Draft Chapter for the collection 'New Labour and the Constitution: Twenty Years On' (forthcoming)

'Three harmless words': New Labour and Freedom of Information

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> A Freedom of Information Act is not just important in itself. It is part of bringing our politics up to date, of letting politics catch up with the aspirations of people and delivering not just more open government but more effective, more efficient, government for the future (Blair 1996).
>
> Freedom of Information. Three harmless words. I look at those words as I write them, and feel like shaking my head till it drops off my shoulders...The information is neither sought because the journalist is curious to know, nor given to bestow knowledge on 'the people'. It's used as a weapon (Blair 2011, 516-517).

Tony Blair's views, expressed a decade and a half apart, reflect some of the paradoxes and contradictions that accompany Freedom of Information laws. New Labour's experience is typical of how such reforms develop. Openness laws are frequently powerfully championed, often by new governments, and then ruefully regretted. As resistance increases and doubts within government grow, they often emerge from conflict as messy compromises (see Worthy 2017).

A Short History of Freedom of Information

Freedom of Information (FOI) laws, also known as Access to Information or Right to Information laws, grant legal access to government information. They are normally subject to a series of exceptions or exemptions, covering, for example, national security and parts of the policy-making process, and are overseen by some form of appeal system, frequently a Commissioner or the courts.

FOI laws have a radical pedigree and somewhat mysterious origin. The idea of 'opening up' government to popular scrutiny became a rallying cry of revolutionaries in England in the 17th century and France and America in the 18th century (see Worthy 2017). Although the world's first functioning law, a Freedom of the Printing Press Act in 1766, was (briefly) introduced in Sweden, earlier claims have been made for edicts in India and China. Philosophers from Kant to Bentham and Rousseau to Marx all supported greater openness, though it took until the mid-20th Century, having been pushed by political outsiders such as Woodrow Wilson and Leon Trotsky, for the idea to become part of mainstream political and legal discourse (see Darch and Underwood 2010: Fenster 2012).

The United States passed an FOI law in 1966, followed by a handful of countries including France in 1978 and New Zealand, Australia and Canada in the early 1980s (Ackerman and Sandoval-Ballesteros 2006). It wasn't until the 1990s that FOI laws began making their way into statute books in any significant number, with key countries such as the UK (2000) India (2005) and Nigeria (2011) passing them (Darch and Underwood 2010: Fenster 2012). There are now around 100 laws in various forms around the world.

FOI is, in essence, a 'moral idea', stemming from the belief that a government should be 'accountable' and 'open to scrutiny' (Darch and Underwood 2010, 49, 7). It has also become, as Birchall puts it, an 'apparently simple solution to complex problems—such as how to fight corruption, promote trust in government...and foster state accountability'(2014, 77). It is in some

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senses an 'empty signifier' that can be 'filled' by very different interpretations or emphasis (Stubbs and Snell 2014, 160). Though ostensibly a neutral legal reform it also provokes political conflict because of the threat of exposure and scrutiny: proposed laws often meet closed door resistance from bureaucracies and politicians. Consequently, as it is develops and once it is in place, transparency remains a 'contested political issue that masquerades as an administrative tool' (Fenster 2012, 449).

The paradoxes of FOI

Given its radical aura, the passage and operation of FOI has been likened to a 'kind of morality play' (Wald 1984, 649). For politicians, such laws are hard to resist in opposition but hard to escape from once in power (Worthy 2017). Committing to a FOI sends out strong messages of radicalism, change and empowerment that new governments and self-styled radical politicians find difficult to resist. The symbolic power is frequently magnified by the fact that they are often part of a wider set of legal, constitutional or political reforms (Evans 2008).

More practically, FOI laws are, it is argued, often passed out of naivety or inattention by inexperienced and new governments. Some are responding to reformist impulses from within, pressure from the media or as a response to a scandal (Berliner 2014: Darch and Underwood 2010). Politicians also have more political motives for introducing them, from the simple politics of wrong footing or neutralising opponents to the more long term, calculating intent of securing of information when they are out of power (Berliner 2014).

Politicians can, at least in the short term, earn a form of 'moral capital' from supporting openness (Birchall 2014: Michener 2009). FOI laws are symbolically important, especially when they play into the radical self-image of reformists and modernisers. A call for transparency 'tells a transformative narrative' as it 'enables – and, indeed forces [a] virtuous chain of events' towards more accountable and democratic government (Fenster 2015, 151).

Yet, despite all their power, FOI reforms are voteless policies. Across the world, with the partial exception of India, nowhere has the promise of FOI attracted significant votes. In the UK Home Secretary Rees made this explicit in the late 1970s when he pointed out that: 'the Guardian can go on for as long as it likes about open government...but I can tell you that in my own constituency of 75, 000 electors I would be hard pressed to find many who would be interested' (Rees 1987, 32).

FOI is the story of radical aspirations and symbolism meeting political reality, resistance and disinterest. FOI is often dependent on a small group of key figures, 'lone crusaders' pushing FOI from 'within' (Snell 2001, 347).The conventional wisdom is also that politicians rapidly fall out of love with transparency and the potential for exposure, uncertainty and unpleasant surprises it brings (Berliner 2014).

However, dropping outright a promised policy that speaks of 'freedom', 'information' or a 'right' is problematic. The symbolism, radicalism and 'moral' angle of FOI, even its resonant name, make it difficult to quietly get rid of. The accusation of betrayal from the media, political opponents and from factions within the party makes backpedalling difficult, if not impossible. What happens instead is that FOI proposals are stalled, blocked and channelled away behind closed doors. The classic trajectory of FOI reform is one of survival through dilution (Archibald 1979; 1993). After many lengthy internal battles FOI laws often emerge, if they emerge at all, as messy compromises (Michener 2009).

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Old Labour versus New Labour

Government secrecy was an obvious target for Labour's reformist impulses since the beginning of the party itself. The commitment to open up government was one of Labour's oldest constitutional reform promises, dating back to its October 1974 manifesto and appearing in every one since. In 1972 it was a Labour politician, Richard Crossman, who famously wrote of the 'English addiction to secrecy' (Crossman 1972, 99). The UK constitution was, argued reformers, built up of 'secretive components...heaped one on top of the other' (Leigh 1980 20). Constitutional conventions and rules, from Collective Responsibility to the Royal Prerogative, interlocked with more than 100 laws preventing the release of information, with the infamous all-embracing Official Secrets Act 1911 at its centre. The result was what Rowat described as a 'principle of discretionary secrecy' (1979, 19). The 'English addiction' meant 'it is as natural for the secretary of a village cricket club to stamp the minutes of its committee meetings confidential' as it is for a Cabinet Secretary to keep Cabinet notes secret (2003, 347).

By the 1980s, despite social and technological change, secrecy remained firmly in place with, it was said, even the brand of tea drunk by ministers technically an official secret (Hennessy 2003). Secrecy was culturally pervasive and almost instinctive 'built in to the calcium of a policy makers bones' (Hennessy 2003, 346). Information control was also lodged deep within the executive dominance, one-party government and strict lines of control of the Westminster system (King 2015). One 1980s study concluded that 'levels of secrecy [are] a direct consequence of the foundations of British democracy' (Robertson 1982,22):

> All government information will be seen as having consequences for their ability to exercise the degree of control the structure of responsibility implies and for their political survival since any information may affect their reputation and popularity. (Robertson 1982, 2).

In the early part of the twentieth century, the Labour party provided the only sustained push for openness. A very small group of radical Labour MPs, including the future Prime Minister Ramsay MacDonald, had opposed the passage of the Official Secrets Act of 1911 (Dorey 2008, 184). Leading left intellectuals, such as the Webb's, were also 'early champions of the public right to know' (Theakston 1992, 177). Ramsay MacDonald spoke of how 'bureaucracy...hides itself from the public gaze' and argued 'it is just upon these offices that the wind of public opinion should blow most freely' (Theakston 1992, 176).

However, Labour's first leaders were themselves torn between the wish to be open and the convenience of secrecy. MacDonald's first government in 1924 issued press releases detailing, for the first time, attendees and subjects at Cabinet meetings but by 1929 this practice was dropped and MacDonald spoke of the importance of secrecy and complained of leaks (Theakston 1992: Dorey 2008). In the 1930s George Landsbury complained how this 'secrecy business was impossible' but Arthur Henderson opposed reforming the Official Secrets Act 'as we might want to use it when we are back in power' (Theakston 1992, 178).

Table 1: Labour and Transparency Reform 1924-2000

1924	MacDonald details of Cabinet Meetings
1968	White Paper *Information and the Public Interest* and Public records Act change
1974 (October)	FOI in manifesto
1977	Croham Directive

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199?	Fisher's Right to Know Bill
1996	Blair's CFOI speech
1997	FOI White Paper
1999	FOI draft bill
2000	FOI law receives assent
2005	FOI law comes into force

The 'long march' to FOI began in the late 1960s when Harold Wilson began the first serious set of open government reforms. He proposed a minor change to the Public Records Act 1958, changing the 50 year rule on document closure to 30 years, and a review of the Official Secrets Act as part of an attempt at 'getting rid of unnecessary secrecy' (Hennessy 2003a; Theakston 2006). Both the Foreign Office and the Ministry of Defence fought back even against these minor proposals. The Cabinet Secretary feared it could result in 'a far too liberally minded report – almost Swedish' (Theakston 2006, 164). The Public Records Act was reduced but the review never took place.

Pressure then was applied from the left, after a series of controversial Officials Secrets Act trials in the early 1970s. As a result, the Labour administration of 1974 then entered power with a manifesto pledge to introduce some form of FOI law. Not for the last time, it was felt that ministers were unaware of what the pledge really meant (Michael 1982). Despite the support of Home Secretary Roy Jenkins, the proposals were greeted with disinterest and delayed (Dorey 2008). After Wilson resigned, the new Prime Minister James Callaghan was 'decidedly unenthusiastic' about openness (Dorey 2008, 191). By 1977 the only clear reform was a voluntarily scheme, the Croham Directive, designed to disclose policy information. Little information was forthcoming and, within two years, the Times concluded that 'the government demonstrated blatantly it cannot be relied upon for the voluntary disclosure of official information' (Leigh 1980, 270).

In all its time in power in the 190s and 1970s Labour consistently failed to fulfil its promises of openness. The policy was delayed, resisted and compromised with 'a series of 'non-decisions' at numerous levels (Burch and Holliday 1996, 171). Partly this was about politics. As with New Labour later, Callaghan felt any reform would be electorally valueless while most other ministers felt open government had 'no votes in it' (Vincent 1998: Michael 1982, 204). But there lay a deeper paradox for reformers. As Diamond explains (2011) 'the structures and processes of central British government...offer very substantial power to the incumbent administration', and this 'power paradox' is itself 'a formidable obstacle to radical political change'(68). To pass an FOI law required not only overcoming 'secrecy' laws and layers of culture and practice, but potentially challenging and upending the UK's political system itself, at just the time when a Labour government would be advantaged by it.

The 1980s were then crucial for the re-invigoration of FOI. A campaign group, the Campaign for Freedom of Information (CFOI), began to build pressure with a series of reforms at local government. Throughout the 1980s and 1990s CFOI also sought specific public promises from opposition leaders that were then 'recorded and heavily publicised' thus 'pinning them down, committing them to a policy' (Wilson 2011, 184–185). As a measure of CFOI's success, in 1984 the new leader Neil Kinnock had promised to make FOI a 'priority' for any future Labour administration.

The push chimed with a current of Labour Party thought on breaking up power given renewed emphasis by Thatcherism. At Westminster, FOI's long support on the Labour backbenches had built

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into a powerful current of cross-party support, seen through a series of Private Members' Bills in the 1980s and early 1990s, culminating in Mark Fisher's Right to Know Bill that galvanised wide support from all sides of the House. Kinnock's late 1980s policy review promised 'a FOI Act covering information held by national, regional and local government' (Labour Party 1989, 59). Before the 1992 general election the Shadow Home Secretary promised that 'a Freedom of Information Act is ready for early enactment. If a Labour government was elected on Thursday I would be able to send the headings of a Bill to parliamentary draughtsman on the following day' (Gundersen 2008, 226).

New Labour

While FOI had a long, if uncertain, 'Old Labour' lineage, it was also given a distinctly New Labour spin. Not only did it fit with its tactics and wider reform programme but it also represented and symbolised key new Labour ideas and aims in the mid to late 1990s.

On a narrow, partisan level, in the 1990s, New Labour's push for FOI was opportunistic. In the early 1990s, John Major had explicitly rejected a full FOI law and instead passed a non-statutory Code of Practice on openness that was largely ignored (Vincent 1998, 323). Blair argued that all the Code really did was to 'underline the need for action on a far greater scale' (Blair 1996). Pushing openness reforms shone a harsh light on a secretive and 'sleaze'-ridden Conservative government of John Major. Under the catch-all term 'sleaze', the media revealed a stream of 'corruption, semi-corruption or near corruption' covering sexual 'misconduct', lobbying and financial mis-dealings (Dunleavy, Weir and Subrahmanyam 1995, 603). No fewer than nine members of the government stepped down over sex scandals alone (Denver 1998).The 'drip' of scandals helped make Major's administration 'the government that could do no right' and meant that it 'plumbed depths of unpopularity never before experienced by a modern government' (Denver 1998, 15–16). Blair himself spoke of how 'it was a media game and as Opposition we played it' and explained, despite his later regrets, it was 'just too easy to score' (Blair 2011, 127). Conveniently for New Labour, the continued exposure was justified as a 'right to know' issue by the media (Turner 2013).

Beyond the convenience, FOI exemplified Labour's radicalism and its new approach towards government and the people. It 'symbolised Labour's core values', reflecting its self-image as modernising and anti-establishment (Scammell 2001, 530). Alongside the Human Rights Act, FOI had become a cause championed by progressive legal and political actors, a 'very fashionable idea' driven by 'radical lawyers' connected to or in the party (interview with David Clark 2015). The politicians behind it saw themselves as 'outsiders from power' in a party that was, and viewed itself as, distinctly 'non-establishment' (interview with David Clark 2015).

More concretely, FOI also fitted neatly with several different parts of the constitutional reform programme, from the rights agenda of the Human Rights Act to the democratic innovations promised across local and central government. More broadly, if Labour's constitutional reform programme was about 'breaking up centres of power', then the ruction of information hierarchies offered a simple yet radical way to do it (Straw 2010, 360). Professor Peter Hennessy later argued that FOI was a completion of democratic reforms began with the arrival of the popular vote:

> ...the Freedom of Information Act … was the completion of the circle that began with the extension of the franchise. It took from 1832 to 1948 to get to one person one vote, but the remaining … test [is whether] an elector could cast an informed vote. The answer was that until the Freedom of Information Act very probably not. It has to be seen as part of completing the virtues of the franchise in an open society. (Justice Committee 2012a)

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Blair later described FOI, somewhat ruefully, as a 'revolutionary offer' (2011, 127). In symbolic terms it was, as it represented a radical break with past sectretive practices (Dorey 2008, 201). Foley characterises FOI as 'captivating in its radical simplicity [although] it may appear nothing more than connecting a disjunction between theory and practice … in reality it would represent a profound change in the sources and usage of power within the British government system' (1999, 69).

The key question, given past experience, was how committed Labour were in 1997. Blair's own commitment appeared to go a long way back. In 1984, as a newly elected MP, he called on Margaret Thatcher to pass an FOI law in the wake of the prosecution of the civil servant Sarah Tisdall: 'Does the Right Honourable Lady agree that there is an urgent need for legislation so that … the government cannot conceal the scale of what they are doing?' (Rentoul 2001, 126).

Between 1992 and 1997, Blair repeated his commitment to FOI in at least eight major interviews, four ministerial statements and one major speech (CFOI 2000b, 4–5). The key event came with Blair's 1996 speech to the CFOI Awards in 1996. The organisers of the event hoped to obtain a definite commitment to legislate for FOI (interview with James Cornford 2005; Wilson 2011). Blair's speech, written by Pat McFadden, perhaps exceeded expectations. Blair outlined the centrality of FOI to New Labour's agenda and philosophy in a rich symbolic 'justifying narrative', explaining why FOI was needed (Michener 2011)**.** In Blair's speech, FOI formed a crucial part of New Labour's vision of how Britain was to be modernised and its government was to function. It sent out a series of signals about Labour's radicalism, its vision of modernisation, a new government morality and its intent to change citizen–government relations.

Blair presented FOI as a practical step in modernising democracy:

> A Freedom of Information Act is not just important in itself. It is part of bringing our politics up to date, of letting politics catch up with the aspirations of people and delivering not just more open government but more effective, more efficient, government for the future. (Blair 1996).

Blair argued that secrecy created 'disaffection from politics' and 'disillusion' and that FOI was an 'essential' part of the constitutional reform programme, because it was about 'genuinely changing the relationship in politics today' towards a 'partnership' (Blair 1996). FOI fitted with a wider, if vague, process of 'democratisation and reconnecting government with the people'. He ended the speech by reaffirming New Labour's commitment to FOI legislation:

> We want to end the obsessive and unnecessary secrecy which surrounds government activity and make government information available to the public unless there are good reasons not to do so. (Blair 1996)

Blair joked that people may cynically see his promise as a media ploy, to be quietly changed once Labour were in office: 'people often say to me today: everyone says this before they get into power, then, after they get into power you start to read the words of the government on the screen and they don't seem so silly after all' (Blair 1996).

Doubts?

Behind the enthusiasm and seeming inevitably, there were doubts about Labour's programme in general and FOI in particular. The wide-ranging constitutional reform programme made Tony Blair, somewhat reluctantly, the 'most far reaching, radical reformer of the formal edifice of the constitution since Oliver Cromwell' (in Matthews 2015, 312). Blair himself, however, 'was always ambivalent about the merits of constitutional reform' and was said to have a curious 'box ticking

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mentality', pushed by a 'moral and political duty to see it through' as an inheritance of John Smith, rather than any deep belief (Flinders 2009b, 42, 44, 38).

What reinforced this was the sense that there was no overall grand design holding changes together. The party's ideas 'deliberately eschewed any engagement with first principles, with grand plans and templates' (Flinders 2009b, 46–47). Instead it was 'curious and contradictory amalgam of radicalism and conservatism' (Dorey 2008, 2). Flinders labelled it 'bi-constitutionality' (2009) with 'significant change...only in relation to the federal–unitary dimension' but 'no dramatic shift from a majoritarian to a consensual model of democracy at the national level. The Westminster model continues to be the default option in terms of democracy in Britain' (63). David Marquand described it as a 'revolution without a theory. It is the muddled, messy work of practical men and women...responding piecemeal and ad hoc to conflicting pressures. (Marquand 1999, 1). It was a 'revolution of sleepwalkers who don't know quite where they are going or quite why' (Marquand 1999, 1).

For FOI in particular there was a lack of awareness at the top of the party. As with the 1970s, it was an issue that was 'good for a handclap at conference' but nothing more (private information). Blair hinted at this later when he said that FOI was 'agreed by most at the time' (Justice Committee 2012c). Straw (2012) claimed that the 'few words' of the manifesto commitment were 'about all the serious intellectual consideration that the PLP or the Shadow Cabinet had given to this inherently complex issue' and that there was a 'collective naivety' at senior levels about the implications (275–276). He claimed, 'FOI was not thought about with any seriousness' before government (275).

But what of the public? Blair claimed in his 1996 speech that four out of five voters supported the policy. Two 'state of the nation' surveys by Democratic Audit in 1991 and 1995 found strong support for FOI: in 1991 77% tended to agree or strongly agreed with having a statutory right of access to information, a figure that rose by 1995 to 81%.

Yet even if support was wide it was unlikely to be deep. Historically the British electorate was 'notoriously uninterested' in its constitution. Only the 'Great Reform Act of 1832 and the Parliament Act 1911' stand out as topics of 'intense political and public debate' (Flinders 2009, 37). Since the 1970s discussion about constitutional change, Scotland aside, was 'primarily conducted amongst the elite – politicians, academics, lawyers and journalists' (Bogdanor 2009, 6). Generally the public was 'little interested' or 'perhaps even unaware' of what Labour wished to do (Bogdanor 2009, 6). Gallup found constitutional issues to be the ones that excited the least interest (Sanders 1998, 241).

Freedom of Information 1997-2000: Radicalism, Reaction and Struggle

Once in power FOI entered what was described in the US as a time of 'backstage in-fighting and front stage dissembling' (Kennedy 1978, 115). The story of FOI in the UK runs in three distinct stages: a first 'radical' stage when a few powerful actors pushed for a far-reaching white paper, a second period of reaction and reversal when other ministers and officials watered down the draft bill and a third, final struggle within parliament between cross-party MPs strengthening the law and the government seeking a minimal Act. The story is thus of the mobilisation and counter-mobilisation of small factions supporting first a radical and then a lesser policy.

Table 2: Changes to FOI policy 1997-2000

	White Paper	Draft Bill	Bill in Parliament

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Scope	100,000 public bodies (excluding Parliament and police)	100,000 public bodies (including Parliament and police)	-
Harm Test	'Substantial' harm	Harm	
Time scale	?	40 days	20 days
Scope of access	Open ended (include cabinet papers)	Exclude Cabinet papers	-
Veto	None	Veto power for cabinet members and council leaders	Reduced to cabinet-and must consult
Other exclusions	Privacy?	Health and Safety, 'mosaic', ministerial power to create new exclusions	Health and Safety, 'mosaic', ministerial power to create new exclusions all removed
Appeal system	Commissioner	Commissioner and Tribunal	
Justification/narrative	Anti-establishment popular tool	Local tool	

The Radical Phase: Your Right to Know 1997-1998

In May 1997 FOI policy was given to Chancellor of the Duchy of David Clark. However, it was also strongly supported by Blair's formidable Lord Chancellor Derry Irvine, who chaired key constitutional reform cabinet committees, including the CRP-FOI committee that oversaw FOI. Together they opted for a radical option, rejecting lesser, smaller changes suggested by officials. Lord Irvine feared FOI would be bogged down and decided to move at speed, drafting his own radical set of proposals described as the 'thoughts of chairman Irvine' (Worthy 2017). His radicalism and speed had, everyone presumed, the support of the new Prime Minister and his approach in the committee was compared to Thatcher in the way he directly attacked and criticised those who raised doubts. The other ministers were either uninterested or intimidated. Only the Home Secretary Jack Straw opposed the law, managing to negotiate an opt-out for the police.

By December of 1997, just six months after coming to power, Irvine and Clark had created an eye-catching initial proposal, in the form of a consultation document called *Your Right To Know*. It offered, as the radicals hoped, a far-ranging law with very extensive right to information, low level protections for government and, something to chill the bones of officials and Ministers, no veto to stop information being released (Cabinet Office 1997). The media and activists cheered the new proposals and welcomed its radicalism (Birkinshaw 1998). Clark described Your Right to Know as a 'very, very radical White Paper' (Worthy 2017). As table 2 shows, its scope, its approach to judging information release and the power it gave to the commissioner who regulated it stood out among FOI laws elsewhere. Released with an enthusiastic preface from Tony Blair, it was, as David Clark joked, one of the few policies to be welcomed by the Guardian and Daily Mail (Worthy 2017). It was unclear if the radicals expected the policy to survive intact or hoped that any compromise would retain some the law's strengths.

Despite its welcome, some commentators expressed concerns. Important issues, such as how FOI interacted with Data Protection, were left unaddressed while the innovative tests of whether release causes 'substantial harm' was legally untested (Birkinshaw 2001, 292). They also found that 'the

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tone of the White Paper was hopelessly optimistic'(Birkinshaw 2001, 292). Professor Robert Hazell, an ex-official who had studied FOI, summed up the worries:

> The White Paper offers a very generous Freedom of Information regime, probably the most generous yet seen. It is almost too good to be true. That is the central concern: that this is an unreal White Paper brought out without the full understanding or wholehearted commitment on behalf of departments or Ministers. (Hazell 1998, 3)

The concerns came to pass. After the welcome given to the White Paper by the media, FOI policy hit a brick wall. As time passed, the government began to have second thoughts about exposing themselves to too much openness. Scandals had begun to hit the new government. Perhaps there should be more protections for government? Perhaps the law was a little too generous? As seen elsewhere, the longer FOI was considered the less appealing it became (Worthy 2017). Maurice Frankel, the head of CFOI, warned how the passage of time and changing context would serve to dilute any FOI plans and create more cautious policy:

> The more used to office ministers become the more plausible the case for caution will seem...being caught out is unpleasant...the press is becoming less admiring and more sceptical; even one or two opposition spokesmen are showing the signs of scoring points (**Independent 26/7/1998**).

Reaction and Reversal: the Draft Bill 1998-1999

The Labour government had indeed begun to experience the effect of scandals and scrutiny, from the Ecclestone scandal, that touched on Blair himself, to the Millennium Dome. FOI was not the only area of constitutional reform where doubts crept in. By 1999 Labour had been able to park or freeze progress in other areas of constitutional reform when they proved too difficult, inconvenient or divisive. Voting reform was put on hold, as was later the more complex and politically limiting 'stage two' of House of Lords reform (Flinders 2009).

In July 1998 responsibility for FOI was then handed to Jack Straw-the Minister who had opposed the radical policy in the committee (Straw 2012). Crucially, David Clark had been sacked from the Cabinet and Lord Irvine, though still in government, had seen his influence wane amid a series of scandals and missteps. Straw claimed he called a 'temporary halt' to the plans during an 'ill-tempered meeting' of CRP-FOI (2012, 279). As he began the complex task of legislating, the fears of other ministers, including Tony Blair, began to creep in. One person present at the meetings described them as 'full of worst case scenarios' as officials and ministers from across government became more anxious. Officials nicknamed the CRP-FOI committee 'Crap FOI' (Straw 2012). Blair, rather than realising 'too late' what his generous promises had wrought, specifically instructing Jack Straw to cut them back and even attempting to introduce a blanket protection for 10 Downing Street (Justice Committee 2012c).

More than a year after the White Paper, in the summer of 1999, a very different set of proposals emerged. Parts of the redrawn bill was necessarily different as it dealt with the numerous difficult areas, such as privacy, left undone by the paper. It offered a series of new protections from non-disclosure, normal for any FOI law. The new FOI 'bill' was full of strong protections for those in power, with a government veto and 40 day turnaround time. In a novel innovation, it gave ministers the power to *create new reasons* to exclude information (Birkinshaw and Parry 1999). The narrative shifted, as Straw himself showed when he emphasised the 'local' or 'service' aspect of FOI in an article in the Independent:

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> ...parents will be better able to find out how schools apply their admissions policies. Patients ...how hospitals allocate resources...citizens will be able to find out more about their local police force. It's at this local level that constitutional reform matters (**Independent 25/5/1999c).**

The new daft was heavily criticised. Some questioned even if the new proposals could be described as 'Freedom of Information' at all and felt that the draft was so repressive in order that parts be 'dropped' to ease its passage in parliament. The law only survived the revisions because the committee agreed a 5 years implementation gap between passing the law and coming in to force, so that the 2000 Act would come into force in January 2005, a full election cycle away. This decision ostensibly gave records managers more time to prepare but was also made because Labour believed they would not be in power in 2005 when the law came into force (Worthy 2017).

FOI in Parliament 1999-2000

In Parliament, a cross-party group of MPs and Peers tried to strengthen the law, removing and blunting some of the worse parts. As table 2 above shows, the all-embracing veto power was reduced, as were some of the more repressive parts of the bill, such as the power to create new exclusions from the law. However, the government used its control of agenda and partisan loyalty to split the alliance and, with a landslide majority of 179, there was limited room for manoeuvre. Straw proved a highly capable strategist in pushing the law, compromising and making concessions at key moments. As happened in other countries, supporters of FOI were nervous of pushing too far when the government seemed so willing to drop the bill (and said so repeatedly via the whips).

Whether the government would truly abandon FOI was unclear. Straw claims that the 'slow progress' of the bill, especially in the later House of Lords stages, 'became the break point', as 'I'd had enough of FOI' (2012,2 81). He 'half thought that the best thing might be to bin the whole Bill or kick it into the long grass with a royal commission' but Blair overruled him (2012, 281). A widely predicted 'final battle' in the House of Lords was circumvented when the government did a deal with Lib-Dem Peers and a similar 'last ditch' battle in the Commons stage was cut short when the bill was guillotined, with the timing of debate cut short. As happened elsewhere, the radical plans of activists were watered down by the fear of politicians. The FOI Act 2000 was an uneven compromise between reformist hope and politicians' anxieties.

Why did FOI survive?

The story of FOI is one of an increasingly reluctant set of politicians, slowly pushing a policy they disliked and feared. So why did FOI not go the way of other New Labour reforms voting reform or stage 2 of the House of Lords reform, which were quietly put on hold or left to gather dust? Superficially, the political costs of 'losing' FOI were low. It was not a vote winner and, the Guardian and Independent aside, large parts of the media were uninterested.

Those involved characterised FOI as a mistake that could not, or was not, stopped in time. Blair claimed it was developed 'with care but without foresight' (Blair 2011, 127) and wove a picture of a new, inexperienced government blundering naively into passing a radical law whose full consequences became clear 'far too late'. His government legislated 'in the first throes of power' and 'it was only later, far too late in the day, when the full folly of the legislation became apparent' (Blair 2011, 517). Straw claimed that CFOI had been 'extremely active' and that ministers had 'become word perfect in the mantra of change' while not foreseeing 'counter-balancing arguments' that would 'hit us in government' (2012, 275).

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FOI in part survived because of Labour's unusual commitment to its own pledges. Straw referred to the manifesto as a 'holy text' created with 'immense care' (2012, 281). As McDonald and Hazell point out, Labour

> ...came to power determined to implement its programme. This...is true of any new administration. But there was a particular edge to New Labour's commitment. This was a party which had been out of power for eighteen years, which had wearied of the charges of betrayal which critics had levelled at the Wilson and Callaghan governments and whose leader had spoken often of the need for sustained achievement over two successive terms. (2007, 6)

More than this was the symbolic effect. FOI had been trumpeted, not least by Blair himself, as an anti-establishment, transformative tool, a weapon of accountability and a new, central right for citizens. Dropping FOI would make it the party of conservatism and secrecy. FOI was a 'test' of New Labour's own image, as a struggle 'between the … pretensions of New Labour as a party of reform against the instincts of a no-longer new- Labour as a party of government' (**Guardian 4/4/2000**). If FOI was dropped, each inevitable scandal or secrecy issue would then highlight it. Backbench Labour MPs would continue to push Private Members' Bills. The Liberal Democrats and Conservatives threatened to take over FOI. The symbolism of FOI would boomerang and, crucially, not go away.

For Blair, there was personal credibility attached. As CFOI hoped, he had left several very public hostages to fortune, including his 1996 speech and the preface to the 1997 White Paper. The media repeated quotes and extracts from his speech and promises. Straw recalled, 'I saw Tony [Blair]' was 'exasperated as I was' with FOI. However, Blair had 'made a categorical promise in the John Smith memorial lecture' as well in the manifesto commitment and had let the White Paper (called the 'David Clark extravaganza') go 'public' (Straw 2012, 281). 'How credibly', Blair asked, 'could we explain dropping a Bill with our names on it which was close to completing its passage through Parliament?', and he concluded that 'we'd better let the Bill go through' (281).

FOI 20 years on

'How many leaders have come into office determined to work for more open government, only to end by fretting over leaks, seeking new ways to classify documents and questioning the loyalty of outspoken subordinates?' (Bok 1986, 177).

Most FOI regimes exist in a constant state of change and flux as legal rulings, political reforms and diverse use continually re-shape the boundaries of the laws. Politically, enthusiasm and support also waxes and wanes in a cycle of 'optimism, pessimism and revisionism' (Snell 2001, 343,350).

FOI remains conflicted 20 years after its assent and 15 years in power. The law has been a success, with high levels of use deep support for it across the media and civil society. While other constitutional reforms simply moved power between elites FOI is a genuinely popular instrument of accountability (Bogdanor 2010: Fenster 2017). Yet politicians and others have vehemently and publically expressed their dislike. The Act has perhaps come to symbolise something that is 'wrong' or 'right' about contemporary British politics.

Comparatively, the UK's FOI regime is well functioning with around 45,000 requests per year and a robust two stage appeal system. Use is also varied with requesters made up of members of the public, journalists and NGOs, with the public representing the largest group (Worthy and Hazell 2016). Many of the battles fought before it became law, over the harm test or veto, appear to have

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had little effect. The veto, which Blair and Straw argued was a 'red line', has only been used 9 times since the law was introduced.

While FOI has helped generate high profile exposes and greater openness, from the MPs' expenses scandal to visitors to Chequers, it is at the local, micro-political level where it has become a valuable tool, with around 80% requests going to local government (Worthy and Hazell 2016). In 2012 an FOI request triggered the mass resignation on an entire parish council (BBC 2012). As the former Scottish Information Commissioner put it, the success of FOI can be seen in the pages of local newspapers (Dunion 2011).

There were concerns that the Act would be 'a sheep in wolf's clothing' (Austin 2007). However, assessments in 2010 of central government and later local government concluded that FOI had made public bodies more transparent and accountable (Hazell et al 2010: Worthy 2013). Post-legislative scrutiny of the law by a House of Commons Select Committee reached very similar conclusions:

> The Freedom of Information Act has enhanced the UK's democratic system and made our public bodies more open, accountable and transparent. It has been a success and we do not wish to diminish its intended scope, or its effectiveness' (Justice Select Committee 2012)

In March 2016 a government-appointed Independent Commission on Freedom of Information reinforced this positive assessment:

> The Act is generally working well... It has enhanced openness and transparency...there is no evidence that the Act needs to be radically altered, or that the right of access to information needs to be restricted (Independent Commission on Freedom of Information 2016, 3).

Experimental work at parish level using FOI requests has shown how the law can work to promote greater openness (John et al 2017). Whether it has altered political trust, as Blair hoped, is a more complex question, and it appears to have a little effect either way in an era of declining trust and surveys show no change due to FOI (Whiteley et al 2016: Justice 2012: MOJ 2010). Nor is it clear whether or how voters are influenced by available information (Bauhr and Grimes 2014). The MPs' expenses scandal of 2009, triggered in part by an FOI, showed how exposures can reinforce rather than reveal, and also, despite the sound and fury, had little effect on voting patterns in the subsequent General Election (Pattie and Johnson 2010: Allen and Birch 2014).

As happened elsewhere, the UK's FOI law has gradually expanded. There was limited change in 2007-2009 to cover exam bodies and databases in 2012. In 2015 the strategic rail authority came under FOI, owing to a change in accounting designation. In 2017, the government promised greater pro-active transparency over pay and FOI statistics. Scotland's separate FOISA covering devolved matters was extended to cover independent schools and certain leisure trusts. Since 2016, the Information Commissioner has championed the inclusion of private sector bodies directly under FOI (rather than simply using contractual clauses on FOI in procurement agreements), something the Independent review suggested and MPs have continually pushed through a series of Private Members' Bills.

Yet a reaction also exists. Looking across the ten years, there is evidence of a clear slowdown in responses at central government level: 'Since 2010, departments have become less open in response to FOI requests' while 39% of requests were 'fully or partially withheld' in 2010 a full 52% were 'fully or partially withheld' in 2017 (IFG 2018). There have been a series of attempts at 'dismantling' or chipping away at the law since 2005, with roughly one attempt floated every 18 months to 2 years.

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Tony Blair proposed introducing a fee for requests (2006), a Private Members' Bill attempted to remove Parliament from the law (2007) and, under Brown, the proposed the Monarch and Heir were removed from the ambit of the law (2010). The Conservative-Liberal Democrat Coalition then mooted a clampdown on 'industrial users' (2012-2013) and the Conservative government suggested amending the veto (2015-2016). In 2015 the Cameron government announced an Independent inquiry into the FOI Act and gave it a remit to examine the potential effect on decision-making and costs of the law. Despite fears it would seek to water down the law, the FOI Commission's clear endorsement of the Act in 2016 and the sheer scale of the resistance to change by the media and civil society halted any attempt to limit it (Worthy and Hazell 2016). Of all these attempts, only the removal of the Monarch and Heir, pushed through at the end of the 2010 Labour government with little publicity, was successful.

One key to the strength or weakens of a law is the level of political support. While Blair was ambivalent, Gordon Brown and then David Cameron both made strong speeches in favour of openness. Nevertheless, it was openness on their terms: Cameron pledged 'true Freedom of Information' through a 'transparency revolution' with aim of making our government one of the most open and transparent in the world' (BBC 2009: Prime Minister's Office 2010). However, while he pushed a series of apparently radical open data reforms from 2010 onwards, many of which were aimed at the private sector, in 2015 he also set up the FOI Commission to restrict the Act and described the law as something that was 'furring up the arteries of government' (Worthy and Hazell 2016).

For some senior politicians and officials, FOI carries a narrative of failure and abuse. Blair argued his FOI law was a two-fold failure. First, it had stopped government decision-making:

> If you are trying to take a difficult decision and you're weighing up the pros and cons, you have frank conversations... And if those conversations then are put out in a published form that afterwards are liable to be highlighted in particular ways, you are going to be very cautious. That's why it's not a sensible thing (Guardian 2010).

The former Cabinet Secretary Gus O'Donnell claimed that it has 'hamstrung' government, though when pressed he could only offer three isolated examples (see Worthy 2017). O'Donnell's successor as Cabinet Secretary, Jeremy Heywood, while praising the Act, agreed that FOI was 'sand in the machine' and that 'there are some extra costs that come with the freedom of information act, there are some chilling effects' (Institute for Government 2015).

Research points towards a minimal effect across government as whole. The Justice Committee (2012, 32) 'was not able to conclude, with any certainty that a chilling effect has resulted from FOI'. In central government there was concern, with isolated instances but no general trend (Hazell et al. 2010). At local government level similarly there appear to be a few exceptional cases but no systematic effect (Worthy 2013; Shepherd et al. 2011). In both Scotland and England there was some concern at informal recording but also some evidence of a positive professionalising effect (Richter and Wilson 2013).

However, there appears to be growing resistance and avoidance at the top. In 2018, following complaints by Scottish journalists, a report by the Scottish Information Commissioner concluded that the government had sought to create a 'two-tier' system delaying journalists or politically sensitive requests (Scottish Information Commissioner 2018). At the same time, Northern Ireland's most senior civil servant, David Sterling, informed the RHI inquiry that records had not been kept of certain sensitive political meetings: 'safe space where they could think the unthinkable and not

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necessarily have it all recorded' with the DUP and Sinn Féin having "got into the habit" of not recording all meetings (BBC 2018: BBC 2018a).

The second problem, according to Blair, is that FOI is being misused. As he put it:

> The truth is that the FOI Act isn't used, for the most part, by 'the people'. It's used by journalists. For political leaders, it's like saying to someone who is hitting you over the head with a stick, 'Hey, try this instead', and handing them a mallet (2011, 516-517).

Though the evidence does not support this claim, it tells us much about how politicians see it. Blair regretted it while Cameron described FOI as a 'buggeration factor' (Worthy and Hazell 2016). FOI is seen as a symptom of create too much openness and too little knowledge (Heclo 1999). In a 'low trust high blame' environment like the UK FOI is viewed a 'gotcha tool' for shock exposure (Fung and Weil 2010). Others argue that such 'hyper-democratic problems' are less a failure of 'openness' as an ideal than a failure of elites to respond properly to the politics of a new age (Richards and Smith 2015, 48–49). Moreover, any successful FOI should make politicians nervous and upset-public laments are markers of success.

At a distance of 20 years, FOI shows us how complex and unpredictable the legacy of its constitutional reforms are, and the extent to which they are as much about perceptions of success as concrete realities. That a popularly supported change is so deeply disliked is telling. Few leaders have addressed themselves so forcefully after passing reforms the party have pushed for 30 years:

> You idiot. You naive, foolish, irresponsible nincompoop. There is really no description of stupidity, no matter how vivid, that is adequate. I quake at the imbecility of it (Tony Blair 2011, 516).

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