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Accountability, open government and record keeping: time to think again?

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and record
keeping

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Abstract

Purpose – The purpose of this paper is to re-visit debates around accountability, openness and record keeping and to suggest that existing assumptions need to be challenged.

Design/methodology/approach – This is a scholarly essay based on published and unpublished works. The focus is on parliamentary democracies where the Queen or a titular president is head of state.

Findings – The primary role of records managers as active citizens should be to provide systems that will enable others to discharge their duties. The primary role of archivists in a plural democracy should be to secure the record for the future. The notion that archivists need to protect the record from political pressure should be re-considered. A more pressing need is for political pressure to be applied at the highest level, to ensure that there is a record.

Research limitations/implications – The research has been limited by the fact that the author has not had access to the Cabinet Office.

Social implications – If the upper echelons of the British Government are to function effectively then the collapse of proper procedures and proper record keeping described by Tony Blair needs to be addressed as a matter of urgency.

Originality/value – This article is original in so far as it offers a new perspective on issues concerning accountability, openness and records and it challenges existing orthodoxies.

Keywords Governance, United Kingdom, Government, Politics, Ethics, Freedom of information, Records management, Information systems

Paper type Viewpoint

Introduction

Research conducted by Ketelaar (2010) demonstrates that amongst established scholars in North America, Australia and the UK there has been a remarkable focus on user studies in recent years[1]. By comparison, accountability seems to have fallen a long way down the professional agenda. Yet concerns that records may not be created or may be created poorly have been expressed, not least by former Prime Minister Tony Blair, so it seems timely to re-visit debates around accountability, openness and record keeping (Blair, 2010; Gough, 2007; Moss, 2005; Committee of Privy Counsellors, 2004; British Broadcasting Corporation, 2010). It is noticeable that much of the literature on this topic tends to be written from a primarily North American and Western European cultural perspective. Harris, himself from South Africa, observed of a conference on political pressure and the archival record in 2003 that among the keynote speakers there was “not a single person who was not white” (Harris, 2005, p. 173). Cox (2006, p. xiv) explicitly acknowledges that he writes from a North American perspective. In the meantime, the International Records Management Trust has carried out a great deal of work on accountability and record keeping from the perspective of



developing countries, particularly through their Information for Accountability Workshops (IRMT, 2000). The impact of this work on thinking in the Western World has been limited[2].

This article will endeavour to highlight a variety of issues around accountability, openness and record keeping and will do so from the perspective of parliamentary systems of government, especially those that are characteristic of Commonwealth countries where the Queen or a titular president serves as head of state. In principle, these include the world's largest democracy, India. They include also Australia, Barbados, Canada, New Zealand, the UK and a number of smaller countries. This should be a timely perspective as existing literature, with the exception of that from Australia, has relatively little to say about the role of parliamentarians and political parties (McKemmish, 2005; Hurley, 2005).

Accountability

It is not easy or straightforward to define accountability. Cox and Wallace build their work on a definition produced by Kevin Kearns, a professor of management. They state:

In his view, accountability meanders through “legal and regulatory mandates”, “negotiating with [...] clients, special interest groups and other stakeholders”, “discretionary judgements, calculated risks, and entrepreneurial ventures,” and finally, advocacy involving the need to “interpret and communicate the needs of citizens to higher authorities who have the power and resources to meet those needs (Cox and Wallace, 2002a, p. 3).

They add that, while Kearns “does not explicitly discuss records (he mentions ‘red tape’ and information systems), it is our contention that the chief value of records is, in fact, a broad accountability binding individuals with each other and with governments, organizations, and society across space and time” (Cox and Wallace, 2002a, p. 4).

It has been argued elsewhere that it is helpful to have a definition of accountability that is more directly related to record keeping concerns (Tough, 2007). In particular, there is a distinction to be made between probity and responsibility, between doing things right and doing the right things. In this view, probity should be about ensuring that public property and funds are used honestly and protected from being siphoned off for private gain. Responsibility, in contrast, is about making the correct decisions on matters of public policy. Academics and others with an interest in record keeping have addressed the distinction between probity and responsibility and suggested that supporting probity is primarily a matter for records managers whilst ensuring responsibility – primarily in the long-term judgement of historians – is a matter for archivists. Moss (2006, p. 63) argues:

[...] the public “archive” fulfils an essential juridical role within a democratic society as the fiduciary guardian of the record of government by which it ... [can] ... be judged to have acted responsibly [...][3].

Angelika Menne-Haritz, Director of the Federal Archives in Germany, addresses the same question saying:

Records managers and archivists do not have the same duties [...] Processes can either be supported or analysed (Menne-Haritz, 2006).

It could be argued that this distinction between probity and responsibility is mirrored in recent developments in the UK where records of routine business are now supposed to be managed through electronic document and records management systems (EDRMS) under the eye of the Departmental Record Officer while the most sensitive records are cared for separately in continuing registry systems to which few record keeping professionals have access.

It is unfortunate that in discussing definitions, Cox and Wallace do not discuss what the public good is and/or what communal benefits are. Considering the title of their book – archives and the public good – this may seem surprising but they are not alone in the oversight. This may help to explain why writing on records and accountability has had a tendency to focus on scandals, grievances and compensation[4]. The politics of grievance can have a tendency to become corrosive. Fortunately, an alternative perspective is offered by Bovens and O'Neill. Bovens (1998) emphasises the important distinction between active and passive responsibility. O'Neill (2002a) has developed this perspective further arguing that demands for accountability unrestrained by active citizenship can lead to the creation of an audit culture. The audit culture she argues is characterised by dwindling trust and grievances and claims for compensation that are sometimes poorly grounded.

The challenge of trust and suspicion was directly addressed by O'Neill in her Reith Lectures of 2002. She suggests that: "[...] the culture of accountability ... actually damages trust rather than supporting it" (O'Neill, 2002b). This is because "[...] it assumes a passive view of human life and citizenship." Referring to Kant, she argues that we need to see "[...] duty as the basis of rights and justice." This she regards as offering a more productive approach than the "[...] new accountability [...]" which requires "[...] detailed conformity to procedures and protocols, detailed record keeping and provision of information in specified formats and success in reaching targets." O'Neill (2002b) offers a positive vision for a better way forward:

Intelligent accountability, I suspect, requires more attention to good governance and fewer fantasies about total control. Good governance is possible only if institutions are allowed some margin for self-governance of a form appropriate to their particular tasks, within a framework of financial other reporting.

A similar orientation has been expressed by Chenge (1998), writing about human rights in Tanzania, who states:

[...] there can be no true democracy in a country where the majority of the people do not know their rights *and duties* (emphasis added).

An interesting example of active citizenship in relation to record keeping is provided by the Care Leavers Association. Their CLEARmark scheme awards accreditation to local authorities, Non Governmental Organisations and others for good record keeping (Care Leavers Association, 2008). This is just one aspect of the work of the Care Leavers Association, a mutual-help association of people who were brought up in care and who provide support to children in care and to adults, especially the survivors of physical, sexually and emotional abuse.

In thinking about accountability, a key question is who is being held to account. It seems reasonable to propose that it is much more important that top rank politicians (Prime Ministers, Cabinet Ministers, ministers in provincial, state and devolved

administrations) are accountable than that park rangers or even local authority chief executives are held to account.

When and how accountability is realised are crucial issues also. Arguably, ill-conceived attempts at openness have backfired. The former Prime Minister whose government was responsible for introducing Freedom of Information (FOI) legislation now regards this as being the case (Blair, 2010, p. 127). In the UK, over the last decade these developments have had a significant and negative influence on record keeping at the highest levels because they have inhibited top rank politicians from supporting the creation of full and accurate records through the formal machinery of government. Presciently, Todd (2005, p. 319) flagged this up by posing the question "In our determination to hold our political representatives accountable in the short term, are we losing something more precious: the ability to judge them with due reflection?"

During the same period, the general focus of accountability and its attendant media spotlight has shifted away from those who make the key policy decisions and towards those responsible for making those policy decisions effective. This is not to say that the Bloody Sunday enquiry, Shaw Enquiry and a succession of enquiries into the murder of children being cared for under the supervision of local authorities are unimportant. Nonetheless, the overall pattern does appear to be one in which an FOI regime and greater open-ness in government have tended to shift attention down the political pyramid. In this context it is apposite to recall Hurley's (2005, p. 165) comment, based on his experience as Keeper of the Public Records of the State of Victoria:

[...] government watch-dogs are susceptible to subtle pressures to compromise their integrity. Their organisational budgets and personal career prospects lie in the hands of those whose political interests such a role calls them to defy.

Cabinet government and parliamentary democracy

The existing literature on records and accountability includes a good many case studies in which secrecy is described as having been used to deny rights, manipulate public opinion and otherwise abuse privilege (instance that may be cited are: Cox and Wallace (2002b); McKemmish (2005); and Whorley (2005)). Todd (2005, p. 314) comments that there "are many dramatic and disturbing tales to tell about secrecy and repression". Countervailing evidence is rarely produced. Perhaps this is a natural concomitant of secrecy. Yet such evidence is not impossible to find. For instance, the work of the code-breakers at Bletchley Park during the Second World War was conducted in absolute secrecy because the Nazi regime would assuredly have changed their Enigma system if they had reason to believe it could be de-coded by their enemies. The successful maintenance of secrecy in the code-breaking project shortened the war in Europe by a significant period (Hinsley, 1993).

The implicit hostility to secrecy that is observable in much records-related literature may be unfortunate. The need for a degree of confidentiality in the formation of public policy was eloquently described in 1987 by Sir Patrick Nairne, formerly Permanent Secretary at the Department of Health and Social Security in Britain. Nairn (1987, p. 43) argued that the existence of a parliamentary system should impose restrictions on any FOI regime:

The Government is responsible [...] through the accountability of the Cabinet and individual Ministers to the elected Parliament. The House of Commons [...] will expect Government decisions [...] to be disclosed *first* to the House.

In other words, new policy initiatives should be announced in Parliament first and be debated there rather than through the media via government-inspired leaks.

Nairne argued also that there must be some private space where policy options are discussed and alternative possibilities are evaluated and weighed. Although he quotes the Campaign for Freedom of Information[5] as accepting this, evidence published by the BBC in 2010 suggests that in reality anxiety about the difficulties of securing such a space has led to widespread and systematic failure to create records (British Broadcasting Corporation, 2010). The testimony of Tony Blair, former Prime Minister of the UK, is worth quoting *in extenso* on these matters:

[...] governments like other organisations, need to be able to debate, discuss and decide issues with a reasonable level of confidentiality. This is not mildly important. It is of the essence. Without the confidentiality, people are inhibited and the consideration of options is limited in a way that isn't conducive to good decision-making. In every system that goes down that path, what happens is that people watch what they put in writing and talk without committing to paper. It's a thoroughly bad way of analysing complex issues (Blair, 2010, p. 517).

With the benefit of experience we might subject the arguments advanced by the Campaign for Freedom of Information, in particular the assertion that greater openness would lead to greater trust, to critical analysis. For ordinary people the rule of law and public order are vital defences against anarchy, crime and impoverishment. For FOI and openness in government to deliver any beneficial effect in relation to those public goods, it is necessary that they should enhance public trust, as the Campaign for Freedom of Information consistently argued they would. Yet there seems to be little evidence of any such development.

The work of Chapman (1987) on relationships between ministers and civil servants is relevant in this context. Writing in the 1980s he identified a number of inter-connected developments in the UK that were tending to undermine both the doctrine of ministerial responsibility – that ministers and not civil servants are answerable to Parliament – and the doctrine of the collective responsibility of the Cabinet. These developments include:

- Public enquiries and select committees questioning civil servants in public.
- Ministers failing to support their civil servants when the latter come under criticism, even though constitutional conventions dictate that they cannot defend themselves.
- Politicisation of the civil service, particularly through the introduction of special advisers nominated by ministers but paid by the tax payer.
- The apparently widespread practice of officially condoned and highly selective leaking, i.e. of ministers foregoing the right to receive and consider policy advice and its implementation outside the public arena.
- The development of management by objectives and targets that began with the Fulton report in the 1970s and which implies a form of accountability incompatible with ministerial responsibility.
- Falling standards on the part of politicians and ultimately the public.

It could be argued that these and other subsequent developments (including the introduction of FOI legislation) have been instrumental in achieving the shift of accountability away from the top, i.e. ministers, and towards the middle ranks of the machinery of government – civil servants, police forces, National Health Service (NHS) boards and trusts, local authorities and so forth. Tony Blair especially has been accused of being excessively focussed on media management and of adopting a presidential style in his dealings both with the Cabinet and Parliament[6] (in which he had a large majority) to the detriment of proper procedure (Gough, 2007). Apparently the latter criticism was even made by the Chancellor of the Exchequer (Blair, 2010, p. 311). Two highly regarded inquiries have produced reports that appear to confirm these criticisms in relation to disregard of due process – the Butler Report on Intelligence on Weapons of Mass Destruction (Committee of Privy Counsellors, 2004) and the Hutton Report on the death of Dr Kelly (Hutton, 2004). Moss (2005, pp. 577-90) has demonstrated that the tendency to disregard proper procedures has had serious consequences for record keeping in the Cabinet Office, particularly during the years when Tony Blair held office as Prime Minister. Sir Richard Wilson too has expressed concerns in relation to public records and especially e-mails, saying:

I have a real worry that fairly important decisions get taken in emails which are actually a fairly ephemeral medium. I have quite a worry about public records in that area (Wilson, 2002, cited in Todd, 2005, p. 315.)

Ethics and responsibility

The final bullet point derived from Chapman's analysis is probably the most important. He writes:

One cannot escape the conclusion that the standards of public conduct have declined and that they reflect a decline in the standards of society as a whole (Chapman, 1987, p. 63).

Chapman (1987, p. 64) goes on to argue that:

Institutional tinkering cannot be expected to resolve fundamental problems of moral standards and integrity in public affairs.

These remarks point towards one of the apparent defects in archival literature about accountability, namely that it often overlooks the defects of democracy. Foremost amongst these is that many of the electorate are uninterested, poorly informed and lack both relevant experience and judgement. A study of 16-24 year olds by the Hansard Society revealed a gap between digital information gathering and knowledge. As the Society's report put it:

[...] they were unclear about the purpose and procedural structure of Parliament (Coleman *et al.*, 2002, cited in Johnson, 2005, p. 302).

A further factor is a tendency towards venality on the part of the electorate. This has an inherent impact in undermining concepts of public good and collective interest[7]. As O'Neill (2002b) has formulated it, the "[...] underlying difficulty [...] is that [such approaches] assume a passive view of human life and citizenship [...] They don't answer the active citizen's question 'what should I do?'"

Cox makes interesting observations on the benefits of faith in relation to accountability. Under the rubric "the need for spirituality in the information age" he

refers to the Bible and particularly “the description of the Tower of Babel early in Genesis and the occasion of Pentecost in the second chapter in Acts” (Cox, 2006, pp. 13-15). Similar points have been made by a Gondwe. Gondwe quotes the Bible, the books of Jeremiah and Esther in particular, and the Koran as providing warrant for good record keeping (National Archives of Malawi, 2006). The authors of this article have no argument of principle against the positions taken in their different ways by Cox and Gondwe. In fact we are inclined to agree that moral standards are essential to the achievement of collective goods and would argue, in agreement with O'Neill and Bovens, that positive citizenship is called for too. We are aware, however, that sometimes people who sincerely embrace faith and uphold high ethical standards in private life adopt a very different attitude to government business. Interestingly, Murove (2003), in his ethical inquiry into the future of the African archival tradition does not address the ethical underpinnings required to make nation states or governments deliver public goods but focuses instead on communities.

Who needs to do what?

There is a serious problem. It is quite simply too serious to be left to archivists and records managers alone. The practice of taking minutes of meetings in the Cabinet Office has apparently been reinstated, having been almost abandoned in the early years of the Blair administration. Nonetheless, there is a real risk that of “[...] an anodyne ‘official’ [...] record being captured, while the real one – the one reflecting our business activities – remains awhile in e-mail boxes [...] but is lost [...] [eventually]” (Todd, 2005, p. 316). The intervention of very senior civil servants is required if real progress is to be made. Moss has described how top civil servants played a leading role in the reform of central government record keeping in the first half of the twentieth century, not least in the Treasury and Cabinet Office. Political leaders have played a role too. Winston Churchill initiated an overhaul of registry systems whilst Secretary of State for the Colonies in the 1920s (TNA, 1921). Churchill’s intervention built on foundations laid by a Treasury expert, Mr Drayton. Drayton comprehensively reorganised the Dominions Registry and spent six months overseeing its work, in order to demonstrate that his methods worked (TNA, 1919). It was only once this had been achieved that the Dominions Office was brought into being as a department of state. Furse (1962, p. 91) describes the active role in record keeping matters taken by a Canadian Prime Minister, also in the 1920s. More recently, and as Prime Minister, Tony Blair influenced developments too. The e-government initiative was run from the Cabinet Office but signally failed to ensure adequate record keeping in that Office. One of the achievements of the e-government unit was to obtain large sums of public money to pay for EDRMS. A crucial aspect of Home Civil Service EDRMS is that records classified as confidential or secret cannot be handled through them. Implicitly, a continuing registry service is recognised as being necessary for the really important issues and the records relating to them. A major challenge is to capture e-mails and other communications that occur outside the processes of Cabinet meetings, Cabinet sub-committees, the “Star Chamber” and so forth. Meijer drew attention to these challenges, not least distinguishing the ephemeral from the significant, as long ago as 2001 but there is little evidence that they have been resolved (Meijer, 2001). To achieve the necessary transformation significant resources will need to be committed and that implies that the boundary between what matters (and goes into continuing

registry-style systems) and what is less important (and goes into EDRMS or its successor) has to be agreed at the highest level. This is a task for Permanent Secretaries, the Head of the Home Civil Service, Cabinet Ministers and even the Prime Minister. Implicit in this conclusion is the recognition that one form of accountability that may be of particular significance is upwards accountability: the accountability of middle ranking civil servants for the effective implementation of improved records management.

The role of archivists and records managers

There should be an opportunity here for records managers to provide expert advice on standards, systems, classification, indexing, metadata and retrieval. There would be a strong argument for those records managers to be based in the Treasury or some other central organ of government. In recent years The National Archives (TNA) has attempted to take on something akin to the role envisaged. A former Keeper even claimed:

Our combination [with the Office of Public Sector Information] [...] has given us policy leadership over information management (Ceeney, 2008, p. 66).

It is open to question on grounds of principle whether it is appropriate for TNA which has a fiduciary role in preserving records for long-term accountability to muddy the waters by getting involved in the design of current systems (Moss, 2005, pp. 589-92). No matter how records management advice is provided, there must be a very strong case for audit to be carried out entirely independently. As Hurley (2005, p. 159) puts it:

[...] audit must not be done by the same person or body responsible for setting standards or enforcing compliance. The recordkeeper's performance [...] is being audited too.

The current situation

Recently a Conservative – Liberal Democrat coalition has come to power. The evidence as to which way matters are moving is not yet clear. The fact that two parties are cooperating on a formally agreed programme may well be a factor that encourages greater adherence to proper procedure in the Cabinet Office. Each side has a vested interest in being able to demonstrate that policy has been implemented in accordance with their power-sharing agreement. The creation of the Office of Budget Responsibility (OBR) is an encouraging indicator too. The OBR has been established explicitly to create an “arms-length” relationship between The Chancellor of the Exchequer and economists and allied professionals working in the civil service. As such it is a step in the direction of re-asserting the independence and political neutrality of the civil service. Likewise, the scrapping of the identity card scheme, introduced as part of the e-government initiative under the seemingly innocuous terminology of “citizen entitlement card” (Johnson, 2005, p. 301) is an encouraging indication that the coalition wishes to distance itself from New Labour's e-government initiatives. There are cross-currents also. The Liberal Democrats in particular have a long-established enthusiasm for FOI and openness and may struggle to grasp the necessity of creating a sacrosanct area of confidentiality around policy formulation and discussion in the upper echelons of government. The publication of Lord Mandelson's memoirs gives rise for concern too. The appearance of *The Third Man* (Mandelson, 2010) just ten

weeks after Mandelson had been a serving Cabinet minister represents serious failure precisely in relation to confidentiality around policy formulation. Lastly, it is clear that drastic retrenchment measures will have to be taken by the coalition. These could be of critical importance if record keeping systems continue to be regarded as back office waste rather than an essential underpinning of governance and accountability.

Conclusion

Some recent literature about the role of record keeping professionals in relation to accountability seems to assume that “whistle-blowing” is an honourable or at least an acceptable practice. We need to re-think this attitude. As O'Neill (2002b) has expressed it:

Ideals of transparency and openness are now so little questioned that those who “leak” [...] confidential information (other than personal data) often expect applause rather than condemnation, and assume that they act in the public interest rather than betray it. Yet this high enthusiasm for ever more complete openness and transparency has done little to build or restore public trust.

The primary role of records managers as active citizens should be to provide systems that will enable others to discharge their duties. The primary role of archivists in a plural democracy should be to secure the record for the future, not to get entangled in contemporary controversies. Similarly, we should re-consider the notion that archivists need to protect the record from political pressure. A more pressing need is for political pressure to be applied at the highest level, to ensure that there is a record to protect. Ultimately, records management standards are not a substitute for political and ethical standards.

Notes

1. The author is grateful to Prof Ketelaar for providing a copy of his research notes on this topic.
2. Richard Cox and David Wallace did include a chapter in their multi-author volume on this work: Barata *et al.* (2002).
3. He also points out that concepts of accountability and responsibility that operate in the public sector may not translate to the private sector, arguing “The foundation of modern enterprise is limited liability”.
4. Some instances are cited in Hinsley (1993).
5. “[...] this campaign will not seek the disclosure of information that would: [...] (g) breach the confidentiality of advice, opinion or recommendation tendered for the purpose of policy-making (Campaign for Freedom of Information, 1984, cited in Nairne, 1987, p. 40).
6. A 2002 Green Paper “In the service of democracy” included proposals for making MPs more accountable to their constituents but none about making ministers more accountable to Parliament. Cited in Johnson (2005, p. 297).
7. Any parliamentary candidate who has undertaken door to door canvassing can testify to the prevalence of the “what will you do for me” mentality.

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