards politicisation is much less widespread in countries where control of individual bureaucrats relies on the law rather than direct hierarchical authority. In these countries, rights of access to files concerning matters in dispute tend to be relatively well-developed, as are rights of access which relate to legally-protected interests.

Chapter Five showed that political parties are crucial to the development of freedom of information, not just for the manner in which they seek to win office but because of the way they act once in power. One tool which policymakers have frequently used to control policy demands is selective communication with some groups in order to weaken the influence of others. For this reason, freedom of information laws have often received their most vigorous, active support from groups which find themselves on the periphery of important policy networks. The extent to which the executive is able to exert autonomous control over the legislative agenda is a crucial determinant of whether these groups are able to have freedom of information introduced. Executive autonomy is generally higher in two-party systems, because a single party usually controls a majority of seats and hence the legislative agenda. This depends, however, on the degree of control which party whips exercise over their parliamentary caucus; it is no accident that the USA was both relatively early to adopt freedom of information and characterised by extremely weak party discipline. Executive control over the legislative agenda is generally weaker in multiparty systems, although this weakness manifests

itself in different ways depending on whether governments tend to be composed of majority coalitions or single-party minorities. Where coalitions are the rule, governments are able to resist pressure for access laws most of the time. The potential for splits between coalition partners is always present, however, and contributed to the passage of laws in two of the countries examined here. Chapter Three discussed the contribution of coalition unity in France. The final passage of the *Informationsfreiheitsgesetz* through the *Bundesrat* was also facilitated in this way, through the decision of the FDP to break with its coalition partner (the CDU/CSU) and abstain from a crucial vote (Germany 2005:278; Redelfs 2005:32-3). In countries where minority cabinets are a frequent occurrence, as in the Nordic world, the prospects for freedom of information are brighter. Here, opposition parties and interest groups alike are in a particularly strong position to demand access rights in return for support for the rest of the government's policy agenda.

One implication of this claim about the importance of the configuration of partisan power in parliament is that other institutions which are sometimes argued to be relevant to the development of access rights appear to be of secondary importance. Institutions such as independent courts, ombudsmen, the separation of powers and hybrid institutions with influence over the legislative agenda like the *Conseil d'État* all contributed at various times, and may well be of crucial relevance to the way these rights are implemented. But, from a comparative perspective, the differences in their contributions to the adoption of access laws from country to country are striking. This is perhaps best demonstrated by the divergent experiences of the USA and France. Both have a separation of powers and constitutional courts with the power to review legislation. Yet only in the USA, where party discipline is notably weak, was freedom of information introduced early. In France, the other institutions which might potentially have circum-

scribed the authority of the executive only became relevant under favourable conditions within the party system: during the breakdown of Giscard's authority in the 1970s, and during the period of *cohabitation* between Chirac and Jospin in the late 1990s and early 2000s. This suggests that the widely-accepted importance of the separation of powers (Robertson 1982; Persson, *et al.* 1997), although real, is contingent. The separate electoral mandates in presidential systems may only favour the introduction of freedom of information laws by lowering the electoral risks to legislators if they do not consider themselves members of an organisation which *also* holds the presidency.

The complex and occasionally contradictory implications of the different modes of collective organisation discussed earlier are exemplified by the varying attitudes of economic actors towards freedom of information. Chapter Six showed that countries in which firms are organised into a limited number of non-competitive and highly-organised representative associations are likely to introduce freedom of information later than those in which interest groups are more numerous, less well-organised and tend to compete with one another. Under neo-corporatism, the high degree of organisation which prevails among producer interests allows them to form privileged relationships with the state, and to minimise the influence which non-economic interest groups are able to bring to bear on the policymaking process. These privileged relations are threatened by freedom of information, and are generally resisted (although, as the case of Sweden showed, this resistance may be highly focussed). Under pluralism, powerful actors within individual economic sectors or policy domains may sometimes be able to establish comparable relations with policymakers. These relations tend to be of more limited scope, and are far more likely to be the subject of attack from the more numerous and heterogeneous excluded interests which exist in these polities.

Finally, Chapter Seven showed that the attitudes of senior political figures towards freedom of information are not just influenced by direct electoral concerns, the challenges of ensuring individual citizens are protected from the bureaucracy or normative isomorphic pressures; they also vary with the structure of their authority relations with the bureaucracy. These attitudes are likely to be more favourable where administrative authorities operate at arm's length from the supervision and control of political actors. This chapter also showed, through an examination of recent episodes of public sector reform, that executive support for access is likely to be strongest where disclosure to the public serves either the practical goal of harnessing public opinion as a means of encouraging bureaucratic efficiency, or as a means of legitimising increased reliance on devolved administrative bodies as a policy tool.

Five Paths to Freedom of Information

This thesis has undertaken a classically Weberian project, in that it has shown how purportedly general processes work themselves out in different ways in different places due to historically-contingent local conditions. Comparing on the basis of the different dates on which Sweden, the USA, France, the UK and Germany introduced similar laws, it has demonstrated that these countries did not just differ in the timing of their legislative activity, nor were the differences between them purely idiosyncratic. It has shown that the broader character of political disputes over access to information varied in other ways as well: the tendency for general public rights of access to emerge as a matter of widespread political debate; the composition and breadth of its supportive constituency (and its opponents), both in civil society and within government; and the kinds of information those in power had an interest in making available to the public.

The sheer age of the Swedish freedom of information act makes it difficult to draw conclusions about its origins through comparisons with more recent laws, but insofar as it is possible to tell from the available sources these appear consistent with the institutional explanation offered here. Sweden has had a centralised and powerful bureaucracy since at least the late 18th Century (Peters 2001:145-6). Its early access law can partly be understood as a reaction to this centralised power, encouraged by the emergence of a prototypical form of two-party competition – albeit, significantly, one which had not yet developed to the point where the institutional interests or capacities of the parties *per se* mitigated the appeal of access rights or the ability of individual members of parliament to pursue it. The law was also made possible by the unusually liberal nature of its parliamentary regime: the separation of powers meant the Crown and bureaucracy were unable to resist the law once it had gathered sufficient political support.

In the modern era, Swedish freedom of information became consolidated thanks to a mix of cohesive social and political organisation, coupled with two crucial institutionalised divisions of political power. Modern access rights were introduced in two stages in 1937 and 1949, in response to demands by groups occupying important positions outside government in the institutions of the liberal democratic order: journalists, lawyers, academics and backbench politicians. The immediate cause of this mobilisation was the threat to individual liberty posed by the growth of the welfare state in the middle part of the 20th Century. These demands were translated into law relatively quickly, despite the existence of strong neo-corporatism, as a result of the strategy adopted by minority Social Democratic governments of pro-actively identifying and formally incorporating nascent social demands into the policymaking process as early as possible. Freedom of information has become entrenched in contemporary Sweden, partly because it continues to contribute to the openness of its policymaking process, and partly because it

underpins a system of bureaucratic accountability and control characterised by a constitutional separation of powers between the political executive and the administrative bureaucracy.

The early and comprehensive consolidation of freedom of information in the USA, in contrast, was due to the combination of a disorganised society and a state in which political power is fragmented by design. This has made both information and legislation important mechanisms of political coordination and control, and official information became an object of political struggle almost from the moment the state began to intervene systematically in society in the 1930s. The combination of the separation of powers and the relative absence of party discipline were of particular importance in translating these structural features into legislative access rights. They facilitated the early development of a comprehensive body of administrative law which purported to include a general right of access to official files. The ill-fated access provisions of the *Administrative Procedure Act* were part of an attempt to address discontent among (disorganised) businesses with expanding but often incoherent regulation under the sprawling New Deal bureaucracy. Disorganisation within the parties contributed to the transformation of these early provisions into a comprehensive, functioning access regime by allowing mobilisation within Congress and the press to exert a disproportionate effect compared with elsewhere. The *Freedom of Information Act 1966* and its subsequent amendments played a similar role in later periods, especially once civil society groups became engaged with the issue. On the two most important occasions, 1966 and 1974, the separation of powers and weak party discipline prevented the executive from blocking proposals outright (as occurred in the UK, and as arguably occurs most of the time in France, albeit only implicitly). These laws, moreover, had a self-reinforcing effect, rendering Congress more open to influence by outside groups, especially during

periods such as the aftermath of Watergate when it was electorally advantageous to be publicly associated with laws that purported to improve executive accountability, and making access to information an ever more-important feature of American political life.

France is in the unusual position of having had an access law for over three decades, but one of which the public is largely unaware and which is essentially absent from mainstream political discourse. It has not developed a supportive constituency in the same way as has occurred in the USA, Sweden or even the UK; despite regular political scandals, the principle of access to official information *per se* is not even a particularly prominent matter of public debate in either the press or parliament. This unusual lack of politicisation can largely be attributed to the predominance of the bureaucratic state within the political system, its autonomy from society at large, and the dampening effect these characteristics have had on the tendency to frame problems of politico-administrative control in terms of secrecy and transparency. The central fact of French political life for much of the modern era has been a centralised and infrastructurally-powerful bureaucracy which is often able to act independently not just of major social and economic interest groups, but also its nominal political masters (Peters 2001:144-5). Although the Fifth Republic is a presidential system as in the USA, the centre of power almost always lies in the executive branch rather than being shared with a legislature. France is thus usually characterised by the fusion of executive and legislative functions which proved conducive to political secrecy in other countries most of the time. It is no accident that the introduction of its access law occurred during a period when the control of the presidency over the assembly was unusually weak, and when it was obliged by political circumstances to accept a law it would have preferred to resist. That the French law exists *despite* a hostile institutional environment is underlined by the paradoxical fact that the bureaucracy has also been the single most important constituency

for freedom of information, albeit far from an enthusiastic one. The strongest supporters of access have been the *Conseil d'État* and the *Médiateur de la République*, joined occasionally by senior political figures for whom it constitutes a means of being seen to protect individual rights from the bureaucracy and to ensure legally-mandated equality of treatment. The absence of politicisation can also be traced to the fact that, even today, access to official files in France is simply taken to be a mechanism of administrative dispute resolution rather than a support for democratic accountability or participation in policymaking.

In Germany, access rights were also introduced relatively late, a fact which this thesis has suggested can be attributed to significant structural resistance to the principle of public access to information, coupled with a relatively narrow supportive constituency. The two main political parties and the main interest groups in Germany are highly-centralised, and establish formal, ongoing relations with each other and the bureaucracy. As a result, the interests of the most important and influential political actors have been aligned with the bureaucracy *against* the introduction of formal access rights for most of the post-war era (Germany 1986b:19098-9). The multiparty electoral system provides few countervailing incentives to compete on cognate issues of trust, and the two main parties actively resisted attempts by civil rights campaigners and the Greens to explicitly politicise freedom of information from the late 1970s to the early 1990s (Riley 1983b:10-1; Redelfs and Leif 2004; Redelfs 2005). Furthermore, Germany has a long tradition of administrative responsibility to a detailed body of positive law rather than to politicians, a system designed in part, to insulate the state from politics. This meant that pressures arising from state growth were largely accommodated through legal rights framed in individual terms. Rights of access to and control over specific kinds of information in Germany are relatively generous, and appear to have satisfied grievanc-

es which were expressed elsewhere as demands for freedom of information. The fact that access rights exist at all in Germany is a testament to the strength of the Green movement, its long-standing desire to open the planning and policy process to broader participation, and the opportunity to enter a coalition with the SPD in the late 1990s.

The development of freedom of information in the UK is the outcome of a complex and contested interaction between its centralised political and administrative systems, and their gradual evolution over time. Here, as elsewhere, the growth of the bureaucratic state was the central problem, but unlike France (which also combines a strong state with a pluralist society), this occurred in the context of a competitive two-party system which favoured the politicisation of concerns about official secrecy and state power in terms of public access to information. This made the electoral calculus of senior party figures a crucial determinant of legislative outcomes, and the late introduction of its access law was largely due to the capacity of the political executive to ignore unwelcome demands it was unable to stifle. The foundations of this autonomy lie the centralisation of legislative and executive power in a Cabinet composed of ministers drawn from a single, disciplined political party elected under a disproportional electoral system. Paradoxically, however, the fact that the foundation of political authority in the United Kingdom is located firmly in the legislature also facilitated the resolution of this contradiction, by allowing the establishment of something like a Swedish-style division between the political executive and the administrative state favourable to the institutionalisation of transparency in the 1980s and 1990s.

The introduction of freedom of information under Blair, and the current Conservative-Liberal Coalition's so-called "Transparency Agenda" (United Kingdom 2010a:20-1) both bear witness to the competing incentives produced by the profound but somewhat in-

consistent changes to the British state which occurred during this period. On the one hand, information rights remain a popular basis of electoral competition because the two-party electoral system remains in place, and Cabinet retains its position at the summit of the state. Symptomatically, both Blair and Cameron have emphasised their support for access as a means of distinguishing themselves from their “untrustworthy” predecessors (Blair 1996; United Kingdom 2010d) These factors continue to encourage Ministers to retain control over information relating to policy and the high affairs of state. But on the other hand, attempts to divest Cabinet of electoral accountability for the behaviour of bureaucrats have at least partly reduced the risks of full rights of access. These have made mechanisms which favour the release of information about operational matters appealing as a means of following through on commitments to be more transparent. Such mechanisms also serve as non-electoral means of disciplining and legitimising the activities of a bureaucracy whose complexity and size have rendered hierarchical control and parliamentary accountability increasingly difficult.

Further Questions, Other Cases and Future Directions

This thesis grew out of a desire to understand the contested and often contradictory boundary between secrecy and transparency in contemporary government, and specifically why it lies in different places in different countries. It is hoped that it has offered sound justifications for its conclusions, but the institutional approach and the comparative method it has employed have shortcomings as well as strengths, and these suggest prudence. The claims made above ought to be understood as invitations to further research rather than the last word on this subject – albeit invitations which deserve to be taken seriously since they are now supported by a substantial body of evidence and argument. By way of conclusion, the following discussion seeks to demonstrate that the

broader significance of this thesis lies partly in its potential to do just this: inform further research. It does so by discussing two avenues which seem particularly fruitful: the adoption of freedom of information in the other consolidated democracies, and the broad politics of transparency after the introduction of a freedom of information act.

Comparative Historical Research on Freedom of Information in the Democracies

The first contribution this thesis makes is to provide a possible foundation for further comparative analysis of the adoption of freedom of information in the consolidated democracies. These comparisons might be undertaken with at least two aims in mind: to confirm the claims made here about the effect of specific institutional configurations, and to illuminate the causes in countries with different arrangements.

If the historical-institutionalist claims made here hold true, countries with similar institutional configurations should share a common historical trajectory towards the establishment of access rights: they should respond to similar pressures and circumstances in similar ways, the constituencies for and against legislative rights should be similar, as should the prominence of public access to information as a matter of debate. Differences in the timing of adoption between countries which share institutional arrangements should be relatively minor compared with those between countries whose institutions are dissimilar. Differences between countries with similar institutions should, moreover, be explicable in different terms – perhaps the degrees to which relevant causal factors were present, the times at which these causes arose, or the anticipated impact of specific features of their transparency mechanisms.

The Netherlands provides a good example of how comparison might be undertaken in pursuit of the first aim. This country introduced a freedom of information act in the late 1970s, at more or less the same time as Germany and Luxembourg strengthened

their administrative procedure laws. It is likely this was associated with the breakdown of the Netherlands' highly segmented system of interest group intermediation in the 1960s, and its replacement with a form of neo-corporatism in which businesses are relatively disorganised compared with their German or Nordic counterparts (cf. Huber, *et al.* 2004). This "depillarisation" opened the way for a critical re-examination of the increasingly large, complex, and all-pervasive welfare state (United Kingdom 1979a:38), of the role played by state control over information in enabling administrative intervention (Brasz 1977:204-5), and of the capacity of traditional parliamentary forms of control to meet these challenges (de Vos 1993:121-2). From this point of view the Dutch case is a counterpoint to Germany for the early date on which its law was passed, but might well confirm the claims made in earlier chapters about the importance of highly structured patterns of interest group intermediation.

There are some obvious groups within which further comparisons of this nature might be conducted. Sweden might be compared with the other Nordic countries – and indeed this thesis made use of several significant similarities within this group to overcome methodological problems posed by Sweden's early access law. The most obvious cases for comparison with the UK are the other Westminster countries; such comparisons would be relatively easy to conduct because of the wealth of extant secondary material on their transparency mechanisms. The other countries examined here do not form part of similarly well-recognised and sharply-defined groups, but tests of the different ways particular institutions interact might be conducted between Germany and other continental countries (e.g. Luxembourg or Austria), or between France and countries like Belgium or Italy. It is not immediately obvious which consolidated democracies the USA might be compared with, given the famous distinctiveness of its institutional ar-

rangements, but the role of social and economic development might be investigated by comparing with Costa Rica, another two-party presidential regime.

The second possible goal of conducting further comparisons is to illuminate the causes of adoption in consolidated democracies with different configurations of institutions. An example of this approach is Switzerland, where a low rate of requests under its 2004 law is widely noted as puzzling, and often explained on the grounds that its long history of consensual, direct democracy makes formal access unnecessary (e.g. Hazell and Worthy 2010:354). If this were so, then one might equally have expected Switzerland to introduce its access law earlier than it did. This thesis suggests an alternative line of inquiry, focussing on the fact that this tradition of open democracy exists alongside institutions which discouraged a vigorous interest in access rights elsewhere. The Federal Council operates at arm's length from the parliament despite being appointed by it, and is appointed according to strict rules which might be interpreted as reducing the incentives for parties to compete with each other by signalling their support for public access to official information. As in Germany, the Council undertakes confidential and cooperative negotiations with relatively well-organised economic interest groups, and maintains an internal system of administrative dispute resolution and appeals which resembles that in France.

The Politics of Transparency and Secrecy

The findings of this thesis might also provide a basis for enriching the study of transparency in countries which have adopted freedom of information laws. At present, as Chapter One noted, most existing studies approach this issue by attempting to assess the effectiveness of freedom of information acts against particular normative standards – often standards chosen by the researchers, but sometimes derived from claims

made by proponents at the time of introduction. For the reasons already discussed, these studies usually amount to evaluations of the extent to which access laws fail to achieve aspirations which may or may not be particularly realistic.

Normatively-oriented studies will rightly remain an important part of the literature on this subject, especially that produced by activists, but a broader, empirically-grounded approach grounded in an appreciation of how social and political context influences the politics of secrecy and transparency also has merit. Freedom of information, like many other governance reforms, spread to the newly-democratising and developing world thanks to the encouragement of international government and civil society organizations (in some cases coupled with a desire by local élites to display their democratic credentials to this international audience). It is increasingly agreed that these laws have fallen short of the lofty goals set for them at their introduction, and that “universal standards... have proved to be particularly unrealistic and frustrating, especially for countries that have farthest to go” (Grindle 2011:415). Part of this shortfall has been attributed to “unrealistic assumptions about the predictability of relationships between policy actions and their consequences”, which fail to take account of “the importance of knowing the context in which reformed policies, institutions and processes are to be introduced” (Grindle 2011:415).

One response to the growing consensus that one-size-fits-all reforms agendas are problematic has been a turn to “comparative history of development processes across countries and the historical context of individual countries” (cf. Raadschelders 2010; Grindle 2011:416) as useful sources of knowledge concerning the environment within which reforms will operate. As yet, however, there are few studies which have attempted to systematically identify, through historical study, the aspects of social or political context

which might prove relevant to freedom of information –indeed, such studies are still relatively rare in the literature on governance reforms more generally (Andrews 2010:31). By examining conflicts over transparency and secrecy at a particularly significant set of points in multiple countries, this thesis has identified a set of factors which might plausibly be expected to influence those conflicts at other points as well. Two aspects of this thesis’ findings seem particularly appealing as a basis for further research in this direction.

This thesis suggests, firstly, that expectations about transparency mechanisms should take into account the fact that the very idea of public access to information may be seen as a more important principle in some countries than in others. Countries in which this principle is both more prominent as a matter of debate and seen as of greater normative importance in a greater range of contexts are more likely to display discontent with existing levels of disclosure than those in which access is seen as less important – even if similar practices of disclosure exist in each. This suggests attempts to produce ratings based on qualitative assessments by requester groups, journalists or academics working in the countries concerned may be systematically biased. There is some evidence for this claim: in the Global Integrity Index assessment of freedom of information (e.g. 2011), countries in which a strong access law is widely held to be important tend to receive lower ratings than countries than those where it is not, even if the law in the former is used far more regularly to obtain information of major political significance than in the latter.³⁰

³⁰ To give one particularly egregious example, the Global Integrity Index rates freedom of information mechanisms in Australia as less effective than in France, and only marginally more effective than in Costa Rica. This appears to reflect dissatisfaction among Australian journalists with a few high-profile instances of official refusal to disclose papers relating to important policy decisions. The Australian law is unquestionably more effective than its French equivalent, which is essentially never used, while Costa Rica *has no law*. It is difficult to explain these relative assessments except as measures of how far the law in each country falls below local expectations.

This thesis also suggests that the implementation of access laws might fruitfully be studied by examining its benefits to actors beyond an undifferentiated democratic “public”, and other than in terms of its facilitating the achievement of broad goals such as “improved accountability”. These concepts may be extremely important in principle or as bases for advocacy. But they designate too broad a range of actors and processes to be particularly useful for empirical work, and they encourage the presumption of a monolithic state which is inherently secretive facing a homogenous society whose members are all equally interested in transparency. Rather, this thesis suggests a focus on how public rights of access to official files are used by organised groups, including politicians and bureaucrats, to structure and conduct their relations with each other. Two specific findings seem particularly likely to provide further insights, even in countries where the institutional structures and socio-political context differ from the countries examined here. The first is a focus on how access rights affect relations between peripheral groups and the state, which is to say how they affect the formation of and negotiations within policy networks. The second is a focus on how institutions which aggregate individual attitudes and decisions affect élite behaviour, as an alternative to a focus on “demands” from a hypothesised “democratic public”.

Whether these avenues prove fruitful or not, the final conclusion must be one of cautious optimism. The establishment of public access to official information is often described as a right dragged from unwilling politicians and exercised over the objections of reluctant or recalcitrant bureaucrats. This is very often true, and the resistance of these groups was decisive in delaying legislation in the countries examined here. But both have occasionally found it in their interests to support the introduction of legally-protected public rights of access to official information, and the historical analysis conducted here has shown that their attitudes towards transparency were far more com-

plex than the assumptions embedded in normative democratic theory suggest. Information is power, as advocates of transparency are fond of saying, and freedom of information is an attempt to reform institutionalised forms of power. Optimism is warranted because, under the right balance of organisational and institutional conditions, even those in power have come to support the introduction of general public rights of access to official files. These were adopted at different times in the five countries considered here due to variations in their structure of political authority over and accountability for the great leviathan of the modern bureaucratic state, and the differing opportunities and imperatives these produced to bind it, harness it, shackle it.

Sources and References

- Aaronson, S. A. and M. R. Abouharb (2011), “Unexpected Bedfellows: The GATT, the WTO and Some Democratic Rights”, *International Studies Quarterly*, vol. 55, no. 2, pp. 379-408.
- Aberbach, Joel and Bert Rockman (2001), “Reinventing Government, or Reinventing Politics? The American Experience”, in B Guy Peters and Jon Pierre (eds.), *Politicians, Bureaucrats and Administrative Reform*, London and New York: Routledge/ECPR Studies in European Political Science, pp. 24-35.
- Ackerman, John and Irma Sandoval-Ballasteros (2006), “The Global Explosion of Freedom of Information Laws”, *Administrative Law Review*, vol. 58, no. 1, pp. 85-130.
- Ambler, John (1991), “Ideas, Interests and the French Welfare State”, in John Ambler (ed.), *The French Welfare State. Surviving Social and Ideological Change*, New York: New York University Press, pp. 1-31.
- Amenta, Edwin (2003), “What We Know About the Development of Social Policy: Comparative and Historical Research in Comparative and Historical Perspective”, in James Mahoney and Dietrich Rueschemeyer (eds.), *Comparative Historical Analysis in the Social Sciences*, Cambridge: Cambridge University Press, pp. 91-130.
- Anderson, Christopher and Christine Guillory (1997), “Political Institutions and Satisfaction with Democracy: A Cross-National Analysis of Consensus and Majoritarian Systems”, *American Political Science Review*, vol. 91, no. 1, pp. 66-81.
- Anderson, Stanley (1973), “Public Access to Government Files in Sweden”, *American Journal of Comparative Law*, vol. 21, no. 3, pp. 419-473.
- Andrews, Matt (2010), “Good Government Means Different Things in Different Countries”, *Governance*, vol. 23, no. 1, pp. 7-35.
- Ansell, Christopher and Jane Gingrich (2003), “Reforming the Administrative State”, in Bruce Cain, Russell Dalton and Susan Scarrow (eds.), *Democracy Transformed? Expanding Political Opportunities in Advanced Industrial Democracies*, Oxford: Oxford University Press, pp. 164-191.
- Ansolabehere, Stephen (2006), “Voters, Candidates and Parties”, in Barry Weingast and Donald Wittman (eds.), *The Oxford Handbook of Political Economy*, Oxford: Oxford University Press, pp. 29-49.
- Anton, Thomas (1969), “Policy-Making and Political Culture in Sweden”, *Scandinavian Political Studies*, vol. 4, no. A4, pp. 88-102.
- Archer, Robin (1995), *Economic Democracy: The Politics of Feasible Socialism*, Oxford and New York: Clarendon Press.
- Archibald, Sam (1979), “The Freedom of Information Act Revisited”, *Public Administration Review*, vol. 39, no. 4, pp. 311-318.

- (1993), "The Early Years of the Freedom of Information Act: 1955 to 1974", *Political Science and Politics*, vol. 26, no. 4, pp. 726-731.
- Armstrong, Scott (1998), "The War over Secrecy: Democracy's Most Important Low-Intensity Conflict", in Athan Theoharis (ed.), *A Culture of Secrecy*, Lawrence, KA: University of Kansas Press, pp. 140-185.
- Arrow, Kenneth (1979), "The Economics of Information", in Michael Dertouzos and Joel Moses (eds.), *The Computer Age: A Twenty-Year View*, Cambridge, MA and London: The MIT Press, pp. 306-317.
- Arter, David (2008), *Scandinavian Politics Today*, Manchester: Manchester University Press.
- Assange, Julian (2006), *State and Terrorist Conspiracies*: Cache by cryptome.org of original posted at iq.org (now offline). <http://cryptome.org/0002/ja-conspiracies.pdf> (Accessed on 3 December 2010).
- Associated Press (2003), "Deutschland Soll in Der Korruptionsbekämpfung Nacharbeiten Erste Zusammenfassung", *Associated Press Worldstream - German*, 22 January 2003.
- (2004), "Transparency Fordert Schaerfere Gesetze Gegen Korruption", *Associated Press Worldstream - German*, 9 January 2004.
- Auby, Jean-Marie and Michel Fromont (1971), *Les Recours Contre Les Actes Administratifs Dans Les Pays De La Communauté Economique Européenne*, Paris: Jurisprudence Générale Dalloz.
- Aurillac, Michel (2003), "Table Ronde: La Genèse De L'élaboration Du Droit D'accès En France", in IFSA/CADA (ed.), *Transparence Et Secret. Colloque Pour Le Xxve Anniversaire De La Loi Du 17 Juillet 1978 Sur L'accès Aux Documents Administratifs*, Paris: La documentation française, pp. 53-56.
- Bailey, Ron (1984), "Secrecy in the Town Hall", in Des Wilson (ed.), *The Secrets File. The Case for Freedom of Information in Britain Today*, London: Heinemann Education Books, pp. 59-73.
- Banisar, David (2005), "The Irresistible Rise of a Right", *Index on Censorship*, vol. 34, no. 3, pp. 79-84.
- (2006), *Freedom of Information around the World 2006; a Global Survey of Access Records Laws*: The Online Network of Freedom of Information Advocates. http://www.freedominfo.org/documents/global_survey2006.pdf (Accessed on 20 September 2006).
- Bathory, Peter and Wilson McWilliams (1977), "Political Theory and the People's Right to Know", in Itzhak Galnoor (ed.), *Government Secrecy in Democracies*, New York: Harper Colophon, pp. 3-21.
- Bay, Christian (1977), "Access to Political Knowledge as a Human Right", in Itzhak Galnoor (ed.), *Government Secrecy in Democracies*, New York: Harper Colophon, pp. 22-39.
- (1981), "Comment", in John McCamus (ed.), *Freedom of Information: Canadian Perspectives*, Toronto: Butterworths, pp. 22-28.

- Beckert, Jens (2010), "Institutional Isomorphism Revisited: Convergence and Divergence in Institutional Change", *Sociological Theory*, vol. 28, no. 2, pp. 150-166.
- Bell, Robin and Helen Watchirs (1988), "Freedom of Information: The Commonwealth Experience", *Australian Journal of Public Administration*, vol. 47, no. 4, pp. 296-311.
- Belski, Mariela (2007), *Access to Information: An Instrumental Right for Empowerment*, London: Article 19. <http://www.article19.org/pdfs/publications/ati-empowerment-right.pdf> (Accessed on 3 June 2008).
- Bennett, Colin (1991), "How States Utilize Foreign Evidence", *Journal of Public Policy*, vol. 11, no. 1, pp. 31-54.
- (1997), "Understanding Ripple Effects: The Cross-National Adoption of Policy Instruments for Bureaucratic Accountability", *Governance*, vol. 10, no. 3, pp. 213-233.
- (2001), "Globalization and Access to Information Regimes", *Access to Information: Making It Work for Canadians*, Ottawa: Access to Information Review Task Force.
- Berliner, Daniel (2010), *Veto Players, Democracy, and the Diffusion of Freedom of Information Laws*, Paper presented at the Annual Meeting of the American Political Science Association, Washington, DC.
- Berliner Zeitung (2004), "Gegen Korruption Und Ämterpatronage Warum Ein Gesetz Zur Informationsfreiheit Nötig Ist", *Berliner Zeitung*, 7 April 2004, p. 83.
- Bezes, Philippe (2001), "Bureaucrats and Politicians in the Politics of Administrative Reforms in France (1988-1997)", in B Guy Peters and Jon Pierre (eds.), *Politicians, Bureaucrats and Administrative Reform*, London and New York: Routledge/ECPR Studies in European Political Science, pp. 47-60.
- Birkinshaw, Patrick (1997), "Freedom of Information and Open Government: The European Community/Union Dimension", *Government Information Quarterly*, vol. 14, no. 1, pp. 27-49.
- (2006a), "Freedom of Information and Openness: Fundamental Human Rights?", *Administrative Law Review*, vol. 58, pp. 177-218.
- (2006b), "Transparency as a Human Right", in Christopher Hood and David Heald (eds.), *Transparency: The Key to Better Governance?*, Oxford: Oxford University Press, pp. 47-58.
- Blair, Tony (1996), *Speech by the Rt.Hon. Tony Blair MP, Leader of the Labour Party at the Campaign for Freedom of Information's Annual Awards Ceremony, 25 March 1996.*, London: Campaign for Freedom of Information. <http://www.cfoi.org.uk/blairawards.html> (Accessed on 1 April 2011).
- (2010), *A Journey*, London: Hutchinson.
- Blais, André and Peter John Loewen (2009), "The French Electoral System and Its Effects", *West European Politics*, vol. 32, no. 2, pp. 345-359.
- Blanton, Thomas (1995), *The Internationalization of Japan and Open Government*, Paper presented at Japan-United States Symposium, Tokyo: National Security Archive and UN University.
- (2002a), "The Openness Revolution. The Rise of a Global Movement for Freedom of Information", *Development Dialogue*, vol. 1, pp. 7-21.

- (2002b), "The World's Right to Know", *Foreign Policy*, no. 131, pp. 58-58.
- Bok, Sissela (1982), *Secrets*, Oxford: Oxford University Press.
- Bollier, David (2004), *Citizen Action and Other Big Ideas. Chapter 4: Let the Information Flow*, Washington, DC: Nader.org. <http://www.nader.org/template.php?/archives/16-CHAPTER-4-Let-the-Information-Flow.html> (Accessed on 3 December 2007).
- Bolzen, Stefanie (2002), "Der Klügel Ist Überall", *Welt*, 15 May 2002, p. 1.
- Boulard, J. C. (1979), "France", in Donald Rowat (ed.), *Administrative Secrecy in Developed Countries*, London and Basingstoke: The Macmillan Press, pp. 155-182.
- Brasz, H A (1977), "The Netherlands", in Itzhak Galnoor (ed.), *Government Secrecy in Democracies*, New York: Harper Colophon, pp. 201-215.
- Brooks, Clem and Simon Cheng (2001), "Declining Government Confidence and Policy Preferences in the U.S.: Devolution, Regime Effects, or Symbolic Change?", *Social Forces*, vol. 79, no. 4, pp. 1343-1375.
- Bullinger, Martin (1979), "Western Germany", in Donald Rowat (ed.), *Administrative Secrecy in Developed Countries*, London and Basingstoke: The Macmillan Press, pp. 217-238.
- Bunyan, Tony (2000), *Access to Documents "Could Fuel Public Discussion"*, Brussels: European Federation of Journalists. <http://www.statewatch.org/secret/essays.pdf> (Accessed on 6 December 2007).
- Busch, Andreas (2009), *Banking Regulation and Globalization*, Oxford: Oxford University Press.
- Cain, Bruce, Patrick Egan and Sergio Fabbrini (2003), "Towards More Open Democracies: The Expansion of Freedom of Information Laws", in Bruce Cain, Russell Dalton and Susan Scarrow (eds.), *Democracy Transformed? Expanding Political Opportunities in Advanced Industrial Democracies*, Oxford: Oxford University Press, pp. 115-139.
- Capitant, David (2003), "L'exemple Allemand", *Transparence Et Secret. Colloque Pour Le Xxve Anniversaire De La Loi Du 17 Juillet 1978 Sur L'accès Aux Documents Administratifs*, Paris: La Documentation Française, pp. 169-174.
- Carter Center (2010), *Carter Center Access to Information Project*, Carter Center: Atlanta, GA. <http://cartercenter.org/peace/americas/information.html> (Accessed on 22 June 2010).
- Castells, Manuel (1996), *The Rise of the Network Society*, Oxford: Blackwell.
- (2001), *The Internet Galaxy: Reflections on the Internet, Business and Society*, Oxford: Oxford University Press.
- CFOI (1989a), "Address at the Fifth Annual Freedom of Information Awards", *Secrets - The Newspaper of the Campaign for Freedom of Information*, February 1989, p. p1.
- (1989b), "[Title Tbc]", *Secrets - The Newspaper of the Campaign for Freedom of Information*, May 1989, p. [TBC].
- (1993a), *1993 Freedom of Information Awards*, London: Campaign for Freedom of Information. <http://www.cfoi.org.uk/awards93pr.html#des> (Accessed on 9 November 2007).

- (1993b), "FOI "Most Important Safeguard" ", *Secrets - The Newspaper of the Campaign for Freedom of Information*, August 1993, p. p1.
- Chanley, Virginia, Thomas Rudolph and Wendy Rahn (2000), "The Origins and Consequences of Public Trust in Government: A Time-Series Analysis", *Public Opinion Quarterly*, vol. 64, no. 3, pp. 239-256.
- Ciepley, David (1999), "Democracy Despite Voter Ignorance: A Weberian Reply to Somin and Friedman", *Critical Review*, vol. 13, no. 1-2, pp. 191-227.
- Clark, David (1998), "The Modernisation of the French Civil Service: Crisis, Change and Continuity", *Public Administration*, vol. 76, no. 1, pp. 97-115.
- Clark, Elias (1975), "Holding Government Accountable: The Amended Freedom of Information Act: An Article in Honor of Fred Rodell", *Yale Law Journal*, vol. 84, no. 4, pp. 741-769.
- Coase, Ronald (1960), "The Problem of Social Cost", *Journal of Law and Economics*, vol. 3, no. 1, pp. 1-44.
- Coates, David (2005), "Paradigms of Explanation", in David Coates (ed.), *Varieties of Capitalism, Varieties of Approaches*, Basingstoke: Palgrave Macmillan, pp. 1-26.
- Collier, David (1991), "The Comparative Method: Two Decades of Change", in Dankwart Rustow and Kenneth Erikson (eds.), *Comparative Political Dynamics*, New York: HarperCollins.
- Cornu, Francis (1978), "Chère Administration...", *Le Monde*, 18 February 1978, p. 16.
- Council of Europe, Parliamentary Assembly (1979), *Access by the Public to Government Records and Freedom of Information*, Strasbourg (Recommendation 854/1979).
- , Committee of Ministers (1981), *Recommendation to Member States on Access to Information Held by Public Authorities* (Recommendation 81/19).
- Cross, Harold (1954), *The People's Right to Know*, New York: Columbia University Press.
- Crouch, Colin (1993), *Industrial Relations and European State Traditions*, Oxford: Oxford University Press.
- Crozier, Michel (1965), *The Bureaucratic Phenomenon*, London: Tavistock.
- Culpepper, Pepper (2002), "Powering, Puzzling and 'Pacting': The Informational Logic of Negotiated Reforms", *Journal of European Public Policy*, vol. 9, no. 5, pp. 774-790.
- Dahl, Robert (1970), *After the Revolution*, New Haven, CT: Yale University Press.
- (1989), *Democracy and Its Critics*, London: Yale University Press.
- Dalton, Russell (1984), "Cognitive Mobilisation and Partisan Dealignment in Advanced Industrial Democracies", *Journal of Politics*, vol. 46, no. 1, pp. 264-284.
- (1989), *Politics in West Germany*, Glenview, Boston, London: Scott, Foresman and Company.
- Darch, Colin and Peter Underwood (2005), "Freedom of Information Legislation, State Compliance and the Discourse of Knowledge: The South African Experience", *International Information & Library Review*, vol. 37, no. 2, pp. 77-86.
- (2007), *Freedom of Information in the Developing World : Demand, Compliance and Democratic Behaviours*, Oxford: Chandos.

- (2010), *Freedom of Information and the Developing World : The Citizen, the State and Models of Openness*, Oxford: Chandos.
- Davidson, Roger and Roger Lowe (1981), "Bureaucracy and Innovation in British Welfare Policy 1870-1945", in WJ Mommsen and Wolfgang Mock (eds.), *The Emergence of the Welfare State in Britain and Germany*, London: Croom Helm, pp. 263-295.
- Davis, Kenneth (1967), "The Information Act: A Preliminary Analysis", *University of Chicago Law Review*, vol. 34, no. 4, pp. 761-816.
- de Baecque, Francis (1991), "Les Origines De La Commission: Les Bases D'une Politique Documentaire", in Commission de Coordination de la Documentation Administrative (ed.), *20 Ans D'activité De La Ccda*, Paris: La Documentation Française.
- de Vos, PL (1993), "Parliamentary Control in the Netherlands", in Carla Zoethout, Ger van der Tang and Piet Akkermans (eds.), *Control in Constitutional Law*, Dordrecht, Boston and London: Martinus Nijhoff Publishers, pp. 113-128.
- Degez, D (1978), "Comment S'informer?", *Le Monde*, 21 February 1978, p. 15.
- DiMaggio, Paul and Walter Powell (1983), "The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields", *American Sociological Review*, vol. 48, no. 2, pp. 147-160.
- Downs, Anthony (1957), *An Economic Theory of Democracy*, New York: Harper and Row.
- Drouin, Pierre (1978a), "Entretien Avec Michel Crozier, I", *Le Monde*, 24 April 1978, p. 2.
- (1978b), "Entretien Avec Michel Crozier, II", *Le Monde*, 27 April 1978, p. 2.
- Dryzek, John (1992), "How Far Is It from Virginia and Rochester to Frankfurt? Public Choice as Critical Theory.", *British Journal of Political Science*, vol. 22, no. 4, pp. 397-417.
- Dryzek, John, David Downes, Christian Hunold, David Schlosberg and Hans-Kristian Hernes (2003), *Green States and Social Movements*, Oxford: Oxford University Press.
- Dunleavy, Patrick, Helen Margetts, Simon Bastow and Jane Tinkler (2005), "New Public Management Is Dead - Long Live Digital-Era Governance", *Journal of Public Administration Research and Theory*, vol. 16, no. 3, pp. 467-494.
- (2007), *Digital Era Governance: It Corporations, the State, and E-Government*, Oxford: Oxford University Press.
- Dunn, Delmer (1999), "Mixing Elected and Nonelected Officials in Democratic Policy Making: Fundamentals of Accountability and Responsibility", in Adam Przeworski, Susan C Stokes and Bernard Manin (eds.), *Democracy, Accountability and Representation*, Cambridge: Cambridge University Press.
- Duverger, Maurice (1968), *Political Parties*, London: Methuen.
- Economist (2007), "The Right to Know", *Economist*, 25 October 2003.
- Einhorn, Eric (1977), "Denmark, Norway and Sweden", in Itzhak Galnoor (ed.), *Government Secrecy in Democracies*, New York: Harper Colophon, pp. 255-274.
- Einhorn, Eric and John Logue (1989), *Modern Welfare States. Politics and Policies in Social Democratic Scandinavia*, New York: Praeger.

- Elgie, Robert (2003), "Governance Traditions and Narratives of Public Sector Reform in Contemporary France", *Public Administration*, vol. 81, no. 1, pp. 141-162.
- Errera, Roger (1987), "Access to Administrative Documents in France: Reflexions on a Reform", in Norman Marsh (ed.), *Public Access to Government-Held Information*, London: Stevens, pp. 87-121.
- Evans, B O (1979), "Computers and Communications", in Michael Dertouzos and Joel Moses (eds.), *The Computer Age: A Twenty-Year View*, Cambridge, MA and London: The MIT Press, pp. 338-366.
- Fearon, James (1999), "Electoral Accountability and the Control of Politicians: Selecting Good Types Versus Sanctioning Poor Performance", in Adam Przeworski, Susan C Stokes and Bernard Manin (eds.), *Democracy, Accountability and Representation*, Cambridge: Cambridge University Press, pp. 55-97.
- Feintuck, Mike (1996), "Government Control of Information: Some British Developments", *Government Information Quarterly*, vol. 13, no. 4, pp. 345-359.
- Feldesman, William, National Labour Relations Board (1966), *Letter to Wilfred H Rommel, 22 June 1966*.
- Ferejohn, John (1990), "Information and the Electoral Process", in John Ferejohn and James Kuklinski (eds.), *Information and Democratic Processes*, Chicago: University of Illinois Press, pp. 1-22.
- (1999), "Accountability and Authority: Toward a Theory of Political Accountability", in Adam Przeworski, Susan C Stokes and Bernard Manin (eds.), *Democracy, Accountability and Representation*, Cambridge: Cambridge University Press, pp. 131-153.
- Financial Times Deutschland (2000a), "Den Obrigkeitsstaat Kippen", *Financial Times Deutschland*, 20 June 2000, p. 29.
- (2000b), "Deutsche Behörden Sind Anfällig Für Korruption", *Financial Times Deutschland*, 20 June 2000, p. 12.
- Finel, Bernard and Kristin Lord (1999), "The Surprising Logic of Transparency", *International Studies Quarterly*, vol. 43, no. 2, pp. 315-399.
- Finkelstein, Neal (2000), "Introduction: Transparency in Public Policy", in Neal Finkelstein (ed.), *Transparency in Public Policy: Great Britain and the United States*, Houndmills, Basingstoke: Macmillan Press, pp. 1-9.
- Fiorina, Morris (1990), "Information and Rationality in Elections", in John Ferejohn (ed.), *Information and Democratic Processes*, Chicago: University of Illinois Press, pp. 329-344.
- Flaherty, David (1989), *Protecting Privacy in Surveillance Societies*, Chapel Hill and London: University of North Carolina Press.
- Flinders, Matthew (1997), "Quangos: Why Do Governments Love Them?", in Matthew Flinders, Ian Harden and David Marquand (eds.), *How to Make Quangos Democratic*, London: Charter88, pp. 32-41.
- (2000), "The Politics of Accountability: A Case Study of Freedom of Information Legislation in the United Kingdom", *Political Quarterly*, vol. 71, no. 4, pp. 422-435.

- (2004), "Distributed Public Governance in the UK", *Public Administration*, vol. 82, no. 4, pp. 883-909.
- Flinders, Matthew and Hugh McConnel (1997), "Quangos and Accountability", in Matthew Flinders, Ian Harden and David Marquand (eds.), *How to Make Quangos Democratic*, London: Charter88, pp. 42-51.
- Flinders, Matthew V. (2001), *The Politics of Accountability in the Modern State*, Aldershot, Hampshire, England ; Burlington, Vermont: Ashgate.
- Flora, Peter, Franz Kraus Krauz and Winfried Pfenning (1987), *State, Economy and Society in Western Europe 1815-1975 : A Data Handbook in Two Volumes* London: MacMillan.
- Florini, Ann (1998), "The End of Secrecy", *Foreign Policy*, no. 111, pp. 50-63.
- (2007a), "Conclusion: Whither Transparency?", in Ann Florini (ed.), *The Right to Know; Transparency for an Open World*, New York: Columbia University Press, pp. 337-48.
- (2007b), "Introduction: The Battle over Transparency", in Ann Florini (ed.), *The Right to Know; Transparency for an Open World*, New York: Columbia University Press.
- Foerstel, Herbert (1999), *Freedom of Information and the Right to Know. The Origins and Applications of the Freedom of Information Act*, Westport, CT and London: Greenwood Press.
- Fountain, Jane A (1999), "The Virtual State: Towards a Theory of Federal Bureaucracy in the 21st Century", in Elaine Ciulla Kamarck and Joseph S Nye (eds.), *Democracy.Com? Governance in a Networked World*, Hollis, NH: Hollis, pp. 133-156.
- France, Assemblée Nationale (1976), *Journal Officiel De La République Française: Documents Parlementaires*, Paris: La Documentation Française (n° 2455).
- , Assemblée Nationale (1977), *Journal Officiel De La République Française: Documents Parlementaires*, Paris: La Documentation Française (n° 3249).
- , Assemblée Nationale (1978), *Journal Officiel De La République Française: Débats Parlementaires*, Paris: La Documentation Française (6e législature, 2e session, Compte rendu intégral - 10e séance).
- ,
Premier Ministre & Commission de Coordination de la Documentation Administrative (1981), *S'informer Et Se Documenter Auprès De L'administration*, Paris: La Documentation Française.
- , Commission de Coordination de la Documentation Administrative (1995a), *Documentation Administrative Et Techniques D'information* Paris: La Documentation Française.
- , Commission d'Accès aux Documents Administratifs (1995b), *L'accès Aux Documents Administratifs - Huitième Rapport D'activité*, Paris: La Documentation Française.
- , Conseil d'État (1996), *Transparence Et Secret. Rapport Public 1995*, Paris: La Documentation Française (Études et documents N° 7).
- , Assemblée Nationale, Premier Ministre & Ministre de la Fonction Publique de la Réforme de l'État et de la Décentralisation (1998a), *Project De Loi Relatif Aux Droits Des Citoyens Dans Leurs Relations Avec L'administration*, Paris: Assemblée Nationale (N° 900).

- , Assemblée Nationale (1999), *Journal Officiel De La République Française: Débats Parlementaires*, Paris: La Documentation Française (Compte rendu intégral - 2e séance du 27 Mai 1999).
- , Commission d'Accès aux Documents Administratifs (2000), *Rapport D'activité*, Paris: La Documentation Française.
- , Conseil d'État (2001), *Rapport Public 2001. Les Autorités Administratives Indépendantes*, Paris: La Documentation Française (Études et Documents N°52).
- , Secrétariat général du gouvernement (2011), *Les Autorités Administratives Indépendantes* Paris: Service Public de la Diffusion du Droit.
- France, Elizabeth (1998b), "Privacy and Openness: Data Protection, Privacy and Confidentiality", in Andrew McDonald and Greg Terrill (eds.), *Open Government: Freedom of Information and Privacy*, London: MacMillan, pp. 45-66.
- Frances, Patrick (1978), "A L'assemblée Nationale, La Mort Du Secret Administrative", *Le Monde*, 28 April 1978, p. 8.
- Frankel, Maurice (1984a), "Files on Ourselves: Fact or Fiction?", in Des Wilson (ed.), *The Secrets File. The Case for Freedom of Information in Britain Today*, London: Heinemann Education Books, pp. 74-107.
- (1984b), "How Secrecy Protects the Polluter", in Des Wilson (ed.), *The Secrets File. The Case for Freedom of Information in Britain Today*, London: Heinemann Education Books, pp. 22-58.
- (1995), "State's Open Secrets; How Effective Has the New Code Been in Making Government More Transparent?", *Guardian*, 24 January 1995, p. 17.
- (1999), "Abysmal Handiwork; Maurice Frankel Is Bitter. He Feels Betrayed, after Campaigning for Decades to Get Open Government.", *Guardian*, 25 May 1999, p. 19.
- (2010), *The Blair Memoirs and FOI*, London: Campaign for Freedom of Information. <http://www.cfoi.org.uk/blairarticle06092010.html> (Accessed on 21 June 2011).
- Frankland, Eugene (1988), "The Role of the Greens in West German Parliamentary Politics 1980-87", *Review of Politics*, vol. 50, no. 1, pp. 99-122.
- freedominfo.org (2005), *How to Measure Openness?*, Washington DC: freedominfo.org. <http://www.freedominfo.org/2005/11/analysis-how-to-measure-openness/> (Accessed on 17 November 2010).
- Freeman, Orville (1966), *Letter to Charles L Schultze*, 23 June 1966.
- Frost, Amanda (2003), "Restoring Faith in Government: Transparency Reform in the United States and the European Union", *European Public Law*, vol. 9, no. 1, pp. 87-104.
- Fukuyama, Francis (1992), *The End of History and the Last Man*, London: Hamish Hamilton.
- Fung, Archon, Mary Graham and David Weil (2007), *Full Disclosure : The Perils and Promise of Transparency* New York: Cambridge University Press.
- G-22 (1998), *Report of the Working Group on Transparency and Accountability: Bank for International Settlements*. <http://www.bis.org/publ/othp01.htm> (Accessed on 8 September 2008).

- Galnoor, Itzhak (1975), "Government Secrecy: Exchanges, Intermediaries and Middlemen", *Public Administration Review*, vol. 35, no. 1, pp. 32-42.
- (1977), "The Information Marketplace", in Itzhak Galnoor (ed.), *Government Secrecy in Democracies*, New York: Harper Colophon, pp. 77-92.
- Geddes, Barbara (1990), "How the Cases You Choose Affect the Answers You Get: Selection Bias in Comparative Politics", *Political Analysis*, vol. 2, no. 1, pp. 131-150.
- (2003), *Paradigms and Sand Castles : Theory Building and Research Design in Comparative Politics* Ann Arbor, MI: University of Michigan Press.
- Gellhorn, Walter (1986), "The Administrative Procedure Act: The Beginnings", *Virginia Law Review*, vol. 72, no. 2, pp. 219-233.
- Germany, Bundestag (1981), *Plenarprotokoll*, Bonn: Deutsche Bundestag (9 Wahlperiode, 46 Sitzung).
- , Bundestag, Fraktion Die Grünen (1986a), *Gesetzentwurf*, Bonn: Deutscher Bundestag (Drucksache 10/5884).
- , Bundestag (1986b), *Plenarprotokolle*, Bonn: Deutscher Bundestag (Drucksache 10/246).
- , Bundestag, Bundesregierung (1991), *Plenarprotokolle*, Bonn: Deutscher Bundestag (12 Wahlperiode, 54 Sitzung).
- , Bundestag, Fraktion der SPD (1993), *Gesetzentwurf*, Bonn: Deutscher Bundestag (Drucksache 12/6323).
- , Bundestag, Gruppe Bündnis90/Die Grünen (1994), *Antrag*, Bonn: Deutscher Bundestag (Drucksache 12/8308).
- , Bundestag, Fraktion Bündnis 90/Die Grünen (1997), *Gesetzentwurf*, Bonn: Deutscher Bundestag (Drucksache 13/8432).
- , Bundestag (1998), *Plenarprotokoll*, Bonn: Deutscher Bundestag (13 Wahlperiode, 214 Sitzung).
- , Bundestag (2005), *Plenarprotokoll*, Bonn: Deutscher Bundestag (15 Wahlperiode, 149 Sitzung).
- , Bundesministerium des Innern (2009), *Statistik Der Ifg-Anträge 2009 Aller Ressorts Einschließlich Geschäftsbereiche*, Berlin: Bundesministerium des Innern.
- Gillis, Robert Peter (1998), "Freedom of Information and Open Government in Canada", in Andrew McDonald and Greg Terrill (eds.), *Open Government: Freedom of Information and Privacy*, London: MacMillan, pp. 143-166.
- Gleditsch, Nils and Einar Hogetveit (1984), "Freedom of Information in National Security Affairs: A Comparative Study of Norway and the United States", *Journal of Peace Research*, vol. 21, no. 1, pp. 17-45.
- Global Integrity (2011), *The Global Integrity Report*, Washington, DC: Global Integrity. <http://www.globalintegrity.org/report> (Accessed on.
- Goldberg, David (1987), "Executive Secrecy, National Security and Freedom of Information in the United Kingdom", *Government Information Quarterly*, vol. 4, no. 1, pp. 43-61.

- Goldstone, Jack (2003), "Comparative Historical Analysis and Knowledge Accumulation in the Study of Revolutions", in James Mahoney and Dietrich Rueschemeyer (eds.), *Comparative Historical Analysis in the Social Sciences*, Cambridge: Cambridge University Press, pp. 41-90.
- Goldthorpe, John (1997), "Current Issues in Contemporary Macrosociology: A Debate on Methodological Issues", *Comparative Social Research*, vol. 16, pp. 1-26.
- Grigorescu, Alexandru (2003), "International Organizations and Government Transparency: Linking the International and Domestic Realms", *International Studies Quarterly*, vol. 47, no. 4, pp. 643-667.
- Grimberg, Steffen (2005), "Härtetest Für Ifg", *Tageszeitung*, 16 March 2005, p. 6.
- Grindle, Merilee (2011), "Governance Reform: The New Analytics of Next Steps", *Governance*, vol. 24, no. 3, pp. 415-418.
- Grønnegaard Christensen, Jørgen (2001), "Bureaucratic Autonomy as Political Asset", in B Guy Peters and Jon Pierre (eds.), *Politicians, Bureaucrats and Administrative Reform*, London and New York: Routledge/ECPR Studies in European Political Science, pp. 119-131.
- Gustafsson, Lennart (1987), "Renewal of the Public Sector in Sweden", *Public Administration*, vol. 65, no. 2, pp. 179-192.
- Guyomarch, Alain (1999), "'Public Service', 'Public Management' and the 'Modernisation' of French Public Administration", *Public Administration*, vol. 77, no. 1, pp. 171-193.
- Habermas, Jurgen (1984), *The Theory of Communicative Action, vol. I*, London: Heinemann.
- (1995), "Reconciliation through the Public Use of Reason: Remarks on John Rawls's Political Liberalism", *Journal of Philosophy*, vol. 92, no. 3, pp. 109-131.
- Hale, Thomas (2004), *Transparency as Governance: Using Information to Regulate Global Actors*, BA thesis. Princeton.
- Hall, Peter (1999), "The Political Economy of Europe in an Era of Interdependence", in Herbert Kitschelt, Peter Lange, Gary Marks and John D Stephens (eds.), *Continuity and Change in Contemporary Capitalism*, New York: Cambridge University Press, pp. 136-163.
- Hall, Peter and David Soskice (2001), "An Introduction to Varieties of Capitalism", in Peter Hall and David Soskice (eds.), *Varieties of Capitalism : The Institutional Foundations of Comparative Advantage*, Oxford: Oxford University Press, pp. 2-68.
- Hall, Peter and Rosemary Taylor (1996), "Political Science and the Three New Institutionalisms", *Political Studies*, vol. 44, no. 5, pp. 936-958.
- Harden, Ian and David Marquand (1997), "How to Make Quangos Democratic", in Matthew Flinders, Ian Harden and David Marquand (eds.), *How to Make Quangos Democratic*, London: Charter88, pp. 8-31.
- Harris, José (1981), "Some Aspects of Social Policy in Britain During the Second World War", in WJ Mommsen and Wolfgang Mock (eds.), *The Emergence of the Welfare State in Britain and Germany*, London: Croom Helm, pp. 247-262.
- Harrison, Tim (1988), *Access to Information in Local Government*, London: Sweet & Maxwell.

- Hayek, Friedrich (1945), "The Use of Knowledge in Society", *American Economic Review*, vol. 35, no. 4, pp. 519-30.
- Hazell, Robert (1998), "Balancing Privacy and Freedom of Information: Policy Options in the United Kingdom", in Andrew McDonald and Greg Terrill (eds.), *Open Government: Freedom of Information and Privacy*, London: MacMillan, pp. 67-88.
- Hazell, Robert and Ben Worthy (2010), "Assessing the Performance of Freedom of Information", *Government Information Quarterly*, vol. 27, no. 4, pp. 352-359.
- Hazell, Robert, Ben Worthy and Mark Glover (2010), *The Impact of the Freedom of Information Act on Central Government in the UK: Does FOI Work?*, Basingstoke and New York: Palgrave Macmillan.
- Heald, David (2006), "Transparency as an Instrumental Value", in Christopher Hood and David Heald (eds.), *Transparency: The Key to Better Governance?*, Oxford: Oxford University Press, pp. 59-74.
- Heclo, Hugh (1974), *Modern Social Politics in Britain and Sweden*, New Haven: Yale University Press.
- (1995), "Towards a New Welfare State?", in Peter Flora and Arnold J Heidenheimer (eds.), *The Development of Welfare States in Europe and America*, New Brunswick and London: Transaction Publishers, pp. 383-406.
- Hennessy, Peter (1978), "Built-in Majority for a Sceptical Approach to Secrets Act Reform", *Times*, 17 July 1978, p. 2.
- (2000), *Accelerated History? Whitehall & the Press since 1945*, London: Charter88.
<http://www.unlockdemocracy.org.uk/charter88archive/pubs/brief/0011hennessy.html> (Accessed on 6 December 2007).
- Hennock, Peter (1981), "The Origins of British National Insurance and the German Precedent, 1880-1910", in WJ Mommsen and Wolfgang Mock (eds.), *The Emergence of the Welfare State in Britain and Germany*, London: Croom Helm, pp. 84-106.
- Herlitz, Nils (1966), "Legal Remedies in Nordic Administrative Law", *American Journal of Comparative Law*, vol. 15, no. 4, pp. 687-708.
- Higgs, Edward (2004), *The Information State in England*, New York: Palgrave MacMillan.
- Hirschfeldt, Johan (2008), *1766 Års Tryckfrihetsförordning Och Offentlighetsprincipens Utveckling (Transcript of Speech to the Swedish National Archives on 2 December 1996)*, Stockholm: Johan Hirschfeldt.
<http://johanhirschfeldt.files.wordpress.com/2008/12/1766tf.pdf> (Accessed on 1 June 2011).
- Hodder-Williams, Richard (1987), "The President and the Constitution", in Malcolm Shaw (ed.), *Roosevelt to Reagan. The Development of the Modern Presidency*, London: C Hurst and Company, pp. 11-45.
- Hogwood, Brian, David Judge and Murray McVicar (2001), "Agencies, Ministers and Civil Servants in Britain", in B Guy Peters and Jon Pierre (eds.), *Politicians, Bureaucrats and Administrative Reform*, London and New York: Routledge/ECPR Studies in European Political Science, pp. 35-44.

- Holleaux, André (1980), "Les Nouvelles Lois Françaises Sur L'information Du Public", *International Review of Administrative Sciences*, vol. 47, no. 3, pp. 191-206.
- Holm, Niels (1975), "The Danish System of Open Files in Public Administration", *Scandinavian Studies in Law*, vol. 19, pp. 153-178.
- (1979), "Denmark", in Donald Rowat (ed.), *Administrative Secrecy in Developed Countries*, London and Basingstoke: The Macmillan Press, pp. 76-105.
- Holzner, Burkart and Leslie Holzner (2006), *Transparency in Global Change; the Vanguard of the Open Society*, Pittsburgh: University of Pittsburgh Press.
- Hood, Christopher (1991), "A Public Administration for All Seasons?", *Public Administration*, vol. 69, no. 1, pp. 3-19.
- (2001), "Transparency", in P B Clarke and J Foweraker (eds.), *The Encyclopaedia of Democratic Thought*, London: Routledge, pp. 700-4.
- (2006a), "Beyond Exchanging First Principles? Some Closing Comments", in Christopher Hood and David Heald (eds.), *Transparency: The Key to Better Governance?*, Oxford: Oxford University Press.
- (2006b), "Transparency in Historical Perspective", in Christopher Hood and David Heald (eds.), *Transparency: The Key to Better Governance?*, Oxford: Oxford University Press, pp. 3-24.
- (2010), "Accountability and Transparency: Siamese Twins, Matching Parts, Awkward Couple?", *West European Politics*, vol. 33, no. 5, pp. 989-1009.
- Horsley, Jamie (2007), "Toward a More Open China?", in Ann Florini (ed.), *The Right to Know; Transparency for an Open World*, New York: Columbia University Press, pp. 54-91.
- Huber, Evelyne, Charles Ragin, John D. Stephens, David Brady and Jason Beckfield (2004), *Comparative Welfare States Data Set*.
- IMF (2007), *Manual on Fiscal Transparency*, Washington, DC: International Monetary Fund.
- Immergut, Helen (1998), "The Theoretical Core of the New Institutionalism", *Politics & Society*, vol. 26, no. 1, pp. 5-34.
- Jaconelli, J (1973), "The Franks Report on Section 2 of the Official Secrets Act 1911", *Modern Law Review*, vol. 36, no. 1, pp. 68-72.
- Jessop, Bob (1977), "Recent Theories of the Capitalist State", *Cambridge Journal of Economics*, vol. 1, no. 4, pp. 353-373.
- Jobert, Bruno (1991), "Democracy and Social Policies: The Example of France", in John Ambler (ed.), *The French Welfare State. Surviving Social and Ideological Change*, New York: New York University Press, pp. 232-258.
- John Moss Foundation (1999), *Overview*, Vint Hill, VA: The John Moss Foundation. <http://www.johnmossfoundation.org/overview.htm> (Accessed on 26 November 2007).
- Johnson, Lyndon (1966), *Statement by the President Upon Signing the "Freedom of Information Act." July 4, 1966*, Santa Barbara, CA: University of California. www.presidency.ucsb.edu/ws/?pid=27700 (Accessed on 2 August 2010).

- Johnson, Maureen (1987), "Freedom of Information Pressure Builds in Secretive Britain", *The Associated Press*, 15 March 1987.
- Kaiser, Joseph (1979), "La Libertà Di Stampa E Di Radiodiffusione Nella Repubblica Federale Tedesca", in Livio Paladin (ed.), *La Libertà D'informazione*, Turin: Unione Tipografico-Editrice Torinese, pp. 107-138.
- Kearney, Gerry and Aine Stapleton (1998), "Developing Freedom of Information Legislation in Ireland", in Andrew McDonald and Greg Terrill (eds.), *Open Government: Freedom of Information and Privacy*, London: MacMillan, pp. 167-179.
- Keeler, John T. S. (1993), "Executive Power and Policy-Making Patterns in France: Gauging the Impact of Fifth Republic Institutions", *West European Politics*, vol. 16, no. 4, pp. 518-544.
- Kellner, Peter (1985), "All So Wrong About Rights", *Times*, 1 July 1985, p. 12.
- Kelly, Paul (2006), "Information Is Power", *Open Government*, vol. 2, no. 1.
- Kennedy, George (1996), *Getting Congress to Guarantee Access to Federal Information through FOIA 30 Years Ago Was a Press Triumph*, Reston, VA: American Society of Newspaper Editors. <http://www.johnemossfoundation.org/foi/kennedy.htm> (Accessed on 26 November 2007).
- Keohane, Robert and Joseph S Nye (1999), "Power and Interdependence in the Information Age", in Elaine Ciulla Kamarck and Joseph S Nye (eds.), *Democracy.Com? Governance in a Networked World*, Hollis, NH: Hollis, pp. -133-156.
- Kettle, Martin (2010), "Tony Blair Interview: The Full Transcript", *Guardian*, 1 September 2010, p. 1.
- Kingdom, John (1991), *Government and Politics in Britain*, Cambridge: Polity.
- Kirby, Michael (2003), "Twenty-Five Year of Evolving Information Privacy Law - Where Have We Come from and Where Are We Going?", *Prometheus*, vol. 21, no. 4, pp. 467-475.
- Kitschelt, Herbert (1986), "Political Opportunity Structures and Political Protest: Anti-Nuclear Movements in Four Democracies", *British Journal of Political Science*, vol. 16, no. 1, pp. 57-85.
- (1990), "New Social Movements and the Decline of Party Organisation", in Russell Dalton and Manfred Kuechler (eds.), *Challenging the Political Order. New Social and Political Movements in Western Democracies*, Cambridge: Polity Press, pp. 179-208.
- Knill, Christopher and Duncan Liefferink (2007), *Environmental Politics in the European Union. Policy-Making, Implementation and Patterns of Multi-Level Governance*, Manchester and New York: Manchester University Press.
- Kulick, Holger (2003), "Glaeserner Staat Statt Glaesernem Buerger", *Spiegel Online*, 10 April 2003.
- Lash, Scott and John Urry (1993), *Economies of Signs and Space* London: Sage.
- Lasserre, Bruno, Noelle Lenoir and Bernard Stirn (1987), *La Transparence Administrative*, Paris: Presses Universitaires de France.

- Lazardeux, Sébastien (2009), "The French National Assembly's Oversight of the Executive: Changing Role, Partisanship and Intra-Majority Conflict", *West European Politics*, vol. 32, no. 2, pp. 287-309.
- Le Monde (1978a), "L'arap Veut Faire Évoluer Les Mentalités", *Le Monde*, 21 September 1978, p. 10.
- (1978b), "Les Délibérations Du Conseil Des Ministres", *Le Monde*, 17 February 1978, p. 10.
- Lee, Edward (2003), "The Public Domain: The Evolution of Legal Restraints on the Government's Power to Control Public Access through Secrecy or Intellectual Property", *Hastings Law Journal*, vol. 55, no. 1, pp. 91-210.
- Lehmbruch, Gerard (1984), "Concertation and the Structure of Corporatist Networks", in John Goldthorpe (ed.), *Order and Conflict in Contemporary Capitalism*, New York: Oxford University Press, pp. 60-80.
- Lemov, Michael (2007), *John Moss and the Battle for Freedom of Information, 41 Years Later*, Cambridge, MA: Nieman Foundation for Journalism at Harvard University. <http://www.niemanwatchdog.org/index.cfm?fuseaction=background.view&backgroundid=191> (Accessed on 26 November 2007).
- Lenoir, René and Baudouin Prot (1979), *L'information Économique Et Sociale*, Paris: La Documentation Française ().
- Leone, Richard (1972), "Public Interest Advocacy and the Regulatory Process", *Annals of the American Academy of Political and Social Science*, vol. 400, no. 1, pp. 46-58.
- Lewis, Anthony (1974), "Introduction", in Norman Dorsen and Stephen Gillers (eds.), *None of Your Business: Government Secrecy in America*, New York: The Viking Press.
- Lewis, Jeremy (1989), "Freedom of Information: Developments in the United Kingdom", *International Journal of Intelligence and CounterIntelligence*, vol. 3, no. 4, pp. 465-474.
- Lieberson, Stanley (1991), "Small Ns and Big Conclusions: An Examination of the Reasons in Comparative Studies Based on a Small Number of Cases", *Social Forces*, vol. 70, no. 2, pp. 307-320.
- Lietz, Hako (2003), "Deutschland, Die Verspätete Nation", *Telepolis*, 21 November 2003.
- Lijphart, Arend (1968), "Typologies of Democratic Systems", *Comparative Political Studies*, vol. 1, no. 1, pp. 3-44.
- (1971), "Comparative Politics and the Comparative Method", *American Political Science Review*, vol. 65, no. 3, pp. 682-693.
- (1999), *Patterns of Democracy. Government Forms and Performance in Thirty-Six Countries*, New Haven, CT: Yale University Press.
- Lindblom, Charles (1977), *Politics and Markets*, New York: Basic Books.
- Linz, Juan and Alfred Stepan (1996), *Problems of Democratic Transition and Consolidation*, Baltimore: Johns Hopkins University Press.
- Lord, Kristin (2006), *The Perils and Promise of Global Transparency*, New York: State University of New York Press.
- Lott, Trent and Ron Wyden (2004), "Hiding the Truth in a Cloud of Black Ink", *New York Times*, 26 August 2004.

- Lowi, Theodore (1977), "The Information Revolution, Politics, and the Prospect for an Open Society", in Itzhak Galnoor (ed.), *Government Secrecy in Democracies*, New York: Harper Colophon, pp. 40-61.
- Lukes, Steven (2005), *Power: A Radical View*, New York: Palgrave Macmillan.
- Lupia, Arthur and Mathew McCubbins (1998), *The Democratic Dilemma. Can Citizens Learn What They Need to Know?*, Cambridge: Cambridge University Press.
- Lyon, David (1994), *The Electronic Eye. The Rise of the Surveillance Society*, Cambridge: Polity.
- (2007), *Surveillance Studies: An Overview*, Cambridge: Polity.
- Mahoney, James and Dietrich Rueschemeyer (2003), "Comparative Historical Analysis: Achievements and Agendas", in James Mahoney and Dietrich Rueschemeyer (eds.), *Comparative Historical Analysis in the Social Sciences*, Cambridge: Cambridge University Press, pp. 3-40.
- Mahoney, James and Daniel Schensul (2006), "Historical Context and Path Dependence", in Robert Goodin and Charles Tilly (eds.), *The Oxford Handbook of Contextual Political Analysis*, Oxford: Oxford University Press, pp. 454-471.
- Maier, Charles (1984), "Preconditions for Corporatism", in John Goldthorpe (ed.), *Order and Conflict in Contemporary Capitalism*, New York: Oxford University Press, pp. 39-59.
- Majone, Giandomenico (1997), "From the Positive to the Regulatory State: Causes and Consequences of Changes in the Mode of Governance", *Journal of Public Policy*, vol. 17, no. 2, pp. 139-167.
- Major, John (1999), *John Major. The Autobiography*, London: HarperCollinsPublishers.
- Manin, Bernard, Adam Przeworski and Susan C Stokes (1999a), "Elections and Representation", in Adam Przeworski, Susan C Stokes and Bernard Manin (eds.), *Democracy, Accountability and Representation*, Cambridge: Cambridge University Press, pp. 29-51.
- (1999b), "Introduction", in Adam Przeworski, Susan C Stokes and Bernard Manin (eds.), *Democracy, Accountability and Representation*, Cambridge: Cambridge University Press, pp. 1-26.
- Mann, Michael (1984), "The Autonomous Power of the the State: The Origins, Mechanisms and Results", *Archives Europeennes de Sociologie*, vol. 25, no. 2, pp. 185-213.
- (1988), *States, War and Capitalism*, New York: Basil Blackwell.
- (1993), *The Sources of Social Power, vol. 2: The Rise of Classes and Nation States, 1760-1914*, Cambridge: Cambridge University Press.
- Manor, Yohann (1977), "France", in Itzhak Galnoor (ed.), *Government Secrecy in Democracies*, New York: Harper Colophon, pp. 234-254.
- Maravall, José María (1999), "Accountability and Manipulation", in Adam Przeworski, Susan C Stokes and Bernard Manin (eds.), *Democracy, Accountability and Representation*, Cambridge: Cambridge University Press.

- (2010), "Accountability in Coalition Governments", *Annual Review of Political Science*, vol. 13, no. 1, pp. 81-100.
- March, James and Johan Olsen (2008), "Elaborating the "New Institutionalism"", in Rod Rhodes, Sarah Binder and Bert Rockman (eds.), *The Oxford Handbook of Political Institutions*, Oxford: Oxford University Press, pp. 3-20.
- Marcus-Steff, Joachin (1977), "L'information Comme Mode D'organisation De Consommateurs", *Revue Française de Sociologie*, vol. 18, no. 1, pp. 85-107.
- Margetts, Helen (2006), "Transparency and Digital Government", in Christopher Hood and David Heald (eds.), *Transparency: The Key to Better Governance?*, Oxford: Oxford University Press.
- (2011), "The Internet and Transparency", *The Political Quarterly*, vol. 82, no. 4, pp. 518-521.
- Marsh, David and Rod Rhodes (1992), "Policy Communities and Issue Networks: Beyond Typology", in Rod Rhodes and David Marsh (eds.), *Policy Networks in British Government*, Oxford: Clarendon Press, pp. 249-268.
- Marsh, Norman (1987), "Public Access to Government-Held Information in the United Kingdom: Attempts at Reform", in Norman Marsh (ed.), *Public Access to Government-Held Information*, London: Stevens, pp. 248-291.
- Marshall, Monty and Keith Jagers (2009a), *Polity Iv Project: Dataset Users' Manual*, Severn, MD: Center for Systemic Peace.
- (2009b), *Polity Iv Project: Political Regime Characteristics and Transitions, 1800-2009*, Severn, MD: Center for Systemic Peace.
<http://www.systemicpeace.org/inscr/p4v2009.xls> (Accessed on 1 June 2010).
- McClellan, Tom (2010), "Who Pays the Piper? The Political Economy of Freedom of Information", *Government Information Quarterly*, vol. 27, no. 4, pp. 392-400.
- McCubbins, Mathew and Thomas Schwartz (1984), "Congressional Oversight Overlooked: Police Patrols Versus Fire Alarms", *American Journal of Political Science*, vol. 28, no. 1, pp. 165-179.
- McDonagh, Maeve (2003), *Freedom of Information in Ireland: Five Years On*, Washington, DC: The Online Network of Freedom of Information Advocates.
<http://www.freedominfo.org/documents/ireland.pdf> (Accessed on 12 November 2008).
- McDonald, Andrew (2006), "What Hope for Freedom of Information in the Uk?", in Christopher Hood and David Heald (eds.), *Transparency: The Key to Better Governance?*, Oxford: Oxford University Press.
- McFarland, Andrew (1987), "Interest Groups and Theories of Power in America", *British Journal of Political Science*, vol. 17, no. 2, pp. 129-147.
- McKelvey, Richard and Peter Ordeshook (1990), "Information and Elections: Retrospective Voting and Rational Expectations", in John Ferejohn (ed.), *Information and Democratic Processes*, Chicago: University of Illinois Press, pp. 281-312.
- Meade, Ellen and David Stasavage (2006), "Two Effects of Transparency on the Quality of Deliberation", *Swiss Political Science Review*, vol. 12, no. 3, pp. 123-133.

- Meijer, Hans (1969), "Bureaucracy and Policy Formation in Sweden", *Scandinavian Political Studies*, vol. 4, no. A4, pp. 103-116.
- Meyer, Peter (2002), "Neue Wege in Der Verwaltung", *Hamburger Abendblatt*, 13 November 2002.
- Mezzacapo, Simone (2006), "The Right of Access to Public Bodies' Records in Italy and Uk: "Actio Ad Exhibendum" and Freedom of Information, Risks and Opportunities for Private Sector Companies", *European Business Law Review*, vol. 17, no. 4, pp. 959-979.
- Michael, James (1980), "Access to Official Information", *British Journal of Law and Society*, vol. 7, no. 1, pp. 95-104.
- (1981), "Open Government and Data Protection", *British Journal of Law and Society*, vol. 8, no. 2, pp. 265-270.
- Miliband, Ralph (1969), *The State in Capitalist Society*, New York: Basic Books.
- Mill, John Stuart (1865), *A System of Logic*, London: Longmans, Green and Co.
- (2003 [1859]), *On Liberty*, New Haven, CT and London: Yale University Press.
- Mitchell, Ronald (1998), "Sources of Transparency: Information Systems in International Regimes", *International Studies Quarterly*, vol. 42, no. 1, pp. 109-130.
- Mock, William (1999), "On the Centrality of Information Law: A Rational Choice Discussion of Information Law and Transparency", *Journal of Computer & Information Law*, vol. 17, no. 4, pp. 1069-1100.
- Moderne, Franck (2003), "Conception Et Élaboration De La Loi Du 17 Juillet 1978", in IFSA/CADA (ed.), *Transparence Et Secret. Colloque Pour Le Xxve Anniversaire De La Loi Du 17 Juillet 1978 Sur L'accès Aux Documents Administratifs*, Paris: La documentation française, pp. 19-50.
- Monbiot, George (2004), "A Scandal of Secrecy and Collusion", *Guardian*, 28 December 2004.
- Moss, Irene (2007), *Report of the Independent Audit into the State of Free Speech in Australia*, Sydney: Independent Audit of the State of Free Speech in Australia.
- Moulin, Club Jean (1968), *Que Faire De La Révolution De Mai?*, Paris: Collection Jean Moulin/Le Seuil.
- Moyers, Bill (2002), *Bill Moyers on the Freedom of Information Act*, New York: Public Affairs Television. <http://www.pbs.org/now/commentary/moyers4.html> (Accessed on 31 July 2010).
- Moynihan, Daniel Patrick (1988), *Secrecy: The American Experience*, New Haven, CT: Yale University Press.
- (1997), "Secrecy as Government Regulation", *Political Science and Politics*, vol. 30, no. 2, pp. 160-165.
- Mueller, Marti (1969), "Nader: From Auto Safety to Permanent Crusade", *Science*, vol. 166, no. 3908, pp. 979-983.
- Munck, Gerardo and Jay Verkuilen (2002), "Conceptualizing and Measuring Democracy: Evaluating Alternative Indices", *Comparative Political Studies*, vol. 35, no. 1, pp. 5-34.

- Murphy, Kevin (1999), *Freedom of Information - the Irish Experience* Paper presented at Delivering Freedom of Information in Scotland, Glasgow: Law School, University of Glasgow.
- Nader, Ralph (1970), "Freedom from Information: The Act and the Agencies", *Harvard Civil Rights - Civil Liberties Law Review*, vol. 5, no. 1, pp. 1-15.
- (1981a), "Citizen Access. Citizen Access to the Democratic Process", *Rupert Public Interest Movement Journal*, vol. 6-7, pp. 12-16.
- (1981b), "Nader. Ralph Nader in Canberra", *Rupert Public Interest Movement Journal*, vol. 4-5, pp. 8-12.
- Naurin, Daniel (2006), "Transparency, Publicity, Accountability - Missing Links", *Swiss Political Science Review*, vol. 12, no. 3, pp. 90-99.
- Newell, Peter (1982), "Education", in Rosemary Delbridge and Martin Smith (eds.), *Consuming Secrets. How Official Secrecy Affects Everyday Life in Britain*, London: Burnett Books, pp. 68-92.
- Nilberg, Ingeborg (1929), "Offentlighetsprincipen I Forvaltningen", *Nordisk Administrativt Tidsskrift*, no. 10, pp. 153-176.
- Nillesen, AB and JG Stappers (1987), "The Government as Communicator: A Dutch Dilemma", *European Journal of Communication*, vol. 2, no. 4, pp. 491-512.
- Nilsen, Kirsti (1994), "Government Information Policy in Canada", *Government Information Quarterly*, vol. 11, no. 2, pp. 191-209.
- Niskanen, William (1971), *Bureaucracy and Representative Government*, Chicago: Aldine.
- Noyce, Robert (1979), "Hardware Prospects and Limitations", in Michael Dertouzos and Joel Moses (eds.), *The Computer Age: A Twenty-Year View*, Cambridge, MA and London: The MIT Press, pp. 321-337.
- Nye, Joseph S (1999), "Information Technology and Democratic Governance", in Elaine Ciulla Kamarck and Joseph S Nye (eds.), *Democracy.Com? Governance in a Networked World*, Hollis, NH: Hollis, pp. 1-18.
- O'Neill, Onora (2006), "Transparency and the Ethics of Communication", in Christopher Hood and David Heald (eds.), *Transparency: The Key to Better Governance?*, Oxford: Oxford University Press.
- OECD (1997), *In Search of Results: Performance Management Practices*, Paris: PUMA/OECD.
- (2000), *Trust in Government. Ethics Measures in OECD Countries*, Paris: OECD.
- (2002a), *Distributed Public Governance*, Paris: OECD.
- (2002b), *Public Sector Transparency and Accountability. Making It Happen*, Paris: OECD.
- (2005), *Public Sector Modernisation: Open Government*, Paris: OECD.
- OECD/PUMA (1997), *Managing across Levels of Government*, Paris: OECD.
- Offe, Claus (1981), "The Attribution of Public Status to Interest Groups: Observations on the West German Case", in Suzanne Berger (ed.), *Organizing Interests in Western Europe: Pluralism, Corporatism and the Transformation of Politics*, New York: Cambridge University Press, pp. 123-158.

- Olson, Mancur (1965), *The Logic of Collective Action: Public Goods and the Theory of Groups*, Cambridge, MA: Harvard University Press.
- Open Society Justice Initiative (2006), *Transparency & Silence, a Survey of Access to Information Laws and Practices in Fourteen Countries*, New York: Open Society Institute.
- Osborne, Stephen and Kate McLaughlin (2002), "The New Public Management in Context", in Kate McLaughlin and Stephen Osborne (eds.), *New Public Management: Current Trends and Future Prospects*, London and New York: Routledge, pp. 15-33.
- Östberg, Kjell and Fredrik Eriksson (2009), "The Problematic Freedom of Information Principle: The Swedish Experience", in Andrew Flinn and Harriet Jones (eds.), *Freedom of Information: Open Access, Empty Archives?*, London and New York: Routledge, pp. 113-124.
- Pallesen, Thomas (2006), "Scandinavian Corporatism in Trans-Atlantic Comparative Perspective", *Scandinavian Political Studies*, vol. 29, no. 2, pp. 131-145.
- Pateman, Carole (1970), *Participation and Democratic Theory*, Cambridge: Cambridge University Press.
- Peretz, Paul and Jean Schroedel (2009), "Financial Regulation in the United States: Lessons from History", *Public Administration Review*, vol. 69, no. 4, pp. 603-612.
- Perritt, Henry (1997), "Open Government", *Government Information Quarterly*, vol. 14, no. 4, pp. 397-406.
- Perritt, Henry and Zachary Rustad (2000), "Freedom of Information Spreads to Europe", *Government Information Quarterly*, vol. 17, no. 4, pp. 403-417.
- Persson, Torsten, Gerard Roland and Guido Tabellini (1997), "Separation of Powers and Political Accountability", *Quarterly Journal of Economics*, vol. 112, no. 4, pp. 1163-1202.
- Peters, B Guy (2001), *The Politics of Bureaucracy*, London and New York: Routledge.
- Peyrefitte, Alain (1976), *Le Mal Français*, Paris: Plon.
- Pfiffner, James (1994), *The Modern Presidency*, New York: St Martin's Press.
- Phillips, Melanie (1982), "Welfare Benefits", in Rosemary Delbridge and Martin Smith (eds.), *Consuming Secrets. How Official Secrecy Affects Everyday Life in Britain*, London: Burnett Books, pp. 185-206.
- Pierre, Jon (1993), "Legitimacy, Institutional Change, and the Politics of Public Administration in Sweden", *International Political Science Review / Revue internationale de science politique*, vol. 14, no. 4, pp. 387-401.
- (2001), "Parallel Paths? Administrative Reform, Public Policy and Politico-Bureaucratic Relationships in Sweden", in B Guy Peters and Jon Pierre (eds.), *Politicians, Bureaucrats and Administrative Reform*, London and New York: Routledge/ECPR Studies in European Political Science, pp. 132-141.
- Pierson, Paul (2006), *Politics in Time. History, Institutions and Social Analysis*, Princeton: Princeton University Press.

- Piore, Michael and Charles Sabel (1984), *The Second Industrial Divide : Possibilities for Prosperity* New York: Basic Books.
- Piotrowski, Suzanne (2007), *Government Transparency in the Path of Administrative Reform*, Albany: State University of New York Press.
- Piotrowski, Suzanne and Gregg Van Ryzin (2007), “Citizen Attitudes toward Transparency in Local Government”, *American Review of Public Administration*, vol. 37, no. 3, pp. 306-323.
- Plantey, Alain (1978), “Pour Un Bond En Avant”, *Le Monde*, 29 June 1978, p. 2.
- Pollitt, Christopher and Geert Bouckaert (2004), *Public Management Reform: A Comparative Analysis*, Oxford: Oxford University Press.
- Ponting, Clive (1987), “Secrecy and Freedom of Information”, in Julia Neuberger (ed.), *Freedom of Information... Freedom of the Individual?*, Basingstoke: Papermac.
- Pontusson, Jonas (1995), “From Comparative Public Policy to Political Economy: Putting Political Institutions in Their Place and Taking Interests Seriously”, *Comparative Political Studies*, vol. 28, no. 1, pp. 117-147.
- Popkin, Samuel (1991), *The Reasoning Voter*, Chicago and London: University of Chicago Press.
- Poulantzas, Nicos (1973), *Political Power and Social Classes*, London: New Left Books and Sheed & Ward.
- Prat, Andrea (2002), *The Wrong Kind of Transparency*, London: London School of Economics (Suntory Centre Discussion Paper No. TE/02/439).
- (2006), “The More Closely We Are Watched, the Better We Behave”, in Christopher Hood and David Heald (eds.), *Transparency: The Key to Better Governance?*, Oxford: Oxford University Press.
- Premfors, Rune (1991), “The 'Swedish Model' and Public Sector Reform”, *West European Politics*, vol. 14, no. 3, pp. 83-95.
- (1998), “Reshaping the Democratic State: Swedish Experiences in a Comparative Perspective”, *Public Administration*, vol. 76, no. 1, pp. 141-159.
- Przeworski, Adam and Henry Teune (1970), *The Logic of Comparative Social Inquiry*, New York: Wiley.
- Raadschelders, Jos (2010), “Is American Public Administration Detached from Historical Context?: On the Nature of Time and the Need to Understand It in Government and Its Study”, *The American Review of Public Administration*, vol. 40, no. 3, pp. 235-260.
- RaaG and NCPI (2009), *Safeguarding the Right to Information*, New Delhi: Right to Information Assessment & Analysis Group and the National Campaign for People’s Right to Information.
- Radcliff, Benjamin and Ed Wingenbach (2000), “Preference Aggregation, Functional Pathologies, and Democracy: A Social Choice Defense of Participatory Democracy”, *Journal of Politics*, vol. 62, no. 4, pp. 977-998.
- Rademaker, Maike (2002), “Korruptionen-Experten Ermahnen Deutschland”, *Financial Times Deutschland*, 29 August 2002, p. 13.

- Ragin, Charles (1987), *The Comparative Method; Moving Beyond Qualitative and Quantitative Strategies*, Berkeley, Los Angeles and London: University of California Press.
- (1997), "Turning the Tables: How Case-Oriented Research Challenges Variable-Oriented Research", *Comparative Social Research*, vol. 16, no. 1, pp. 27-42.
- (2000), *Fuzzy-Set Social Science*, Chicago: University of Chicago Press.
- Ramkumar, Vivek and Elena Petkova (2007), "Transparency and Environmental Governance", in Ann Florini (ed.), *The Right to Know; Transparency for an Open World*, New York: Columbia University Press, pp. 279-308.
- Redelfs, Manfred (2005), "Informationsfreiheit: Deutschland Als Verspätete Nation", in Petra Ahrweiler and Barbara Thomaß (eds.), *Internationale Partizipatorische Kommunikationspolitik Strukturen Und Visionen*, Berlin: Lit-Verlag.
- Redelfs, Manfred and Thomas Leif (2004), "Mehr Transparenz Wagen: Warum Die Informationsfreiheit Unverzichtbar Ist – Und Die Politik Sich Damit Schwer Tut", in Thomas Hart, Carolin Welzel and Hansjürgen Garstka (eds.), *Informationsfreiheit. Die »Gläserne Bürokratie« Als Bürogerrecht*, Gütersloh: Verlag Bertelsmann Stiftung.
- Reese, Jurgen (1977), "The Federal Republic of Germany", in Itzhak Galnoor (ed.), *Government Secrecy in Democracies*, New York: Harper Colophon, pp. 216-233.
- Regini, Mario (1984), "The Conditions for Political Exchange: How Concertation Emerged and Collapsed in Italy and Great Britain", in John Goldthorpe (ed.), *Order and Conflict in Contemporary Capitalism*, New York: Oxford University Press, pp. 124-142.
- Reich, Charles (1970), "The New Public Interest Lawyers", *Yale Law Journal*, vol. 79, no. 6, pp. 1069-1152.
- Relly, Jeannine and David Cullier (2010), "A Comparison of Political, Cultural, and Economic Indicators of Access to Information in Arab and Non-Arab States", *Government Information Quarterly*, vol. 27, no. 4, pp. 360-370.
- Relly, Jeannine and Meghna Sabharwal (2009), "Perceptions of Transparency of Government Policymaking: A Cross-National Study", *Government Information Quarterly*, vol. 26, no. 1, pp. 148-157.
- Relyea, Harold (1975), "Opening Government to Public Scrutiny: A Decade of Federal Efforts", *Public Administration Review*, vol. 35, no. 1, pp. 3-10.
- (1979), "Faithful Execution of the FOI Act: A Legislative Branch Perspective", *Public Administration Review*, vol. 39, no. 4, pp. 328-332.
- (1983), "The Rise and Pause of the U.S. Freedom of Information Act", *Government Publications Review*, vol. 10, no. 1, pp. 19-33.
- (2001), "Legislating Personal Privacy Protection: The Federal Response", *Journal of Academic Librarianship*, vol. 27, no. 1, pp. 36-51.
- (2003), "Government Secrecy: Policy Depths and Dimensions", *Government Information Quarterly*, vol. 20, no. 4, pp. 395-418.
- Rhodes, R. A. W (1996), "The New Governance: Governing without Government", *Political Studies*, vol. 44, no. 4, pp. 652-667.

- Rhodes, Rod (2008), "Old Institutionalisms", in Rod Rhodes, Sarah Binder and Bert Rockman (eds.), *The Oxford Handbook of Political Institutions*, Oxford: Oxford University Press, pp. 90-108.
- Rhodes, Rod and David Marsh (1992), "Policy Networks in British Politics: A Critique of Existing Approaches", in Rod Rhodes and David Marsh (eds.), *Policy Networks in British Government*, Oxford: Clarendon Press, pp. 1-26.
- Riley, Tom (1983a), "Freedom of Information Acts: A Comparative Perspective", *Government Publications Review*, vol. 10, no. 1, pp. 81-87.
- (1983b), "A Review of Freedom of Information around the World", in Tom Riley and Harold Relyea (eds.), *Freedom of Information Trends in the Information Age*, London: Frank Cass, pp. 5-53.
- Roberts, Alasdair (1998), *Closing the Window: Public Service Restructuring and the Weakening of Freedom of Information Law*, Paper presented at Annual conference of Ontario freedom of information and protection of privacy coordinators, Toronto.
- (2000), "Less Government, More Secrecy: Reinvention and the Weakening of Freedom of Information Law", *Public Administration Review*, vol. 60, no. 4, pp. 308-320.
- (2001a), *Access to Information: So Much for Transparency*.
<http://www.caj.ca/mediamag/spring2001/ati.html> (Accessed on 22 October 2010).
- (2001b), "Structural Pluralism and the Right to Information", *University of Toronto Law Journal*, vol. 51, no. 3, pp. 243-271.
- (2003), *Three Patterns in the Diffusion of Transparency Rules: Money, Guns and Human Rights*: SSRN. <http://ssrn.com/abstract=1439722> (Accessed on 10 November 2010).
- (2004), "Les Faces Chachées De La Résistance Gouvernementale À La Transparence", *Éthique publique*, vol. 6, no. 2.
- (2006a), *Blacked Out: Government Secrecy in the Information Age*, New York: Cambridge University Press.
- (2006b), "Dashed Expectations: Governmental Adaptation to Transparency Rules", in Christopher Hood and David Heald (eds.), *Transparency: The Key to Better Governance?*, Oxford: Oxford University Press.
- (2006c), *The Struggle for Open Government*, Paper presented at First International Conference on Corruption and Transparency, Mexico: Institute of Social Research, National Autonomous University of Mexico.
- (2010), *The Logic of Discipline*, Oxford: Oxford University Press.
- Roberts, Michael (1986), *The Age of Liberty. Sweden 1719-1772*, Cambridge: Cambridge University Press.
- Robertson, Kenneth (1982), *Public Secrets: A Study in the Development of Government Secrecy*, London: MacMillan.
- (1999), *Secrecy and Open Government: Why Governments Want You to Know*, Basingstoke: MacMillan.

- Rohr, John (2003), "French Public Administration", in Krishna Tummala (ed.), *Comparative Bureaucratic Systems*, Lanham, MD: Lexington Books, pp. 35-54.
- Rootes, Christopher (1999), "Political Opportunity Structures: Promise, Problems and Prospects", *Lettre de la Maison Française d'Oxford*, no. 10, pp. 75-97.
- Rose, David (1986), "Freedom of Information Welcomed: Poll Shows Most Voters Oppose 'Catch-All' Clause of the Official Secrets Act", *Guardian*, 19 August 1986.
- Rosendorff, B. Peter and John Doces (2006), "Transparency and Unfair Eviction in Democracies and Autocracies", *Swiss Political Science Review*, vol. 12, no. 3, pp. 99-112.
- Rothstein, Bo (1998), "Political Institutions: An Overview", in Robert Goodin and Dieter Klingemann (eds.), *A New Handbook of Political Science*, Oxford: Oxford University Press, pp. 133-166.
- Rourke, Francis (1957), "Secrecy in American Bureaucracy", *Political Science Quarterly*, vol. 72, no. 4, pp. 540-564.
- (1960), "Administrative Secrecy: A Congressional Dilemma", *American Political Science Review*, vol. 54, no. 3, pp. 684-694.
- (1975), "Administrative Secrecy: A Comparative Perspective", *Public Administration Review*, vol. 35, no. 1, pp. 1-2.
- Rousseau, Jean-Jacques (1968 [1763]), *The Social Contract*, Harmondsworth: Penguin.
- Rowat, Donald (1983), "The French Law on Access to Government Documents", *Government Publications Review*, vol. 10, no. 1, pp. 35-41.
- Rozell, Mark (2002), *Executive Privilege: Presidential Power, Secrecy and Accountability*, Lawrence, KA: University Press of Kansas.
- Rueschemeyer, Dietrich, Evelyne Huber Stephens and John D Stephens (1991), *Capitalist Development and Democracy*, Cambridge: Polity Press.
- San Francisco Chronicle (1997), "John E Moss: 1915-1997", *San Francisco Chronicle*, 15 December 1997, p. A18.
- Sartori, Giovanni (1970), "Concept Misinformation in Comparative Politics", *American Political Science Review*, vol. 64, no. 4, pp. 1033-1053.
- Sauger, Nicolas (2009), "Party Discipline and Coalition Management in the French Parliament", *West European Politics*, vol. 32, no. 2, pp. 310-326.
- Saward, Michael (1992), "The Civil Nuclear Network in Britain", in Rod Rhodes and David Marsh (eds.), *Policy Networks in British Government*, Oxford: Clarendon Press, pp. 75-99.
- Saxer, UW (1993), "The Political Data-Gathering Scandal in Switzerland - Political Surveillance by State Authorities as a Problem of Constitutional Control Relations", in Carla Zoethout, Ger van der Tang and Piet Akkermans (eds.), *Control in Constitutional Law*, Dordrecht, Boston and London: Martinus Nijhoff Publishers, pp. 39-70.
- Schaar, Peter and Otto von Diederichs (1996), "Grundsätzliches Zu Akteneinsicht Und Akteneinsicht - Mehr Licht!", *Bürgerrechte & Polizei/CILIP*, vol. 2/96.

- Schedler, Huno and Isabella Proeller (2002), "New Public Management: A Perspective from Mainland Europe", in Kate McLaughlin and Stephen Osborne (eds.), *New Public Management: Current Trends and Future Prospects*, London and New York: Routledge, pp. 163-180.
- Schick, Allen (2002), "Agencies in Search of Principles", *Distributed Public Governance*, Paris: OECD, pp. 35-52.
- Schmidt, Vivien A (1999), "The Changing Dynamics of State-Society Relations in the Fifth Republic", *West European Politics*, vol. 22, no. 4, pp. 141-165.
- Schmitter, Philippe (1981), "Interest Intermediation and Regime Governability in Contemporary Western Europe and North America", in Suzanne Berger (ed.), *Organizing Interests in Western Europe: Pluralism, Corporatism and the Transformation of Politics*, New York: Cambridge University Press, pp. 287-330.
- Schraut, Lena (1996), "Gesetzentwürfe Der Grünen Zu Einem Allgemeinen Akteneinsichtsrecht - Datenschutz Kontra Informationszugang?", *Bürgerrechte & Polizei/CILIP*, vol. 2/96.
- Schumpeter, Joseph (1992), *Capitalism, Socialism and Democracy*, London and New York: Routledge.
- Schwanitz, Thoralf (2005), "Jeder Soll Recht Auf Akteneinsicht Haben", *Die Welt*, 3 June 2005.
- Schwartz, Bernard (1977), "The United States: The Doctrine of Executive Privilege", in Itzhak Galnoor (ed.), *Government Secrecy in Democracies*, New York: Harper Colophon, pp. 129-143.
- Scotland (2010), *About Applicants*, St Andrews: Scottish Information Commissioner. See <http://www.itspublicknowledge.info/inyourhands/about-applicants.html> (Accessed on 1 May 2011).
- Scott, Colin (2000), "Accountability in the Regulatory State", *Journal of Law and Society*, vol. 27, no. 1, pp. 38-60.
- Seymour-Ure, Colin (1977), "Great Britain", in Itzhak Galnoor (ed.), *Government Secrecy in Democracies*, New York: Harper Colophon, pp. 157-175.
- Shapiro, Martin (1986), "Apa: Past, Present, Future", *Virginia Law Review*, vol. 72, no. 2, pp. 447-492.
- Shepherd, George (1996), "Fierce Compromise: The Administrative Procedure Act Emerges from New Deal Politics", *Northwestern University Law Review*, vol. 90, no. 4, pp. 1557-1683.
- Shrivastava, KM (2009), *The Right to Information. A Global Perspective*, New Delhi: Lancer.
- Shroff, Marie (2005), *The Official Information Act and Privacy: New Zealand's Story*, Paper presented at FOI Live, London: New Zealand Privacy Commissioner.
- Sides, Charles (ed.) (2006), *Freedom of Information in a Post 9-11 World*, Amityville, New York: Baywood.
- Simmel, Georg (1906), "The Sociology of Secrecy and of Secret Societies", *American Journal of Sociology*, vol. 11, no. 4, pp. 441-498.
- Simon, Herbert (1957), *Models of Man*, New York: John Wiley and Sons.

- Singer, Michael Jay (1979), "United States", in Donald Rowat (ed.), *Administrative Secrecy in Developed Countries*, London and Basingstoke: The Macmillan Press, pp. 309-356.
- Skelcher, Chris, Stuart Weir and Lynne Wilson (2000), *Advance of the Quango State*, London: Local Government Information Unit.
- Skidelsky, Robert (1981), "Keynes and the Treasury View: The Case for and against an Active Unemployment Policy in Britain, 1920-1939", in WJ Mommsen and Wolfgang Mock (eds.), *The Emergence of the Welfare State in Britain and Germany*, London: Croom Helm, pp. 167-187.
- Skocpol, Theda (1985), "Bringing the State Back In: Strategies of Analysis in Current Research", in Peter Evans, Dietrich Rueschemeyer and Theda Skocpol (eds.), *Bringing the State Back In*, Cambridge: Cambridge University Press, pp. 3-37.
- (2003), "Doubly-Engaged Social Science: The Promise of Comparative Historical Analysis", in James Mahoney and Dietrich Rueschemeyer (eds.), *Comparative Historical Analysis in the Social Sciences*, Cambridge: Cambridge University Press, pp. 407-428.
- Skocpol, Theda and Margaret Somers (1980), "The Uses of Comparative History in Macrosocial Inquiry", *Comparative Studies in Society and History*, vol. 22, no. 2, pp. 174-197.
- Smith, Martin (1992), *Pressure Power & Policy*, London: Harvester Wheatsheaf.
- Somin, Ilya (1998), "Voter Ignorance and the Democratic Ideal", *Critical Review*, vol. 12, no. 4, pp. 413-458.
- (2000), "Democracy and Voter Ignorance Revisited: A Rejoinder to Ciepley", *Critical Review*, vol. 14, no. 1, pp. 99-111.
- Soskice, David (1999), "Divergent Production Regimes: Coordinated and Uncoordinated Market Economies in the 1980s and 1990s", in Herbert Kitschelt, Peter Lange, Gary Marks and John D Stephens (eds.), *Continuity and Change in Contemporary Capitalism*, New York: Cambridge University Press, pp. 101-134.
- SPD-Bündnis 90/Die Grünen (1998, 20 October 1998), *Aufbruch Und Erneuerung - Deutschlands Weg Ins 21. Jahrhundert*, Bonn: Bündnis 90/Die Grünen.
http://archiv.gruene-partei.de/gremien/rot-gruen/vertrag/ko_vertr.pdf
 (Accessed on 10 December 2010).
- (2002, 20 October 1998), *Erneuerung - Gerechtigkeit - Nachhaltigkeit*, Berlin: Bündnis 90/Die Grünen. http://archiv.gruene-partei.de/gremien/rot-gruen/vertrag/ko_vertr.pdf (Accessed on 10 December 2010).
- Spencer, Maureen and John Spencer (2010), "Coping with Conway V. Rimmer [1968] Ac 910: How Civil Servants Control Access to Justice", *Journal of Law and Society*, vol. 37, no. 3, pp. 387-411.
- Spiller, Pablo (1990), "Agency and the Role of Political Institutions", in John Ferejohn and James Kuklinski (eds.), *Information and Democratic Processes*, Chicago: University of Illinois Press, pp. 269-280.
- Steinmo, Sven (2010), *The Evolution of Modern States*, Cambridge: Cambridge University Press.

- Stiglitz, Joseph (1985), "Information and Economic Analysis: A Perspective", *Economic Journal*, vol. 95, Supplement: Conference Papers (1985), pp. 21-41.
- (2000), "The Contributions of the Economics of Information to Twentieth Century Economics", *Quarterly Journal of Economics*, vol. 115, no. 4, pp. 1441-1478.
- (2003a), "Democratizing the International Monetary Fund and the World Bank: Governance and Accountability", *Governance*, vol. 16, no. 1, pp. 111-139.
- (2003b), "On Liberty, the Right to Know and Public Discourse: The Role of Transparency in Public Life", in Ha-Joon Chang (ed.), *The Rebel Within*, London: Wimbledon Publishing Company, pp. 115-156.
- Stirton, Lindsay and Martin Lodge (2001), "Transparency Mechanisms: Building Publicness into Public Services", *Journal of Law and Society*, vol. 28, no. 4, pp. 471-489.
- Stjernquist, Nils (1992), "Judicial Review and the Rule of Law: The United States and Sweden", in Donald Jackson and C Neal Tate (eds.), *Comparative Judicial Review and Public Policy*, Westport, CT and London: Greenwood Press, pp. 129-142.
- Strøm, Kaare (2000), "Delegation and Accountability in Parliamentary Democracies", *European Journal of Political Research*, vol. 37, no. 3, pp. 261-289.
- Sunkin, Maurice (1992), "The Incidence and Effect of Judicial Review Procedures against Central Government in the United Kingdom", in Donald Jackson and C Neal Tate (eds.), *Comparative Judicial Review and Public Policy*, Westport, CT and London: Greenwood Press, pp. 143-156.
- Sunstein, Carl (1986), "Government Control of Information", *California Law Review*, vol. 74, no. 3, pp. 889-921.
- Sweden, Justice Department (2001), *Yttrandefrihetsgrundlagen Och Internet. Utvidgat Grundlagsskydd Och Andra Frågor Om Tryck- Och Yttrandefrihet*, Stockholm (SOU 2001:28).
- Tant, A P (1990), "The Campaign for Freedom of Information: A Participatory Challenge to Elitist British Government", *Public Administration*, vol. 68, no. 4, pp. 477-491.
- Tant, Tony (1993), *British Government : The Triumph of Elitism : A Study of the British Political Tradition and Its Major Challenges*, Aldershot, Hants, England ; Brookfield, Vt., USA: Dartmouth.
- Tarrow, Sidney (1998), *Power in Movement: Social Movements, Collective Action and Politics*, Cambridge: Cambridge University Press.
- Ten (1994), "Mit Giftigen Informationen Auf Du Und Du; Amerikas Erfahrungen", *Tageszeitung*, 11 March 1994, p. 7.
- Terrill, Greg (1998), "The Rise and Decline of Freedom of Information in Australia", in Andrew McDonald and Greg Terrill (eds.), *Open Government: Freedom of Information and Privacy*, London: MacMillan, pp. 89-116.
- (2000), *Secrecy and Openness - the Federal Government from Menzies to Whitlam and Beyond*, Carlton South: Melbourne University Press.
- Theakston, Kevin (2004), *The 1964-70 Labour Governments and Whitehall Reform*, Leeds: School of Politics and International Studies, University of Leeds.

<http://www.polis.leeds.ac.uk/assets/files/research/working-papers/wp2theakston.pdf> (Accessed on 2 August 2010).

- Thelen, Kathleen (1999), "Historical Institutionalism in Comparative Politics", *Annual Review of Political Science*, vol. 2, no. 1, pp. 369-404.
- (2001), "Varieties of Labour Politics in the Developed Democracies", in Peter Hall and David Soskice (eds.), *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage*, Oxford: Oxford University Press, pp. 71-104.
- (2003), "How Institutions Evolve: Insights from Comparative Historical Analysis", in James Mahoney and Dietrich Rueschemeyer (eds.), *Comparative Historical Analysis in the Social Sciences*, Cambridge: Cambridge University Press, pp. 208-240.
- Thelen, Kathleen and Ikuo Kume (1999), "The Effects of Globalization on Labor Revisited: Lessons from Germany and Japan", *Politics and Society*, vol. 27, no. 4, pp. 477-505.
- Thelen, Kathleen and Sven Steinmo (1992), "Historical Institutionalism in Comparative Politics", in Sven Steinmo, Kathleen Thelen and Frank Longstreth (eds.), *Structuring Politics. Historical Institutionalism in Comparative Analysis*, Cambridge: Cambridge University Press.
- Thoenig, Jean-Claude (2005), "Territorial Administration and Political Control: Decentralisation in France", *Public Administration*, vol. 83, no. 3, pp. 685-708.
- Thomas, Richard (2000), "Freedom of Information: The Implications for Business", in Jack Beatson and Yvonne Cripps (eds.), *Freedom of Expression and Freedom of Information: Essays in Honour of Sir David Williams* Oxford: Oxford University Press, pp. 375-396.
- Thompson, E P (1980), "The Secret State", in E P Thompson (ed.), *Writing by Candlelight*, London: Merlin.
- Thyreau, Alain and Jérôme Bon (1981), "L'amélioration Des Relations Entre L'administration Et Les Administrés En France", *International Review of Administrative Sciences*, vol. 47, no. 3, pp. 252-263.
- Times (1976), "More Open to Inspection", *Times*, 27 November 1976, p. 15.
- Timmins, Nicholas (1991), "Citizen's Charter: Major Spells out His Plan for the Decade", *Independent*, 23 July 1991, p. 1.
- (1996), "How Free Can We Get with Their Information? Whitehall Is Steeped in a Culture of Secrecy Which Denies the Public Vital Information. That Is the Most Damning Conclusion of the Scott Report. Nicholas Timmins Examines How a Freedom of Information Act Would Change All That. ", *Independent*, 19 February 1996, p. 13.
- Traxler, Franz, Sabine Blaschke and Bernhard Kittel (2002), *National Labour Relations in Internationalized Markets*, Oxford: Oxford University Press.
- Treviño Rangel, Javier (2007), "The Transparent Denial of Information", in Jonathan Fox, Libby Haight, Helena Hofbauer and Tania Sánchez Andrade (eds.), *Mexico's Right-to-Know Reforms. Civil Society Perspectives*, Washington, DC: Woodrow Wilson International Center for Scholars, pp. 140-145.

- Tsebelis, George (1995), "Decision Making in Political Systems: Veto Players in Presidentialism, Parliamentarism, Multicameralism and Multipartyism", *British Journal of Political Science*, vol. 25, no. 3, pp. 289-325.
- (2002), *Veto Players: How Political Institutions Work*, Princeton, NJ: Princeton University Press.
- United Kingdom, Interdepartmental Committee on Social Insurance and Allied Services ["Beveridge Committee"] (1942), *Report*, London: Her Majesty's Stationery Office (Cmd 6404).
- , Ministry of Agriculture and Fisheries, Public inquiry ordered by the minister of agriculture into the disposal of land at Crichel Down (1954), *Report*, London: Her Majesty's Stationery Office (Cmd 9176).
- , House of Commons (1962), *Government Departments (Public Grievances)*, London: Her Majesty's Stationery Office (HC Deb 08 November 1962 vol 666 cc1124-5).
- , Home Office, Committee on the Civil Service ["Fulton Committee"] (1968), *Report*, vol. 1, London: Her Majesty's Stationery Office (Cmnd 3638).
- , Prime Minister (1969), *Information and the Public Interest*, London: Her Majesty's Stationery Office (Cmnd 4089).
- , Home Office, Committee on Section 2 of the Official Secrets Act ["Franks Committee"] (1972a), *Report*, vol. 1: *Report of the Committee*, London: Her Majesty's Stationery Office (Cmnd 5104).
- , Home Office, Committee on Section 2 of the Official Secrets Act ["Franks Committee"] (1972b), *Report*, vol. 2: *Written Evidence Submitted to the Committee*, London: Her Majesty's Stationery Office (Cmnd 5104).
- , Home Office, Committee on Section 2 of the Official Secrets Act ["Franks Committee"] (1972c), *Report*, vol. 3: *Oral Evidence Mainly from Government Witnesses*, London: Her Majesty's Stationery Office (Cmnd 5104).
- , Home Office, Committee on Section 2 of the Official Secrets Act ["Franks Committee"] (1972d), *Report*, vol. 4: *Oral Evidence Mainly from Non-Government Witnesses*, London: Her Majesty's Stationery Office (Cmnd 5104).
- , Home Office, Committee on Data Protection ["Lindop Committee"] (1978), *Report*, London: Her Majesty's Stationery Office (Cmnd 7341).
- , Civil Service Department (1979a), *Disclosure of Official Information: A Report on Overseas Practice*, London: Her Majesty's Stationery Office.
- , Lord Privy Seal (1979b), *Open Government*, London: Her Majesty's Stationery Office (Cmnd 7520).
- , Prime Minister and Minister for the Civil Service (1982), *Efficiency and Effectiveness in the Civil Service*, London: Her Majesty's Stationery Office (Cmnd 8616).
- , Efficiency Unit (1988), *Improving Management in Government : The Next Steps : Report to the Prime Minister*, London: Her Majesty's Stationery Office.
- , Comptroller and Auditor General (1989), *The Next Steps Initiative*, London: Her Majesty's Stationery Office (HC 410).

- , Chancellor of the Duchy of Lancaster (1993), *Open Government White Paper*, London: Her Majesty's Stationery Office (Cm 2290).
- , House of Commons, Select Committee on the Parliamentary Commissioner for Administration (1995), *Open Government. Minutes of Evidence Wednesday 8 March 1995*, London: Her Majesty's Stationery Office (1994/95 HC 290-ii).
- , House of Commons, Select Committee on the Parliamentary Commissioner for Administration (1996), *Open Government*, London: Her Majesty's Stationery Office (1995/96 HC 84).
- , Office of Public Service (1997a), *Code of Practice on Access to Government Information*, London: Her Majesty's Stationery Office.
- , Chancellor of the Duchy of Lancaster (1997b), *Open Government. Code of Practice on Access to Information. Guide on Interpretation*, London: Department for Constitutional Affairs (Second Edition).
- , House of Commons, Select Committee on Public Administration (1997c), *Your Right to Know: The Government's Proposals for a Freedom of Information Act. Minutes of Evidence, Tuesday 2 December 1997*, London: Her Majesty's Stationery Office (HC398i).
- , Chancellor of the Duchy of Lancaster (1997d), *Your Right to Know. The Government's Proposals for a Freedom of Information Act*, London: Her Majesty's Stationery Office (Cm 3818).
- , House of Commons (1998a), *Freedom of Information Draft Bill. Minutes of Evidence Tuesday 29 June 1999*, London: Her Majesty's Stationery Office (HC 570-iii).
- , House of Lords, Select Committee on the Public Service (1998b), *Public Service*, London: Her Majesty's Stationery Office (HL 55).
- , House of Commons, Select Committee on Public Administration (1999), *Sixth Report*, London: Her Majesty's Stationery Office (HC209).
- , Parliamentary and Health Service Ombudsman (2005), *Access to Official Information. Monitoring of the Non-Statutory Codes of Practice, 1994-2005*, London: The Stationery Office (HC 59).
- , Ministry of Justice (2008), *Freedom of Information Act 2000. Third Annual Report on the Operation of the FOI Act in Central Government 2007*, London: The Stationery Office.
- , Prime Minister and Deputy Prime Minister (2010a), *The Coalition: Our Programme for Government*, London: The Cabinet Office.
- , Ministry of Justice (2010b), *Freedom of Information Act 2000. 2009 Annual Statistics on Implementation in Central Government*, London: Ministry of Justice.
- , Council on Tribunals (2010c), *Origins and History*, London: Accessed on 1 June 2010 from <http://www.council-on-tribunals.gov.uk/about/origins.htm>.
- , Prime Minister (2010d), *Pm's Podcast on Transparency. 29 May 2010.*, London: Prime Minister's Office.
- United States, House of Representatives, Committee on the Judiciary (1946), *Administrative Procedure Act: Report*, Washington, DC: Government Printing Office (79th Congress, 2nd Session, Report 1980).

- , House of Representatives, Committee on Government Operations (1956), *Availability of Information from Federal Departments and Agencies.*, Washington, DC: Government Printing Office (84th Congress, 2nd Session, Report 2947).
- , House of Representatives, Committee on Government Operations (1957), *Availability of Information from Federal Departments and Agencies. (Progress of Study, July-December 1956)*, Washington, DC: Government Printing Office (85th Congress, 1st Session, Report 157).
- , House of Representatives, Committee on Government Operations (1958a), *Availability of Information from Federal Departments and Agencies (Progress of Study, February 1957-July 1958)*, Washington, DC: Government Printing Office (85th Congress, 2nd Session, Report 2578).
- , House of Representatives, Committee on Government Operations (1958b), *Availability of Information from Federal Departments and Agencies. (Scientific Information and National Defense)*, Washington, DC: Government Printing Office (85th Congress, 2nd Session, Report 1619).
- , Senate, Committee on the Judiciary (1958c), *Constitutional Rights*, Washington, DC: Government Printing Office (85th Congress, 2nd Session, Report 1492).
- , House of Representatives, Committee on Government Operations (1959), *Availability of Information from Federal Departments and Agencies (Progress of Study, August 1958-July 1959)*, Washington, DC: Government Printing Office (86th Congress, 1st Session, Report 1137).
- , House of Representatives, Committee on Government Operations (1960a), *Availability of Information from Federal Departments and Agencies (the First Five Years and Progress of Study, August 1959-July 1960)*, Washington, DC: Government Printing Office (86th Congress, 2nd Session, Report 2084).
- , Senate, Committee on the Judiciary (1960b), *Constitutional Rights*, Washington, DC: Government Printing Office (86th Congress, 2nd Session, Report 1199).
- , House of Representatives, Committee on Government Operations (1961a), *Availability of Information from Federal Departments and Agencies (Progress of Study, January-August 1961)*, Washington, DC: Government Printing Office (87th Congress, 1st Session, Report 1257).
- , House of Representatives, Committee on Government Operations (1961b), *Availability of Information from Federal Departments and Agencies. Progress of Study, July-December 1960*, Washington, DC: Government Printing Office (87th Congress, 1st Session, Report 818).
- , House of Representatives (1966), *Clarifying and Protecting the Right to Information*, Washington, DC: Government Printing Office (112 Congressional Record 13007).
- , Department of Justice (1967), *Attorney-General's Memorandum on the Public Information Section of the Administrative Procedure Act*, Washington, DC: Government Printing Office.
- , Senate, Committee on the Judiciary (1974a), *Amending the Freedom of Information Act. May 16, 1974*, Washington, DC: Government Printing Office (93rd Congress, 2nd Session, Report 854).

- , Office of the President (1974b), *Message from the President of the United States Vetoing H.R. 12471, an "Act to Amend Section 552 of Title 5, United States Code, Known as the Freedom of Information Act"*, Washington, DC: Government Printing Office (93rd Congress, 2nd Session, Document 383).
- , House of Representatives, Committee on Government Operations (1978), *Freedom of Information Act Requests for Business Data and Reverse-FOIA Lawsuits*, Washington, DC: Government Publications Office (95th Congress, 2nd Session, Report 1382).
- , National Performance Review (1993a), *From Red Tape to Results. Creating a Government That Works Better & Costs Less*, Washington, DC: Government Printing Office.
- , President (1993b), *Remarks by President Clinton Announcing the Initiative to Streamline Government, vol. 29: Weekly Compilation of Presidential Documents*, Washington, DC: Government Publications Office, pp. 331-365.
- , President (1995), *Executive Order 12958. Classified National Security Information, vol. 60*, Washington, DC: Federal Register, pp. 19825-19843.
- , House of Representatives, Committee on Government Reform and Oversight (1996), *Electronic Freedom of Information Amendments of 1996*, Washington, DC: Government Printing Office (104th Congress, 2nd Session, Report 795).
- , Department of Justice, Office of Information Policy (2009), *FOIA Post: Summary of Annual FOIA Reports for Fiscal Year 2009*, Washington, DC: Department of Justice.
- Vanhanen, Tatu (2003), *Democratization: A Comparative Analysis of 170 Countries*, London and New York: Routledge.
- (2009), *Measures of Democracy 1810-2008*, Tampere Finnish Social Science Data Archive <http://www.fsd.uta.fi/english/data/catalogue/FSD1289/meF1289e.html> (Accessed on 12 June 2008).
- Verkaik, Robert (2005), "'Right to Know' Fails to Open the Government's Vaults of Secrets", *Independent*, 31 December 2005.
- Vincent, David (1998), *The Culture of Secrecy*, Oxford: Oxford University Press.
- Vishwanath, Tara and Daniel Kaufmann (1996), *Towards Transparency in Finance and Governance*, Washington, DC: World Bank.
- Vleugels, Roger (2009), *Overview of FOIA Countries Worldwide*, Utrecht: Self-published. <http://right2info.org/resources/publications/Fringe%20Special%20-%2009%20FOIAs%20-%20sep%207%202009.pdf> (Accessed on 1 October 2009).
- Warren, Adam and James Dearnley (2005), "Data Protection Legislation in the United Kingdom, from Development to Statute 1969 – 84", *Information, Communication & Society*, vol. 8, no. 2, pp. 238–263.
- Weber, Max (1968a [1922]), *Economy and Society: An Outline of Interpretive Sociology, vol. 1*, Los Angeles: University of California Press.
- (1968b [1922]), *Economy and Society: An Outline of Interpretive Sociology, vol. 2*, Los Angeles: University of California Press.
- (1998a [1948]), "Bureaucracy", in Hans Gerth and Charles Wright Mills (eds.), *From Max Weber*, London: Routledge, pp. 196-244.

- (1998b [1948]), "Politics as a Vocation", in Hans Gerth and Charles Wright Mills (eds.), *From Max Weber*, London: Routledge, pp. 77-128.
- Wegener, Bernard (2006), *Der Geheime Staat. Arkantradition Und Informationsfreiheitsrecht*, vol. *Habilitation*, Göttingen: Morango.
- Weir, Stuart and W Hall (eds.) (1994), *Ego-Trip: Democratic Audit Paper*, Democrati Audit Paper, University of Essex: Human Rights Centre.
- Wennergren, Bertil (1983), "Freedom of Information in Nordic Countries: Recent Developments", *Government Publications Review*, vol. 10, no. 1, pp. 11-17.
- Weston, Joe (1989), *The Foe Experience: The Development of an Environmental Pressure Group*, Oxford: Oxford Polytechnic School of Planning.
- Wieland, Joachim (2000), "Freedom of Information", in Christoph Engel and Kennet Keller (eds.), *Governance of Global Networks in the Light of Differing Local Values*, Baden-Baden: Nomos Verlagsgesellschaft, pp. 83-104.
- Williams, Robert (1987), "The President and the Executive Branch", in Malcolm Shaw (ed.), *Roosevelt to Reagan. The Development of the Modern Presidency*, London: C Hurst and Company, pp. 119-158.
- Willman, John (1994), "The Civil Service", in Denis Kavanagh and Anthony Seldon (eds.), *The Major Effect*, London: Macmillan, pp. 64-83.
- Wilson, Des (1984), "Information Is Power: The Causes of Secrecy", in Des Wilson (ed.), *The Secrets File. The Case for Freedom of Information in Britain Today*, London: Heinemann Education Books, pp. 13-21.
- Wilson, Harold (1974), *Britain Will Win with Labour: October 1974 Labour Party Manifesto*, London: Labour Party. <http://www.labour-party.org.uk/manifestos/1974/Oct/1974-oct-labour-manifesto.shtml> (Accessed on 1 October 2011).
- Winder, David (1986), "Little Known British Tradition - Secrecy", *Christian Science Monitor*, 17 December 1986, p. 1.
- Winslow, Philip and Victory Dwyer (1988), "Secrecy and the Role of a Free Press", *Maclean's*, 4 January 1988, p. 33.
- Wong, Andrew (1973), "The Birth of an Ombudsman: A Study of the British Parliamentary Commissioner", *United College Journal*, vol. 11, no. 1, pp. 133-145.
- Wolf, Marie (2006), "Whitehall 'Abusing Spirit' of Disclosure Law", *Independent*, 5 February 2005.
- Woolley, John and Gerhard Peters (2010), *The American Presidency Project*, <http://www.presidency.ucsb.edu/index.php>.
- World Bank (2010), *World Development Indicators*, <http://data.worldbank.org/>.
- Worthy, Ben (2007a), "John Major's Information Revolution? The Code of Access Ten Years On", *Open Government*, vol. 3, no. 1.
- (2007b), *Policy Making in British Central Government: The Freedom of Information Act 2000: A Case Study*, PhD thesis. Manchester University.

- (2010), "More Open but Not More Trusted? The Effect of the Freedom of Information Act 2000 on the United Kingdom Central Government", *Governance*, vol. 23, no. 4, pp. 561-582.
- Wraith, Ronald (1979), "United Kingdom", in Donald Rowat (ed.), *Administrative Secrecy in Developed Countries*, London and Basingstoke: The Macmillan Press, pp. 183-216.
- Wright, Vincent (1978), "The French General Election of March 1978: La Divine Surprise", *West European Politics*, vol. 1, no. 3, pp. 24-52.