8
Freedom of Information and Open Government

...secrecy of deliberation and internal communication is always of the essence of all government, and therefore the attempt to invade it is uniformly self-defeating and results only in government erecting new barriers to defend its necessary privacy.

Enoch Powell, 1977.¹

Introduction

There can be no better illustration of the dominance of the executive over the legislature in British politics than the use of official secrecy.² For as James Michael (1982, p. 18) notes, in Britain ‘the government’s privilege to conceal is valued above the publics right to know’. Indeed, as Ponting (1991, p. 43), observes, ‘the desire for secrecy is an automatic reflex in the executive. Britain’s extensive secrecy laws...were introduced to reinforce an already well-established doctrine and practice of executive secrecy’. This chapter observes that the debate over freedom of information exposes contrasting views of democracy held by proponents of constitutional reform and constitutional “traditionalists”. It will be shown that until recently the British political system has been markedly traditionalist and that the key to understanding the relative lack of success of campaigns advocating freedom of information reform at the centre of British government is that the demand has been contrary to the very nature of the British political tradition itself. At the same time freedom of information campaigners have had considerable success in local government. The rise of the New Constitutionalism under New Labour initially went some way towards challenging conventional wisdom. Since 1999, however, the Labour government has initiated an informal policy of constitutional containment in defence of the constitutional status quo by delaying the implementation of the 2000 Freedom of Information Act until January
2005. Nonetheless, freedom of information will soon be in operation and as the New Constitutionalism matures it is likely to gain in radicalism.

The chapter has four sections. Section one examines what will be termed the four pillars of ‘closed’ government in Britain - institutions, sovereignty, tradition and secrecy. It is argued that they represent the key obstacles to the introduction of freedom of information in ‘high’ politics at the centre of British government. Section two examines the Labour Party’s record on freedom of information in government and opposition since it first appeared as a manifesto pledge in 1974. The issue of open government under the New Conservative administrations between 1979 and 1997 is then explored and its impact on Labour thinking is considered. This section maps out an incremental process in which we can trace the gradual acceptance of the principle of freedom of information in ‘low’ politics. At the same time the Labour Party gradually moved away from its traditional preoccupation with a collective/residual rights approach towards an individual rights approach that emphasized freedom of information as a right of citizenship. In section three New Labour’s freedom of information policy is evaluated, prime movers influencing change are identified and policy documents are reviewed. Here, a particular emphasis is placed on a critical evaluation of the radical thinking that preceded the introduction of legislative change in this area. The legislation is then reviewed and a retreat from the radicalism of previous thinking is identified. The chapter concludes with an appraisal of the implications of freedom of information reform for the relationship between the individual and the state in the UK.

The Four Pillars of ‘Closed’ Government: Institutions, Sovereignty, Tradition and Secrecy

It is argued in this chapter that the state and its political institutions, the concept of parliamentary sovereignty which determines their status, the political tradition that underpins them and the secrecy laws that protect them, may be viewed as the four pillars of ‘closed’ government in the UK. This argument is central to both our understanding of the freedom of information issue in Britain and the politics of pressure groups that advocate its introduction.

Institutions

This is an argument that has been widely used to account for the rise of new social movements in Western Europe but has largely been ignored in