



Who pays the piper? The political economy of freedom of information

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ABSTRACT

If freedom of information is fundamental to contemporary democracy, why have democratic countries differed so markedly in their willingness to pass laws enshrining formal rights of access to government files? This article demonstrates that an analysis grounded in comparative political economy can provide a compelling answer to this question. Specifically, it demonstrates that the more highly coordinated a country's economy, the less transparent it is likely to be. Through a comparison of the United States and Germany, this article argues that in coordinated market economies, ongoing negotiations between the state and the peak representative bodies provide privileged access to information about the government, and indeed privileged channels of influence over government action. Public access to official files threatens this privileged access. In less coordinated economies, however, firms lack this privileged access; they are likely to favor access laws as a partial substitute, especially since such laws are more consistent with the highly fragmented and competitive environment in which they operate. By further comparing Sweden and the United Kingdom, it also demonstrates the limits of this explanation, suggesting that historical sequences and classic political variables should also be taken into account.

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1. Introduction

The spread of freedom of information laws in recent decades has been widely praised for many reasons. The ready availability of information about what governments are doing and why is increasingly recognized as an important precondition for the meaningful exercise of many fundamental human rights (Banisar, 2005; Birkinshaw, 2006a,b; Florini, 2007a), and above all for democratic accountability and deliberation (Bathory & McWilliams, 1977; Bay, 1977; Piotrowski, 2007, pp. 107–108). A related body of thought sees freedom of information as an important mechanism for ensuring that public authorities are responsive, efficient, and effective in the formulation and execution of policy (Finkelstein, 2000, pp. 6–7; Florini, 1998, pp. 53–56; Heald, 2006, p. 64).

The widespread consensus that the legitimacy of public authority depends, at least in part, on its transparency (Roberts, 2006b, pp. 1–2) begs an important question: why have democratic countries, where questions of legitimacy presumably carry so much political weight, differed so markedly in their readiness to enshrine access to information in law? This article will make the case for an explanation grounded in political economy. It will do so by comparing four consolidated democracies which have legislated at different times, and in which the relationship between political and economic spheres takes quite different forms.

This article is divided into four sections. The first section situates this approach within the existing literature on the origins of freedom of information. The second section shows why, in principle, the presence of neo-corporatism (the formal integration of comprehensive, centralized economic interest groups into the policy-making process) should delay the introduction of laws providing general public rights of access to official documents. The third section shows that this prediction is consistent with two archetypically-contrasting real-world political economies: the United States and Germany. Finally, the fourth section uses two apparently divergent cases—Sweden and the United Kingdom—to consider the limits of political economy as an explanation, and how economic factors might interact with the more straightforward political factors which are usually invoked to explain the development of information rights.

2. Existing explanations for freedom of information

Since the end of World War II, there has been a dramatic increase in the number of countries with laws enshrining the presumption that documents produced by governments in the ordinary course of their activities should be generally available, and that documents should only be withheld in exceptional cases. In 1950 only one country unquestionably had a functioning law which met these criteria; by the mid-1980s there were still fewer than a dozen; in 2010, almost all democratic countries have one, as do a good many which want to appear democratic (standard references are Banisar, 2006; Vleugels, 2009). Using these laws as an indicator of overall levels of transparency is commonplace, and for good reason. Lawmaking is a time-consuming and costly process

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under the best of circumstances; its very existence suggests acceptance of the link between the legitimacy of government authority and the transparency of politically-powerful groups, including lawmakers themselves. Moreover, at least among the consolidated democracies, the introduction of a law that provides access on the terms laid out above is likely to result in the availability of more official information, thanks to the existence of relatively professional bureaucracies, active civil societies, independent media, and effective courts. Where these factors are present, it is unlikely that governments would risk introducing access laws merely for the sake of window-dressing.

The four countries which will be examined in this article occupy contrasting positions within this overall trend towards legislative rights. Sweden introduced the world's first access law in 1766 as part of the Decree on Freedom of the Press (*Tryckfrihetsförordning*); the present regime can trace its origins back to 1809, and attained its modern form in 1949. Freedom of information in the United States is usually said to have been established by the *Freedom of Information Act 1966*, although the first law which purported to provide a right of access was actually the *Administrative Procedure Act 1946* (the significance of this will be examined shortly). The United Kingdom and Germany were much slower to legislate: the UK's *Freedom of Information Act* entered into force in 2005, followed in 2006 by the German *Informationsfreiheitsgesetz*. Although these four laws were introduced at very different times, there is little to distinguish them in formal terms. All of them meet the core definition of freedom of information offered above, and although the two older acts have been amended several times in recent decades, there has never been any serious suggestion of outright repeal. There are some differences between their procedural requirements and enforcement mechanisms, and each contains a few idiosyncratic exemptions, but these are not materially relevant to the issues which will be addressed in this article: all four laws exempt internal administrative draft documents from disclosure, as well as documents which, if released, would harm the financial interests of third parties. These laws represent, in short, a case of quite remarkable policy convergence.

The idea of invoking political economy to explain why these countries converged on this common form at different rates might seem a little surprising to those familiar with the historical sources. These sources usually describe the origins of freedom of information in political terms, emphasizing the struggle of democratically-inspired civil society campaigners, journalists, and the occasional politician against a bureaucracy clinging resolutely to its traditional privileges. This account is not to be discarded lightly. Thinkers as far back as Max Weber have argued that the modern administrative state has an inherent institutional interest in secrecy (1978 [1922], pp. 992–993), and indeed all laws were delayed by—and introduced over the objections of—important sections of the bureaucracy and the political executive. On the other hand, this political narrative cannot be accepted uncritically as a sufficient explanation for why these countries differ from one another; since bureaucratic resistance and democratic rhetoric were present in each, an explanation for cross-national variation must necessarily refer to other factors.

The invocation of political economy 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, for example, been explained as a response to pressure from transnational financial interests and the functional requirements of increasingly integrated international markets (e.g. Blanton, 2002; Florini, 1998, p. 56; Florini, 2007b, pp. 5–10 et sqq.; Lord, 2006, pp. 5–10). Economic factors have also been linked to the development of access rights in the rich consolidated democracies, but there is less consensus on the nature of the relationship or its effects. The diffusion of data protection has, for example, been explained as a result of pressure on laggard governments from businesses eager not to lose opportunities for the cross-border transfer of personal information (Bennett, 2001). This suggests that the influence of economic interests is at least possible in the case of freedom of information; although, since freedom of information

directly affects the core interests of the state itself, it is not clear that its development can be understood as a peaceful process of harmonization and diffusion (an assumption made by e.g., Bennett, 1997). Conversely, there is considerable evidence that economic norms, if not actual interests, serve as justifications for resistance among officials to the implementation of disclosure laws once they are in place (e.g., Roberts, 2006a), but the question of whether this illuminates their *origins* have not yet been explored. These are the gaps which this article aims to fill.

3. Political economy and freedom of information

The claim that political economy can explain the relative timing of freedom of information legislation rests on two assumptions about firms in capitalist democracies: that they generally have an interest in obtaining official information, and that they generally enjoy sufficient political clout to obtain favorable policies. Neither is particularly controversial.

Recognition of the economic value of official information goes back at least as far as Max Weber, who pointed out that industrial production oriented towards a mass market encourages a preference among producers for a government whose actions can be predictably factored into calculations of risk and profitability (Weber, 1978 [1922], p. 1095). Since documents are the lifeblood of any bureaucratic organization, access to official files arguably contributes to the “predictability” of government in several ways. First and foremost, it gives advance warning of intended policy changes or the development of new rules. Secondly, and on a similar note, official files constitute the record of how public officials have applied those rules to particular cases in the past, thereby providing a guide to how they are likely to be applied in the future. In both cases, access means businesses are in a better position to adapt to the administrative environment, or to lobby for changes to it. Transparency should also have indirect, but equally salutary, effects on the quality of public administration. Officials who know their activity could be scrutinized at any time are likely to anticipate criticism and avoid it by refraining from widely-unpopular or illegal conduct (Prat, 2006).

The idea that capitalist interests enjoy considerable influence over democratic governments is likewise widely-accepted, although the precise manner in which this power is exercised has been the subject of long-running and heated debates. One need not enter into the finer points of neo-Marxian theories of state power to accept this; one need only recognize that firms enjoy two distinct, mutually-reinforcing advantages: their material wealth, which assists them when competing against other interests for the attention of policymakers, and their indirect control over the government's own tax base by virtue of their direct control over investment, employment, and production. This means that policymakers have a strong incentive to take firms' interests into account even if firms themselves are electorally weak compared with the groups who are also competing for attention (Gintis & Bowles, 1986, pp. 64–65 et sqq.; Jessop, 1977, p. 336; Lindblom, 1977, pp. 170–200).

Although these two factors could obviously combine to produce widespread, decisive support among firms for freedom of information, the extent to which they do so in practice is likely to vary. Access laws are not necessarily cost-free for either governments or firms, but the nature and distribution of these costs is likely to vary with the nature of the relationship between state and economy. Structural factors are also extremely likely to influence both the extent to which firms as a group are able to reach a consensus among themselves on specific questions of public policy, and their ability to exert influence over public officials in pursuit of that consensus. For the sake of analytic clarity, this will be demonstrated in this first section by adopting the conventional distinction in the literature on comparative political economy between coordinated, organized, or “neo-corporatist” capitalist economies on the one hand, and disorganized, liberal, or “pluralist” capitalist economies on the other; the model will be refined somewhat in the course of subsequent sections.

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