

The World's First Freedom of Information Act

Anders Chydenius' Legacy Today



ANDERS CHYDENIUS

SÄÄTIÖ • STIFTELSE • FOUNDATION

Publications 2

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Introduction:

Anders Chydenius' Legacy Today

Freedom of information (FOI) is a human right. In order to make governments accountable, citizens have the right to know - the right of access to official documents. Freedom of information has been developing at a strong pace only recently, but it is hardly a new concept. The roots of the FOI principle date back to the 18th Century, the Age of Enlightenment.

In Sweden and Finland, 2006 is observed as the 240th Anniversary of the Freedom of Information. The world's first freedom of information legislation was adopted by the Swedish parliament in 1766. This publication includes the English translation of this ordinance on freedom of writing and the press. The enlightenment thinker and politician *Anders Chydenius* (1729-1803), from the Finnish city of Kokkola, played a crucial role in creating the new law. As Professor *Juha Manninen* describes in his article, the key achievements of the 1766 Act were the abolishment of political censorship and the gaining of public access to government documents. Although the innovation was suspended from 1772-1809, the principle of publicity has since remained central in the Nordic countries.

Over recent decades, Anders Chydenius' legacy has received increased recognition globally. With the creation of the United Nations and international standards on human rights, the right to information began to spread. Freedom of information is recognized in international law. Article 19 of both the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights provide that every person shall have the right to seek and impart information. There is growing recognition that the right to seek information includes a right of freedom of information.

Over the last 40 years there has been a dramatic increase in the number of countries that have adopted freedom of information laws. A milestone was the US Freedom of Information Act (FOIA) of 1966, and many countries started to follow the FOIA model on access to government documents. According to a global survey¹, some 70 countries have now adopted comprehensive Freedom of Information Acts. Fifty countries have legislation pending. This global situation is discussed by *Thomas*

1

Banisar, David (2006). <http://www.privacyinternational.org/foi/foisurvey2006.pdf>

Soon after the death of Anders Chydenius (1729-1803), this mezzotint copy of his portrait was reproduced by J.F. Martin in 1805 to be distributed to Chydenius' friends in Sweden and Finland (K.H. Renlund's Museum, Kokkola, Finland).



Blanton, Director of National Security Archive in the George Washington University (USA).

Despite the spread of FOI legislation, the Anders Chydenius' legacy remains topical in all countries. The enactment of a law is only the beginning. There is still much work to be done. Governments must change their internal cultures and civil society must demand information. Weaknesses in laws, implementation or oversight may have left access largely unfulfilled. There have also been problems with record keeping, state secrets and the misuse of privacy exemptions.

The right to know applies also to international organisations such as the European Union. Openness of decision-making has been one of the priorities of the Finnish EU Presidency in the latter half of 2006,

as Minister of Justice *Leena Luhtanen* states here. Prospects of the EU's transparency are discussed in more detail by *Tony Bunyan*, Editor of *Statewatch* (UK). To raise public discussion on these transparency challenges of the EU, the Anders Chydenius Foundation has decided to convene an international seminar on eve of the 240th Anniversary of the Freedom of Information, on 1 December 2006 in Helsinki.

The principle of publicity (*offentlighetsprincipen*) in Finland is discussed by Professor *Olli Mäenpää*. The experience of Finland, Anders Chydenius' home country, shows that transparency in the decision-making process is beneficial also to governments themselves by improving citizens' trust in government actions. This should be kept in mind when discussing the contemporary challenges of transparency.

With this publication, the Anders Chydenius Foundation aims to provide a brief introduction to the origins of FOI principle. We hope to raise awareness about Chydenius' legacy concerning freedom of information - and to inspire us all to continue to work for the citizens' right to know.

Finally, we would like to thank the authors and all those who contributed to producing this 240th anniversary publication.

Kokkola, November 2006

Gustav Björkstrand
Chairman
Anders Chydenius Foundation

Juha Mustonen
Secretary General
Anders Chydenius Foundation

I

THE FIRST FREEDOM
OF INFORMATION ACT

His Majesty's Gracious Ordinance Relating to Freedom of Writing and of the Press (1766)

Translated by Peter Hogg

*Issued in Stockholm, in the Council Chamber, on 2 December 1766.
Printed at the Royal Printing-Press.*

We Adolphus Frederick by the Grace of God King of Sweden, Gothland and Wenden etc. etc. Heir to Norway and Duke of Schleswig-Holstein, etc. etc. Proclaim,

That, having considered the great advantages that flow to the public from a lawful freedom of writing and of the press, and whereas an unrestricted mutual enlightenment in various useful subjects not only promotes the development and dissemination of sciences and useful crafts but also offers greater opportunities to each of Our loyal subjects to gain improved knowledge and appreciation of a wisely ordered system of government; while this freedom should also be regarded as one of the best means of improving morality and promoting obedience to the laws, when abuses and illegalities are revealed to the public through the press; We have graciously decided that the regulations issued previously on this matter require such appropriate amendment and improvement that all ambiguity, as well as any such coerciveness as is incompatible with their intended purpose, may be removed.

In regard to which, and having received the loyal report of the Estates of the Realm on this matter, We have graciously decided that the previously established office of Censor shall be entirely abolished and that it shall not hereafter be the duty of the Chancellery to supervise, approve or disallow the texts submitted for printing, but the authors themselves shall

500

Kongl. Maj:ts
Nådige
Sörordning,

Angående
Skrif- och Tryck- friheten;

Gifven Stockholm i Råd- Cammaren then 2. Decembr.
1766.



Cum Gratia & Privilegio S:æ R:æ Maj:ts.

Tryckt uti Kongl. Tryckeriet.

(8)

Anders Chydenius took an active part in the Diet of 1765-66. One of the lasting results of his activities was this Ordinance on Freedom of Writing and of the Press (1766), which he considered himself to be one of his greatest achievements.

be responsible, together with the printers, for what will appear in print, subsequent to this gracious ordinance, by which the former censorship regulations are entirely repealed; although, with regard to the importa-

tion and sale in the bookshops of harmful books, the supervision of that will remain with Our Chancellery and the respective consistories, whose obligation it is to ensure that no banned and corrupting books, whether on theological or other subjects, may be disseminated.

§1. No one shall be permitted to write or publish in print anything that is contrary to the confession of Our true faith and the pure Evangelical doctrine; whoever is convicted thereof shall be fined three hundred *daler* in silver coin.

Should the text contain blasphemy against God, it shall be judged according to statute law. And in order the more effectively to prevent the insinuation of heretical doctrines, all manuscripts that in any way concern doctrine and our fundamental Christian articles of faith shall be inspected by the nearest consistory, and no printer shall venture, on pain of a fine of two hundred *daler* in silver coin, to issue such publications in print without written permission from the consistory, which shall also be printed.

§2. It is the irrevocable fundamental law of the Swedish Realm that there shall be a King: He and none other shall govern His Realm with and not without, even less contrary to, the advice of the Council of State, in accordance with the laws approved and established by the Estates, and after Him His direct male heirs in the manner laid down in the Act of Settlement adopted in 1743 by the Estates of the Realm; that no other authority shall be permitted to introduce and amend laws than the legitimately assembled Estates of the Realm, pursuant to their authority as Parliamentary delegates; that the privileges of any estate may not be touched upon or altered without the unanimous agreement of all four estates; no new taxes and imposts be laid upon the kingdom without the knowledge, free will and assent of the Estates of the Realm, without which, likewise, neither may war be declared nor the official coinage, in respect of its quality, be improved or impaired; in addition to which the Councillors of State are always individually accountable to the Estates for the advice that they give to His Majesty, as also government officials for the performance of their duties.

These fundamental laws, with others that the Estates of the Realm have established or will establish as irrevocable, no one shall venture in any way to assail or question by means of publications or printed material, on pain of a fine of three hundred *daler* in silver coin.

§3. Should anyone dare to include vituperative or disparaging opinions of Us and of Our Royal House in published writings or to make such imputations against any of the Councillors of the King and the Realm that concern their honour or are otherwise defamatory, he shall be judged by statute law.

Should anyone similarly offend in the aforesaid manner against the Estates of the Realm, he shall, according to the greater or lesser seriousness of the offence, either be condemned to death or be punished with some other severe physical penalty.

Should anyone write a libel, or what may otherwise be insulting or disparaging, against the officials of the realm or any other citizen, he shall incur the penalty laid down in statute law. Nor shall it be permitted for anyone to indulge in abusive statements in public writings about crowned heads or their closest blood relatives and contemporary ruling authorities; nor to write or publish in print anything by which a manifest vice is promoted or justified and is thus incompatible with decency, a just natural and Christian ethics and its principles; whoever offends against this shall be liable to a fine of three hundred *daler* in silver coin.

§4. The printer shall display the name of the author on the title-page, unless the latter wishes to remain anonymous, which should not be denied him, in which case the printer, for his own protection, shall obtain from him a written acknowledgement that he has written the publication; notwithstanding which, whether or not the publication lacks the name of the author, the name of the printer himself and that of the town where the printing has taken place, as well as the date, should always be displayed on it; if the printer neglects to do so, he shall pay a fine of two hundred *daler* in silver coin.

If the publication lacks the name of the author and the printer, were it to be prosecuted, is demonstrably unwilling to reveal it, he himself shall bear the entire responsibility that the author of the publication should have borne; but if he is willing to name the author, he shall be freed from all responsibility.

Of everything that is printed the printer shall be obliged, in the established manner, to deliver six copies, as soon as they have been printed, of which Our and the Kingdom's Chancellery, the State Archives, Our Library and all three universities in the kingdom shall each receive one copy; should the printer neglect to do so, he shall pay a fine of one hun-

dred *daler* in silver coin; and in order that offences against this gracious ordinance may be duly prosecuted, it shall not only be the duty of Our Chancellor of Justice and the respective ombudsmen and public prosecutors to maintain close supervision over this matter and bring offenders to lawful conviction; but We also wish to permit every loyal subject of Ours to have the right to act as plaintiff in cases concerning offences against this ordinance, which shall always be pursued in a proper manner before the appropriate court, following a lawful summons, allowing both parties to enjoy their lawful procedural rights; and the judge shall likewise, at the very outset of the trial, examine whether there may be grounds for impounding all available copies of the prosecuted publication and placing them in safe custody until the conclusion of the case; if the publication is eventually deemed harmful and banned, all copies should be confiscated and destroyed. If the plaintiff, on the other hand, is found to have brought the action without sufficient reason, he shall face the same penalty that the accused would have undergone, had he been found guilty, and shall in addition be liable for all costs.

§5. What We have thus expressly decreed in the first three paragraphs concerning that which shall be deemed to be prohibited in writing and in print no one may in any manner cite or interpret beyond its literal wording, but everything that is not clearly contrary to that is to be regarded as legitimate to write and print, in whatever language or in whatever style it may be written, whether on theological topics, ethics, history or any of the learned sciences, concerning the public or private economy, the activities of government departments and officials, societies and associations, commerce, trades, handicrafts and arts, miscellaneous information and inventions and so forth that may be of utility and enlightenment to the public; as also no one shall be denied the right to publish treatises concerning the public law of the realm and matters connected with it, in which everyone, provided that the publication in no way offends against the irrevocable foundations of the political constitution referred to in the second paragraph above, shall have unrestricted freedom to present their thoughts on all matters that concern both the rights and duties of the citizens and may serve to produce some improvement or the prevention of harmful consequences; which freedom shall also extend generally to all laws and regulations that have already been promulgated or will be promulgated hereafter.

It shall also in equal measure be permitted to write and print material concerning the relations of the kingdom with other powers and the

advantage or harmfulness of former or more recent alliances, or statements made regarding them; in which regard all treaties concluded with foreign powers may likewise be printed, although not any part of them that should remain secret; even less shall the right be denied to produce and have printed any accounts of the civil constitutions of other nations, their advantages, intentions, commerce and economy, strengths and weaknesses, character and customs, achievements and mistakes, whether specifically or comparatively.

§6. This freedom of the press will further include all exchanges of correspondence, *species facti*, documents, protocols, judgments and awards, whether they were produced in the past or will be initiated, maintained, presented, conducted and issued hereafter, before, during and after proceedings before lower courts, appeal and superior courts and government departments, our senior administrators and consistories or other public bodies, and without distinction between the nature of the cases, whether these are civil, criminal or ecclesiastical or otherwise in some degree concern religious controversies; as well as older and more recent appeals and expositions, declarations and counter-declarations that have been or will be submitted to the Chambers of Our Supreme Court as well as the official correspondence and memorials that have already been or may in future be issued from the Office of the Chancellor of Justice; although no one may be obliged to obtain and print more of all this, either *in extenso* or abridged as a *species facti*, than he himself requests and regards as adequate and which, when requested, shall immediately be issued to anyone who applies for them, on penalty of the provisions in the following paragraph; but in criminal cases that have been settled by an amicable reconciliation between private individuals no one may, without the agreement of the parties, make use of this freedom as long as they remain alive; while also, if anything concerning grave and unfamiliar misdeeds and abominations, blasphemies against God and the Head of State, evil and cunning schemes in these and other serious criminal cases, superstitions and other such matters should appear in court proceedings or judgments, they shall be completely excluded.

§7. Whereas a legally correct *votum* does not have to be concealed in cases where a decision is arrived at only by the vote of the judge; and as an impartial judge has no need to fear people when he has a clear conscience, while he will, on the contrary, be pleased if his impartiality becomes apparent and his honour is thereby simultaneously protected

from both suspicions and pejorative opinions; We have therefore, in order to prevent the several kinds of hazardous consequences that may follow from imprudent votes, likewise graciously decided that they shall no longer be protected behind an anonymity that is no less injurious than unnecessary; for which reason when anyone, whether he is a party to the case or not, announces his wish to print older or more recent voting records in cases where votes have occurred, they shall, as soon as a judgment or verdict has been given in the matter, immediately be released for a fee, when for each *votum* the full name of each voting member should also be clearly set out, whether it be in the lower courts or the appeal and superior courts, government departments, executory authorities, consistories or other public bodies, and that on pain of the loss of office for whosoever refuses to do so or to any degree obstructs it; in consequence of which the oath of secrecy will in future be amended and corrected in this regard.

§8. Concerning the votes of the members of the Council of State, apart from cases that concern secret ministerial matters, as well as reports and statements on those applications and appeals that will be or have been submitted to the Estates of the Realm, the law shall, on the same grounds and in the same manner as in the preceding paragraph, be the same.

§9. In addition to the records of trials and other matters referred to above, everyone who has a case or other proceedings touching his rights before any court or public body whatsoever, as also before Ourselves, the Estates of the Realm, their select committees and standing committees, shall be free to print an account of it or a so-called *species facti*, together with those documents relating to it that he regards as necessary to him; although he should in this matter keep to the truth, should he be concerned to avoid the liabilities prescribed in law.

§10. The printing shall moreover be permitted of all the judgments and awards, decisions, rescripts, instructions, rules, regulations and privileges, with more of the same of whatever kind and nature they may be that have been issued in the past or will be issued in future from Our Council Chamber and Chancellery, government departments or offices, as well as the appeal and superior courts and the official boards of the realm, together with the public correspondence of their and other officials; also included among which are all memorials, applications, projects and proposals, reports, appeals, with decisions and responses to them from societies and

public bodies as well as private individuals, including the documented proceedings and official duties, both legitimate and illegitimate, of all officials, together with whatever then occurred, whether advantageous or harmful. And to that end free access should be allowed to all archives, for the purpose of copying such documents *in loco* or obtaining certified copies of them; responsibility for the provision of which is subject to the penalty laid down in §7 of this ordinance.

§11. All reports of parliamentary proceedings, from whichever locality they have formerly been issued, may also be printed, by whomsoever applies to do so, save that whatever is referred to in them regarding any activity or negotiations occurring on foreign territory that require secrecy may not be released and made public. Regarding those reports of parliamentary proceedings, on the other hand, that will be produced in future, We shall graciously ensure that they will be published in printed form in the same manner, in sufficient time before the beginning of each subsequent Parliament to allow everyone the opportunity, not only to inform himself as well as possible about the situation in the kingdom, but also all the more easily to subsequently contribute to the general good by means of the appropriate memoranda and useful proposals and information; besides which those memorials and *dictamina ad protocollum* that are submitted to the Estates of the Realm may be freely printed by whomsoever applies to do so. It is also permitted to print the reports of the select committees with their minutes and records of voting, in the manner prescribed in §7, although not before the reports have been delivered to the *plena*. And as the constitution requires that every matter be lawfully determined, and in order that all Our loyal subjects may be persuaded of the honourable conduct of their delegates during the sessions of Parliament, it is therefore freely permitted to print all the minutes and votes of the estates in the aforesaid manner, which shall also apply to all matters submitted to the *plena* by the Joint Security Committee as well as those gracious bills that We Ourselves lay before the Estates of the Realm which do not contain anything that should be kept secret.

§12. A truthful history of former kings and regents and their ministers has been highly regarded by most nations both in former and more recent times, as directly raising important issues, in order to convey to the governing lords and commoners memorable judgments on wise and commendable achievements and, on the other hand, very necessary warnings against rash, imprudent, malicious or even cruel and ignominious deci-

sions and deeds, as well as to enable the subjects, from events in former reigns, all the better to comply with, be aware of, understand, value and defend the obligations, freedoms and rights that they possess, as well as public and individual security. In order that nothing should be lacking in such historical works that may serve to ensure their completeness, We also wish to extend to them the freedom of writing and of the press to the extent that all specific events or known incidents, in part secret and in part more familiar, that have occurred under past governments, either in this kingdom or elsewhere, may be made public, together with political comments on them.

§13. Furthermore, We herewith also wish to graciously declare that, as it would be too cumbersome to enumerate all possible subjects, cases and matters in detail, it is Our gracious will and command that all Our loyal subjects may possess and make use of a complete and unrestricted freedom to make generally public in print everything that is not found to be expressly prohibited in the first three paragraphs or otherwise in this gracious ordinance, and still less that anything that may be noted, remarked upon or otherwise published in the form of comment relating to all the admissible cases and matters specified above may ever, under the pretext that it implies censure, blame or criticism, be refused or prevented from being printed.

§14. And in order that Our loyal subjects may in future possess that complete confidence with regard to the assured preservation of the freedom of writing and of the press outlined here that an irrevocable fundamental law provides, We herewith wish to declare that no one, whoever he may be, on pain of Our Royal displeasure, shall dare to advocate the slightest elaboration or limitation of this gracious ordinance, much less attempt on his own authority to achieve such a limitation to a greater or lesser extent, and that not even We Ourselves will permit anyone to make the slightest modification, alteration or explication that could lead to the curtailment of the freedom of writing and of the press.

§15. The fines listed in this gracious ordinance will be distributed three ways.

Which all those whom it concerns shall obediently observe. In confirmation of which We have signed this with Our own hand and certified it with Our Royal seal. Stockholm, in the Council Chamber, on 2 December 1766.

ADOLPHUS FREDERICK.

(L. S.)

Johan von Heland.

Anders Chydenius and the Origins of World's First Freedom of Information Act

By Juha Manninen

Introduction

“Freedom of information” is the designation adopted around the world after its North American example as the freedom of human actors to access existing documents. In the United States such an act was passed in 1966, and became effective through improvements made to it in 1974. This can be said to have signalled the triumph of laws of freedom of information throughout the world.

Nevertheless, already 200 years before the Act was passed in the United States, and thus before the founding of the United States at all, such an Act had been passed in the Kingdom of Sweden, which at the time also included Finland. As was to be expected, various complications followed but the law proved to be a success in Scandinavia. It is partly due to the Act that the European North, which previously had had a very different image, has become the world's least corrupt area and, concurrently, exceptionally socially responsible and committed to democratic principles. The most informed writers know to give the Freedom of Information Act its Swedish name *offentlighetsprincipen*, “the principle of publicity”. It is in Sweden that a Freedom of Information Act, or FOIA as it is usually designated, was first put into practice, gaining a status in the country's constitution. Yet, the story of its origin is not generally known.

The work of the Diet in Sweden is well documented from different perspectives. Of course, a number of controversies remain among historians, but, concerning the world's first FOIA, a valuable analysis can be found in Professor Pentti Virrankoski's biography of Anders Chydenius, the central person involved in drafting the law. However, I will not here concentrate on details of biography or political history – my standpoint

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is the history of ideas – , but before going to the actual drafting of the Swedish FOIA, it is necessary to highlight the ideological backgrounds of the key actors in the process. I will look at how the first FOIA was composed, the steps and conditions that made it possible, and analyse its different elements on the human plane.

Of some of the phases of the story inferences can be based only on circumstantial evidence. But there are also preserved writings by Anders Chydenius, primarily those in which he made preparations for the Act, but also some short memoirs. Of additional interest is the fact that Chydenius came from a periphery of the Swedish Realm, from the northern and middle parts of Finland, and that he had an office in the service of the Church, though he was still undeniably a versatile Enlightenment philosopher, representing democratic thought, as we would say today. How could such a person, a priest from the countryside be active in making radical reforms?

In its original formulation the Swedish Freedom of the Press Act was short-lived, a mere six years, but its effect on the general consciousness

about rights was indelible. It was recurrently returned to in new forms. After various developments the way of thinking expressed by the Freedom of Press Act of the Swedish Realm has today become a cornerstone of the worldwide struggle for freedom of information. It is conceived as the prerequisite of the freedom of expression, widely seen as belonging to human rights, and it is just a matter of time when it will finally be acknowledged to be an integral part of them.

The principle of the freedom of information has been approved as part of legislation throughout the world in about 70 countries, and at its strongest within constitutions. 35 of the approving states of the FOIAs are due to the unprecedented worldwide revolution in openness of the 1990s. The number is growing every year. And yet even today there are drawbacks that threaten FOIAs in individual countries.

At present freedom of information is recognised as the most effective way to prevent corruption in developing countries, but Thomas S. Blanton, the Director of the National Security Archive of the George Washington University underlines its worth in promoting security in general. The consciousness of citizens and their ability to act on it is often a more important security factor than exaggerated secrecy measures. Perhaps the best confirmation of such a view can be found in the history of the Nordic Countries, where general and high education, social mobility and openness have been at the top of political agendas.

A few words about the history of Sweden/Finland in general are needed. The Swedish Diet of the so-called Age of Liberty (1719-1772) was an early experiment in parliamentarism, the only one of its kind aside from the English Parliament. The name given to the period refers to the shift of power from the Monarch to the Estates. In effect it meant the liberty of the Estates. The Swedish Diet was divided into four Estates: nobility, clergy, burghers and peasants. In Sweden, the peasants were free and Lutheran priests had in many cases good contacts with them.

When the Estates assembled they had all power, and the ruling Senate, Council of the Realm, was responsible to them. The King was little more than a representative figure. As happens in parliamentarism, there were parties but they did not have any powerful nation-wide organizations and they were concentrated mostly in Stockholm. The Hats dreamed of making Sweden again a great European power and were supported by France. The Caps thought that such times were past. They had the support of England and Russia. After losing Finland to Russia in the war of 1808, Sweden was never engaged in further wars.

Finland had the same rights as other ancient parts of Sweden, the main difference being the language and origin of the major part of the population. The country succeeded in defending its Swedish legal order when it was later transformed into part of the Russian Empire. However, the legal order of Finland in the 19th century was not that of the Age of Liberty but the following one, dating from Gustav III's era, one that was friendlier to the Emperor. Still, some of the old rights were sensitive from the Emperor's point of view, but the autonomous status given to Finland made possible a consolidation of this nation and state and, indeed, a number of modern reforms and a democratic development. The 19th century was for Finland one of peace and nation building, under the guiding device formulated by philosopher and statesman J.V. Snellman that the strength of a small nation lies not so much in its arms but in its level of education and culture, making it and its individual citizens capable of rational action and integrating the thus enlightened population into the network of global civilisation.

In 1906, the Finnish Diet, which was modelled on the Swedish one, could be turned into a single chamber parliament where all men and women could be represented and elected according to a general, unqualified right to vote – the first of its kind in the world. After gaining full sovereignty in 1917, Finland never lost its democracy. It was attacked by the Soviet Union in 1939 because of the Stalin-Hitler pact. It lost ten percent of its area in the Second World War, being the only democracy fighting against Stalin's aggression, but at a high cost it remained one of the few European countries not occupied by foreign powers. After the war it was busy building a democratic welfare state in the company of other, in many ways similar, Nordic Countries. As this is being written, it has for the second time the presidency of the European Union, which is, contrary to pessimistic voices, emerging as a global peace providing player.

Starting Points of Chydenius and Some Other Writers

On the basis of Anders Chydenius' (1729-1803) formulations the Swedish Diet passed in 1766 the Freedom of Press Act, *Tryckfrihetsordningen*, which was unprecedentedly radical, both in Sweden and in the world in general. Chydenius formulated during the Diet the thinking that proceeds from the idea of the indivisibility of freedom: "A divided freedom is no freedom and a divided constraint is an absolute constraint."

He developed this idea in conjunction with ever new issues, both during the historically revolutionary Diet of 1765-1766 and later. In his

memoirs he even claimed that “for nothing else did I work in the Diet as diligently as the freedom of writing and printing”.

All writing about the foundations of affairs of the state had so far been banned in Sweden, literally all writing, also with pen on paper, not just the publishing of ideas. If one was discovered in possession of forbidden materials, no explanations that it was written for oneself only or at the most in a letter to a friend were of any help. Therefore the act of the freedom of press would contain the curious double characterization: the freedom of both writing as such and of publishing it in the press and books, *skrif- och tryckfrihet*.

When Anders Chydenius, a young Church employee in the small county parish of Alaveteli, became politically active it was to become an important incentive to the development that led to the freedom of information in Sweden. This happened when he participated as a speaker in 1763 in the provincial meeting (in Chydenius' words, *en allmän landtdag*) that the deputy Governor of Ostrobothnia Johan Mathesius had summoned in Kokkola. The main incentive for Chydenius to set out to the assembly was the freedom of commerce of the Gulf of Bothnia that had long been aspired to. The political wind was changing after decades of rule by the Hats. The opposition party, the Caps, and its new radicals, including Chydenius, would soon attain prominent positions.

Chydenius was a priest who pondered many issues relevant to daily existence. He practiced agriculture and its reform according to the latest knowledge, herded merino-sheep, cultivated tobacco for sale, and participated in the cultivation of potatoes introduced to Finland by the war over Pomerania, better known as the Seven Years War. He was also an active medical practitioner, giving health advice, vaccinations and practicing surgery, and in addition he wrote a treatise on the causes of moss spreading in meadows and its prevention. Since there were no apothecaries nearby, he learned the making of medicines.

This makes you wonder what kind of education Anders Chydenius received when studying at the Academy of Turku and for a shorter time at the University of Uppsala. All was not due to Chydenius' exceptional initiative. The degree he took involved manifold studies in the most diverse subjects of the small but broadly oriented university of Finland, and not only concentrated on theology.

According to the project of the Enlightenment, human individual reason would form the basis for processes of progress in all fields of life.

The ideas of humanity, freedom, equality and happiness were not in themselves unique or new, whereas confidence in the possibility to combine them to the rationality expressed by modern science, technology and economy was a revolutionary idea.

The Enlightenment can be regarded as a universal European phenomenon that also reached beyond its borders. The philosophical, scientific, economic, political, cultural and religious contexts related to its birth differed from country to country. Its point of departure was the move towards peace, reconstruction, the restoration of economies and mutual interaction in Europe after the storms of the early Eighteenth Century. The possibility for a peaceful comparison of conditions in different countries gave birth to critical standpoints and the will to make reforms, which little by little were channelled into the programmes of the Enlightenment.

After its Glorious Revolution England became the general ideal for the early Enlightenment, especially in France through the works of Voltaire. The Netherlands which had realized the freedom of printing, gave an important contribution to making the Enlightenment possible in a wider European context. Hanover, which had a personal union with England, was to bring the Enlightenment to the German countries and to Scandinavia especially via the new University of Göttingen.

There was no one great Enlightenment movement in Sweden, though there were Enlightenment tendencies. There were also individual Enlightenment perpetrators, such as Peter Forsskål and Anders Chydenius. Both promoted the same goals, Forsskål ideating them, Chydenius actually realizing a number of them and fighting for more. There is no proof of a direct literal connection between the two men, despite the correspondences in their thinking. Politically, both belonged to the Caps, although not in any strong sense. Chydenius was a disciple of the Enlightenment-spirited professors of the Academy of Turku, but unlike his instructors who tended towards the Hats, he found himself siding with the Caps.

In Sweden there was no Enlightenment programme against the state as in France for the simple reason that Sweden had an early form of parliamentarism. When the Estates did not meet, the Senate had to follow their instructions. If the scrutiny of the records of the Senate by the Estates then showed this had not been the case, the Senate members responsible for "errors" could be dismissed. This is also what happened in practice. Different parties could gain governance in the country, though especially the Hats who had long had the lead, throughout Chydenius' youth, had been able to stay in power even after taking the country to

disastrous wars. The point is that under such a mode of governance it was possible to affect a change in society without taking recourse to violence against the state.

The precondition of being able to affect such change was to have free access to information of the state of affairs and to express one's opinions about them. The Caps, who most clearly felt the need for a change, especially the radical ones coming from peripheral parts of the realm, understood this best.

Anders Chydenius was not widely travelled in Europe at all. He travelled only within the realm, first to the universities of Turku and Uppsala and then to the Diet in Stockholm as one of the junior members of the Estate of Clergy. Nor did he become a courtier during his stay in the prosperous capital. He had only a limited circle of acquaintances, though his thinking was not limited, and by appealing to publicity, exploiting the possibility to publish political writings during the Diet, he made up for his lack of influence. He also clearly had a network of relations behind the scenes.

Most of the authors discussed here had a common background in the peripheral regions of the country, families that moved from one place to another, and a tortuous process of social rise. Such a background made it possible to perform comparisons and develop a critical stand. Anders Chydenius was born in Sotkamo, an absolute periphery of peripheral Finland. Johan Arckenholtz and Peter Forsskål were born in Helsinki which at that time was quite an unimportant centre, the most flourishing Finnish city being Turku. All three also came from peripheral parts of Finland, which however had their connections to the centres of state politics and academic life. Arckenholtz's father was the Secretary of Uusimaa and Häme county, Forsskål's and Chydenius' fathers were priests, thus in a position where it was necessary to know the vernacular and the conditions of local population. Having a background in periphery and experience of mobility brought together many critical voices, including the prolific political writer Anders Nordenkrantz, who came from Northern Sweden, but had been in England and knew Europe. Nordenkrantz was an author who was very important for Chydenius.

By contrast the powerful figures of the ancient families had from time immemorial been concentrated round the king in Stockholm, where they were able to keep themselves informed and gain influence. The *nouveau riche* of Stockholm was of course in the same position, even concerning the Diet.

Utility on the Agenda of the University of Turku

The earliest introduction to some aspects of enlightenment thought in Finland was presented by professor of rhetoric Henrik Hassel, born in Åland, the archipelago between Sweden and Finland. Instead of admiring the Classics as was the rule in his profession, which concentrated on the use of Latin, he paved the way to modernist thinking.

Hassel was the main representative of Humanism in Turku from 1728-1775. His course differed from those of his colleagues in other Swedish universities. Yet it did not reflect directly the alternative attitudes of the Royal Academy in Stockholm, founded to forward utility, natural sciences and economy.

Finland's occupation by the Russians during the Great Northern War caused great destruction and a hiatus in the work of the university, but this made it possible to recommence the functioning of the Turku Academy on a completely new basis, without dwelling overly on the past. Hassel took advantage of the situation, as can be seen by the theses he tutored.

Hassel regarded knowledge to be based on sensory experience and reason, and opposed metaphysical speculation. Knowledge should be of immediate service to human life. Francis Bacon was his paragon of virtue. According to Hassel, the world was as it was contingently and not by necessity, since God had created it freely. Absolute knowledge of the world was not possible. Divine reason was not within man's reach. The use of creatures of the world to certain ends, their utility, was ordained by God.

Though Hassel had no overall idea of progress, he regarded the sciences as progressing. Contemporary science was thus not about retrieving the Classics, but the achievement of Bacon and his followers. In the theses tutored by Hassel the significance of the vernacular as the language of science was surprisingly stressed in contrast to Latin, his own field. Hassel thought that such a change of language was one of the background factors behind the success of England and France. The mother tongue as the language of science was to be raised everywhere to the same level reached by the contemporary languages of those successful countries. The worth of the past was to be found in the fact that rhetoric and culture had flourished best under conditions of political freedom.

Furthermore, Hassel was convinced that the cause of almost all the misery in the realm during the existing and past century had been war. In

the spirit of Samuel Pufendorf's natural justice that stressed the significance of contracts, he gave a pacific tone to his treatment of relations between states and individuals. The theses rejected the rhetorical way of appealing to emotion. Instead one should address reason so that people could form their opinions themselves and not be driven hither and thither, slaves to another's will.

Hassel who appreciated empirical sciences was to have some colleagues who appreciated especially the utility of natural sciences. Johan Browallius had studied Bacon's empiristic utilitarian philosophy, and was a good friend of Carl Linné. Browallius published two booklets, one asserting the benefits of natural history in schools and the other its significance in universities. The works argued that speculation should be replaced by extensive observations and gathering them from all over the realm, including by using the educatory system. According to Browallius, the clergy was in an excellent position to teach natural science to the peasants, and set an example in their own agricultural activities. C. F. Mennander, another disciple of Linné, was more humanistic than his predecessor Browallius, applying even Pufendorf's natural law in his teachings.

The professorship of poetry in Turku was transformed into a professorship of economics, one of the first in the world. The position was given after much dispute to Linné's favourite disciple Pehr Kalm, who studied in Turku and in Uppsala, made expeditions to Russia and Ukraine, and, after receiving the professorship, a renowned journey to North America, documented in a book translated into several languages.

Economics was part of a project to have professorships in sciences of utility at the universities of Sweden. At Uppsala it was accomplished from without the university, in Turku there were sustainers already within the university. Whereas at Uppsala, the main university of the realm, economics concentrated on the affairs of the state and statistics needed by the governance, and on the doctrine of trade under mercantile ruling, Turku was the only place in Sweden to represent Linné's peculiar notion of economics: one was to learn it through agriculture and its reform, utilitarian plants and natural products and descriptions of regions and counties.

No Swedish university was so tied to utilitarian thinking as Turku. At no other Swedish university was there to be developed such a union of striving for utility and the humanism that directed it. At Turku the values of humanity, freedom and happiness were combined with a trust in the

rationality of science, economy and even technology. Instead of enhancing manufacture and technological skills it was however seen proper for Finland to advance agriculture.

Johan Arckenholtz and the Ideal Country of England

A precondition for the transformation of Sweden was the decision to end absolute monarchy and give highest power to the Estates, made by a state that was weary of the endless wars of Charles the XII and that had lost its status as a great power. Arvid Horn was then practically in the position of a prime minister, leading the Chancellery, and his realistic foreign policy opened for many the doors to England, which was practicing parliamentarism and was to be followed in this by Sweden. However, despite frequent commercial contacts with England, a great number of leading Swedes remained allied to France, unable to admit that the grandeur of Sweden as a great European power was a thing of the past.

Johan Arckenholtz, who had travelled widely in Europe as a guide to young noblemen and was deeply versed in its history and social conditions, was the first Finn to be impressed in 1731 by the society he had experienced in England. In England, unlike the rest of the Europe, according to Arckenholtz, the Estates were not kept apart. All followed the same statutes. All paid taxes, from the high to the low. Parliament, the House of Lords and the Court balanced one another's power, but the decisive power in the realm was held by Parliament. The English, who loved their freedom and increased their wealth, were the most efficient of all nations in enhancing common well-being and manifested in their actions a future "natural equality" between men, as Arckenholtz expressed it with Pufendorf's concept.

After having received an office in the Chancellery Arckenholtz wrote an extensive manuscript on the position and interests of Sweden in Europe, discussing the situation in the different European states and their prospects of development. In the chapter dealing with England he formulated the principles of his own social and political philosophy.

He came to the conclusion that there was no sense in revelling about an ideal state in the fashion of Plato, More or Campanella. Utopias had never proved to function. It was infinitely easier to look for faults in the existing state than to formulate the structure for a model one. Yet one needed an understanding of a mode of governance where "all disorder and imperfection may be avoided, and where every member or subject can be called happy, and where he indeed after his own manner may so be". The

happiness of a nation was to be estimated by the amount of population that could be regarded prosperous, or by the degree whereby the government at least strove for maximum well-being.

The mode of governance was a significant precondition for well-being. A good mode of governance was according to Arckenholtz one that bound together the fundamental parts of the state, so that movement could pass from one part to another. Everything should have a common ground that would enable the right functioning and movement to the whole mechanism.

Such a developed harmony was rare because the lawmakers could not create the whole organised state at once. Laws had to be made piecemeal, applying long-standing laws and customs. A lawmaker was thus in the same position as a master builder renovating an old house with new materials. The building could never be as beautiful as when beginning the work from the foundations. Parts of the pre-existing house would be preserved within the new.

Arckenholtz gave an interesting example. Even though it was possible to remove the absolute monarchy from governance, repressive relations could still be preserved, unnecessary secrecy concerning public issues could be observed, freedom of opinion could be restricted, freedom of writing and press banned. A free nation should abhor such remnants of despotism in its public life. According to Arckenholtz, the freedom of a nation presupposed also the freedom of public discussion of significant common issues, including freedom of the press. Arckenholtz did not name any such state where outdated secrecy had been preserved. But the description fits exactly his contemporary Sweden.

England possessed, according to Arckenholtz, a correct understanding of the freedom of personal liberty and liberty of property; it pertained to both the high and the low, and no privilege put one estate before another. The English did not talk as much about the common good as they furthered it in their actions in practice, but Arckenholtz could still maintain that "...common good is promoted in England more seriously and enthusiastically than anywhere else in the world". The whole nation was elevated with "public spirit".

In his treatment of foreign politics Arckenholtz thought the politics of peace and a neutrality of sorts to be in the interests of Sweden. His admiration for England and mistrust towards France did not go well with the opposition party of that time, afterwards named the Hats, which had

leanings towards France. The Hats were strengthening their positions. Together with another Finn, Johan Mathesius, who acted as the Finnish interpreter for the Chancellery, Arckenholtz opposed the Hats, obsessed with military power and demanding an attack on Russia. Arckenholtz was active in negotiations with the Finnish Diet members in the coffee houses and inns of Stockholm. Later, he apparently even sought to influence the election of Diet members from Finland and the counties on the other side of the Gulf of Bothnia.

Such outside influence was considered an interference with the freedom of the Estates. When the Hats gained power in government Arckenholtz would pay for his opinions first by losing his office, accused of endangering the relations with France, and when the war against Russia really broke out, by being imprisoned for its duration, along with Mathesius. Nothing would dishearten their stubborn opposition to the Hats, and finally he had to leave Sweden. Much later, both of these staunch Caps with rich memories of the political past would encounter the young Chydenius at crucial stages of his career.

Peter Forsskål and the Enlightenment

Peter Forsskål begun his studies in Uppsala at the age of 10, and joined the circle of eager natural scientists that was gathered around Linné. With the help of a grant he could study philosophy and Oriental languages at the best Enlightenment university of the time, Göttingen. It was there that he presented his dissertation in 1756, which defended the principles of empiricism. His tutors at Göttingen praised their student's free spirit and his trust in his own capacities.

The dissertation and the disputes that followed made Forsskål the first Finn to have defended the freedom of scientific research. In his view science should not be frozen into an inhuman, unchangeable system. The search for truth demanded infinite renewal. Truth could be also approached in diverse ways and therefore fundamental to science were both continuous critique and tolerance.

After returning to his fatherland Forsskål asked permission of the University of Uppsala to defend a doctoral thesis on the freedom of citizens, *De libertate civili*. Because of the sensitivity of his subject this was denied. Later, Forsskål managed to obtain permission from the Censor of the Realm to print a Swedish version of his treatise, *Tankar om borgerliga friheten*. He handed out the five hundred copies of the edition mainly to students in Uppsala in 1759. He had a docentship in economics at the

university, but earned his living under the protection of the Caps, as a private instructor in the family of Count Christer Horn, of Finnish origins and a likeminded thinker.

For the Hats freedom meant absolute power and untouchability for the Estates assembled to the Diet. Forsskål presented a radical alternative to this conception of freedom. He summed up the claims of Enlightenment in twenty theses. In defending his booklet Forsskål said his conclusion was that “freedom must be maintained through freedom, that is, the freedom of the realm through the freedom of writing, as is the case in England”. The answer to shortcomings and discontent could be given either “in blood” or “in ink”. According to Forsskål Sweden could only choose the latter, and this presupposed the creation of an “enlightened public”. The goal was general civic freedom.

Absolute monarchy was the gravest menace to civic freedom, but also in a state boasting of its freedom people could oppress each other. Concealing injustice made this possible. Everybody should have the right to express in public writing what he thought was an offence against the common good. The life and power of civic freedom resided according to Forsskål in a limited government and unlimited freedom of writing.

To this Forsskål added a reminder that blasphemy, libel and evident persuasion to misdemeanour should not be allowed. The censor demanded that he add also attacks against government to the list. One passage had to be removed completely: it stated that the freedom of writing could be no menace to divine revelation, rational constitution or individual honour, because “the truth will always conquer, when it can be questioned and defended through equal rights”.

Forsskål’s defence of religious tolerance was allowed in the printed version. Here, in his view, the English model was also the most momentous. Opposing heresies only made them stronger, whereas lenience towards people of different creeds enhanced their adaptation to society. Neither did England have to fear intrigues against the constitution. Through the freedom of writing shortcomings could be recognized in time and resolved.

The freedom of writing was a guarantee for the flourishing of sciences, supervision of public officials and ultimately the stability of the government. The citizens should be able to obtain pertinent information about social conditions and use the knowledge to enhance general well-being.

Civic freedom should be extended to the economy as well as the state.

Forsskål was against the guilds, which he deemed a slow and inefficient system, and demanded public schools that would prepare people for professions. Impediments to buying land should also be removed. Also the people without estate should be lords in their own homes after the fashion of England and Germany. Steps had been taken to have the principle of merit approved as the basis for nomination to an office or promotion to a higher one during the Diet of 1755-1756. Forsskål took it further. Instead of birth, money and relations, one's own capabilities and industriousness should be of decisive importance.

Forsskål thought that citizens should have the right to defend themselves publicly before an impartial court, but he was forced to see that this right was denied him. After the publication of his booklet the Council of the Realm ordered it to be confiscated. Rector Linné was given the task to collect the copies, although he managed to gather only a small part of the edition. A long and futile exchange of letters with different bodies of the opposing machinery ensued. With the help of professor J.D. Michaelis from Göttingen Forsskål was appointed as a natural scientist to the expedition to Arabia by the king of Denmark. After prolific gathering of observations and various mishaps Forsskål passed away in Jemen.

It is easy to agree with the Swedish writer Thomas von Vegesack: "The significance of Forsskål's theses can hardly be overrated. His book is a summary of those demands which in the Europe of Enlightenment could be put to society."

How a Priest Found Politics

The foremost Finnish social thinker of the Eighteenth Century was Anders Chydenius. However, as I will show, his thought had not only a local interest, although the discontent of the people of Chydenius' home county Ostrobothnia certainly forms a causal precondition for it. Because of the turn Chydenius' thought took, it must instead be judged as belonging to the most important social and political philosophies in the fascinating world of the Eighteenth Century in general. Like most of the early modern philosophers, Chydenius had no academic career, and he can be considered a "philosopher" only due to the general theoretical significance of his writings. His name does not appear in ordinary curricula around the world, but this can be explained by reference to the unhappy situation that the great bulk of Chydenius' writings has so far been available only in Swedish and Finnish.

Chydenius acted in Ostrobothnia first as the curate of Alaveteli, then

as the pastor of Kokkola. Compared to Peter Forsskål he became more an Enlightenment influence at the level of national Swedish politics. He was also a comparable phenomenon to Adam Smith as a formulator of economic liberalism, albeit independently of Smith. Economic freedom was important for the Finns for exactly the same reason as for the Scots in the period of their unification with England. Abandoning the barriers of trade was a common goal and so it was no wonder that there was a congruence of thought. The political career of Chydenius was made possible by the Swedish Diet, through which the periphery might also try to make its voice heard. In the centres of the realm direct and secretive links to the cores of power could function well enough, but for the peripheries it was important to expand freedom, publicity and the accessibility of information, and thus improve the possibilities of independent action.

The provincial meeting held in Kokkola proved to be a turning point for Chydenius. The meeting was a dramatic happening, recapitulating the long-standing struggle of the people from Ostrobothnia for their rights to engage in commerce. The issue dates back to the 1617 sailing code and its restrictions. The code gave the right to sail from the region to just two staple cities, Stockholm and Turku. Merchants from these cities transported the products from Ostrobothnia abroad. The export of tar was the monopoly of the great merchants from Stockholm, likewise all import of products. The burghers and peasants of Ostrobothnia saw this as an affront to their rights and an unjust privilege for the capital. All proposals to change the situation had been repeatedly rejected.

The lack of rights of commerce was felt in the regions surrounding the Gulf of Bothnia, and especially in Ostrobothnia. There was ongoing anger at the regulation of commerce and initiatives to have it cancelled. The Diet that opened in 1760 turned into a real confrontation. The peasants of Ostrobothnia tabled a motion to have three staple cities, while the peasants of Norrland demanded two. Petter Stenhagen, the magistrate of Kokkola wrote several accounts to prove what an injustice it was that Stockholm profited from foreign trade at the expense of the province.

Stenhagen had found also more general arguments to support his standpoint, references to the profits of the freedom of trade and even of a general freedom of occupation to the realm. The motion for new staple cities had strong support among the peasant estate, and also the nobility and the clergy tended towards it. The burghers of Stockholm however opposed it strongly, and turned it into a question regarding the privileges of all the Estates, which presupposed it would have to be approved by all.

A systematic and deep corruption had been a notorious habit of the country, with support bought by corrupting the Diet members. France, England and Russia had traditionally used large sums with varying degrees of success to direct the Swedish Diet, which had no system of wages or reimbursements. Vaasa, Kokkola and Oulu made use of this traditional means. Unsurprisingly, Stockholm could muster more wealth. The peasant estate began to waver in its stand.

The issue was adjourned. It was passed to the Council of the Realm to be cleared up, which passed it to the Councils of Chancellery and Commerce, which in turn requested a statement from the Governors of Ostrobothnia and Norrland.

At this stage the long-standing Cap an acting Governor Johan Mathesius decided to convene a special assembly in Kokkola. Chydenius says in his memoirs that the purpose of the meeting was to unite “the cities of Ostrobothnia to the countryside surrounding them”. This was done so that during the next Diet it would be possible to work together “for the already demanded freedom of sailing and to be prepared for the opposition that might come from the merchants of Stockholm and Turku”.

The provincial meeting was held in February 1763. Chydenius was asked to produce a text on the subject for the purpose mentioned above. This was the real beginning of his political career. But it was also an interesting sign of the times that such a meeting was held at all. From the time of the meeting on Chydenius was an undeniable Cap politician.

Chydenius recalls the outcome of his participation thus: “The text was courageous, and I wished to remain unknown, but there was no-one brave enough to present it; therefore I had to step forward myself and read it to the whole congregation, while the public applauded most enthusiastically...” The only version of the speech that survived is the one published by the city of Kokkola two years later, when preparations for the Diet began. Chydenius studied the material produced during the previous Diet and discussed with people versed in the subject.

Chydenius recalled later that due to envy caused by the speech he was in danger of being imprisoned, had not some of his protectors intervened without his knowledge. The truth may never be known, but the menacing situation recalled by Chydenius cannot be considered impossible. The Diet had decided to impose severe restrictions in the towns on meetings of this kind.

Johan Mathesius had well over twenty years since paid bitterly for his

political activity with Johan Arckenholtz of recruiting people against the Hats. After that the condemnatory attitudes towards such activity had only become sterner. The principle that Diet members would be answerable to their electors had been condemned as contrary to the Swedish Constitution. In its strictest form the feared imperative mandate meant that the electors could withdraw their Diet member, if he acted against their will.

Chydenius seems to have had in mind the scrutiny of the Diet members by the nation, a conception that at least came close to that of the forbidden imperative mandate, as can be seen from the sketch on freedom of the press by Chydenius found in his papers: "The freedom of a nation does not consist in the sovereign estates acting as they will, but in that the light of the nation binds their hands so that they cannot act in a biased manner." In a later version, presented to the Committee of the Freedom of Press, the passage has been moderated to the statement: "The freedom of a nation cannot be upheld by laws alone, but also by the light of the nation and knowledge of their use."

Chydenius had apparently been told that to demand that the nation needs to control the estates gathered in the Diet would lead to contestations. A safer way to express the idea would be to use the metaphor of light. The constitution did not recognize the ancient assemblies of the county, called to represent local interests. In Kokkola there were gathered representatives of different cities of Ostrobothnia, of the clergy, peasants, commanding officers of the local regiment, and even some representatives from the eastern part of the country, in all many former and future Diet members. Such a meeting was a significant "local parliament", which defied the decision of the sovereign Diet.

The imperative mandate would have been a means to control the representatives and counteract the bribes. Soon Chydenius would find out that there was also another, less harsh method: free public opinion.

There is no mention of Chydenius' speech in the records of the assembly Johan Mathesius made for the Councils, and thus it has been possible to conclude that Mathesius intentionally kept secret the demand of freedom of commerce for the Gulf of Bothnia presented by the assembly. Nevertheless the result of the meeting was the goal to have three new staple cities and to ease the conditions of four others in other ways, while also ensuring the right of sailing by peasants. Not surprisingly it was precisely the experienced opposition man Mathesius who organised such a meeting fully conscious of the dangers that went with it, and gave it the

most innocent form possible, protecting Chydenius, whose speech was not officially recorded.

Formulating General Principles

Soon after the events in Kokkola, Chydenius wrote an essay for the competition announced by the Royal Academy of Science on the causes of Swedish emigration and the means to prevent it. Trying to find the causes and formulate general explanatory principles was characteristic of Chydenius' activity, not only in this one essay but also later on.

The script was in fact a broad and grim political pamphlet, where Chydenius already discussed how the light of knowledge should enlighten a free-thinking citizen elected to represent his estate in the Diet. Chydenius summed up the lessons of history as an ongoing struggle between constraint and freedom. Fatherland was where one was happy, and happiness depended always on liberty. "Everybody strives after the freedom to which one is born." Chydenius elaborated his ideas further:

"Freedom is the true opposite of constraint, but as a word its meanings are much too numerous, it is most prone to be used and abused and must therefore be used most cautiously, so that it causes not more harm than good. For the freedom of certain persons has led to devastation in all states, and could prove to be such also for us, unless we oppose it in time.

We don't have to dwell on the freedom of governance itself here. It is a precious accomplishment that we never want to lose, not as long as we and our descendants will be called Swedes.

I am addressing that freedom, by which I mean the privilege of every citizen given to him by the laws and constitutions of the realm to promote his own happiness to the degree that he will not impair the happiness of his fellow citizens or of the whole society."

This was an English-type, individualistic conception of freedom in a general sense, not just limited to a few individuals or to a form of state. For Chydenius people seek help and shelter from each other and have thus left behind a natural state, where everybody is responsible only for himself. All have from their free will sworn an oath of loyalty to the Swedish Crown. Love towards it rested on the foundation of freedom:

"Therefore no-one must be another's lord, no-one's slave; all have the same right, all the same interest. When this happens, the citizen has all

that he can reasonably wish for and in some well organized society attain; then no reason remains for him to emigrate...”

The Lord had, according to Chydenius, made nature perfect and man sociable, and also men’s abilities thus that the more they enjoyed freedom, the more they procured strength and comfort for the society and for each individual. Nor did freedom disturb occupations. It invested them with more vigour and movement.

Chydenius emphasized that society must protect all productive members as the apple of its eye. His views clashed completely with those of the professor of economics at Uppsala University, Anders Berch. Berch considered the existence of poverty necessary for the ruling of society, because without it people would grow lazy and stop working. Chydenius instead believed industriousness to be a natural property of men, and civic freedom would enhance and not diminish it. All that was needed to unleash it were equal rights and privileges.

Carl von Linné’s peculiar tenet about natural economy was combined in Chydenius’ thinking with ideas about natural justice coming from Pufendorf, and seemingly also from a conception stemming from John Locke. Chydenius did not dream of a return to a natural state preceding the organized society, but instead of a society where everybody would “be well”. Such a state, Chydenius believed, was connected precisely to freedom.

The prevailing contemporary economic tenet called Mercantilism relied on rules, subsidies and input from above, strict regulation and the control of occupations and industries by the state. Linné’s economical thinking instead gave a central role to an “economy of nature” stemming from God. This line of thinking had become established at the University of Turku. According to it the order and balance created by God prevailed in nature. All things had their place and meaning in the Great Chain of Being, the highest of all being man, whose utility the rest of the creation served.

From this perspective economics was based on the knowledge of nature and the utility it offered. The proper order of nature was to be followed, not disturbed. This conception of nature led to questioning political the regulation of economics and thus paved the way for liberalism. In his treatise on menial servants and later in his other writings Chydenius opposed forced measures. Like Pufendorf he departed from the natural equality between people and like Locke he thought that all people own

themselves and their labour-power, which they ought to be able to sell to the highest bidder. He defended the freedom of contracts for menial servants instead of the law on menial service.

When the Caps won the elections Chydenius became a representative of the Diet in 1765-1766, defending the freedom of trade of the cities of the Gulf of Bothnia against the privileges enjoyed by Stockholm. To advance his cause he studied the history of existing statutes and wrote pamphlets appealing to the Diet members and greater public. From practical interests he progressed to making a general theoretical presentation of his view in his booklet about "the national gain", as he said, *Den nationale Vinsten* (1765), where he formulated a comprehensive program of economic freedom.

Never in his thought did he simply defend his compatriots in Ostrobothnia. He sought universal solutions to the problems encountered. On the other hand, Chydenius was not a lone genius, without preconditions and popping up from nothing. For a great part, his ideas were anchored in the teachings of the University of Turku. When he came to Stockholm, he had an open mind, but in a scholarly sense his reading remained limited, although he obviously profited from his publisher Lars Salvius who also ran a bookshop.

In Chydenius' view knowledge of the natural order created by God was necessarily incomplete, as it had been to Henrik Hassel and his followers in Turku. A lawmaker could not have sufficient grounds for favouring some occupations, regulating labour or offering privileges to certain groups. Consequently, the best regulation was natural. It was formed by demand. Occupations attained a balance after being freed: "In this mankind is entirely like the sea, where one pillar of water affects another with an infinite pressure, but an equal respective pressure causes the surface of the water to remain level and horizontal. No enclosing of each pillar of water or other complicated measures will be needed."

This was Chydenius' defence for a free market economy, not unlike Adam Smith's "invisible hand", presented only later in print.

Already in his essay on the causes of emigration Chydenius emphasized that in a free state wide learning and knowledge is needed because the majority must settle matters. A free people could not entrust its matters to the few. The more numerous the subjects participating in the deliberations are, in some way or other, thought Chydenius, the better shall they represent society, and the less possible is it to silence them with threats, the less possible it is to bribe them.

From this he reasoned: “That it could happen, the nation must itself be enlightened, but this requires reason; this is best exercised when we write our thoughts down on paper. But for this there is no great incentive, unless printing makes it common.”

Where would a Diet member learn reason? Chydenius answered: “From all pamphlets published for and against concerning the success and misfortune of our fatherland, for thus is the truth best discovered. Therefore the legitimacy of the freedom of writing and printing is one of the strongest defences of our freedom. But if only biased arguments and corrections ever see the light, the high representatives themselves will remain in darkness. The highest power must therefore with tender and caring eyes also regard this facet of our freedom.”

Such a “tender and caring eye” could also mean the Censor representing the highest power. The contemporary Censor Niklas von Oelreich saw himself as a promoter of the freedom of the press. The term for the Swedish era of the sovereign Estates as “the Age of Liberty” comes from one of his writings.

During the Diet Chydenius concluded that political censorship was not needed at all. In England, censorship had been abolished in 1695, but it had not been replaced by a new law formulated with positive concepts, wherefore control could seek new forms. The radical Swedish *Tryckfrihetsordningen* would thus be the first nationwide liberating freedom of information act. Its founding idea can be considered to have been formulated by Chydenius: the freedom of a nation presupposes an enlightened publicity, which will tie the hands of the Estates and impede them from using absolute power. This moved the focus from the sovereign Estates to the nation in general.

Sources and Mentors in Stockholm

In his memoirs speaking of his indebtedness regarding the idea of the Freedom of the Press Anders Chydenius mentions only two names. Neither was an author of the memorial on Freedom of the Press presented to the Diet. Both were Caps well ahead in their years: the tempestuous writer on issues of the day Anders Nordencrantz; and Johan Arckenholtz, who had already served in the Chancellery under Arvid Horn, and who had later been suspended by the Hats because of his anti-French leanings.

Nordencrantz’s writings meant a lot to Chydenius. In his memoirs Chydenius explained: “When becoming a priest there was no subject I

knew less about than politics, but the Diet Journals published during the 1756 Diet opened my eyes for the first time to ideas about the Swedish form of government and our political constitutions, and when Councilor of Commerce Nordenkrantz at the 1761 Diet presented his detailed memorial to the Estates of the Realm, and this came to my possession like his other writings on the rate of exchange, it incited me to go further into such matters.”

The *Riksdagstidningar* of 1756 Chydenius first referred to was merely a bulletin containing information on the decisions of the Diet. As such it contained no political analysis and still less a critique, but its significance was in telling what the Diet was and what happened during it.

Already during the last Diet Nordenkrantz had been given permission to publish two previously written books of his, in which he strictly criticised the Hats and defended the radical freedom of the press. Nordenkrantz did not present England as a model of freedom of the press, however, because he did not approve of the Whigs who were in power. Instead he set up as a model China, widely admired in those days, about which he gathered information through citations in French from the Jesuit Jean-Baptiste Du Halde’s work in four volumes *Description géographique et historique de l’empire de la Chine et de la Tartarie chinoise* (1735), the basic work on China in the Eighteenth Century.

Even though Nordenkrantz spoke a lot about freedom of the press and opposed secrecy, he did not demand the abolition of censorship. He would have allowed even rebellious writings, which he thought ought to be publicly corrected, not punished. He would have maintained religious censorship. He would have moved political censorship from the Censor and Chancellery to the Estates.

In connection with the freedom of printing Chydenius writes of Nordenkrantz in his memoirs only that: “Nordenkrantz’s writings had opened my eyes so that I now considered it [freedom of the press] the apple of the eye of a free realm.” This frequent Chydenian metaphor of the freedom of press as the “apple of the eye” of a free nation and its constitution was in fact derived from Nordenkrantz.

It has not been possible to establish with certainty how Chydenius arrived at a conception much more radical than the one held by Nordenkrantz: the demand to abolish political censorship in general. But there is even some contemporary printed evidence enlightening the development of his thoughts.

In his memoirs Chydenius does not mention the small pamphlet published in the Spring of 1766, translated from Danish by Chydenius, including a foreword written by him and dedicated to the Crown Prince Gustav, the future Gustav the III. The Danish economics writer F.C. Lütken, versed in physiocracy, had published a chapter from Du Halde's book on the censorship during the Chinese Tang dynasty (618-907 AD). Chydenius translated this passage, following the admiration held by Nordencrantz towards China, and it forms the main content of the pamphlet.

Du Halde's text in the pamphlet begins with a reference to the ancient custom of hanging on the palace walls canvases, where the subjects could write their opinions. The author then tells of numerous wise emperors who had set themselves censors to remind them of their duties, warn them of mistakes and relate of all things concerning the government of the realm. Nothing they brought up would cause the emperor to take offence, thus they could do it openly and without fear. The wise emperors were receptive to all remarks and corrected their actions. This explained the success and endurance of China.

In his foreword Chydenius agreed with this. The same practices would lead to same results everywhere, thus also in Europe. The practice had originated already under absolute monarchy, but it could be fitted to a Swedish guise, "under the protection of the sweet name of Freedom". Light and truth should lead people, but nobody had them from their birth. Those responsible for the nation must procure them. Often the light giving splendour to the throne blinded the rulers from seeing "the destinies of their distant subjects". Behind these metaphors one can detect Chydenius' critique of those near the ruler. But, he emphasized, there were such rulers whose heart was filled with compassion, when they "stepped down to the abodes of the smallest and heard the voice of the Nation". They performed with the blessing of people deeds of everlasting glory.

"Distant subjects", "the abodes of the smallest" and "the voice of the Nation" were examples of true Chydenius in the eloquent foreword. In fact, when the pamphlet came out Chydenius had already been working for a much more radical solution than could be gathered from that publication.

In his memoirs Chydenius said of the times of the Diet begun in 1765 that the cause he was promoting "was exactly to the taste of the party that had long been underfoot and now for the first time sat at the reins,

willing to open those recesses of knowledge created by the former party, and under whose power they had so long been suppressed”.

According to preserved records, one gets the impression that Chydenius was somewhat smoothing the description of the situation. “Opening the recesses of knowledge”, freedom of information as the right to publicise official records was not even mentioned in the oldest extant version of the memorial he wrote. He may have heard such demands, but he had not adopted them initially. The passage on China might indeed reflect his earliest feelings. It presented the idea about the king and the people, and contained a gibe against the nobility.

Chydenius continues in his memoirs, here manifestly reliably: “Therefore I made a memorial of it [the freedom of the press], which I gave to the late Bishop Serenius for his use, who introduced me to the acquaintance of the late Counsellor of the Court Arckenholtz, newly arrived in Stockholm, and invited me to consult with him about the memorial. After various discussions and reflections I rewrote my memorial...”

According to his account Chydenius thus had “various discussions” over his first, extinct version of the memorial on Freedom of the Press precisely with Johan Arckenholtz. These lead to a new, but not yet final version of the memorial. We may ask why the earliest version of the memorial has not been preserved. One possibility is that it underwent so many changes that it was not worth preserving.

Jakob Serenius, an old fox and a Cap who had seen from within different stages of Swedish politics, proved a disappointment to Chydenius in this matter. Serenius did read the memorial and even shortened it, “but at the end of the draft he retorted that it was not permitted to write anything concerning the state, which shocked me greatly, since with these few words already had been allowed all that the friends of constriction and secrecy could demand, and I dissociated myself from anything like it. He complained it was a most delicate matter and had been contested, but asked me then to write in my own name as it pleased me, which I did...”

Serenius did not dare to be the one to make public the ideas expressed in the edited version of Chydenius’ memorial, but lector Anders Kraftman from Porvoo consented to do it, and the memorial was presented in his name, though according to Chydenius he was unaware of who had written it. If this statement is true, then some kind of group was in action behind the scenes. The less known Chydenius hid or was hidden behind

a more experienced member of Diet. Serenius had been quite correct in saying that it was forbidden to write about the nature of the state; the constitution just had to be followed.

In addition to the middle version the final version of the memorial has been preserved. It was slightly shortened compared to the interim version. This can be explained through Chydenius' reference to passages removed by Serenius. From the final version has been removed for example – in the words of Pertti Virrankoski – “all poisonous references to absolute power of the Estates and their high-handed behaviour and the rights of the citizens trampled by the magnates”. It certainly had not been wise to speak in such a way about the powerful.

One can ask whether Johan Arckenholtz could be the one that caused Chydenius' thought to radicalize still further. Arckenholtz stayed in Stockholm during the spring of 1765 from mid-February to the end of May. The discussions between him and Chydenius must have taken place during that period. Arckenholtz was exceedingly interested in matters of state. In his memoirs Chydenius does not associate Arckenholtz with a similar confrontation as Serenius, but neither does he specify his potential impact.

We may assume that Arckenholtz presented suggestions regarding the state in principle based on his knowledge of Europe and especially of England, and likewise considerations based on his personal experiences of suppression during the power of the Hats. As we saw, Arckenholtz, an admirer of the political conditions in England, had already in his manuscript on the interests of Sweden among the states of Europe concluded that secrecy was a left-over from the times of absolute monarchy. There is nothing to suggest that Arckenholtz who abided firmly by his stances changed his mind about this.

In the preparations for the Freedom of the Press Act England was repeatedly posited as a model. It was undoubtedly an idealized paradigm, yet not without reason, if one compared the conditions in different countries. Similar references occurred in numerous places in Europe.

A clear image of the exemplary character of Britain, certainly corresponding to Arckenholtz' thinking, is presented in the interim report of the Committee on the Freedom of the Press: “All states have experienced the fundamental benefit of such freedom, and England, that has shed blood to guarantee it, counts it among the most precious bulwarks of its constitution.” Arckenholtz was exactly the kind of person, who was quali-

fied and had a motive to convince Chydenius that instead of China he should look to England.

He could also give advice where significant documents could be found. He had in his time been responsible for the documents of the Chancery, and had spent the major part of his later life seeking, gathering, organizing and publishing historical documents. Since no documents about foreign policy of Sweden could be published in Sweden, Arckenholtz had, under the name of one of his likeminded friends, published them in the promised land of forbidden books during Enlightenment, the Netherlands.

Arckenholtz was bitter at having had to be the first to suffer an attack from those opposing the moderate foreign policy of Arvid Horn, had lost his office and later finally became a political exile to Kassel, even if as a librarian to the Duke, who at that time was the King of Sweden. He was seeking recompense, in practice a retirement allowance, of which the downfall of the power of the Hats gave him hope. He was oppressed by his "misfortunes", as it was said, to the extent that it is impossible to imagine that he would not have unburdened his mind about them to the young Chydenius even under the new situation. Talk of the behaviour of the Estates and oppression of civil rights sounds very much like the agony of Arckenholtz.

But it is hardly justifiable to claim that Arckenholtz is the source for the most important emphasis of the memorial by Chydenius, the vision of the free competition between differently minded writers as a method for reaching the truth. Chydenius believed such a method had been in existence in China, and he thought it efficient under all conditions, forgetting China's absolute monarchy. Emphasis on this critical method of finding the truth was what most clearly separated Chydenius from the previous conception of political publicity as information meant to firmly establish the power of the Estates, propaganda for the Diet. The solution advocated by Nordencrantz would only have strengthened the power of the estates.

This fundamental idea in Chydenius' memorial has been ignored in various later commentaries. It has been discussed who would be held responsible in the case of an offence of the Freedom of the Press Act, the publisher or the author. During the discussion Chydenius shifted his stand from the responsibility of the former to the latter, but from the beginning he regarded both options. Chydenius thought that in England the responsibility was the printer's, and therefore supported such a solution at the outset.

However, the crucial issue, the main goal of the freedom of the press was according to Chydenius something else. He formulated it by saying that freedom in these matters gave birth to “the competition of the pens”. This had to be encouraged. Its impact was most precious:

“No fortress can be praised more than the one that has endured the hardest sieges. If the goal is unclear, then truth must be sought through the exchange of writings. [...] False writings shame their authors but profit the nation in that truth is argued for and embedded more deeply.”

Chydenius defended the seeking of truth through statements of different standpoints, through “the exchange of writings”. The statements that had endured the hardest critique would be the strongest. This reminds us of the spokesman for an Open Society in the Twentieth Century, Karl Popper, and his doctrine of the strengthening of scientific hypotheses caused by the attempts to prove them false, “corroboration” as he said.

Chydenius’ argument was a remarkable insight. Though today we may understand that politics cannot be reduced to knowledge, but presupposes various values and goals, the value of critically evaluated knowledge for politics will in no way lose its weight.

Three Memorials by Different Authors

While writing detailed pamphlets about the freedom of trade Chydenius had, because of his position at the Diet, been given permission to study old documents, often containing surprises and significant for formulations of standpoints. Probably this manner of working had a part in paving the way to a demand of publicity of official documents.

Three memorials were presented to the Estates as the freedom of press was taken into scrutiny in the spring of 1765. The first two were made by Historian of the Realm Anders Schönberg and Ensign of Artillery Gustaf Cederström, both the middle of May. The third and last a month later was Chydenius’ presentation. Of these three only Chydenius would participate directly in the preparation of the Freedom of Press Act.

Schönberg gave detailed arguments about everything that should be banned, but this was not the main point. Schönberg’s memorial repeated the one he had presented to the previous Diet. It dealt with the publication of official documents widely and in a positive tone. Already the Hats had begun publishing the documents of the Diet, although restrictedly. Their aim was not to forward freedom of opinion and critical debate, but

to spread knowledge about the fruits of their power and thus strengthen their position. This practice did also not originate in the Freedom of the Press Act, but it was in contrary a part of the development leading to it. Despite the seemingly liberal stand of his memorial Schönberg spoke for censorship.

Cederström for his part suggested a whole new idea, a kind of voluntary advisory censorship. Like Schönberg he too presented a long list of documents that should be allowed to be published.

Chydenius was the only one to demand the complete abolition of political censorship in general. It was Chydenius' programme that would be realized in the famous Freedom of the Press Act of 1766.

It must be said that the programme was not presented in full in the memorial to the Estates by Chydenius. It was significantly completed in the later work of the Committee, which made it so uniquely all-encompassing. It is evident that other people and not just one person had an impact on the final formulation of the law and in general on its birth, as is customary to a Diet.

The preceding discussion from the previous Diet to the present one had dealt only with the right to publish more freely, and not with the complete abolition of political censorship. A substantial and exceptional new idea was called for. Chydenius had precisely one that would serve: the competition of pens. It was a method that would bring out the truth by itself. Nobody could stand above it to regulate its course.

A unique feature of the Swedish Act, in addition to the freedom of writing and printing, was the freedom of access to public documents, the citizens' right to have information about documents the public officials had in their keeping. Highly significant too was the positioning of this right as primary and leaving of the necessary restrictions to a secondary position. Such an order of importance is proper to all subsequent laws on freedom of information. It is still a valid principle.

Originally this idea did not come from Chydenius. When the Caps gained central positions several people suggested publishing the documents concerning the Diet. It was considered necessary for gaining general confidence and deflecting suspicions. The general motives did not much differ from those that the Hats had had previously. Such motives of course would differ according to who felt or thought their policies have been successful or could at least trust in their success. It had become the

habit that during the Diet information about it was published and censorship was more moderate than at other times.

It was debated whether the records making public all discussions ought to be published, or just the specific memorials produced over different issues. One argument against the publishing of the records was for instance that the Diet members had greater freedom of expressing their opinions, if it were known that the records would not be made public.

In his speech concerning the issue in the Great Committee Chydenius had on 3 April 1765 declared unequivocally that both records and memorials ought to be freely published. He defended this view on several instances. It was in accordance with his view about the necessity to regulate the Diet, which he did not see as a body of absolute power. However, the result was then, contrary to Chydenius' view, that only the memorials would be published, not the records. This early speech proves that quite soon after the Diet had commenced Chydenius sustained an extensive publicity of official documents, at least as concerned the Diet, but at that date he apparently did not yet connect the issue with the freedom of printing in general.

Anders Schönberg Gives a Formulation for the Freedom of Information

The memorial by Anders Schönberg, a Hat, had been prepared during the previous Diet of 1760-1762 in a committee set by the Great Committee of the Estates. Despite approving of retaining censorship and listing prohibitions, the memorial defended an extensive publicity of official documents. From the perspective of the history of ideas it is a significant document, because it presents the principle of the freedom of information in a clear cut form.

Another matter is that during the previous Diet governed by the Hats the delicate matter of freedom of press was altogether abandoned, including the principle of publicity that had been drafted.

What did Schönberg's memorial, the basis for what came later, contain? Firstly it dealt with publishing documents of trials:

“Once any documents, judgments or records of any description have been issued, whether in earlier or more recent times, by any courts of law, government departments, consistories or other public bodies, the Committee finds no reason to ban their printing as they stand, with no

other examination beyond their being reported to the censor, who is then obliged to subscribe his name to them, in so far as no censorship can alter a legally issued document. It should be possible to remove only what relates to serious, less familiar crimes or anything else that is not entirely consistent with decency". It would not be necessary to print everything that had been brought up during a process. From an exchange of submissions however, the submissions of both parties to the court of law should be printed.

Contrary to the royal letter from 1735 that had been the foundation for the former practice, the memorial proposed that it would be useful "if all votes are disclosed together with the names of the voters, both when votes are reported to the Crown by the court of appeal and the major government departments in accordance with chapter 30, § 3 of the Code of Judicial Procedure and when one party, or whoever it may be, in any court of law, government departments or any public body, requests the release of the voting record or of reports by public officials concerning rights of individuals, which the Committee believes may then safely be printed;" A restriction as in previous times would regard only the highest power: "... it does, however, make an exception for the votes in the Council of the Realm, which are scrutinised only by the Estates of the Realm..."

The memorial thought that publicity would promote the attention of the public officials and judges making their decisions, likewise the education of public officials: "...that hereby the inestimable benefit will be obtained that none but mature and competent men would apply for such offices in which the rights of a citizen are put to the test, when it will not be so easy to fell under the influence of an ill-considered voice as it might be when it is concealed under an injurious silence..."

Anders Schönberg's memorial went even further: "The Committee further considers it to be necessary to allow the printing of all the official correspondence, judgments and verdicts, resolutions, edicts, instructions, statutes, regulations and privileges, of whatever kind or nature they may be, from the Crown, appeal courts, government departments and public officials; likewise all the memorials, applications, projects, proposals and the like submitted by private persons or individual societies and public bodies to the Crown or the Estates of the Realm, to the appeal court, government departments and state officials, as well as all reports, projects, official proposals, appeals against and responses to these, as also all accounts of parliamentary proceedings submitted by the officials to the Crown or the Estates of the Realm and all the verifiable activities of and duties

performed by officials, lawful as well as unlawful, with what occurred in connection with them, beneficial or deleterious. In short, whatever is not contrary to the basic rules outlined above for the censorship should be allowed to be printed subject to the appropriate censorship.”

The breathtaking list continues about printing the documents of the Diet: "...the Committee has not, however, felt able to recommend a ban on the printing of the resolutions issued by the respective Estates and of the protocols and reports of the committees; nor does the Committee find that there is any obstacle to the printing of parliamentary memorials, once the secretary of the Estate has certified by his signature that they have been read to the Estate and that the author of the memorial has either received the permission of his Estate to present the memorial to the other Estates, or that the memorial has been approved outright or referred to some committee.”

However, an important restriction ensued: “The Committee likewise recommends that all documents and papers that are produced during sessions of Diet and that provide useful information may be printed, as they should not be kept secret and concealed, although the signature of the Censor is required in all such cases...” Even though a document concerning the Diet would not be defined a secret one, it had to provide “useful information” and have the approval of the Censor. In other words, it remained the task of the Censor to decide on the basis of directions received what was useful. In practice this left the censor unlimited possibilities of political power. The memorial did not take the stand that publishing opposing standpoints could be useful.

Schönberg’s memorial saw no contradiction between publicity of official documents and preserving the Office of the Censor. The silent precondition seems to have been that the persons who prepared the memorial who had long been accustomed to the power of the Hats could not imagine a situation where radically different and contradictory standpoints would struggle for the favour of public opinion. They could not comprehend it as a method of seeking the truth.

If openness, on the contrary, were to be realized as a method of “seeking the truth”, what would there be left to do for censorship? Chydenius’ answer was unequivocal: nothing. The specific Office of the Censor and censorship by political officials in general should be abolished, as Chydenius claimed had been done in England.

Neither freedom of the press nor the principle of publicity were as such invented by Chydenius, but it was his action during the Diet that

was central to having these reforms realized and to giving them their final form. It was all about much more than presenting good arguments and the approval they received. A factor in the approval was that the Chancellery had long had problems keeping up censorship. The outcome of course presupposed a change in the political relations of power, the Caps winning the elections, new modes of thinking and new coalitions of people within the Caps. There were also some incidental happenings that proved lucky for Chydenius and affected the result.

The heritage concerning the publicity of official documents could be termed as a tight knot, which Chydenius opened with one stroke directed at censorship. His conclusion was namely that the publicity of official documents that depended on political censorship would be no publicity at all. Freedom and constraint could not be united.

The Final Decisions: Freedom of Information without Censorship

Chydenius believed that the people ought to be able to regulate the Diet and its representatives in it. Therefore a free state required a wide foundation of knowledge. The majority of the nation should be able to settle matters in light of its enlightenment. It was not just a question of the freedom of an assembly of the Estates, but a deeper issue of civic freedom and the enlightenment it presupposed. These could be brought about by publicity, not by a censor's judgement.

On 26 August 1765 the Great Committee set up a specific Committee to look into the Freedom of the Press, and Chydenius was appointed one of its members. The Committee acquired all memorials on the freedom of the press and investigated its history. If not before, then at this stage the whole range of the freedom of information must have become clear to Chydenius. It corresponded fully with the ways of thinking he had already adopted, wherefore he became its most consistent speaker and writer. Having discussed the restrictions necessary for freedom of press the Committee made a declaration at the end of the same year, 9 December 1765, about the publicity of official documents, or as Pentti Virrankoski has summarized it:

“All decisions, proposals and edicts by Committees and High Courts, not to mention the lower instances, could be published freely, and citizens ought to have an access to archives and copy them if they wanted. Likewise, records by all offices, even the Council of the Realm itself, and furthermore all documents presented at courts of law, though regarding

these some privacy of individual persons was to be respected. It was even proposed that public officials ought to hand over the documents for publication or they could be dismissed.

“It ought to be possible to make comments and proposals concerning all laws and other statutes, whether these had been passed or were just being drafted. It should also be permitted to write about foreign policy, and all treaties made with foreign powers ought to be public, unless they had specifically been declared secret. It should be possible to freely publish and comment on the history of the state, both national and in general.”

It was clear that publicity should be primary, and that what remained secret was to be a secondary exception. That is what the principle of publicity is all about. Not even the Council of the Realm, that is the government, was left outside the general principle of publicity. Even though many demands were the same that had been presented during the previous Diet but left unrealized, the policy had become more resolute. Prohibiting secrecy at the peril of dismissal was an unheard of means, and unheard of was also interfering with the world of secrecy that had covered diplomacy through the ages.

At the next meetings, held during December, Chydenius acted as the Committee’s secretary. The Committee proposed, again in the summarization by Virrankoski:

“...that the memorials presented to the Diets could be published by the permission of the respective estate and the responsibility of the one who drafted the memorial. The Committee furthermore wanted to make public the reports of the Committees and the records of the Committees and meetings of the Estates.”

The example of England proved also that publishing the documents of the Diet was an efficient way to instruct those who attended the Diet for the first time. Furthermore, publicity was the only means to check whether Diet members were promoting the well-being of their electors and the Realm, because – in the words of Chydenius – “there is no other way to make responsible those who have the highest power.”

The grand debate processed the interim report of the Committee of the Freedom of Press, which contained the proposals, much later the next spring, on 7 March 1766. As was to be expected, there were doubts about the proposal leading to control of the members of the Diet by their electors against constitution. Chydenius managed to defend the interim report skilfully, and it was accepted with a few reservations. The struggle

Chydenius went through to get political censorship abolished was complex and extremely close. The report Chydenius finally drew up and dated 21 March 1766, ended up as the stand taken by the Committee of the Freedom of Press.

Censor Niklas von Oelreich who was heard as an expert during the drafting did present a vision to preserve censorship on a new basis. He admitted it was necessary to correct some failings and drafted a plan for a whole new office with several officials who would control and regulate political writings towards useful subjects, helping the authors in various questions beginning even from problems with language. Chydenius responded politely, that giving up the office of Censor von Oelreich would have even greater glory than Gilbert Mabbott who resigned from a corresponding one in England in 1649 and declared it detrimental.

The proposal of such a new office had patently a contrary effect on the Committee of the Freedom of the Press than von Oelreich had assumed. The arguments with which he opposed the responsibility given to uneducated printers, the stand previously taken by Chydenius, however must be considered significant. Chydenius then changed his view so that if a work was found to contain criminal material in a normal court of law, the responsibility was the author's.

At the final presentation to the Great Committee on 7 August 1766 something surprising came up. Baron Gustaf Reuterholm presented a tedious two and half hour defence of political censorship. He managed to infuriate his audience so that they turned against him, and the estate of the burghers could decide over the subsequent procedure. When the proposal for an extensive freedom of press was passed on in the name of the Great Committee to be processed further, the assemblies of the Estates accepted it without objections. That was all that the Swedish Parliament Act required. Even though Chydenius was dismissed from the Diet because of presenting opinions concerning monetary politics against the views of the Caps – the Freedom of the Press Act not yet being effective – the stands he had drafted were presented to the Great Committee and were inscribed into the Freedom of the Press Act which ensued on 2 December 1766. It is probable that the real reasons for the end of Chydenius' first career in the Diet had to do with the Freedom of the Press Act, which actually was against the will of the leading Caps.

The freedom of information must be regarded as a heritage of the earlier Diets, indeed from the Hats, although unrealized and contradictory, combining the fire of openness and the water of censorship, but

now it was given a new approach. The principle could become efficient only when combined with the abolition of political censorship. Anders Chydenius' work combines the two. It would seem that no single ingredient of the Act was especially invented by Chydenius, but his mode and zeal in combining the different ingredients produced something unprecedented. The same can be said of his work for these principles during the Diet, which resulted in the first Freedom of Information Act in history.

In the last instance the Act was given the firm protection of the constitution. In his foreword to the China pamphlet Chydenius had spoken about freedom of expression as the "apple of the eye of a constitution", but it is not known who made the last minute additions. This ascension in worth proved in fact fatal after some years, when King Gustav III as a consequence of his 1772 coup abolished the old Constitution. Despite the later, less strict versions of the Act, the Act of 1766 was to become an ineradicable part of development of consciousness of justice and practices of publicity. Its place of honour in the constitutions both of Sweden and later of independent Finland the Act regained through time.

A Global World Needs Openness

The Freedom of the Press Act of 1766 was not a radical upheaval in practice. The writers were cautious, as the responsibility was now theirs. There began to appear a lot of writing under pseudonyms, though more serious academic writers were slow to come out. But the printers profited. Journals and political pamphlets flourished. Political newspapers were born. The first Swedish daily newspapers began their careers. Chydenius' Act was opening a new political publicity.

Restrictions were soon added to the Act. The first three articles defined what could not be criticized: religious dogmas and constitution, the Royal family, the Council of the Realm and the Estates. In practice the threat of a suite of law was imminent for instance because of the following prohibition: "Let no one use public writing to make debasing statements about the crowned heads or their closest relatives nor yet of the reigning foreign powers." This was not what Chydenius had in mind, however much he may have appreciated the Crown Prince.

The impact of the law was also weakened. Some months after the Act took effect there ensued a royal declaration and caution about "spreading untruthful rumours". Chydenius and various others had considered the freedom of spoken word unlimited. For this reason, they had paid no attention to it. But the situation was changing. As early as March 1767

the Council of the Realm ruled by the Caps issued a ban not to write too freely about matters concerning government.

Restriction of spoken statements revealed a problem of the law. Attention had only been paid to text, either handwritten or printed. The Constitution of the United States would not have this restriction, combining directly the two issues: “the freedom of speech or of the press”. What was ignored by the Constitution of the United States was instead the Swedish speciality, the freedom of information, the openness of official documents.

England had been an example for Chydenius of the abolition the office of the censor. In reality England developed a masterful censorship of mail independent of the law. A Freedom of Information Act took effect in law in the UK England as late as the beginning of 2005.

The threads woven together by Chydenius have experienced a series of reformations and restorations. Only the openness revolution of the 1990s has made it globally irreversible, even if setbacks are a reality too. It seems to be a historical process, which in a restricted sense can be said to have a direction, growing openness – though not as a definite goal, which evolution in general does not have. The starting point is comprehensive secrecy, which little by little begins to open disparate targets of democratic processes. “Full openness” is nevertheless neither the goal of the process nor possible. Openness always has its opponents. Privacy, for instance, needs to be protected. Openness is a matter of ongoing struggle.

In a global world everybody begins to be in the same position as the curate from Alaveteli. Power is somewhere far and its cores are shadowed by secrecy. More and more people realize that they need the kind of information that Chydenius already had in his mind. The possibility to get it freely, consider it and express one’s thoughts without fear were, according to Anders Chydenius, the preconditions for the wealth, stability and well-being of nations.

References to the literature concerning Anders Chydenius are to be found on the home pages of the Anders Chydenius Foundation, www.chydenius.net. Unfortunately, the most extensive studies are not available in English. A critical edition of Chydenius’ writings is in the process of being edited, together with an English translation of his main works. Thanks are due to Taina Rajanti, Mark Waller and Peter Hogg for the English of the present study.

II

FREEDOM
OF INFORMATION
TODAY

Transparency at the core of democracy

By Leena Luhtanen

The question of transparency in government has lost none of its significance, although it dates back as far as government itself. How much information can decision-makers entrust citizens with? The answer on this relates directly to the basic constituents of any political entity. In a modern society decision-making must be based on the political will of enlightened citizens, which is expressed through votes and elections. In such a society transparency should be the rule and secrecy the exception. Citizens should be entrusted with as much access to information as possible.

The right of access to public information has its roots in the 18th century. The title of a founding father may rightly be bestowed upon the Finnish priest Antti Chydenius. As a member of the Swedish Parliament from 1765 onward, he was the initiator of the Freedom of Press and the Right of Access to Public Records Act. At the time Finland was still part of the Kingdom of Sweden.

The Swedish example was later followed by the United States' Constitution. The right to freedom of expression entered into the Constitution with the First Amendment in 1789. The focus was, however, rather on the freedom of press than on access to public information as a citizens' right. In the US, the Freedom of Information Act was introduced in 1966, and today almost all European countries have such an Act.

In the EU, major steps towards open government were taken in the 1990s. A big step forward was the Charter of Fundamental Rights of the European Union in 2000. The Charter includes both freedom of expression and the right of access to documents. In 2001 the first regulation on access to documents was adopted.

The Nordic countries are internationally regarded as forerunners in questions of transparency and openness. Therefore it was only logical for the Finnish Presidency of the European Union in 2006 to put special



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emphasis on the transparency of the EU. Public discussion has largely focussed on whether or not all legislative decision-making should be carried out in public. However, the access to documents and an efficient information policy are just as important for making legislation and the legislative process more transparent and understandable to the European Union's citizens.

To this end, the Finnish presidency started implementing the new overall policy on transparency, which had been adopted by the European Council in June 2006. Consequently, the openness of legislative decision-making has been significantly increased. Altogether about half of all debates between ministers in the EU Council are now held in public. Web streaming technology enables all citizens and the media to follow such proceedings through the internet from wherever they are. Furthermore, all documents discussed by ministers in public proceedings are also made available on-line.

The transparency of government is a core issue of the democracy principle and a precondition for bringing any government closer to its citizens. If a government does not trust its citizens, how can one expect the citizens to trust their government? The same applies to the European Union and is therefore one of the main priorities of Finland's EU policy during and beyond the 2006 presidency.

Openness and Access to Information in Finland

By Olli Mäenpää

1. Right of Access

1.1. Tradition and Reform

The principle of access to government documents has a longstanding tradition in Finnish law dating back to a constitutional enactment of 1776 when Finland was under Swedish rule (the Act on the Freedom of Publishing and the Right of Access to Official Documents). While it is true that this constitutional principle of openness has been interpreted and applied in a varied manner, narrowly and less narrowly, the principle itself has prevailed over the centuries, albeit without the support of detailed legislation governing access to government information. Today, detailed rules governing access to administrative documents are laid down in the Act on the Openness of Government Activities of 1999. The Act is based on the principle of general access to official documents, denoting an assumption of openness.

The era of modern, comprehensive access legislation cannot, however, be said to have been formally initiated until in 1952 when a first act on access to documents in public administration was adopted. This Act was expressly based on the presumption of openness and it also provided for a general statutory right of free access to official administrative and judicial documents. Under this first Act, exempt from free access were secret and internal documents while access to draft documents could be obtained at the discretion of the authority. The 1952 Act was amended several times to include provisions granting the party in administrative proceedings broader access, and also in order to update the concept of document to cover other than paper documents.

Gradually criticism of the first act grew. This was for a number of reasons: the grounds of secrecy were defined quite broadly leaving plenty of lee-way for the authorities to apply them in a secretive fashion; openness

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of the preparatory stages of decision-making procedure was considered unsatisfactory because the grant of access to draft documents was discretionary; transparency of issues related to EU decision-making was limited; the concept of an official document had failed short of the development of information technology; the accommodation of privacy with openness was vaguely regulated.

These and similar reasons led to the project of reforming the access legislation. A constitutional reform and update of the basic rights catalogue in 1995 gave additional impetus to the ongoing drafting of a completely new law. In this reform, access to administrative documents was defined as a fundamental constitutional right and openness consequently gained the status of a constitutional principle.

The draft bill to reform legislation regulating access to government-held information was based on an intensive preparation in which an accommodation of basically two competing concerns proved to be crucial. On the one hand, the principle of general access to information should be defined clearly and so that it would also be easy to make the principle function effectively in practice. On the other, the drafters had to consider strong opinions quite unfavourable to increased openness. Among the proponents of a narrower concept of openness were several Government departments and the Central Bank. They insisted on limiting the applicability of the access legislation mainly by defining the grounds of secrecy more extensively.

The accommodation of these two (there were others, to be sure) leading considerations found a less satisfactory result in the text of the

draft law. Consequently, it was subjected to strong criticism in Parliament. One of the main points in the parliamentary criticism was that the grounds of secrecy were far too open-ended and that no compelling reasons could support narrowing openness as much as was proposed. A broadly defined catalogue of grounds of secrecy could also jeopardize the public nature of judicial proceedings. A further point voiced in Parliament's deliberations emphasized the constitutional right of access and insisted that the discretionary powers of the authority should be more expressly constrained in all cases where the result could be a negative answer to a request to gain access.

As a result of the comprehensive critique, Parliament decided to make considerable amendments to the bill. For instance, a majority of the provisions concerning secrecy were actually rewritten in a more exact way. All the amendments had the objective of giving more precision to the provisions of the Act and extending the scope of openness. In this respect, the alterations were clear improvements. However, some provisions still remain open to considerably differing interpretations and the structure of the Act is rather complicated which is unlikely to facilitate its application.

1.2. Principle of general access to information held by public authorities

The right of access to official documents is included as a fundamental right in the new Constitution Act of 1999.¹ Section 12(2) lays down the principle of openness and the right of access to government documents:

”The documents and other records in the possession of public authorities shall be public unless their publicity has been separately restricted by Act of Parliament for compelling reasons. Everyone shall have the right to obtain information from public documents and records.”

Judicially, and particularly from the point of view of the normative hierarchy, it is significant that the principle of open access to administrative and judicial documents has been defined as a basic constitutional right and not merely an interpretative principle. Access to government held information in a recorded form enjoys a constitutional status. Right of access may thus be invoked by anyone regardless of citizenship or the

1 The text of the Constitution Act can be found at www.finlex.fi/en/laki/kaannokset/1999/en19990731.pdf. The provision cited in the text was initially included in the (old) Constitution in 1995.

purpose for which that right is exercised. Since access to documents and other records is a basic right it also takes precedence over ordinary legislation. For instance, if the application of a statute were in evident conflict with the access right, the access provision in the Constitution would be given primacy in judicial proceedings concerning that application.

Together with the guarantees of freedom of expression and freedom of information in Sec. 12(1) Constitution Act, the access right forms a vital component of an open government. An additional stimulus to a functioning access legislation is found in Section 14(3) of the Constitution Act defining a positive obligation on the administrative authorities to promote openness: "It shall be the task of public authorities to promote the opportunities of the individual to participate in the activities of society and to influence decision-making affecting him."

The right of free access to administrative documents forms one of the most significant guarantees of the transparency and openness of public administration. Detailed rules governing access to administrative documents are laid down in the Act on the Openness of Government Activities of 1999 (Openness Act).² According to the general principle stipulated in Section 1 of the Openness Act, all official documents shall be public, unless specifically otherwise provided in this Act or another Act.

The Openness Act also sets out the objectives of its application. Section 3 lists as the goals promotion of openness and good practice on information management, the provision to private individuals and corporations of an opportunity to monitor and influence the exercise of public authority, to observe the use of public resources, to freely form an opinion, and to protect their rights and interest. The list is intended to serve as more than a mere declaration of good intentions. It must be taken seriously because, pursuant to Section 17, the authorities are duty bound to take the list into consideration when making any decision under the Openness Act. The objectives of the Act, consequently, are meant to inform all instances of its application.

1.3. Obligation to promote openness

Under the Openness Act the authorities have not only the duty to respond to requests for access, they have also an active obligation to provide information and promote openness. There are several provisions to

2 The text of the Act in English can be found at www.finlex.fi/en/laki/kaannokset/1999/en19990621.pdf

this effect in the Act. The authorities must actively produce and disseminate information on their activities. For this purpose they must produce guides, statistics and other publications, as well as information materials on their services and practices and on the social conditions and developments in their field of competence (Sec. 20). The authorities must also ensure the availability of this information by making it available in libraries and on the Internet.

Good practice on information management is a new concept denoting the obligation to see to the appropriate availability, usability, protection, integrity and other matters of quality pertaining to documents and information management systems (Sec. 18). An element of the good practice is the obligation to arrange the documents, information management and data systems in a manner that facilitates the operation of the openness principle.

2. Scope of Application

2.1. Information

The Openness Act contains provisions on the general right of access to official information and how this right is exercised in practice. In addition, it defines active duties of the authorities to promote access to information and good practice on information management. A considerable part of the Act is devoted to defining the grounds of official secrecy, the official's duty of non-disclosure, and other restrictions of access that are considered necessary for the protection of public or private interests. An important safeguard of access is the comprehensive reviewability of decisions taken pursuant to the Act.

The Openness Act takes the mid-road with regard to its applicability to information. Basically, it guarantees access to government-held information to the extent it is documented or stored while the restrictions of access extend to cover even undocumented information. The Act thus defines primarily access to official documents and the information contained therein. Government-held information as such, irrespective of whether it is stored or documented, comes under the scope of the law mainly pursuant to provisions concerning non-disclosure and promotion of openness.

2.2. Documents

The right of access is applicable to a variety of documents regardless of their external configuration and manner of storage. Since the use of the term *document* is not restricted to written texts or pictures only, the Act is applicable even to information stored in a specific form such as electronic documents, data disks and files, tapes as well as visual presentations, maps and x-ray pictures. A recording is considered a document even if it can be comprehended only by means of technical aids. The same applies to any message that can be deciphered only by means of a computer, an audio or video recorder or some other technical device.

2.3. Administrative bodies

With respect to the organization of the administrative entities, the scope of application of the Openness Act is fairly wide. It comprises all state, regional and municipal authorities as well as judicial bodies; e.g. ministries, administrative authorities, courts, tribunals and representative bodies. Access to Parliament documents is regulated solely in the Constitution, however.

In a rapidly transforming environment of public administration it is important that access to information is extended also to semi-public organizations to the extent that they perform public functions. The solution to this consideration is twofold. First, the application of the Openness Act extends to formally private bodies such as corporations, associations and foundations to the extent that they are authorized to *exercise public authority*. For instance, a private undertaking may be authorized to register and inspect motor vehicles. These activities are considered to constitute an exercise of public authority and thus the Openness Act is applicable to the performance of such functions. Second, the access rule also applies to bodies undertaking public duties under express commission if the commission contract is concluded with a public subject. As a result, the new Act is applicable for instance, to a private nursing home or a private care institution for the elderly to the extent it undertakes a commissioned municipal task.

The extension of the scope of the Act to private bodies implies that most of the indirect public administration comes under the application of the access rules. For the sake of exactness, it should be added that a private body does not fall under the scope of the Act simply due to the fact that it is owned by the state or a municipality or because it receives public subsidies or operates under the supervision of a public authority.

Thus, for instance, a municipal corporation will not escape the principle of public access to the extent it is vested with any public authority or when it performs a commissioned public task. The same can be said of an association receiving state funding and a company licensed to operate in a regulated field of economic activity.

2.4. Official documents

For a document to be qualified as public and generally accessible, it must be prepared by or delivered to a public authority and be in the possession of that authority. This definition means that both documents issued by an authority and documents received by it count as official. Even an initially private document thus becomes an official document once a public authority has duly received it. As a rule, it is the recipient authority that decides, by applying the Openness Act, whether access can be granted to an official document. The grounds of secrecy protecting personal integrity, vital professional and economic interests and the ability of the State to participate in international co-operation govern the balance of interests in this respect.

Since the official documents and the right of access to them are defined exclusively by the Openness Act, the sender has no power to bind the authority in this respect by requiring confidential treatment or by making similar reservations. For the same reason, derogations from accessibility cannot be based on contractual arrangements. Similar rules apply to documents emanating from other states and international organizations such as the EU.

3. Preparatory documents

In day-to-day administrative practice official documents under preparation, in the process of being drafted or otherwise incomplete constitute an important category. Because of their formal incompleteness, internal character, or preliminary nature they will not be generally accessible until the issue in question has been decided. As a consequence of such a deferral, preparatory documents will be subject to the right of access at the latest after the decision is made (Sec. 6).

This rule applies also to internal documents such as outlines, aides-mémoire and other memoranda drawn up by a public official. A small group of preparatory documents may still remain inaccessible under the Openness Act. This group includes notes kept by an individual official, drafts,

which have not yet been released for presentation of other consideration, and internal communications unless they contain information that must be archived. The group is expected to remain limited.

The reason for the special status of preparatory documents has traditionally been a presumed need to ensure the undisturbed functioning of the administration and the requirements of confidentiality. That kind of deference for purely administrative considerations has lost most of its justification over time, since it is just the preparatory documents that are significant for the general monitoring of administrative activity and for influencing official action. After all, the outcome of an administrative procedure will quite often be determined already at the drafting stage.

In any case, there is an obvious tension between these two conflicting arguments – the need to protect the confidentiality of drafting decisions and the need to ensure sufficient openness at the preparatory stage of decision-making. The new Act has resolved this tension by a general stipulation to the effect that an authority has been reserved discretion to disclose a preparatory document before the decision has been made (Sec. 9), while the most important preparatory documents are generally accessible when they have been completed.

Since it is at the discretion of the authority to disclose a preparatory document before the decision is taken, there is no general right to obtain information on it. In administrative practice draft documents are usually disclosed relatively easily, but attitudes vary concerning the dissemination of information at the preparatory stage. For these reasons and in order to guarantee the operation of the openness principle the Openness Act introduces three important constraints to the discretion.

The first constraint concerns studies, statistics, and other comparable accounts if they contain information on the alternatives, reasons and impacts pertaining to a project of general importance. They will be public as soon as they have accomplished their purpose of providing that information. No discretion is thus left to the authority once such a study or account has been completed. The second constraint applies to the scope of the discretion itself. Access to information in preparatory documents may not be restricted unduly or any more than is necessary to protect the interests in question; also the persons requesting information must be treated equally. Third, the access legislation also includes an important amendment of the Penal Code whereby the disclosure of information in preparatory documents is decriminalized. This amendment has as its specific purpose to encourage the authorities to participate in public

debate in their areas and also to facilitate the exchange of opinions at the preparatory stage.

The authorities also have a general duty to keep available documents on legislative reform projects and of pending projects of general importance. On request, the authority must also provide access to information on the stage of consideration, alternatives and impact assessments on legislative and administrative projects of general importance (Sec. 19).

4. Gaining Access to an Official Document

4.1. Presumption of accessibility

Since the Openness Act is based on the presumption of openness, access to documents is the predominant rule, whereas secrecy is the exception that must in each case have an express legal base. Everyone is presumed to have a general right to examine the contents of an official document and obtain information contained therein, subject only to exceptions provided in law. In addition, the exceptions must be construed narrowly.

In many cases it is possible that a document contains both secrets (e.g. health data or commercial secrets) and public information. Such a document is not considered completely but only partially secret and the public information in it must be made available. When only a part of a document is secret, access must be granted to the public part of the document if this is possible without disclosing the secret part (Sec. 10). The authorities are also under an obligation to manage their documents and data systems so as to guarantee access to public information without disclosing secret information. In this respect, the presumption of access extends not just to the document as a whole but also to the public information contained therein. The release of information is therefore assessed on a “contents basis”.

The access right extends to Finnish citizens and foreigners without distinction. No reason needs to be given when exercising this right. In fact, an authority is expressly forbidden to demand verification either of the identity of the person requesting information, or of the purpose of the information sought, unless knowledge of that purpose is essential to the exercise of discretion by the authority (Sec. 13(1)). Such discretion may be necessary if the document is secret and the information contained in it may therefore be disclosed only to certain person or to limited groups of persons or for specific purposes.

4.2. The procedure of obtaining access

To obtain access to an official document one must request it from the authority keeping the document or the official responsible for the care of the document. It is not necessary to be able to give a detailed description of the document since the authority must provide help in finding the document. This duty has its limits, however. If the request does not contain any specification of the document or fails to provide any details of the information sought, the authority does not have a duty to conduct extensive examinations or searches to locate the document or the information.

An individual may exercise the right of access in several ways. The person requesting an official document is entitled to obtain a copy of it for a fixed charge. Alternatively, the person has the right to read the document and make a copy of it at the premises of the administrative body provided that the office space allows this and it does not cause considerable inconvenience. Access to a document must be granted in the requested manner unless doing so would cause unreasonable harm to the authority's normal activities. In most cases, the document itself is made accessible by allowing the individual to read and copy it on the premises of the authority or by supplying oral information of its contents. The minimum requirement for proper access is that the authority supplies a copy or an official transcription of the document requested.

If the document can be read or apprehended only with the use of technical devices, the authority shall make necessary equipment available or provide a transcription. The applicant must be given the appropriate equipment for reading, seeing or hearing its contents or otherwise retrieving information from it. Such arrangements could, for instance, include providing access to a computer or the use of a CD-ROM reader. At the permission of the authority it is also possible to have a copy of an EDP recording or to gain direct electronic access to its database. Official registers of decisions are generally accessible electronically.

4.3. Time limits

A request must be considered without delay, and access to an official document shall be granted as soon as possible (Sec. 14(2)). In the established practice "without delay" has been considered to allow a maximum of a couple of workdays for assessing and processing ordinary requests for access. Despite well-founded criticism during Parliament's deliberations, the Openness Act approves of a considerably slacker procedure: in any

event access must be granted within two weeks from the arrival of the request. If the number of the requested documents is large, if they contain secret parts or if the request otherwise requires an irregular amount of work, access must be provided within one month.

4.4. Guarantees of access and remedies

In cases where the right to access has been denied by a public official, sufficient information must be provided of the reasons of the refusal. The individual who has requested the document may also require that the official refer the matter to the authority in question for a formal decision. That decision is always reviewable in an administrative court. In addition, it should be noted that all decisions taken pursuant to the Openness Act are reviewable. Thus subject to review are also decisions to grant access to e.g. a secret document.

The applicant or a directly interested party has the right to make an administrative appeal against the decision according to the rules applicable to ordinary appeals against that authority. The appeal would in most cases be heard by an Administrative Court in the first instance, while the Supreme Administrative Court is the court of last instance in all such appeals.

5. Secret documents and non-disclosure

5.1. Criteria of secrecy

As such, the principle of public access to official documents would require that practically all documents produced or received by the public administration be made generally available and that the information held by public officials could be disseminated without restrictions. Such an extensive and limitless accessibility has been considered unfeasible for various reasons based on the need to protect legitimate private and general interests. In order to accommodate such interests access to official documents and disclosure of information held by public authorities are subject to certain qualifications and limits.

Section 12(2) of the Constitution Act stipulates that a restriction to access is possible provided that it is based on compelling grounds and has an express statutory basis in an enactment by the Parliament. In the Openness Act the qualifications are defined in provisions determining the

grounds of official secrecy and defining the duty not to disclose confidential information.

To protect such legitimate interests as personal integrity, commercial confidentiality and national security, access has been restricted with regard to information about e.g. issues falling under the core areas of foreign policy, privacy, business secrets and professional confidence. One reason for restrictions is that the personal data obtained in the course of government work need to be protected because of its sensitivity. The operations of authorities can also not be wholly public in matters dealing with national security or crime prevention. These reasons account for the majority of express secrecy or confidentiality provisions. Furthermore, rapid advances in automatic data processing set new demands on protection of privacy, currently being met by developing data protection.

The list of the criteria of secrecy in Section 24 of the Openness Act is based on the following interests which may be protected by keeping the official documents secret:

- personal integrity and other important personal interests in health care, social services, taxation or public supervision
- protection of private business interests
- the economic interests of the State and the municipalities
- protection of nature
- prevention and prosecution of crime
- safeguarding judicial proceedings and data protection
- the security of the state and its relations with foreign powers,
- defense interests.

5.2. The grounds of secrecy

The most central grounds of secrecy have been codified in Section 24 Openness Act. The section has been divided into 32 paragraphs each defining a separate ground of secrecy. This relatively detailed regulation has made it possible to repeal about 120 separate provisions on secrecy. Still, Section 24 is not exclusive since there remain a number of specific provisions on secrecy in the material legislation concerning such things as taxation, health care, and social welfare. In addition, there are duties of professional secrecy under other areas of legislation regarding persons who are not in public office, such as advocates and physicians in private practice.

The grounds of secrecy in Section 24 have been formulated following three different methods. *Mandatory secrecy* is the strictest and most com-

prehensive of these methods since its interpretation is independent of the case-by-case consequences of access. This method has been particularly used in the protection of privacy, personal integrity, professional secrets relating to private business, national security and foreign policy documents. In these cases the secrecy is absolute.

The other two methods are based on an evaluation of the possible detrimental consequences of access. In the application of these provisions the authority must always first consider whether and to what extent the disclosure would cause harm, injury or damage to the interests protected by the secrecy provision. Parts of these provisions are based on a *presumption of accessibility*: access must be denied only if disclosure would have adverse consequences. For instance, documents concerning the relationship of Finland with international organizations, such as the EU, are secret if access to them could damage or compromise Finland's international relations or its ability to participate in international cooperation (Sec. 24(2)).

Another part of the provisions are based on a *presumption of secrecy*: access to the document may be granted only if there manifestly will be no such consequences. For instance, the documents of the security police are secret, unless it is obvious that access will not compromise State security (Sec. 24(9)). Accordingly, access to these documents may be refused only provided that such harmful consequences are likely to take place. This means that there must be very good and weighty reasons for gaining access to the security documents, but secrecy is not considered to be total.

Since documents are regarded as secret only if and to the extent this is separately provided for in an Act of Parliament, no particular procedure of classification (or de-classification) is necessary, nor is it performed in actual practice. Any document can thus be declared secret by law and secret is the only category of restrictions of access. Public authorities or officials, on the other hand, lack an independent power of assigning secrecy to official documents. Instead, it is their duty, applying the relevant legislative provisions, to determine whether an official document may be supplied or whether it is to be kept secret pursuant to the relevant provisions.

5.3. Duty of non-disclosure

Public officials are under the duty not to disclose to any unauthorized person a secret document or information contained in it or to make an official document available in any other way. That obligation extends

also to information, which has been proclaimed confidential by a superior official or body pursuant to an express provision in an Act of Parliament. The duty not to disclose confidential information is binding on public officials even after leaving the service. The wrongful disclosure of a secret document or confidential information is subject to criminal liability. Provisions imposing penalties for such offences are contained in the Penal Code (Chapter 40, Section 6).

Inside the public administration, secrecy means that information may not be made available to other authorities. Secrecy also applies within an authority, especially between functionally different operational units or branches of the authority. Authorities or public officials are not entitled to share secret documents and confidential information solely on the basis of imperative reasons requiring disclosure. Disclosure of secret documents within the administration to other administrative branches as well as sharing of secret information between authorities is usually possible only pursuant to an express legislative provision. The consent of the concerned person may also make such information sharing possible (Sec. 29).

Even official secrecy fails to remain unconditional and absolute. Secret documents and confidential information may be disclosed in certain cases, to qualified recipients, and under specific circumstances. The most important of such exceptions are made to guarantee procedural rights and especially in order to satisfy the maxim 'audi alteram partem'. In other cases the authority holding a secret may provide access to it if there is a specific provision on such access or in an Act, or the person whose interests are protected by the secrecy provision consents to the access (Sec. 26).

6. Openness of the Administrative Procedure

The principle that the meetings of elected decision-making bodies shall be open to the general public may be derived from Section 21 of the Constitution Act. In administrative procedure the principle applies especially in municipal administration. According to Section 57 Municipal Act (1996) the meetings of the directly elected municipal council that exercises the decision-making powers of the municipality, shall be held in public. It is only in exceptional cases that the municipal council may meet behind closed doors. The other municipal bodies may decide to hold open meetings but in general their meetings are not open.

The meetings of the Council of State and other state authorities are generally held behind closed doors but public hearings may be arranged whenever the case is of interest to a larger group of people.

7. The party's access to case documents

According to the principle of public access to administrative documents laid down in the Constitution Act, documents kept by an authority are public which denotes for everyone the right to obtain information from public documents and records. By definition such documents are accessible to all, including the party in the administrative procedure. What makes the party's access specific, however, is that it is potentially wider than the general right of access. Secret, confidential and draft documents may also fall within the purview of 'access to parties', in which case the parties concerned are allowed more extensive access to the documents than the general public. Parties in an administrative procedure may have access even to a secret document if it either actually has affected or may affect the outcome of the procedure.

The justification for the wider access rights of a party lies in the significance of the right to be heard. The party should basically be entitled to unrestricted insight into the material the administrative authority may deal with and use as the basis for its conclusions. Wider access enables the party both to defend his or her rights and to simultaneously ascertain that the case is being handled in a fair and objective manner. Despite the importance attaching to the party's wider access, in administrative matters the access right are not unconditional and the relevant authority enjoys a fairly wide margin of discretion in determining whether the disclosure to a party is necessary or possible.

The basic rule of the party's wider right to insight is laid down in Sec. 11 of the Openness Act. Sec. 11(1) provides quite broadly that an applicant, appellant and anyone whose right, interest or obligation in a matter is concerned (a party) is entitled to have access to the contents of a document even though the document is not public, if those contents may be or may have been of influence in the consideration of his/her case. The scope of application of this generous rule is subject to a number of limitations, however. A party may be denied access to a document in an administrative procedure e.g. if the disclosure of that document would adversely affect a very important public or private interest. Access may also be denied to the presentation memorandum and the proposal for the decision until the case has been resolved by the authority. These limitations notwithstanding, the party is always entitled to access to the decision taken in his or her case.

Even though the limitations to the party's access to the documents in the file are worded broadly the authorities must construe and apply

the exceptions narrowly. There are two main reasons for this rule of interpretation. First, the limits on party's access constitute an exception to the right to be heard laid down as a basic constitutional right. Since the authorities must choose the interpretation, which in a given case is most conducive to the attainment of the goals of a basic rights provision, limited application of the exception is necessary. Second, the exceptions, if applied broadly, would weaken the fairness and erode the legitimacy of the administrative proceedings.

The two considerations mean that the protection of the privacy or confidentiality of one party cannot automatically be used to the detriment of the legitimate interests and the rights of access of other parties. The authority may rather be said to be under a duty to balance in each individual case the interests protected by confidentiality and the interests to fair hearing in administrative procedure.

8. Future Challenges

The Openness Act is undoubtedly an improvement because of the up-to-date and express regulation of access and its limits. Yet, the text of the Act itself is perhaps not as user-friendly as it should be. Some of the provisions are so complicated that both the authorities and information-seekers may encounter at least some difficulties in their interpretation and application. The grounds of secrecy are now clearly and comprehensively defined, but clarity has also resulted in an almost impenetrable jungle of detailed secrecy provisions. To some extent it may be that these and similar deficiencies are unavoidable in a modern information society; any attempt at a clear-cut and simple regulation of access to government information may already simply prove to be unfeasible.

Access regimes should almost by definition be accessible, i.e. understandable and easily applicable. It is accessibility in this sense that, somewhat paradoxically, is perhaps the biggest challenge facing the application of the new Act. It will most likely take a while before a settled case law will emerge and give needed guidance in the most complicated issues. Other challenges include the rapid development of information technology and the role of government information as a resource for commercial exploitation. It may very well be that the new Act requires amendments faster than has been foreseen at the drafting stage. In the meanwhile, the long tradition of open government will also play a vital role in the implementation of the Openness Act.

Access to documents – freedom of information “could fuel public discussion”

By **Tony Bunyan**

In 1999 when Statewatch applied for copies of the new Council proposal on access to documents we were refused access as it: “could fuel public discussion” and could offend “the Council’s partners” (on that occasion the USA and NATO). This logic still persists seven years on in the main EU institutions.

The 1993 code of access was replaced by a Regulation covering the Council of the European Union, the European Commission and the European Parliament in 2001 (1049/2001) and was meant to “enshrine” the Amsterdam Treaty’s commitment for the citizens’ right of access to documents.¹ The shortcomings of the Regulation were largely predictable; indeed they closely mirror the objections by civil society in 2000 when the measure was going through the European Parliament.

Now six years on the European Commission says it is going to “consult” over possible changes in the near future. So it is a good time to take stock.

The European Parliament

Let us start with the European Parliament, the least of the culprits! The documents concerning the workings of the Committee on Civil Liberties (LIBE) are accessible. But there is a very “grey” area when it comes to the parliament agreeing - at the request of the Council (the 25 governments) - to “fast-track” measures by adopting them at first reading (ie: they are rushed through). The procedure was intended to pass uncontroversial measures quickly.

¹ The history of access to EU documents up to the adoption of the Regulation can be found in an online book on: <http://www.statewatch.org/secret/freeinfo/index.html>



The author, Tony Bunyan (UK), is a journalist specialising in the openness in the EU and an editor of Statewatch (UK), one of the leading groups in the EU monitoring the policies and actions in the field of justice and home affairs. Photo: European flag in front of the Berlaymont building (© European Community, 2006).

However, a real problem arises when the "fast-track" procedure is applied to controversial measures, like the Framework Decision the mandatory retention of telecommunications data which introduced the surveillance of all phone-calls, e-mails, faxes, mobile calls (including location) and internet usage. It was argued in the "Brussels bubble" that this was a good example of "inter-institutional loyalty" between the Council and the European Parliament - the UK Council Presidency claimed the need for the measure was urgent, yet it had been "on the table" for over four years.

Amendments to the Commission's proposal were agreed in secret "trilogue" meetings between the Council, Commission and parliament. The agreed amendments were then put through the Committee and the plenary without any changes being allowed.

Such a procedure on such a controversial measure gave national parliaments and civil society little or no chance to find out what is being negotiated behind closed doors, let alone to intervene and make their views known.

The European Commission

A small, but significant, point is that, unlike the Council, the Commission's public register of documents does not include confirmatory applications for access to documents and the outcomes of appeals are not on its public register.

But this is indicative of a much bigger problem with the Commission, namely its public register of documents – which on some estimates only covers less than 10% of the documents produced and received.

There has been talk for years by Commission of "improving" the register but it has a statutory obligation to put into effect Article 11 of Regulation 1049/2001. Article 11 is unequivocal: "*References to documents shall be recorded in the register without delay*" (Art 11.1)

It does not say some documents, or the documents the Commission chose to include - references to all documents under this Article must be recorded in the register without delay.²

It is quite scandalous that four years after the Regulation was adopted on 2001 the Commission does not provide a full register of documents.³

The Council of the European Union

While the Council's public register of documents contains references to nearly all the documents prepared (for exceptions see below) the problem lies in getting access to key categories of documents.

Summits and meetings of the European Council

It is not acceptable that decisions of the primary policy-determining fora, the meetings of the 25 Prime Ministers at European Councils, are not made public before they are adopted and, on occasions when they are, there is no chance for parliaments [national and European] or civil society to intervene and make their views known.

The classic instance was the Tampere Summit in October 1999 which adopted a 62 point, "Programme" for justice and home affairs. A draft was

2 The Commission has chosen to only try and partially implement Article 12 largely related to legislative documents adopted.

3 Statewatch has sent a complaint to the European Ombudsman on this issue.

circulated on the first day to delegations and the media. The final draft was available at 10.00am on the second and final day and adopted a few hours later.

The same goes for the "Hague Programme" adopted on 5 November 2004 or rather nodded through without debate by the Council. Drafts were only leaked by Statewatch a week before adoption, yet again leaving no time for public debate.

These two "Programmes" set the detailed agenda for the Justice and Home Affairs Council and for Commission - and subsequently for the European Parliament. Yet there was no public or parliamentary debate based on the drafts as to what should or should not be included.

The "space to think"

The Council (and Commission) have always argued that it needs "the space to think", that is, to formulate and change in secret so that we can only see the final proposal - and not the aspects removed or added by unseen influences.

Under Article 4.3 of the Regulation the Council can, and regularly does, deny access to documents concerning measures under discussion. This often means that the Commission's draft proposal is radically changed. While the European Parliament's opinion is either ignored (under "consultation") or negotiated in secret trilogues (excluding a proper role for its committees and plenary sessions) under "co-decision".

"Third parties" such as the USA

One area in which there is the greatest secrecy is the numerous EU meetings involving the USA on JHA issues. Between 2001-November 2005 a total of 409 documents on the Council register concern "USA" of which only 48.8% are publicly accessible (compared to over 62% in the register as a whole). Sixteen documents are "partially accessible" meaning that the US position is blanked-out.

Most USA documents which are accessible were the subject of parliamentary scrutiny in national and European parliaments. However, of 118 documents that were not, only 20 are accessible (17%) - mainly concerning high-level EU-US meetings and "Informal" meetings covering a range of issues.

The “public interest”

When the 2001 Regulation was being discussed a lot was made of the possibility of the “public interest” in disclosure out-weighing the interests of the institutions in maintaining secrecy - in practice not a single appeal of the grounds of “public interest” has ever won the day with the Council (or the Commission).

Overall problems

For both the Council and the Commission a major problem is which documents they give access to and which they does not. For example, the largest category of refusal of access to documents by both institutions is where disclosure would “seriously undermine the institution’s decision-making process unless there is an overriding public interest in disclosure”. This is the so-called “space to think” for officials and not in a single instance has a “public interest” argument by an applicant been upheld.

In effect this means, for example, that although final Council and Commission positions are made public few, if any, of the internal discussions leading to the position are available before the measure is adopted. In a democratic EU all documents related to proposed new measures should be made public at the same time as the proposal. Citizens can then see what options and influences were rejected or adopted.

Since the Amsterdam Treaty came into force in 1999 the number of documents in the field of justice and home affairs (JHA) has mushroomed and there are now over forty working groups that have to be tracked. Dozens of documents are produced every day by the Council and Commission making the job of monitoring what is being discussed almost impossible even for the most dedicated of researchers.

In addition there has been an explosion in the number of “off-shore” bodies, agencies and centres which are subject to little meaningful accountability or scrutiny.⁴

The need for freedom of information in the EU

The time has surely come for an EU Freedom of Information Regulation governing all its institutions, agencies, bodies and centres. As distinct

4 It is one of the great failings in the EU that there is no mechanism in place for post-legislative scrutiny.

from "access to documents" which require each issue to be tracked down in the plethora of committees and working groups. FOI in the EU would mean that a person could simply request all the documents concerning a specific measure or initiative and it would be the job of the institution to provide them. This should be subject to a new very limited set of exceptions - excluding the "space to think" and the right of third countries to veto disclosure.

It should also have a meaningful "public interest" test. To argue, as the Council and Commission do, that for momentous decisions such as the finger-printing of everyone in the EU (biometric passports and ID cards) and the surveillance of all telecommunications, the "public interest" of disclosure never overrides their "space to think" has no place in a democratic Europe.

The much talked of "democratic deficit" is not just about the powers of parliaments - national or European - it is much deeper than that. It is about changing the democratic culture into a culture of openness, informed public debate and responsible and accountable institutions.

The argument is really very simple and should be quite easy to understand: citizens have a right to know how and why decisions are made and implemented. Open, transparent and accountable decision-making is the essence of any democratic system. Secrecy is its enemy and produces distrust, cynicism and apathy among citizens and closed minds among policy-makers.

Without freedom of information, including access to documents, there is no accountability and without accountability there can be no democracy.

The Global Openness Movement in 2006: 240 Years after the First Freedom of Information Law, Access to Government Information Now Seen as a Human Right

By Thomas S. Blanton

Anders Chydenius would be proud. During the 240th anniversary year of the first freedom of information law ever enacted, Chydenius's principle of publicity for government records has now won legal recognition as a fundamental human right. On 11 October 2006, the Inter-American Court of Human Rights became the first – but certainly not the last – international tribunal to hold that there is a fundamental human right to access government information.

In the case of *Claude Reyes et. al. vs. Chile*, the Inter-American Court found in favor of three environmental activists who in 1998 sought information from the Chilean government about a controversial logging project. According to the Court's ruling, by failing to provide access to the requested information, Chile had violated Article 13 of the American Convention on Human Rights, which guarantees freedom of thought and expression. The Court held that Article 13 contains an implied right of general access to government-held information, and States must adopt legal provisions to ensure the right is given full effect. The Court specifically ordered Chile to provide the requested information about the Rio Condor logging project (which involved environmentally sensitive woodlands in the sub-arctic region of Tierra del Fuego and a multinational timber company that had gained government subsidies), or to issue a reasoned decision for withholding the data, as well as to adopt adequate administrative procedures to protect the right in the future and to train public officials to uphold the public's right to information.

The author, Thomas S. Blanton (USA), is the director of National Security Archive of the George Washington University and the founding member of the editorial board, www.freedom.org. He visited Chydenius' home town of Kokkola in summer 2006. The statue of Anders Chydenius by Walter Runeberg was sculpted in 1903 (Chydenius Park, Kokkola).



International advocates of transparency in governance and the right-to-know have applauded the precedent-setting court decision. For example, according to Helen Darbshire, Executive Director of [Access Info Europe](http://www.accessinfo.org) which is attempting to raise openness standards especially in Western Europe, the decision "will be invaluable for activists who need government information to defend other human rights, protect the environment, and fight corruption." As Darbshire suggests, the new decision could provide the basis for the European Court of Human Rights to reconsider its earlier rulings against information access as a human right. In a series of cases, from *Leander v. Sweden* in 1987 to *Guerra v. Italy* in 1998, the European Court declined to find such a right in the European Convention on Human Rights, even though that Convention's Article 10 directly echoes both the Article 13 of the American Convention (the basis for the Inter-American Court's new ruling) and the original Article 19 of the Universal Declaration of Human Rights.

The Chydenius Parallel

The Chile case featured some interesting parallels to the debates of 240 years ago, parallels that Anders Chydenius would likely have appreciated. The Chile issues centered on secret deals made between a government and wealthy industrial interests seeking exclusive access to timber and natural resources. In Chydenius's day, the leading debates concerned the trade monopolies enjoyed by wealthy Stockholm merchants that prevented the towns along the Gulf of Bothnia (specifically Chydenius's own Kokkola) from trading their pine-tar (essential for naval stores) or engaging in shipping and ship-building. As the mercantilist Hats party lost power to the more agrarian-centered Caps in the Swedish Diet in the mid 1760s, during an extended period of parliamentary rule, the free trade debates opened other secrecy issues such as the closed committee of the Diet that made secret budgeting and foreign policy decisions, as well as the government's censorship regime – both of which became targets of Chydenius's polemics and parliamentary maneuvering. The culmination on 1 December 1766 was the first freedom of information statute, in the Freedom of the Press Act that stands as one of the four fundamental constitutional laws in Sweden.

It must be noted that Chydenius himself was soon forced out of the Diet and back to the life of a parish priest in Kokkola, where he not only preached and taught, but also practiced medicine, played chamber music, drained bogs, rotated crops, and constructed church buildings that stand to this day. His innovative Freedom of the Press Act only remained in effect for six years after that first passage. The restoration of the power of monarchy under King Gustavus rolled back the Age of Freedom in Sweden. But the elevation of the principle of publicity stayed in the Swedish constitutional framework, and in that of independent Finland after World War I. The two countries can rightfully boast of the two earliest Freedom of Information laws, and of a continuing tradition of transparency in government to which the rest of the world increasingly looks for a model.

The Success of the International Freedom of Information Movement

Nearly 70 countries today have enacted formal freedom of information laws, and there are current debates and proposals under discussion in scores of others. Before the end of the Cold War in 1989, there were fewer than a dozen countries with formal statutes. The usual list starts with Sweden and Finland, then includes the United States (1966), Norway

and Denmark (1970), France and the Netherlands (1978), Australia and New Zealand (1982), and Canada (1983). But even this historic list demonstrates the enormous range of effectiveness and implementation that is found especially in the newest laws, since the French law in particular provides only a shadow of the legal rights built into the U.S. or Canadian laws, and attracts a fraction of the number of requests that other countries deal with routinely.

Just in the last year or so, countries around the world as far apart as Taiwan, Uganda, Azerbaijan, and Macedonia joined the list of countries with formal access laws. A complete country-by-country accounting may be found at the www.freedominfo.org web site, based on global data compiled by David Banisar of Privacy International, and updated annually with links to the texts of the laws, to the web sites of government agencies and NGOs working on access issues, and related resources. These compilations also include several countries such as Zimbabwe and Uzbekistan, whose statutes are freedom of information laws in name only, since their real purposes were to censor the press and monopolize government information but to do so under a false flag.

Perhaps the most successful implementation of a new freedom of information law has occurred in Mexico, where the transition in 2000 from 70 years of one-party rule opened political space for transparency reforms. Media and civil society groups had banded together in a joint national campaign named the “Grupo Oaxaca” after the historic town (site of ancient Native American ruins on Monte Alban as well as colonial and revolutionary monuments) where the movement first met. The new president, Vicente Fox, a business executive representing the right wing, embraced the transparency cause, opened the Presidential household accounts (revealing exorbitant expenditures on sheets and towels, among other small corruptions), and pressed for passage of the law in 2002.

But the signal accomplishment of the Mexican implementation was the creation of new agency, an independent information commission, as the leading edge of reform. The commission, known by its Spanish initials as IFAI, became the center of a new generation of reformers attracted by Fox and the possibilities for change. The commission combined judicial powers as a tribunal for appeals of agency denials, with educational and training functions for the public and for government officials. IFAI did not hesitate to overrule even cabinet ministers on issues of information withholding, and President Fox to his credit backed up the commission, appeared at its functions, and will leave office at the end of this year with the implementation of the access law as perhaps the only lasting achieve-

ment of his six years in office.

Freedom of Information in the Long View

In much the same way that Anders Chydenius struggled against secret and unaccountable government power in the 1760s, so too has the international freedom of information movement been sparked by the 20th century rise of the administrative state. Citizens and parliaments looked for ways to rein in bureaucratic and executive power, which naturally employed secrecy as a basic tool for retaining power and restraining public debate even in the democracies, and developed more destructive mutations in autocracies. State power's most extreme and grotesque manifestations – the concentration camps of Hitler and the Gulag of Stalin – put moral arguments in the hands of reformers who reached back to ideas of the Enlightenment for notions of human rights, checks and balances, free markets, and democracy. The first efforts at restraint on bureaucracies produced reforms that rationalized administrative procedures and granted rights of access to information and input into decisionmaking, but only to the self-interested parties to the procedure. To inspect a government record, one had to show a need to know, or be an interested party. But over time, this common law standard eroded under pressure from market forces and from various scandals, and turned into a right of public access and public inspection of records.

Seen in this long view, the trend toward Freedom of Information Acts is the outgrowth of a century-long process of rationalizing government bureaucracy, or, put another way, counterbalancing the rise of the administrative state. In the United States, for example, the substantial bureaucratic foundation that grew up in the federal government beginning early in the 20th century was necessary, though not sufficient, for the ultimate passage of the FOIA. At the same time that doctors, lawyers and academics were successfully seeking prestige and higher incomes by organizing their professions and imposing barriers-to-entry (such as bar exams, educational credentials, professional associations), a similar professionalization came to government service. The political dynamic was led by the “progressive” movement of Theodore Roosevelt and other self-styled reformers who challenged economic monopolies, sought to address social problems like poverty and infant mortality, and fought the then-prevalent “machine” politicians (often ethnically-based and usually in the big cities) by exposing political and business corruption, bribes, nepotism, and patronage. (Thus did the generic public interest in clean government mesh with the self-interest of these mostly white, mostly middle- and

upper-class reformers in their political advancement.) The core reforms seized on to solve these problems were the creation and expansion of a professional civil service to staff the government, together with much greater government intervention into and regulation of various sectors of U.S. society. For example, the Federal Reserve Board (regulating the money supply and banks) dates from 1913, as does the U.S. Department of Labor (regulating the workplace); and the Federal Trade Commission (anti-trust and other market regulation) dates from 1914.

The rise of the professional bureaucracy brought far more systematic approaches to record-keeping in the U.S. government, including the first surveys of governmental archives and the first standardized information systems. The growth of the U.S. government – most dramatic during the two World Wars, as the administrative state turned into the national security state – required writing things down, and being able to find them later. The informal arrangements of the pre-bureaucratic era no longer sufficed when the task of government was to move hundreds of thousands of armed soldiers across the Atlantic or Pacific oceans, provide them the logistics to fight a war, and bring them back. The era of “normalcy”, as President Harding called it, between the two World Wars also saw its contribution to the professionalization of the bureaucracy and ultimately to freedom of information, with new laws establishing the U.S. National Archives in 1934 (previously, government records were preserved, or more likely not, by the agency that created them), and the *Federal Register* in 1935, for formal, daily publication of agency actions and regulations. In one famous case in 1934, government attorneys arguing a lawsuit before the Supreme Court were embarrassed to find their case was based on a non-existent regulation. After six years of the *Federal Register* produced a bookshelf-full of agency actions, the Congress in 1941 created the *Code of Federal Regulations*, as an authoritative compilation of current law and regulation.

These disclosure mechanisms were building blocks for a future freedom of information process. The key actors pushing these reforms ranged from professional associations of lawyers and historians to crusading anti-corruption politicians. Perhaps the most surprising allies for more open government came from the private sector, responding to the administrative state’s increasing interventions in markets and society in the early 20th century and culminating with the establishment of the national security state during World War II (President Eisenhower’s famous term for this phenomenon was “the military-industrial complex”). In effect, the mobilization by government of private industry for war production, the massive expansion of government contracting, and the resulting surge

in economic growth sparked a parallel growth in the numbers and variety of “stakeholders” such as corporate contractors, industrial and service unions, lobbyists, lawyers, trade associations, and representatives of regulated industry. All had an interest in affecting agency actions, and the *Federal Register* as it existed then only published final actions, rather than proposed actions. A crucial turning point came in 1946, with passage of the Administrative Procedure Act. The APA created the right of “notice and comment,” in which agencies had to provide some period for public comment before new regulations or proposed changes to existing regulations could go into effect. For the first time, stakeholders had a formal, legally reviewable process for participating in federal agency decisionmaking. Ironically, the APA also included a flawed public information section intended by its drafters to open government files, but which worked so poorly because it allowed so much discretion to the bureaucrats that it was ultimately repealed and replaced by the U.S. FOIA in 1966.

The Fundamentals of Freedom of Information

The point of this narrative of bureaucracy is to emphasize that freedom of information statutes are not stand-alone solutions to government secrecy. In the U.S. case, for example, reformers had to begin with threshold requirements to create, maintain and preserve government records, and to regulate agency information systems and archives. The delegations of reformers who visit the U.S. are always surprised to see the first section of the U.S. FOI law – the section that requires government agencies to publish in the *Federal Register* descriptions of their organization, functions, procedures, forms, substantive rules, policies and regulations. The U.S. Privacy Act requires every federal agency to publish in the *Federal Register* detailed descriptions of every database and records system containing records that are retrievable by personal identifiers – the Pentagon report alone fills two volumes of closely-spaced type. In Sweden, the threshold openness requirement goes even further: agencies list in public registers almost every document written or received in the course of official business – with very few exceptions – so that requesters know exactly what they’re asking for, and also the agency knows exactly what it has.

The process of bureaucratic expansion also created an interactive effect, so that at the same time that government was making its own record-keeping more efficient for internal purposes, it also faced increasing public demand for access to those records as well as for participation in shaping any new regulations. The U.S. FOIA grew on a substantial bureaucratic foundation, as one more of a wide variety of accountability and

efficiency mechanisms – some of which, like the requirement to maintain formal records systems documenting the activities of government, are probably a prerequisite to any kind of successful FOI process.

The duty to publish, and a kind of threshold transparency, is fundamental before citizens can make informed and effective requests for information. This routine openness also has to extend to each of the major functions of government – executive, legislative, and judicial. The ideal openness regime, of course, would have the government publishing so much that the formal request for specific information (and the resulting administrative and legal process) would become the exception rather than the rule. Until that time, openness advocates have reached consensus on the five fundamentals of effective freedom of information statutes:

* First, such statutes begin with the presumption of openness. In other words, the state does not own the information; it belongs to the citizens.

* Second, any exceptions to the presumption must be as narrow as possible and written in statute, not subject to bureaucratic variation and the change of administrations.

* Third, any exceptions to release must be based on identifiable harm to specific state interests, not general categories like “national security” or “foreign relations.”

* Fourth, even where there is identifiable harm, the harm must outweigh the public interest served by releasing the information, such as the general public interest in open and accountable government, and the specific public interest in exposing waste, fraud, abuse, criminal activity, and so forth.

* Fifth, a court, an information commissioner, an ombudsperson or other authority that is independent of the original bureaucracy holding the information should resolve any dispute over access.

The Next Frontier: The Openness Challenge in the International Institutions

As Tony Bunyan argues in this publication, the European Union is long overdue for its own Freedom of Information statute. And so are the other international institutions that exercise more and more power over the daily lives of citizens and the policy decisions of nations. Indeed, one of

the greatest challenges to democratic governance in the globalized world lies in the growing gap – the “democratic deficit” – between the power of the international institutions to affect human lives throughout the planet, and the power of the people so affected to hold those institutions accountable, much less participate in the institutions’ decisions. This issue is rapidly becoming the next frontier of the openness debate.

The growth of the international institutions, especially since the end of the Cold War, is particularly dramatic. The World Bank has more than doubled its annual commitments since 1979 and now lends in more than 100 countries, including the previously off-limits territory of the former Soviet Union. The multilateral development banks have emulated the World Bank in the growth of their own regional portfolios. The World Trade Organization replaced the earlier General Agreement on Tariffs and Trade in 1995 with a more restrictive set of rules and binding dispute settlement procedures. The end of the fixed exchange rate system in the 1970s and the debt crisis of the 1980s changed the International Monetary Fund from the world’s exchange rate fixer into a key provider of development assistance as well as ultimate arbiter for many countries of whether international capital will be available at all. After 1991, the North Atlantic Treaty Organization expanded to take in the former Warsaw Pact countries of East and Central Europe, and now has troops on the ground in Afghanistan. But the governance structures of these international institutions have not changed.

Discussion of the resulting “democratic deficit” is no longer limited to the protest movement that gave the place names “Seattle” and “Genoa” significance both as generic anti-globalization reaction and as a more sophisticated challenge to the legitimacy of international institutions. The policy and scholarly literature is exploding with attempts to analyze the problem, but at the root of the issue is the genealogy of the financial/trade institutions (IFTIs) and the inter-governmental organizations (IGOs). The former descend directly from central banks, which even in the most democratic countries tend to be the least directly accountable governance institutions; and the latter spawn from lowest-common-denominator alliances of nations, with concomitant governance processes that trend towards the bottom. In both cases, diplomatic confidentiality served as the norm for communications among nations that established these institutions; and such norms – although somewhat eroded – continue to shroud them today.

The Possibilities for Openness in the International Institutions

The fact of public attention to the problem of secrecy in international institutions should serve as the threshold signal of an opportunity for change. One cannot underestimate the ameliorative effect of embarrassment, or as the analyst Ann Florini termed this effect, “regulation by revelation.” Such exposure has compelled in particular the IFTIs over the past 20 years gradually to expand the documentation that is available to the public and to improve their communication with stakeholders and other target groups. In fact, the public relations and publications functions of international institutions may well be the fastest-growing such bureaucracies in terms of budget and employee positions. But the new transparency more resembles a sophisticated publications scheme than it does an actual “revolution” in accountability. Even so, there are at least five other causes for optimism that more fundamental change may well be possible – if civil society seizes the opportunity, and the institutions themselves internalize the need for change.

First, what was once a marginalized, placard-expressed, protester critique of international institutions’ secrecy and lack of accountability has now risen to the level of conventional wisdom. When the dean of Harvard’s Kennedy School of Government (Joseph Nye) compares the IFTIs to “closed and secretive clubs,” when the European Union’s commissioner for external affairs (and formerly chair of Britain’s Tory party, Chris Patten) pronounces in passing that international institutions “lack democratic legitimacy,” and when the World Bank’s former chief economist (Joseph Stiglitz) describes increased openness as “short of a fundamental change in their governance, the most important way to ensure that the international economic institutions are more responsive to the poor, to the environment [and] to broader political and social concerns” – one sees the makings of an emerging elite consensus on the problem and the potential role of greater openness in addressing the “democratic deficit.” In this formulation, openness becomes the next best thing to democratic governance, and when the latter is unlikely because those in control are unlikely to give up that control, then transparency will serve as the most important alternative control mechanism, and the possible threshold for addressing governance.

Second, as a result of outside pressure and the emerging conventional wisdom, international institutions themselves are paying at least lip service to the need for greater openness, and in some cases, have actually achieved significant progress towards more transparency. Each of the

multilateral development banks, for example, has promulgated formal policies on access to their internal documentation, and a wide variety of records that were previously secret are now routinely provided to the public – although host government veto power and ingrained bureaucratic self-preservation instincts still prevent the most controversial information from such routine publication. Starting in 1999, the almost simultaneous emergence of the left-wing antimarket critique featured in the Seattle and Genoa demonstrations, among others, with the right-wing pro-market critique offered by the Republican-dominated U.S. Congress and its Meltzer Commission about the banks and the IMF, pointed towards greater transparency as one of the few strategies that addressed both wings of the debate. The real importance of these developments, however, is that the pro-openness rhetoric from IFTI and IGO leaders, together with the existence of formal disclosure policies, provides extensive leverage points for activists who are willing to test specific instances of secrecy and to pursue an “inside-outside” strategy of working with internal reformers and external watchdogs.

Third, the international financial institutions have themselves begun advocating national level openness laws, as part of their new emphasis on governance and accountability as a standard for aid and investment, and therefore are harder pressed to avoid transparency themselves. Research supported by the World Bank has established a wide range of governance indicators that associate transparency with decidedly lower levels of corruption, more effective delivery of public services, and more public voice for stakeholders and constituencies. The evidence has become strong enough that the World Bank has officially included the promotion of access-to-information laws as one of its own goals for anti-corruption and development efforts around the globe.

Fourth, civil society organizations around the world have seized on openness as a threshold goal in struggles over the whole panoply of social issues, ranging from the environment to AIDS to poverty reduction to corruption. In India, for example, the Mazdoor Kisan Shakti Sangathan (MKSS) grassroots movement based in Rajasthan began in 1990 with a focus on securing the legally-required minimum wages for poor farmers and rural laborers, but soon realized that access to official records was key not only to that goal, but also to preventing corruption and enforcing a connection between government expenditure and human need. Ironically, this tactical choice by NGOs has coincided at least rhetorically with the rise among elites – not least the professional staffs of the international institutions themselves – of the so-called “Washington consensus” for market-driven economic development, the fundamental assumptions

of which require highly-distributed information to make markets work – thus adding efficiency arguments to the moral and political critiques already employed by activists.

Fifth, the success of the international movement for freedom of information at the national level, with new laws in dozens of countries over the past few years, has brought new attention to the international level of governance. While there is enormous variation in the effectiveness of these laws, and major difficulties remaining in the implementation of such rights in transitional democracies with limited rule-of-law, one hallmark of the dozens of national campaigns has been their attentiveness to other national models and their outreach for international connections and support. In the process, international FOI campaigners have identified the problem of secrecy in the international institutions as a major priority for future work, and have begun reaching out beyond the traditional FOI community to NGOs and civil society activists experienced in the various IFTI accountability efforts. Over time, these new networks are likely to develop even more dramatic reform proposals for openness and accountability in the international institutions, ranging from potential international treaties as an overarching framework based on human rights arguments, to notice-and-comment requirements for projects and policy changes.

The Chydenius Principle of Publicity in Action around the World

Perhaps the best testimony to the effectiveness of Anders Chydenius's original idea comes from the creative ways in which journalists, researchers, companies, interest groups, and just plain citizens have made use of the access laws to fix social problems, expose corruption and wrongdoing, and change the ways that governments do their business. Earlier this year, the author and his colleagues at the virtual network of freedom of information advocates, located at www.freedominfo.org, searched news databases world wide to locate examples of openness laws in action. Not only were there hundreds of news stories and media broadcasts about the ongoing campaigns and debates over freedom of information laws, but there were also more than a thousand news stories just in 2006, just in English, reporting the results of citizens' access to government information. What follows here is an edited and admittedly selective compilation from around the globe of reports that pay tribute to the freedom of information concept, in the 240th anniversary year of the very first access-to-information experiment:

Serbian Student's Request Reveals Corruption in School, Spurs Government Investigation

I.N., a 17-year-old student, sent an access to information request to his school, seeking information about its financial operations and other matters. The institution refused to provide the information, and on several occasions sought to cancel the request on the basis that the requester was a minor. But I.N. appealed to the Commissioner for Information, which ordered that the request be fulfilled. The financial data that the student obtained showed serious abuses and corruption at the school, which is now being investigated by the Organised Crime Directorate.

Rodoljub Sabic, "Jonesko in secondary school," *Danas (Serbia)*, Nov. 22, 2005.

Britain Secretly Gave Israel Nuclear Material, Documents Show

Previously classified documents obtained under the Freedom of Information Act by BBC2 show that Britain secretly supplied plutonium to Israel during the 1960s. Despite warnings from intelligence officials that Israel was seeking to develop a nuclear bomb, Britain made hundreds of shipments of material that may have helped Israel's nuclear program. The documents describe how officials in the Ministry of Defence and the Foreign Office opposed the deal, which was later forced through by a Jewish civil servant in the Ministry of Technology.

Richard Norton-Taylor, "Britain gave Israel plutonium, files show," *The Guardian*, March 10, 2006.

Poor Delhi Woman Uses RTI to Force Shop to Provide Rations

A 42-year-old woman who works as a domestic servant discovered that she had been denied her ration share from a government-approved shop in a slum area of south Delhi for more than five years. The impoverished Delhi resident, whose name is Sunita, had been given a ration card for the poor five years ago, but never received any rations from the local shop. She filed a complaint under the Right to Information Act (RTI) and learned that the record incorrectly reflected that she had received the ration during the past five years. Since the discrepancy was revealing, Sunita has been receiving the required ration each month.

"A right that has got them food," *Indo-Asian News Service*, April 2, 2006.

Pentagon Releases First Complete List of Guantanamo Bay Detainees

In response to a Freedom of Information Act lawsuit filed by the Associ-

ated Press, the U.S. Department of Defense for the first time released a comprehensive list of the names and nationalities of 558 foreign terrorism suspects held at Guantanamo Bay, Cuba. The Pentagon had long resisted releasing any details about the prisoners, citing security concerns in letting al Qaeda know which of its members had been captured. But under several recent court orders, the government was made to release more than 7,000 pages of documents relating to military hearings at Guantanamo Bay, and then also agreed to provide the complete list of detainees.

Will Dunham, "US releases extensive list of Guantanamo detainees,"
Reuters, April 20, 2006.

UK Warns: Blood Products Sold in 14 Countries May Be Contaminated With Mad Cow Disease

Documents released to *The Guardian* under the Freedom of Information Act show that British health officials have warned authorities in 14 countries that patients who receive blood products exported from the UK may be at risk for contracting mad cow disease. In particular, officials in Brazil and Turkey were warned that "sufficient quantities" of infected products may have been sent, and that they should take precautions to avoid spread of the disease. Although the media had previously reported that patients abroad might be at risk, this was the first time that specific countries and relative risks had been disclosed.

James Meikle and Rob Evans, "British blood products may pose vCJD risk in 14 countries," *The Guardian*, May 2, 2006.

U.S. Military Sent Troops With Severe Mental Health Problems into Combat

A report obtained under the Freedom of Information Act (FOIA) by *The Hartford Courant* described numerous cases in which the military did not follow regulations requiring screening, treatment and evacuation of mentally ill troops in Iraq. Twenty-two U.S. troops in Iraq committed suicide in 2005, the highest rate since the start of the war. The report detailed how fewer than 1 in 300 troops screened were referred to a mental health professional before being deployed, and that some of the service members who committed suicide had been kept on duty despite clear signs of mental health problems.

"Report: Troops with mental health problems forced into combat,"
Associated Press, May 14, 2006.

Canadian Government Warned that Food Supply is Vulnerable to Terrorism

A report, released under the Access to Information Act by the Canadian Food Inspection Agency (CFIA), warns that the Canadian food supply chain has a number of “weak links” and is vulnerable to terrorist attacks. The document describes several potential scenarios, including biological strikes on livestock and sabotage of genetically modified crops, and also cites inadequate security at food processing plants as a major concern.

James Gordon, “Food supply a terrorism risk,” *Ottawa Citizen*,
May 15, 2006.

Local Governments in Japan Ignored Contract Bid-Rigging

An investigation by the *Yomiuri Shimbun*, with documents obtained under the Freedom of Information Law, found that local governments allowed numerous projects, including 16 sewage plant building projects, to go forward despite suspected bid-rigging. The government officials contend that they signed the contracts because they could not confirm the bidding process had in fact been tainted. The governments also argued that they lacked adequate authority to investigate the allegations, and could only ask companies to admit whether they had engaged in bid-rigging.

“Local governments ignored bid-rigging,” *The Daily Yomiuri* (Tokyo),
May 26, 2006.

South Korean Government Report Says 489 People Abducted by North Korea

South Korea’s opposition, the Grand National Party, released data from a report it obtained from the intelligence service, confirming that a total of 489 South Koreans had been abducted by the North. The report says that 90 percent of the victims were fisherman who worked in the territorial waters dividing the South from the North. Of those captured, 103 are confirmed dead.

“No. of South Koreans abducted by North totals 489,”
Japan Economic Newswire, June 5, 2006.

Request on Bulgarian Vote for UN Human Rights Council Reveals Lack of Recorded Decision-Making

After the United Nations General Assembly on May 9, 2006 held a secret session to elect members of the new Human Rights Council, NGOs in a

number of countries filed coordinated freedom of information requests for voting procedures and the votes cast by each country. In response to a request from the Access to Information Programme (AIP), the Ministry of Foreign Affairs (MFA) released 73 pages of documents. However, much to the dismay of openness advocates, the documents contained only details of the final outcome of the voting but no information regarding the voting process or the decisions made by the Bulgarian government about which candidates to support. As a result, AIP and other activists have vowed to press for policies requiring the MFA and other government bodies to records details of meetings and discussions on such vital issues as human rights policy.

Gergana Jouleva, "Public Information But Not Really,"
AIP Bulgaria newsletter, July 2006.

In Ireland, Cuts in Prison Funding Threaten Safety and Security

A series of reports, obtained by *The Irish Times* under the Freedom of Information Act, detail major funding cuts in the prison system that have forced closure of educational and rehabilitation facilities in overcrowded prisons across the country. One report warns that many prisoners who are addicted to drugs upon their release may seek compensation from the Irish Prison Service later for inadequate rehabilitation services. Some of the reports, submitted nearly eight months ago, detail the threat of mental illness to the security of prisoners and prison staff. This threat was brought to the fore recently, when a mentally ill inmate murdered another prisoner at Mountjoy Prison in Dublin.

"Impact of prison cutbacks highlighted in reports,"
The Irish Times, Aug. 17, 2006.

Australian Government Ignored Asbestos Contamination in Immigration Detention Center

Documents obtained by *The Australian* under the Freedom of information Act show that the government in 2002 wrongly declared safe a plot of land near Sydney that now houses an Immigration Detention Center. When the contamination was discovered, 265 detainees had to be evacuated, costing taxpayers \$1.5 million. Officials fear that hundreds of detainees who were held at the site could file compensation claims against the government.

Michael McKinnon, "Asylum centre's deadly asbestos,"
The Australian, Aug. 25, 2006.

British Government Gave Landmines to Saudis, Free of Charge, to Avoid Violating Treaty

Letters publicized recently in response to a Freedom of Information Act request show that the British government handed over £ 17 million worth of anti-personnel land mines to the Saudis just before the 1999 Ottawa Treaty banning landmines came into force. In his letters, British defence secretary George Robertson justified the transaction as a way of helping Saudi Arabia modernize its weapons. But the Saudis did not sign the anti-mine treaty, and the transfer of weapons allowed the British to pass an inspection by showing it had no anti-personnel mines in its arsenal once the treaty came into effect. After the revelations, the Ministry of Defence defended the transaction, saying that it demonstrated the UK's commitment to the Ottawa Treaty.

Christopher Hope, "Saudis handed pounds 17m of free arms; 'strategically important country' benefited from landmine treaty," *Daily Telegraph (London)*, Aug. 21, 2006.

Documents Reveal Mexican Soldiers, Police Crossing U.S. Border

U.S. intelligence summaries released to the watchdog group Judicial Watch as the result of Freedom of Information Act requests describe more than 200 incidents between 1996 and 2005 when Mexican soldiers and police crossed the U.S. border, including some that resulted in armed confrontations with U.S. federal agents. The charts, maps, and incident reports detail both "threatening" and "non-threatening" encounters, including shots being fired, unmarked helicopters entering U.S. airspace, and confrontations among Mexican troops, U.S. border patrol agents, and illegal immigrants and drug smugglers.

Bryon Wells, "Documents detail incursions by Mexican soldiers, police," *Yuma Sun (Arizona)*, Sept. 15, 2006.

Hungarian Government Releases NATO Secrecy Policy Document

In response to a freedom of information request by Adam Foldes of the Hungarian Civil Liberties Union (HCLU), the Hungarian security agency released a policy document that describes the information security policy followed by the North Atlantic Treaty Organization (NATO) and applied to its member countries. The document contains the agreement by which NATO parties collectively safeguard NATO classified information within their respective information security regimes and defines "principles and minimum standards to be applied by NATO nations and

NATO civil and military bodies” to ensure proper protection of such information. The disclosure was of particular significance because the governments of Canada, the United Kingdom, and the United States have previously refused to release this document and others regarding NATO information security policies.

“Hungarian Government Releases NATO Secrecy Policy Document,”
freedominfo.org, Sept. 22, 2006.

Anders Chydenius

(1729-1803)

Anders Chydenius was one of the most notable politicians of eighteenth century Sweden-Finland. He is most of all remembered as an outspoken defender of freedom of trade and industry, the Adam Smith of the North. Chydenius' views on free trade emanated from his general ideology of freedom. In his view democracy, equality and a respect for human rights were the only way towards progress and happiness for the whole of society. Behind Anders Chydenius' thought and actions there can be seen three of the main keys to the spirit of his time: the idea of natural rights, the natural scientific worldview, and pietism, which emphasises the religious convictions of the individual.

Priest, Enlightenment Thinker, Politician

Anders Chydenius' youth was passed in the poor and barren surroundings of Northern Finland. He was born in 1729 in Sotkamo, where his father Jacob was a chaplain. Soon the family moved to Kuusamo, and Jacob became rector there in 1734. After being taught by his father, Anders attended Oulu grammar school along with his brother Samuel. After the War of the Hats of 1741-43 the boys studied together privately in Tornio, and were accepted to Turku Academy in 1745. They also studied at Uppsala University. Anders' studies included mathematics, natural sciences, Latin and philosophy.

In 1753 Chydenius, having just graduated, was appointed preacher to the chapel of the dependent parish of Alaveteli in Ostrobothnia. In 1755 Anders married Beata Magdalena Mellberg, the daughter of a merchant from the port of Pietarsaari. The marriage was childless. Throughout the years at Alaveteli Chydenius was active in many practical projects. He was responsible for the clearing of marshes and he experimented with new breeds of animals and plants and adopted new methods of cultivation. In all his practicality Chydenius was clearly representative of the Swedish "Age of Utility", with his aim of enlightening the peasantry by example. Chydenius also practiced medicine, and achieved renown in his own lifetime by inoculating ordinary folk against smallpox. He also performed demanding ocular cataract operations, and prepared medicines himself.



In 1770 Anders Chydenius (1729-1803) was appointed rector of Kokkola Parish. The same year this portrait of Chydenius was painted by Per Fjällström (Alaveteli Church, Finland).

Chydenius' first writings concerned practical matters, such as the overgrowing of meadows by moss, and improvements in the design of horse-carriages. Soon he moved on to social questions. Chydenius was acclaimed as a writer and speaker, and was dispatched to the Stockholm Diet in 1765-66, commissioned to obtain free trading rights for the towns of Ostrobothnia. Kokkola, Vaasa, Pori and Oulu obtained navigational rights, which had considerable consequences for their later development and for the whole of Ostrobothnia. Chydenius' radical activities led in the end to his exclusion from the Diet at the hands of his own political party (the so-called Cap-wearers). In the last resort the cause was his article on monetary politics, which criticised a decision of the estates of the realm.

In 1770 Chydenius was appointed rector of Kokkola. He began to concentrate more than ever upon parish work, which he considered a most important task. His musical interests also thrived and he maintained his

own orchestra, which gave concerts in the rectory's reception hall. One of his main tasks during his latter years was the supervision of the building of the extension to the old parish church. Chydenius died in 1803.

Dedender of Freedom - "Father of Freedom of Information"

Chydenius participated actively in the Diet of 1765-66. One of the concrete results of Chydenius' activities was an extension of the freedom of the press, which he considered himself to be one of his greatest achievements. The Ordinance on Freedom of Writing and of the Press (1766) abolished political censorship and gave the public access to government documents. This was the world's first freedom of information legislation.

Chydenius again participated in the Diet from 1778-79, at which amongst other matters the position of hired hands was brought up. Chydenius strongly championed the rights of the servant class and called for the creation of an open employment market. He introduced a bill, at the suggestion of King Gustavus III, by which foreigners were granted limited rights to the practice of their own religion.

Chydenius participated in the Diet once more in 1792. He was again highly active as a writer, covering for example the development of agriculture, the burning of saltpeter, smallpox, and the settlement of Lapland.

Pioneer of Economic Liberalism - "Nordic Adam Smith"

Soon after the commencement of the Diet of 1765-66 Chydenius published a number of political pamphlets at a prolific rate, in which he criticized other faults in the economical system of Sweden, such as the so called commodity ordinance. As these writings gave rise to an extensive and heated debate, Chydenius wanted to put forward his viewpoint on the basic factors in economic activity. This resulted in *The National Gain* (*Den Nationale Winsten*), which was published in July 1765.

In the essay Chydenius completely rejects the basic assumptions of mercantilist policy; economic life can not be planned and directed from above. If one wants economic activities to gain the nation as a whole, then the only guiding principle for this should be freedom. When people can advance their own selfish interests and get their livelihood in the way they consider the best, economic activity increases and the "national gain" will grow. When the laws of supply and demand prevailed, it was possible to achieve a natural balance between trades.

The National Gain is a treatise of our classical liberalism, which is why posterity often has considered it one of Chydenius' most important works. Due to this work pioneering free trade Chydenius has often been compared to Adam Smith. The democratic basic view of Chydenius has largely been neglected, however. He objected both to the patronage by the state and to monopolistic large-scale entrepreneurship. His view is that freedom in economic life is freedom at grass-root level, the rights of individuals to realize their ideas in life.

The Anders Chydenius Foundation

The Foundation serves to promote discussion on the liberalization of the economy and its consequences in the light of the ideas and tradition of Anders Chydenius (1729-1803), to support academic research into this topic and to influence decisions in this field by laying emphasis on ethical values.

Although Anders Chydenius spoke of the liberalization of the economy and the elimination of privileges, he was firmly of the opinion that the economy existed for the good of the people and not the people for the good of the economy. His political platform was based on democracy, equality and respect for human rights. The need for ethical discussions in society on the basis of these values does not seem to have diminished in the least.

The Foundation sees its role as one of stimulating discussion and exercising influence in practical matters. It brings together researchers, thinkers, decision-makers and other influential persons to deliberate over aspects of the globalizing economy or the development of an information society, for instance. Chydenius himself demonstrated that international discussions can be responsive to initiatives from outside the major centres of activity.

The Foundation in cooperation with the Chydenius Institute has launched a project to publish a scientific edition of Anders Chydenius' collected works during the years 2006-2010. The complete works will be published in 10 volumes in their original language Swedish, and translated into Finnish. In addition, the principal works of Chydenius and a comprehensive biography will be published in English. The complete works will also be published in an electronic format in internet.

The Anders Chydenius Foundation was founded in 2001 and is located in his home town of Kokkola.

Seminar on the 240th Anniversary of Freedom of Information

”Democracy and Transparency in the European Union”

Time: Friday, 1 December 2006, at 9.00 - 12.00 a.m.

Venue: Parliament of Finland, Annex auditorium

Organised by Anders Chydenius Foundation, European Movement in Finland and European Movement International with financial support of the Ministry for Foreign Affairs of Finland.

Programme:

9:15 WELCOMING ADDRESSES

- Mr *Gustav BJÖRKSTRAND*, Chairman of Anders Chydenius Foundation
- Mr *Jari VILÉN*, MP, Chairman of European Movement in Finland

9:30 FROM CONSTITUTIONAL CRISES TOWARDS DEMOCRATIC EUROPE

- Mr *Paavo LIPPONEN*, Speaker of the Parliament, Former Prime Minister of Finland
- Mr *Pat COX*, President of European Movement, Former Speaker of European Parliament

10.30 TRANSPARENCY AND THE FINNISH EU PRESIDENCY

- Ms *Paula LEHTOMÄKI*, Minister for European Affairs, Government of Finland

10:30 TRANSPARENCY CHALLENGES OF THE EU

- Mr *Jacob SÖDERMAN*, Doctor of Political Science and Law, Former European Ombudsman
- Mr *Sverker GUSTAVSSON*, Professor, Chairman of Swedish network for European studies in political science
- Ms *Heidi HAUTALA*, Member of Finnish Parliament, Former Member of European Parliament

11:50- 12.00 CONCLUSION

- Mr *Jo LEINEN*, Chairman of Constitutional Affairs Committee in the European Parliament

Chaired by Mr *Juha MUSTONEN*, Secretary General of Anders Chydenius Foundation

Further information: www.chydenius.net