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The Last Forum of Accountability? State Secrecy, Intelligence and Freedom of Information in the United Kingdom

By Melina J. Dobson

Abstract

The official mechanisms of intelligence oversight and accountability in the United Kingdom are arguably disjointed and ineffective. Thus, informal actors such as journalists, have played a more significant role. In addition, a rise of whistleblowers and leakers, such as Chelsea Manning, have highlighted the importance of online archives as an avenue for accountability. The United Kingdom is legally bound to place official documents on the public record at the National Archives. Sensitive material on intelligence and other security subjects majorly impedes the bulk release of documents. Inevitably, the inclination to ‘weed’ sensitive material from mundane documents has resulted in a costly declassification process. Evidence suggests that historians successfully investigated these subjects through the use of archives, despite the efforts of officials to obfuscate. This article argues that historians increasingly constitute the last forum of accountability and that routine declassification is an important, but neglected aspect of our machinery of intelligence oversight.

'The history of the world is the world's court of justice'.

Friedrich Schiller, Resignation (1786)¹

Intelligence accountability is now a vast industry. European Court judgements prompted the United Kingdom (UK) to put its security and intelligence services on the statute book in 1989 and 1994 respectively, expanding the regulatory framework. Thereafter, the co

ntroversies over renditions and secret prisons attracted the attention of both the UK and European courts. In 2006, the Council of Europe and the European Parliament both launched enquiries into secret prisons in Eastern Europe established by the Central Intelligence Agency (CIA). In the 21st Century, intelligence accountability has become a particular challenge for government. More than ever, there is a conflict of interest between accountability and preserving national security. This has amplified the demand for intelligence accountability mechanisms to be more effective. It has also increased the number and diversity of bodies watching the secret state (Leigh, 2011: 3). Even a broad definition of accountability falls short of encapsulating its full extent. In recent years, state accountability has often been portrayed as a key element and the litmus test of a democracy (Schmitter and Karl, 1991). It denotes whether a power can be held answerable for its actions or not. A large part of this mechanism is the function of formal oversight. Born and Wetzling (2007) observe there are now many aspects to the landscape of accountability. Some of these are part of the official structure of the state, for example, the UK Parliament's Intelligence and Security Committee. Whereas other components of the landscape have developed unofficially and in parallel, such as, whistleblowers and journalists (Gill, 2007; Phythian, 2009; Dover and Goodman, 2009; Hillebrand, 2012).

Since the Snowden revelations in June 2013, many of which concerned the UK's Government Communications Headquarters (GCHQ), civil liberty campaigners and human rights organisations have become more interested in the issue of oversight and accountability (Phythian, 2007; Gill, 2016). Journalists working with 'off-the-record sources' like whistleblowers and leakers have traditionally considered themselves to be the 'fourth estate' or 'shock troops' of intelligence accountability (Johnson, 2007). Their role has been expanded by working in partnership with increasingly active electronic whistleblowers who are unearthing unpleasant things, which must then be probed by formal bodies. These are now joined by an increasing band of campaign groups, activist lawyers and government watchers conducting what some have deemed 'oversight from below' (Van Buuren, 2014; Hillebrand, 2014). Does this signify that we have now entered an era of 'regulation by revelation' (Aldrich, 2009)? These

¹ Translated from original, 'Die Weltgeschichte ist das Weltgericht'.

informal processes also have their problems, not least as Aldrich's term implies, since these revelations are episodic, uneven and sometimes seemingly random. Some have argued that we are moving towards 'ambient accountability' where many official, as well as, unofficial actors are involved in the accountability process and often interact (Aldrich and Richterova, 2018). What is undeniable is that the current oversight structure of the intelligence services in the UK is, by all accounts, an increasingly 'cluttered landscape' (Howarth, 2014: 20).

One of the criticisms of the more formal elements of the oversight structure is that it concerns itself with efficiency and effectiveness, as well as lawfulness and civil liberties, issues that could be considered to stand in conflict with one another. Moreover, the Intelligence and Security Committee has often been led by former cabinet ministers who have previously worked closely with the secret services, including Tom King (Northern Ireland), Margaret Beckett (Foreign Office and Department of Trade and Industry) and Sir Malcolm Rifkind (Foreign Office). Parliament boasts a range of competing select committees that often conduct retrospective inquiries into major public issues or perceived problems related to intelligence. Furthermore, a range of bodies specialise in financial accounting including the Public Accounts Committee. Competing with these groups of politicians are the judges, either in the courts, as specialist reviewers or as leaders of independent investigations and commissions (Behn, 2001: 2-7; Bochel, Defty and Kirkpatrick, 2014). Working mostly behind closed doors with classified material, their involvement hardly ever sees the light of day. Therefore, it is difficult to judge the effectiveness of official accountability and oversight measures. The opinions of former secretaries of state, who one might think would have an informed view on this matter, vary widely.

It is therefore welcome that over time there is further independent examination of events by academics, often using declassified documents to access the intelligence domain. In their analysis of the landscape of accountability, Born and Wetzling (2007: 317), pinpoint five different layers of accountability: (1) Internal regulations of the services including whistleblowers, (2) robust measures enforced by the executive, (3) parliamentary oversight, (4) reviews conducted by the judiciary, and (5) external oversight by independent civil liberty groups and human rights organisations. Amid this jostling crowd the importance of official document declassification and the subsequent analysis by academics has tended to be overlooked in the literature thus far. An omission, which this article will address. Increasingly, academics compete in this crowded market of accountability. Historians and political scientists in particular contribute *inter alia* through the analysis of declassified public records that accompany special investigations such as Lord Chilcot's inquiry into the Iraq War.

Often such experienced academics provide testimony for interpretation of newly declassified documents and offer comment on proposed legislative changes. The last two decades have seen a revisiting of the importance of historical revisionism generated by new archives.

Legitimate historical revisionism refers to the idea that the established record of historical events will necessarily continuously be questioned through new evidence (James McPherson, 2003 and Marnie Hughes-Warrington, 2013). Unlike the waves of 'holocaust denials', genuine historical revisionism is concerned with the re-interpretation of events based on evidence stemming from reliable sources, such as major archives. It also recognises the part that recent historical records can play in accountability. This article spotlights academics as suppliers of longitudinal accountability by providing historical and more contemporary examples of their successes. A historian's analysis of the past is still a lengthy process, consisting mostly of the meticulous scrutiny of a plethora of archived files. It is an upward struggle to ensure that documents are preserved or indeed records created in the first instance. Record keeping and the accessibility of official records to academics are essential in order to facilitate latent accountability and oversight, through the proper review of primary sources. Historians such as A. J. P. Taylor, Peter Hennessy, David Anderson and Christopher Andrew have sequentially battled successfully with the secret state in order to secure a reliable version of historical events, arguably making them the last forum of accountability.

Historians as investigators

The UK National Archives (Kew, London) was known as The Public Record Office for most of its long history.² The act of releasing a document, perhaps previously a highly secret document, for inspection by ordinary citizens was known as 'placing a document on the public record'. Since the 1970s, the majority of UK policy documents have officially been subject to declassification at the 30-year point, this is known as the 30-year rule. It refers to the number of years that official documents of certain government departments that might contain information sensitive to foreign policy and international relations, such as those held by the Cabinet and Foreign Offices, are normally retained before becoming publicly available at the National Archives. However, in practice only around 5% of official British state papers are preserved and transferred to the UK National Archives and made available to the public (Anderson, 2015: 144). Routine declassification has not hitherto been considered as part of the

² The Public Record Office was created in 1838.

complex system of oversight and accountability, yet it has often allowed academics to discern misdeeds of the secret state through meticulous analysis and cross-referencing of declassified documents. This, in turn, has allowed the doyens of British constitutional history like Peter Hennessy to draw on contemporary history to comment on the successes and failures of central mechanisms like the Joint Intelligence Committee (JIC), together with recommendations for reform (Hennessy, 2010).

A more contentious form of contemporary history, the memoirs of former officials and members of the security services, have played a large role in triggering the release of public records. Most importantly, the publication of a number of damaging accounts by figures like Kim Philby (1967), one of the notorious 'Cambridge five' and a Soviet spy blackened the reputation of British intelligence (Andrew, 2009: 168-171). Thereafter, the decision to commission official histories of intelligence and to speed up the declassification of Second World War intelligence records was partly about telling a story that officials felt was creditable and would offset Moscow's narrative in a Cold War context (Murphy, 2014). In the early 1990s, accelerated official declassifications of intelligence material competed with rival accounts by disgruntled former secret service employees, such as Peter Wright's *Spycatcher* (1987). In contrast to the United States, where former CIA officers are allowed to pen memoirs, so long as a prepublication review board suitably screened them, British intelligence chiefs have not been encouraged to take up the pen. Stella Rimington's *Open Secret* (2001) is a rare example of direct accounts provided by a former chief of the secret aspects of the UK government. By contrast, and somewhat at odds with this policy, prominent figures in other parts of government are free to write about such things. Alastair Campbell, Tony Blair's Communications Chief (1997-2003), for instance, recorded quite a lot about intelligence matters in his four volumes of diaries. Intelligence historians, (see *inter alia* Moran, 2015; Aldrich and Cormac, 2016) have extricated invaluable material from the diaries and memoirs of government officials.

The secret services themselves increasingly regard historians as undertaking something close to accountability in slow motion. In 2005, MI5 and MI6 both chose to embark on authorised histories. The agencies were keen to emphasise that official historians had been given free run of the archives and nothing had been withheld. There was a strong sense of this exercise representing the final judgement or at least a serious independent audit. In 2014, followed the first volume of the official history by Michael Goodman on the Joint Intelligence Committee, which provides policy advice on a number of security and intelligence related issues. These authorised historians work in tandem with unauthorised historians using material of both open access and closed sourced varieties to provide an important form of longitudinal

accountability. They employed material from the enactment of the Public Records Act in 1958 and its amendment in 1967, to the Freedom of Information Act (FOIA) in 2000 and the Constitutional Reform and Governance Act, which has reduced the 30-year rule to a 20-year rule. Arguably, a rigorous 'screening' process enforced by the services prior to any publication constrained some of the details, but not the overall texture or meta-level judgement in the accounts these historians have provided (Zamir, 2012; De Jong 2015).

Material used in official histories is often given a higher level of priority for preservation and such files are often stamped 'Do not destroy = used in official history'. The implication is that the official author who pens the authorised history is not in fact quite the final auditor and eventually other non-official historians will be able to crosscheck the authorised account with some primary documents, albeit released long in the future. However, there are some questions about this arrangement, especially relating to the relationship between official historians and the security services. The abiding concern is that official histories are not always about accountability and can represent what Richard Thurlow has described as a 'charm offensive' (Thurlow, 2000). For example, in 2017 GCHQ somewhat tardily embarked on an official history, but without allowing full access to the official historian John Ferris. Instead Ferris will be allowed to submit requests for material on selected topics and GCHQ will then choose some files for him (Lomas and Murphy 2017).

The GCHQ approach will permit commemoration and celebration of GCHQ's 100th anniversary and will also doubtlessly improve public understanding. However, it cannot provide the sort of historical longitudinal accountability afforded by the other two official volumes (Lomas and Murphy, 2017). Indeed, in an interview given to the Guardian in 2003, Christopher Andrew emphasised the importance of integrity in his work. He remarked that his current PhD students (and the leading scholars of the future) would be the ones - no doubt - to draw attention to any negligence or attempts to 'whitewash' the material when they would follow in his footsteps (The Guardian, 2003). Given that official documents of the secret services are not subject to any procedure for release or FOIA requests, we rely heavily on scholars to provide us with an insight into these organisations. A FOIA request can be made under certain provisions to gain '...access to information held by public authorities' (FOIA, 2000).

Findings by independent historians have sometimes constituted a dramatic and highly significant form of accountability. Most famously, forensic attention to existing records allowed David Anderson to deduce that the Foreign Office had maintained an illegal, and partially destroyed, archipelago of records at their Hanslope Park site in Milton Keynes. The secret archive was eventually acknowledged in 2011 by then

Foreign Secretary William Hague and partially released by the end of 2013 (Anderson, 2011, 2015). The contents are now changing our view of Britain's recent colonial past. This example of state interference in official record keeping can be held as illustrative proof of the practice described as 'policing the past' (Aldrich, 2004), where policy-makers guide the narrative of history, making strategic and selective excisions in the official records to portray a positive image of British government activity. In this case, the answer was to bury or burn the evidence. Anderson (2015) writes on the 'misplacement' of around 1500 files relating to the activities of the British Empire during its colonisation of Kenya. Following this initial discovery, a further 8800 miraculously preserved files were uncovered concerning 36 former colonies. Stored in back offices, these documents illustrated claims of torture and other human rights abuses during times of the British occupation (Anderson, 2011:699). Though not all of these files were released into the public domain, their existence altered the reality for the surviving victims (Anderson, 2011:713). The dedication to meticulous research among existing records by professional historians and human rights lawyers, eventually called the Foreign Office to account. This work has significantly changed the public perception of intelligence and security activities during the British Empire regarding record keeping and further potential attempts to cover up illegal activities (Anderson, 2011).

The Hanslope Park episode suggests that the disclosure process can be highly politicised and arbitrary in its operation. Providing ample opportunity to deliberately select information to be released or refrain from keeping records at all, creating a mere semblance of openness. It further highlighted problems with FOIA and demonstrated that in order to request documents there has to be a record of them, which was not the case with the Hanslope Park files. Therefore, expert historians and political researchers are a critical element in the pursuit of transparency (Anderson, 2011:713). It is often researchers like Peter Hennessy and David Anderson who identify missing documents, fill the gaps and connect the dots. By processing an often vast body of historical material and disseminating critical information in a condensed format in order to facilitate public understanding they make an invaluable contribution to the public right to know. However, this challenge of processing large amounts of material is increasing as the (often digital) private collections of records compiled by former officials, often whilst still in office, begin to compete with official archives (Hansard, 2013: 349). There is an increasing trend for instant declassification by whistleblowers and open access information provided by platforms such as Wikileaks. This suggests that the sophisticated analysis undertaken by scholars is becoming increasingly more important in a complex ecosystem of information release.

Countries in the global south also regard historical accounting as important. This includes Iran, where the religious revolution of 1979 was in part an angry response to earlier British and American interference in its democratic politics. In 1953, a joint MI6/CIA operation overthrew an elected Prime Minister and installed the Shah, who was hated by his people. During the Blair years, when efforts were made repeatedly to repair relations between London and Teheran, two Foreign Secretaries (but interestingly not MI6 itself) openly avowed the 1953 covert operation and apologised for it. Jack Straw chose an Iranian history event at the British Museum, while David Miliband chose to do this on Channel 4 News (Melikianfeb 2009, Miliband 2009). Despite the fact that MI6 and the CIA have not yet released the relevant operational documents, often blaming each other for the continued restrictions, historians have patiently unpicked this episode. By carefully sifting what has been released, combing memoirs and conducting interviews, they have provided a remarkably full account that now runs to a dozen monographs (Balaghi, 2013). Although 'truth' is an unfashionable word, the sober judgement of historians after decades of reflection is a crucial site of intelligence accountability and perhaps its last moment of judgement.

Sometimes the authorities seek academic judgement. Another official indication that intelligence history is viewed as a form of intelligence accountability is the release of the Mitrokhin archive. This was a collection of handwritten notes made in secret by Vasili Mitrokhin during his thirty years as a KGB archivist in the Russian foreign intelligence service. In 1992 he defected to the West and brought the archive with him. Christopher Andrew based two books on this material, *The Sword and the Shield* (1999) and *The World Was Going Our Way* (2005). Within these books Andrew unpacked the context and meaning of Mitrokhin's papers and exposed the vast intelligence operations of the inner KGB. In 2014, the Churchill Archives Centre at Churchill College released Mitrokhin's edited Russian-language notes for public research, providing yet further research opportunities for future scholars. Andrew's two volumes are still regarded as the most authoritative account of Soviet espionage and in 1999 the UK Intelligence and Security Committee conducted an inquiry into the handling and release of the Mitrokhin archives (The Mitrokhin Inquiry Report, 2000: 20-21). Particular focus was given to the claim that MI6 knew of the activities and took the decision not to prosecute several KGB spies known to have been operational in the UK. Furthermore, it proved impossible to discern who exactly made this decision (The Mitrokhin Inquiry Report, 2000: 16-19). We might even see this episode as one form of intelligence accountability investigating another (ISC, 2000).

History casts a long shadow. The activities of the secret state are often long remembered and resonate within contemporary politics. For many years, the United States has published a fulsome record of its formerly secret diplomatic

correspondence, normally at the 30-year point. The Foreign Relations of the United States or FRUS series, a legal requirement under the Foreign Relations Authorizations Act (PL 102-138), demonstrates an acknowledgement of the critical role that historians play in analysing contemporary historical events (Jones and McGarr, 2013, 65-83). The FRUS series provides a published primary source account of US foreign policy. Prior to the act coming into force in 1991, Stephen Kane the editor of the volume on Guatemala expressed his concern to the State Department about the lack of engagement with CIA activities, which overthrew the Arbenz government in 1954. He wrote, 'If HO [Head Office] permits silence to substitute for substance, and gaps in the record for accountability, the series' reputation as a credible and objective official documentary publication will not endure' (Kane, 1981). Protest also grew from scholars that had been hired to review and approve the integrity of existing material, mainly concerning the involvement of the CIA and some resigned. The declassification shortcomings even extended to events that were already acknowledged in other publications (Kamen, 1991). Academics have demonstrated a link between the examining of official records and uncovering information that is pertinent to the understanding of the development of international events. Furthermore, under the ruse of secrecy, government cover-ups have been conducted partly for fear of embarrassment. It is then unsurprising that the resolution has often been sought in the release of more official records.

War, Openness and Public Access

The Second World War was important in transforming public access to information precisely because it was seen as a people's war (Calder, 1969). There was a growing demand for an accurate account of events both abroad and on the home front. Particularly in the 1950s and 1960s, historians such as A. J. P. Taylor were vocal in critiquing the apathetic approach to improving access to public records (Taylor, 1959). Although the 1838 Public Records Office Act stipulated that official records had to be kept in the Public Records Office, no provisions for public access were made until the Public Records Act in 1958. This Act was ratified following the report of the Grigg Committee³ - chaired by Sir James Grigg, Permanent Under-Secretary of the War Office - which saw the release of records as a central element in a liberal democracy: 'We believe that the making of adequate arrangements for the preservation of its records is an inescapable duty of the government of a civilised state'. Formed in 1952, the Grigg Committee was brought together in order to examine the existing systems governing official records.

³ Formed by the Chancellor of the Exchequer R. A. Butler and Master of the Rolls Sir Raymond Evershed.

The last 60 years has seen a phenomenal change in the regulations governing access to official records that were previously heavily guarded. Under the Public Record Act 1958 (and its amendments) it was required that all official government records be released and transported to the Public Records Office for public viewing after fifty years. In 1967, it was reduced to thirty unless any 'blanket' exemptions applied or there was a danger that they could do 'damage [to] the country's image, national security or foreign relations' (Andrew et. al., 1984). Extraordinary powers were also extended to the Lord Chancellor if other departments made a convincing case for keeping their records closed (Grigg Committee, 1954). In other words, the objective was that the files relating to sensitive material, such as intelligence and security would be closed for longer or in perpetuity. Exemptions under the 'blanket ban' provision currently include: 'Security and Intelligence material, classified records of the Special Branch of the Metropolitan Police down to 1985, records relating to defence applications of atomic energy, personal records of civil servants created before 1985, personal records of the members of the armed forces and Home Guard created before 1990, Teachers' pensions files and teachers' misconduct files created between 1914 and 1978' (The National Archives, Retention, 2016: 5-6). The fact that intelligence and security materials were intermingled with other routine records caused officials to worry and historians to get excited at what might be uncovered by a process that some have termed as archival 'hacking' (Moran, 2011).

Although there was only a period of nine years between the original act and its amendment in 1967, the cultural change was enormous. The 1960s was a decade of tumult and exposure for security and intelligence agencies, a sobering backdrop to the wider social change of the 'swinging 60s'. The reduction to a 30-year rule was brought about through the persistent campaigning of historians, many of whom were household names. Much protest originated with arguments over ownership of the history of the Second World War. Many people had lost relatives and yet decisions made by policy-makers were shrouded in a veil of secrecy. Because of this, the Cabinet Office decreed that all materials for the Second World War (1939-1945) would be released in one fell swoop. The relatively rapid shift from the 50-year rule to the 30-year rule and the bulk release of Second World War files, presented departments of state with a huge logistical task as well as a major security headache. Particularly demanding were the practical difficulties posed by the volume of documents and the potential for embarrassment should mistakes be made due to the added pressure of releasing more recent documentation (FCO 12/34).

Each department boasted a section for vetting files before release. Typically, the FCO created a 'Sensitivity Review Unit', staffed by 'weederers' who were often retired

diplomats. The 1967 Act effectively doubled the work of these units as they confronted the consequences of the 30-year rule. The idea was that intelligence files would be held back en masse, while the routine files of the customer departments to which intelligence was sent would also screen their files and withdraw intelligence material. But in practice, this plan was hard to implement because of the volume of material and also because of the way in which Whitehall had expanded during the war. The Foreign Office began the war with about a dozen departments, however by 1945 these had tripled in number. Entire new departments were created and these byzantine bureaucracies communicated with each other by circulating extra copies of documents to each other by the use of cyclostats and carbon paper. Even highly classified Joint Intelligence Committee (JIC) papers might run to a hundred copies. This was a problem for weeders and, by equal turns, a remarkable opportunity for historians because it was almost impossible to track down all the copies of every intelligence document (Historians, 1995: 12; Walton, 2014: 345).

Soon historians, political scientists and journalists were doing their best to outwit the weeders. PhD students spent happy hours confounding the 'history police' to find the material they needed to progress their dissertations (Hennessy, 2010: xxxiii-xxxix). David Stafford, Julian Lewis and Bradley Smith were among several historians to pioneer the technique of lateral research, which allowed them to locate copies of supposedly 'closed' documents in the papers of more mundane organisations. Typically, Bradley Smith and David Stafford found many Office of Strategic Services and Special Operations Executive papers in routine military files at a time when work on both of these secret services was thought 'too difficult' by many historians (Smith, 1988; Stafford, 1983). Julian Lewis wrote a pioneering book on early Cold War planning strategy and intelligence at a time when many were still coming to grips with the history of the Second World War (Lewis, 1988). Many of his triumphs were found in an obscure collection of lowly papers on landing craft and amphibious warfare, which had been on the circulation list for sensitive papers but which weeders had overlooked. Other historians were quick to learn the trade of archival sleuthing (Lucas 1993; Aldrich, 2000).

Officials and the Embarrassments of the Past

In the 1960s, eminent historians pressing for declassification clearly saw themselves as a proto-transparency movement. There was considerable pressure from senior members of the establishment for greater openness and these records make for interesting reading. This includes discussions between prominent academic scholars, mostly historians such as Herbert G. Nicholas and A. J. P. Taylor and members of the

Cabinet, such as Michael Cary. There were also strenuous efforts made to increase public awareness through newspaper editorials and academic publications by historians on the subject (Taylor, 1959; Nicholas, 1962). Judges such as the distinguished Lord Denning also offered their opinions on the early release of official records (PRO 54/210; PRO 54/211). However, some senior officials argued long and hard for records to remain closed for longer. There was much special pleading and requests for restricted access. Some examples concern monetary issues, such as the taxation of the Royal Family, where the request was for the records to remain restricted for a further 100 years. Another example comes from the Scottish Record Office for 'reports on fishing', where the request is also for a further restriction to be upheld for 100 years (CAB 21/5220b). There were many examples of what is often termed 'over-classification' (Moran, 2012).

The pivotal issue was the decision to make formerly top-secret correspondence public within the lifetime, and more notably, during the career of some government officials. The threat of openness appears to have unleashed a sense of paranoia. However, the dominant theme – a fear of public embarrassment and professional reprimand - is still evident today (Hansard, 2012a: 541). Does this illustrate that the threat of making public previously considered confidential records could encourage better government? Does the knowledge of eventual historical judgement within the public domain mean that words are more carefully considered in official meetings and that civil servants behave better? Alternatively, it could result in suppressing conversations about sensitive matters, moving them to a different setting or not recording them at all? We know that Tony Blair, for example, preferred a 'sofa style' of government, transferring decision-making to a less formal setting, free from rigorous minuting by the civil service (Prescott, 2010).

Scholars and particularly contemporary historians clearly believed that they formed a significant part of the system of holding governments to account, but also accepted that the time-cycle was necessarily long. During the 1960s, scholars argued that only they had the time and patience to examine key historical incidents in retrospect, often sifting through large quantities of archival material in order to unearth the truth about specific events. There was also a sense of government benefitting from lessons learned. Immediately after the war, several internal histories had been set in train that were not intended to see the light of day but were instead designed to capture valuable lessons about arcane secret service techniques that might otherwise be lost, including strategic deception. In the 1970s, the first public official history of intelligence in the Second World War was also intended to be an exercise in lessons learned, as well as in public understanding. The official history triggered the release of more secret materials. For example, the UK government decided to make public

some of the Ultra records prior to the release of the history to bolster its credibility. Ultra consists of a celebrated archive of decrypted World War II German signals intelligence generated from encryption machines such as, 'enigma' that had been declared unsolvable until a breakthrough in 1941 (Aldrich, 2010: 1).

Scholars seek to make sense of history and the world around them, through the study of their subject. Historians in particular pursue information concerning causation. This pursuit is made more difficult when gaps in the available material make the piecing together of certain events difficult. It is much like trying to see the picture within a puzzle when half the pieces are missing. This also leaves undesirable room for speculation and assumptions. In the early 1960s, during the period of the initial 50-year rule, a group of historians began campaigning for a shorter restriction period and better access to documents for scholars (Taylor, 1959; Nicholas, 1962). The group called themselves the 'Recent Historians' and included amongst others: Herbert G. Nicholas, Donald Watt (London School of Economics), Dennis Austin (Institute of Commonwealth Studies, London), Kenneth Robinson (Institute of Commonwealth Studies, London), Kitson Clarke (Trinity College, Cambridge), F. H. Hinsley (St. John's College, Cambridge), Michael Howard (King's College, London), Alan Bullock (St Catherine's College Oxford), Norman Gibbs (All Souls College, Oxford) and Nicholas Mansergh (St John's College, Cambridge). On the 16 December 1963, these individuals met with Michael Cary, a senior civil servant in the Ministry of Defence, to discuss some concerns that they had about the 50-year rule.

The primary concern that the group brought forward in this meeting was related to the length of the period of closure: 'The period of restriction should be shorter. They did not dispute that the existence of some closed period was justified but they felt that fifty years was unnecessarily long and were in favour of a shorter period' (CAB 21/5223; CAB 21/5220b). Secondly, they voiced some confusion over the policy concerning exceptions to the rule, as there was some discrepancy between access granted to academics and official historians. Thirdly, they noted that there was exasperation amongst scholars that British researchers were often at an overall disadvantage due to the slow release of records in the UK. Here, historians appealed to the idea of patriotic competition, suggesting that foreign records would be released at a much earlier date, allowing others to comment unfavourably on British involvement in major world events. British scholars would then struggle to provide any response, as they were unable to access the corresponding records. Such examples frequently included colonial issues, including France (on the French Resistance/Maquis), Malaysia, India and Palestine. Many of the scholars in this group were interested in recent episodes of decolonisation. With this in mind the Recent

Historians suggested that it might be beneficial to create an advisory committee that would include historians (MSS.Amer.s.22 6/1).

Although it was understood that any final decision on release of material would continue to lie with the government, they felt that their wealth of experience in this area would be beneficial. Cary made no promises to the group that the government would consider any changes, and forewarned that these requests came too soon after the implementation of the 50-year rule. However, the Recent Historians were resolute in arguing that with the upcoming release of records relating to certain critical world events, such as the First World War, it was imperative British historians had the edge. The group explained to Cary that a gradual release of these records would impede the research in this area (MSS.Amer.s.22 6/1).

Remarkably, there was some concern amongst officials that the release of Cabinet meeting records of the First World War could still potential damage national security and international relations. This was despite Winston Churchill's own entrepreneurial instant history of the war, published in the 1920s, which discussed matters such as signals intelligence. Eventually the solidarity amongst the Recent Historians and the support of PM Harold Wilson, himself a former Oxford junior research fellow, resulted in pivotal changes in the area of official records. In 1966, Wilson announced the amendment of the period of restriction on public records from 50 to 30 years. In the same year, the release of peacetime, along with wartime records were also announced (Hansard, 1966).

Some government departments were extremely anxious about the project of a move from a 30 to 50-year rule. In particular, they had reservations over the concept of releasing select peacetime records. The Foreign and Commonwealth Office (FCO) was particularly affected by this decision, and in 1967 a 'special review of papers' took place (FCO 12/39). Those in charge anticipated several issues with the preparation for their move to a 30-year disclosure period, which was also well underway. The diplomats tasked their Joint Research Department to identify any issues in advance of the special review. They worried that the large number of files to be reviewed (estimated around 20,000 in total) would be too time consuming and that there would be a high risk of errors by the weeders due to the time restriction. In other words - secrets would slip out. They rightly noted that weeders were being asked to second-guess the future impact of released material and that it might not be immediately evident to them that material could be harmful or damaging in the future. Furthermore, the difference between a document being damaging after a 50-year period and it being damaging after a 30-year period was significant enough that it would require further training and understanding of the materials. Nor could they see

how a large body of weeders could avoid inconsistencies, even with explicit guidelines (FCO 12/39).

Officials also felt at a disadvantage set against the competition offered by expert researchers, investigative journalist and historians. Whereas researchers examining the files were likely to have spent years training up on particular issues, the weeders would, by the very nature of their job, be generalists and might not understand what was sensitive or secret about the material they were releasing. Intriguingly, there was some debate about indexes and registers of the content of the fields and many felt this should not to be included when records would be made public. Officials worried that those accessing the files in the future, particularly historians, would be alerted to intelligence papers that had been intentionally retained. Worse, that they might make deliberate and intensive efforts to find copies that had been missed (FCO 12/39). The whole process was expected to be labour intensive and costly for a civil service that was under increasing budgetary pressure during the 1970s.

What is especially fascinating is that there was considerable disagreement about how difficult it would be to screen records and remove sensitive material. There was a particular concern about intelligence and the secret service documents mixed with more mundane records. The general assumption was - and still is - that a degree of experience and skill is required to separate the harmless information from potentially sensitive records. This was linked to the issue of a lack of resources, funds and time. In part this was overcome by taking on retired senior staff, even ambassadors, who brought experience to bear on the records at a lower cost. Yet, not all those debating the 30-year rule were of the same opinion concerning the required specialisation. C. J. Child, then Head of the Labour Research Department, noted that civil servants were inherently generalists and insisted that no specialisation is required to 'identify obviously sensitive material'. Child was also not too concerned with scrutinising all 20,000 records closely. This reflected the fact that he came from a department where material was often relatively unsecret whereas his opponents were those who had been indoctrinated into subjects such as signals intelligence (FCO 12/39). This debate highlighted an intra-Whitehall problem, namely that much of Whitehall was itself insulated from an inner circle of departments and sections that handled secret material away from the eyes of routine civil servants.

Since the Second World War, there has been an ostensibly continuous trend towards a more transparent UK government. The British official path to further openness has been sluggish, dragging its metaphorical heels with some administrations actively seeking to reverse the openness already achieved (Anderson, 2015). For example, in 2015 the Conservative administration commissioned a review of the Freedom of

Information Act (FOIA). Amongst other findings, the Independent Commission on Freedom of Information Report thwarted an attempt to implement an up-front charge for a FOIA request (2016: 44-50). Justifiably there is some foreboding that FOIA itself has created a culture where policy-makers will refrain from keeping official records and use private emails and post-it notes. The fear of being exposed will leave little in the way of official archives in the future (BBC, 2012). The motivation for reversing openness centres on the apprehension of revealing sensitive information and preventing embarrassment through the release of previously classified official documents. This approach is heavily criticised and claims are made that material is routinely and strategically withheld without just cause, thereby policing the past (Aldrich, 2004).

The current system of oversight in the UK is relatively fragmented and arguably requires a restructure. Especially in a time dominated by an overabundance of information and rapid technological advances. This was addressed - to some degree - by the Privacy and Security Inquiry of the Parliamentary Intelligence and Security Committee, which held a number of open evidence sessions with experts in the field to discuss the conflict of interest between the protection of privacy and the enduring need for some retention of government secrecy (ISC Evidence Session 1, 14 October 2014: 2). They concluded that developing multifaceted measures for effective democratic accountability should be a central aim for government. They also held that this was the only way of ensuring that the delicate balance between privacy and security is maintained (ISC Report, 2015: 1-2).

The 20-Year Rule and the Freedom of Information Act

During the Blair administration, the UK saw the introduction of a Freedom of Information Act (FOIA). Famously, the former Labour Prime Minister regrets this decision, writing in his memoirs: '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' (Blair, 2010: 516). Blair argued that FOIA had not been employed by citizens but by journalists – intriguingly there is no discussion of historians. He also insisted that officials needed to be able to discuss policy 'with a reasonable level of confidentiality' (Blair, 2010: 517). In his opinion FOIA made officials reluctant to have frank conversations. Blair remarked that the power it handed to the media was 'gigantic' (Blair, 2010: 127). In retrospect this judgment is probably a symptom of the way his government was battered by the expenses row, the wars in Afghanistan in 2001 and Iraq in 2003 and the five subsequent inquiries, the most

recent being the Chilcot Report released in 2016. FOIA was more a symptom of the age - one when leakers and whistleblowers, such as Katherine Gun at GCHQ in 2003 were moving toward more direct disclosure as a form of intelligence accountability.

The enactment of FOIA was initially hailed a fundamental change in attitude towards official records. It was suggested that FOIA has reversed the philosophical approach towards official records - whereas previously government records would be determined closed until the relevant marker for release was hit (50 or 30 or 20-years), following FOIA all records are considered 'open' to the public unless deemed sensitive. However, Paul Dacre's independent review in 2009 demonstrated that this was not the case. Dacre, editor-in-chief at the Daily Mail, was tasked with reviewing of the 30-year rule. As part of this review the FOIA provisions were also considered and whether or not this negates the need for a periodic declassification. Some of the testimony that Dacre collected from prominent members of the media, such as David Hencke, suggests that although FOIA does provide a way of circumventing the rules governing the periodical release of public records, it does not go far enough and any results can be an incomplete and arbitrary (Dacre, 2009: 22).

Submitting a FOIA request, for instance, by no means guarantees access to the information requested. The individual applying for access, in order to be successful, must demonstrate a certain amount of information about the content of any file requested. Vague requests are often seen as a 'fishing expedition' and used as an excuse to retain sensitive information (Roberts, 2008: 222). The power of FOIA is further restricted by the continual cuts to staff numbers in record departments. Meanwhile FOIA requests themselves, draw staff away from routine record declassification. Most importantly, the intelligence agencies and groups like Special Forces are immune to FOIA requests - although interestingly not to subject access requests - under data protection laws.

In other words, FOIA does not appear to have remedied the issue of the government's unwillingness to disclose records. Whilst access to MPs expenses and the lunch accounts of Ministers of State have been made more accessible, the cloaked operations of the secret state remain and these have been expanding. The rise of whistleblowers and leakers indicates a decline in faith in traditional means of accountability or systems such as FOIA. Individuals such as Katherine Gun, Chelsea Manning or Edward Snowden have taken the function of oversight and accountability out of the hands of official bodies. The unauthorised disclosures that were made by these three individuals were retrospectively confirmed to be largely (not exclusively) over-classified material. Particularly the case of Edward Snowden, although this does not relate to the UK system directly, has highlighted some concern for the current

oversight systems. If a blind eye is turned to these developments, the state runs the risk of records being published without guidance or real understanding for what information may be sensitive (Beuren, 2014; Hillebrand, 2012).

Much of the debate concerning the 30-year rule focused on documentation of the Foreign Office, Cabinet papers and Ministry of Defence material that related to sensitive subjects such as intelligence, nuclear programmes and biological warfare. The enactment of FOIA has – at first glance - allowed much greater access to such official records. As a result, the rules governing periodical reviews and release of public records are seen by some to be redundant. However, FOIA only offers the mere semblance of public access. While it provides a path whereby ordinary citizens can request access to records years before they are due for automatic release, the records that may be requested are mostly insipid. It is more likely that the most important effect of FOIA has been indirect and cultural, generating a prevailing sense of entitlement amongst the public to details of the decision-making process and other official information. This trend has been accelerated rapidly by the evolution of the Internet. Julian Assange's WikiLeaks, for instance, exemplifies the modern phenomenon whereby information can be in the public domain in 30 minutes rather than 30 years, evidencing a continuing trend to 'publish and be damned' (Moran, 2012).

Despite the regrets of Tony Blair over FOIA, the greater challenge to government secrecy has in fact been the pressure that has been exerted to move to a shorter duration of periodic release (Dacre, 2009). After the recommendations by the Dacre report for a 15-year rule, the government decided on a 20-year rule, a shift which some officials still believe to be too much, too soon (Hansard, 2012a: 541). The move to a shorter period of declassification was decided upon, but without allocating appropriate budgets. The result was near panic in the more sensitive departments of Whitehall, with good reason. As in previous decades, the resource intensive process of sifting sensitive material from files that might at first glance seem innocuous is costly and time-consuming (Interview 1, 2017).

Jonathan Phillips (2008), the Permanent Under Secretary (PUS) at the Northern Ireland Office, fervently disagreed with the suggestion of a 20-year rule. His biggest concerns were 'resource consequences'. His office was one with what he described as 'a large volume of unusually sensitive records'. Phillips argued that sensitive records required thorough checks before release. He noted a case in point, where a reviewer discovered 'an intelligence report and information identifying a particular agent' in an otherwise routine file on trade subsidies (Phillips, 2008). In 2014, top-secret documents containing information about the British involvement in the 1984 attack

on the Golden Temple of Amritsar in India were handed to the National Archives as part of the routine 30-year rule release of documents. An independent researcher and blogging journalist Phil Miller discovered the files in the National Archives (Miller, 2014). This refreshed the debate on the need for Whitehall to be honest about its inability to screen records properly (Allan, 2014; Hansard, 2012a). Without provisions to work with and recognition of their value in these situations, scholars and journalists remain Whitehall's enemies rather than its partners in drawing lessons from the past for policy.

The Cabinet papers on these debates are themselves still closed. But some insight into the difficult discussions can be gleaned by taking a closer look at debates within the Houses of Parliament. The debates show that there is still a lingering trend towards avoiding any 'embarrassment' of officials, but at the same time, also an increasing acknowledgement of the valuable work that historians do when they analyse such documents (Hansard, 2012a). Hennessy remains a fervent advocate for the release of more documents and the patron of a second Waldegrave initiative, promoting a more targeted review of classified documents (Hansard, 2012a). The first Waldegrave initiative saw 96,000 files re-reviewed and declassified between 1993-1998, many related to intelligence and security (Aldrich, 1998). Hennessy remarked that a 'confident democracy such as ours should uncover its state paper trail as fully and as swiftly as it can, warts and all'. He also reminded the House of the necessity for carefully practiced scholarly analysis, which allows any declassified material to be recognised in the context of its time (Hansard, 2011).

However, earlier release dates also present two possibly serious obstacles to the analysis of the deluge of official material potentially to be released. In addition to material that is stored by websites of official inquiries, like the Hutton Inquiry investigating the death of Dr David Kelly (The Hutton Report, 2004), to curate vast numbers of documents or indeed 'offshore' archives, such as the Wikileaks state department cables. The first difficulty is that history departments have tended to disengage from old-fashioned political and diplomatic histories, just as the sources have become more plentiful. Since the 1990s, subjects such as social relations, identity and emotion have occluded what has often been derided as the 'cabbages and kings' approach to history. While many of these criticisms have much force, the result is a decline in the number of historians trained to subject newly released policy records to forensic analysis. Much of the work on recent intelligence and security records has in fact been conducted in department of politics, international relations, sociology or area studies (Gillon 1997, Reuss 1993).

The second barrier is simply departmental spending limits. The 'phased' approach to a 20-year rule has placed additional strain on over-stretched resources in departments of state and at the National Archives. Phillips cautioned that in 2008 declassifying under the 30-year rule cost his department £125,000 a year. He estimated the cost of shifting to a 20-year rule to be £1.8 million extra - over 25% of the running costs of the Northern Ireland Office (2008). In 2010, the British government reviewed the 30-year rule and predicted implementation to cost a staggering £28 million in the first 5 years (Ministry of Justice, 2010). As the move to a 20-year rule commenced in 2013, it was estimated that this would affect around 3.3 million records overall. The expected cost over the actual 10-year transition period inevitably rose further to between £34.7 million and £38.5 million (Hansard, 2012b). The question is whether a Conservative government will allocate the necessary funds post-Brexit, to something that it may deem to be against the national interest?

It appears that the government aimed for a 'headline' approach with the 20-year rule - releasing a limited number of more recent files to create an appearance of movement. The files that were amongst the earliest to be released contained documents about the 1984-85 strike of the National Union of Mineworkers opposed heavily by the Thatcher government and the 1984 IRA bombing of the Conservative Party Conference in Brighton. The jury is still out on whether the records released under the new rule will prove to be of real substance, or else mere indications of an unfulfilled aspiration.

Conclusion

The anxiety of officials such as Jonathan Phillips over declassifying intelligence confirms the contention of this paper. Releasing records, together with the subsequent analytical work of historians, constitutes a neglected aspect of accountability for the security agencies. Placing official documents on the record should be the ultimate form of accountability, irrespective of any state sanctioned release dates. This provides an additional safeguard against official misdemeanours in all areas of public life. Therefore, suitable resources should be made available to implement the 20-year rule effectively.

Even officials accept that rigorous accountability and oversight improves performance. In this sense, contemporary historians also play an important role. Thus a further premise of this paper is that we must look back and learn in order to move forward in the realms of intelligence and security. Current policy on sensitive issues have been influenced by lessons learned concerning the interrogation of detainees during periods of colonial detention, such as in Aden during the 1960s or the troubles

in Northern Ireland in the 1970s (Newbury, 2015). Moreover, historical analogies can provide inert examples which allow the public to debate current policy in this difficult area. Ultimately, we have to ask - why lessons in the intelligence and security field proved so hard to learn over recent decades? One answer might be excessive secrecy.

Retrospectively, fundamental issues were raised with the Public Records Act both in 1958 and 1967, as well as FOIA. In particular, regarding the way in which our elected officials approach the idea of transparency and disclosure. The nature of the arguments brought forward against earlier releases was questionable. Unsurprisingly perhaps, the process was somewhat politicised. Participants were often more concerned with the possible embarrassment of senior officials and potential discovery of corner cutting, than any benefits from openness. In the past, as now, the key issue is operational. There is a lack of resources to fulfil the requirements of the law governing the release of official papers. This has contributed to the creation of illegal archipelagos of documents like Hanslope Park, consisting of a substantial quantity of intelligence files. Departments did not wish to destroy these, but equally did not wish to invest time and money in declassifying them.

Recent history also reveals the important role that has been and still is played by scholars endeavouring to analyse the plethora of contemporary materials available in official records. Historians specifically investigate the intricate pathways of causation and work on disseminating this information in a digestible format in order to educate the public. Few normal citizens have the time or the inclination to spend days digging through Cabinet Office files. This process of democratic inspection is effectively delegated to academics, increasingly required to disseminate their analysis for free via "gold access" journal articles if they are in receipt of public research funds. This matters even more today, since storing records has drastically changed - letters have become emails and typewritten documents have become word-processed files. The volume and complexity of records has increased drastically, making the deployment of scholars more imperative than ever. Contemporary historians should therefore be considered a national resource, delivering not only oversight and accountability, but also lessons learned and wider public understanding.

Academics and recent historical analysis play an important part in the realm of intelligence and security accountability, because the formal mechanisms are not always operationally effective. Official accountability bodies identified few if any of the major intelligence scandals of the last decade. The distorted and bewildering system that is currently in place in the UK includes *inter alia* several independent bodies, both parliamentary and judicial that do not work harmoniously. Furthermore, these official oversight bodies are joined by several unofficial cogs within the

mechanism of accountability, such as whistleblowers and journalists, which have been recognised for their contribution (Born and Wetzling, 2007: 317). Despite the efforts of government to narrow the range of participants in the field of accountability, it is in fact growing and we need to recognise contemporary history as part of this widening process.

Overall, it is insufficient for the oversight and accountability of the vital security realm to only be constructed around official mechanisms. Parliamentary review bodies, inspectors-general, judges, the media, whistleblowers, campaign groups but also academics and researchers must all play their part. Increasingly, these different elements are able to interconnect providing a robust challenge. For this reason, the UK government now needs to take a wider view as it moves to complete the transition to a 20-year rule. The documented move from a 50-year rule to a 30-year rule demonstrated the need for more openness to assist government rather than thwart its main purposes. The arguments made then are not so different from the arguments made now. They illustrate that a preoccupation with preventing embarrassment to our policy-makers does not justify restricting access to official records. In any case, the formal mechanisms for declassification are fast being by-passed through unofficial channels. As one intelligence officer remarked in 2012, in the present climate 'there are no secrets, only delayed disclosure' (Fallon, 2012).

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