

FOI LAWS AROUND THE WORLD

Greg Michener

Greg Michener is a political scientist, consultant, and editor based in Rio de Janeiro, Brazil. He is currently writing a book for Cambridge University Press about transparency and freedom of information laws in Latin America.

Not long ago in these pages, Andreas Schedler observed that apart from constitutional courts and human-rights law, the twentieth century “added little to the inventory of basic democratic institutions” established in the eighteenth.¹ Succinct appraisals of the last century’s contributions to democratic governance are rare, and Schedler’s opinion is arresting. But can the potential impact of the twentieth century’s political innovations be yet understood? Institutional innovations often take a long time to unfold. With our vision still blurred by proximity, we risk overlooking the potential of recent political innovations that may deserve closer consideration.

Among these, freedom of information (FOI) and transparency (or “open government data”) laws are certainly worthy of note. As public goods that are largely products of the twentieth century’s Information Revolution, these laws serve an important function. If the first stage of democratic governance was to assert decision-making control over who governed, transparency and FOI laws play a critical role in the second stage: influencing how governments operate, a struggle that requires access to accurate information.

Currently, FOI laws are being adopted at an unprecedented pace. Nearly ninety countries have enacted these mechanisms, and of those countries approximately seventy have done so since 1990. Five countries put laws into effect in 2009 and several more nations—with a combined population exceeding five-hundred million—either enacted laws in 2010 or are expected to do so before 2011 is over.² As of this writing in early March 2011, Argentina, Brazil, El Salvador, Ghana, Kenya, Luxembourg, and Spain are considering FOI laws. (A map of FOI laws

worldwide is available at www.journalofdemocracy.org/articles/gratis/MichenerMap-22-2.pdf.)

Rapid diffusion also reflects how international organizations such as the United Nations and World Bank have pinned their hopes on trans-

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parency as a means of controlling corruption and promoting good governance. Laws guaranteeing freedom of information are regarded as the gateway policy to effective e-government, campaign-finance-disclosure laws, and electronic procurement systems, among other policy innovations. In theory, eliminating information asymmetries should help to promote greater economic transparency and stability, encourage more carefully crafted public

policy, make it easier for different wings of government to talk to one another, and empower citizens and the press to monitor the conduct of public affairs more fully. In short, FOI laws are meant to make governments more professional, predictable, and accountable, and citizens more proactive in public life.

Despite FOI laws' virtues and the current zeal for transparency, various dilemmas are threatening to consign these laws to the irrelevant status of window dressing—good-looking from a distance, perhaps, but ill-suited to any useful end and even dysfunctional in practice. Some of these window-dressing dilemmas have to do with the technical and legal characteristics of FOI laws. Others have to do with the bureaucratic capacity of governments to implement good laws, much less enforce them. Still others can be traced to the origin of so many open-government statutes, which often begin as items pushed onto the policy agendas of developing countries by international or regional organizations without much if any prior grassroots demand.

The primary dilemma is of course political. The symbolic qualities of FOI laws attract political support, but their ideal effect—to expose the doings of politicians and bureaucrats to ongoing public scrutiny—weakens the political will to enact strong laws, much less ensure full implementation and enforcement. As the WikiLeaks scandals suggest, the question of secrecy versus disclosure is becoming one of the most important political issues of our time.

Will laws now being adopted open windows into the workings of governments or become little more than window dressing? Studying the problems facing FOI laws within the context of their rapid global diffusion will help us to answer this question. So will analyzing a few of the more prominent cases of FOI-law adoption from around the world

in order to illustrate the promises and challenges associated with these statutes.

The mere fact of having enacted an FOI law makes leaders look good and international actors feel pleased—largely irrespective of the legal quality of what was passed. Government will continue to function without such a law, and most citizens will not lament its absence. Indeed, freedom of information is generally such a diffuse, cross-cutting issue that at times it may seem as if both everyone and no one at all favors transparency laws. The effects of FOI are numerous but not easy to quantify or generalize about. And because FOI laws—unlike, say, a law reforming economic policy or the police service—are not remedying any visible and pressing problem, it is all too easy for those in power to delay implementation, skimp on funding, let enforcement slip, or conceal and misrepresent the effectiveness of such laws.

Having an FOI law of the “window-dressing” variety might be seen as fairly harmless, but that is not always the case. In Zimbabwe, the dictatorship of Robert Mugabe twisted an FOI statute into a gag law for limiting access to previously available information and curtailing the freedom of expression. A similar legislative sleight-of-hand occurred in Paraguay, until the gag law was finally repealed. Perhaps the most common danger is that window-dressing laws permit governments to lawfully resist disclosure and are notoriously difficult to reform. By not delivering on promises to empower citizens, they promote cynicism and disenchantment.

FOI’s core window-dressing dilemmas are shared by a broad array of institutions, especially ones that imply some type of ethical obligation on the part of government or politicians, such as ombudsmen, campaign-finance laws, comptrollers, special prosecutors, auditors, whistleblower-protection statutes and, of course, ethics laws. But FOI laws present uniquely difficult challenges. The principle of public ownership over government information is patently intuitive, yet so is the political instinct to conceal. For officials, surrendering secrecy regarding the way money is spent or regulations followed will usually be onerous at best and intolerable at worst. Unnecessary secrecy remains the most enduringly undemocratic feature of many a government, the first refuge for incompetence, waste, and malfeasance.

The clearest indication of political resistance is the striking amount of time that elapsed between the world’s first freedom of information precedents and the onset of large-scale diffusion. Sweden enacted the world’s earliest FOI law in 1766, thanks in large part to pressure from the Swedish press during the decades of parliamentary rule known as the “Age of Liberty” (1718–72). Only after the UN’s 1948 Universal Declaration of Human Rights, however, did any other country adopt an FOI law. Article 19 declared that citizens should have the right to access government information, but at first no country acted pursuant to this

save Finland, which enacted an FOI law in 1951. The United States followed suit in 1966, but as late as 1990 only a dozen or so countries had joined it. Any number of constitutions, regional covenants, and treaties stipulated the right to public information, but in the absence of comprehensive national laws, access remained limited.

It was only in the 1990s and the early years of the new millennium that the diffusion of FOI laws finally began to take off.³ Between 2000 and 2005, 34 laws were enacted—more than a third of the total number to date. There have been some notable successes, including in Bulgaria (2000), Mexico (2002), and India (2005). A few surprise late-adopters unveiled themselves, including the United Kingdom (2000),⁴ Switzerland (2004), and Germany (2005). Some did not come quietly: The government of British prime minister Tony Blair stipulated a delay of nearly five years before the law was to take effect. Other countries have continued to resist. As of March 2011, Spain remains one of the few European democracies not to have adopted a law, despite a 2004 promise to do so by the government of Prime Minister José Luis Zapatero.

The U.S. experience with the Freedom of Information Act (FOIA) has become paradigmatic of the extraordinary circumstances required to secure and maintain minimally effective laws. A bill came under legislative consideration in the early 1950s, but enactment only took place in 1966 under President Lyndon B. Johnson (1963–69). Johnson, whose Democratic Party controlled both houses of Congress, grudgingly signed a watered-down FOIA only after a prolonged campaign by the news media and persistent urging by entrepreneurial legislators.⁵ The FOIA only began to function effectively, however, after the 1972–74 Watergate scandal triggered a reform campaign largely driven by media pressure. This campaign led the Democrat-dominated legislature to vote in favor of a seminal 1974 reform. Republican President Gerald Ford unexpectedly vetoed the measure, but Congress overrode him in November 1974, finally giving the FOIA its teeth.

The Challenge of Comparisons

Institutional struggles, as Andreas Schedler notes, commonly occur in two stages: First the form of institutions emerges, and then comes the struggle to ensure their effectiveness in practice. Both stages are crucial. But the path-dependent nature of institutions makes clear that one stage builds upon the next: Getting the laws right on paper is the best predictor of their future effectiveness. At a minimum, strong FOI legislation much improves the odds of greater access to information, particularly when laws mandate the establishment of robust oversight agencies to handle complaints and appeals, clear rules for implementation, minimal exceptions, and a strong legal obligation for officials to proactively disclose information.

This is not to say that “strong” or “weak” is the best way to characterize FOI laws. “Minimally effective” is perhaps a more apt descriptor of a strong disclosure law, such is the universal resistance of authorities to surrendering sensitive information. Few comparative indicators are yet available on the effectiveness of new FOI laws. Differences from one country to another, including varying political systems, disclosure procedures, and measures of public use and awareness, make compliance and usage difficult to compare. More important, however, official data can be untrustworthy.⁶ Evidence of FOI laws’ successes on the ground is still mostly anecdotal and comes mainly in the form of news stories.

The largest comparative study to date on the operation of FOI laws provides evidence regarding the problematic nature of FOI in practice, but it also illustrates the positive effect of laws (versus no laws) and strong laws in particular. The study is one that the Open Society Institute (OSI) undertook in 2006 to measure compliance in fourteen countries—seven countries with FOI laws and seven without.⁷ On average, requests for information met with noncompliant responses 58 percent of the time in countries with FOI laws—which sounds bad until you learn that the comparable figure for countries *without* such laws was an overwhelming 83 percent. On average, requests for information were met with mute refusals 47 percent of the time in all countries. Mexico, which is well known for its strong law, scored among the best of the fourteen; requests were met with mute refusals just 21 percent of the time. One reading of the results might suggest that: 1) even with FOI laws, getting governments to give up information is hard; 2) the laws have a moderately positive effect; 3) the stronger the law, the more clearly positive the effect it will have; and, 4) a weak law may be worse than no law at all, a viewpoint shared by some experts.

Effectiveness obviously depends on more than just how strong the law is on paper; implementation and enforcement are key. But like the strength of the legislation itself, those will in turn depend on political conditions. The effectiveness of the FOIA in the United States, for instance, has varied greatly over the years, depending on congressional-presidential dynamics and media activism. After the original 1966 FOIA proved ineffective, critical strengthening reforms took place in 1974 and 1976 under President Ford, who faced an opposition-controlled Congress. Similar strengthening reforms occurred in 1996 (E-FOIA reforms) and 2007, each time in the wake of a shift to divided government: first after Republicans took both houses of Congress from President Bill Clinton’s Democrats in the 1994 midterm elections, and then following the rout of President George W. Bush’s Republicans in the 2006 midterms. Unsurprisingly, given the “checking” function of laws, FOI has frequently tended to become stronger under weaker presidents and weaker under stronger presidents (under George W. Bush, for example). It appears that President Barack Obama has

bucked this general trend. Deemed by many to be the “transparency president,” Obama has translated his stated commitment to transparency into tangible results: The backlog of FOIA requests has been reduced by 40 percent⁸ since Obama assumed office in January 2009 with wide Democratic majorities in both houses of Congress.

In order to be strong on the ground, moreover, an FOI law needs to be accompanied by grassroots or NGO activism and, most crucially, media that are willing to lend transparency advocates a platform. The media’s natural self-interest in easier-to-access information provides an obvious incentive for editorial support. Heavy coverage puts transparency backers in the spotlight, engenders legislative commitments, and makes behind-the-scenes bids to weaken regulation harder to get away with. In the United States, media efforts have been coordinated by the Sunshine in Government Coalition, representing the country’s principal media powers.

Of the fifty or so cases of FOI-law enactment since 2000, several provide particularly vivid examples of how an effective law can be won, lost, or go on being resisted. Examinations of Mexico, Argentina, and Brazil portray a famous victory, an unexpected defeat, and ongoing resistance, respectively. An analysis of Bulgaria’s adoption process illustrates how determined efforts and propitious political conditions can transform unpromising laws into well-implemented, effective tools for transparency. Finally, the story of India’s decade-long right-to-information campaign offers a little bit of everything: resistance, failure, victory, and ongoing challenges to effectiveness. The examination of these experiences, particularly the first four, once again underlines the importance of legislative dynamics and media advocacy.

A Famous Victory

Mexico’s “Federal Law on Transparency and Access to Public Government Information” has been widely recognized as a regional and indeed global benchmark for disclosure regulation. The law’s innovative provisions and Web-based transparency infrastructure have won it many plaudits.⁹

Similar to the U.S. FOIA, the Mexican law and subsequent reforms were enacted within the context of strong media campaigns and presidents who lacked control over the legislature. President Vicente Fox promised an FOI law during his 2000 campaign, but a robust reform initially appeared far from a foregone conclusion. Fox lacked majority control of the legislature, and Congress succeeded at sinking much of his agenda. While these legislative failures did not bode well for a robust FOI law, neither did Fox’s initial approach: The administration leaked a seriously defective draft law in the first half of 2001.

Fearing the worst, a civic coalition hastily assembled. Christened the

Grupo Oaxaca by the *New York Times*, the movement comprised fewer than two-dozen academic experts and editors from the country's three largest newspapers (from across the political spectrum), *Reforma*, *El Universal*, and *La Jornada*. Using academics as news sources, the national Grupo Oaxaca publications produced voluminous coverage. Fox and his cabinet found themselves newly motivated to overcome political and bureaucratic obstacles and advance more-promising legislation. The Grupo Oaxaca then secured the support of opposition parties for its own model FOI bill. Most incredibly, the Grupo Oaxaca's knowledge of the law led the inexperienced opposition politicians to hand the Grupo the task of hammering out the final measure with government representatives in Congress—an unprecedented occurrence in Mexico.

The Grupo Oaxaca's publicity tactics sparked a credit-claiming contest between the opposition and government that bid up the quality and scope of an FOI law. The media wielded favorable publicity as a carrot for supporters and criticism as a stick against dissenters. Continual media interest in the FOI law and successive opposition-controlled legislatures since 2001 have led to incremental reforms, which culminated in a 2007 constitutional amendment. The reform set in place minimum standards for FOI regulation within all levels and branches of government.

The law's innovative features include a ban on the exemption of information relating to human-rights investigations, and a positive obligation for officials to lend assistance to requesters. Most important, the law provides for a strong oversight agency, the Federal Access to Information Institute (IFAI). Although it has recently experienced budgetary pressures,¹⁰ the IFAI has proven effective at handling complaints and appeals when information is denied to applicants, thereby sparing them the costly trips to court required under the U.S. FOIA.

Mexico's law has set off a wave of bureaucratic changes. The handling of government records has vastly improved, and state integration has strengthened. Former IFAI commissioner María Marván Laborde has revealed that because of the law's efficiency, top bureaucrats use it to acquire information about other parts of government.¹¹ Mexico's FOI law has also helped to bring corruption to light. Journalist Fátima Monterrosa won a 2007 National Journalism Award by using the law to uncover a series of fraudulent procurement orders coming from the President's Office.¹² The news media has employed the law to press for greater legal freedoms, which include a journalistic shield law and the reform of harsh defamation laws.

Argentine Travails

While in Mexico a handful of elite actors moved an FOI law rapidly forward amid a major media outcry, in Argentina a staggering array of well-established civil society groups struggled for years but,

despite their sustained and noble efforts, were able to secure only the inferior Presidential Decree 1172/03 of 2003. This weak outcome surprised FOI experts around the world. After all, Argentine provinces had passed numerous disclosure laws starting in the 1980s and 1990s, and in 2002 the campaign for a comprehensive FOI law included more than two-hundred NGOs and boasted signed presidential pledges. It should by all rights have also gained steam after former president Carlos Menem's corrupt rule began to be exposed in the late 1990s, and again after the crisis triggered by Argentina's debt default at the end of 2001. Yet Argentina's FOI campaign drew little media support, and successive presidents used their formidable agenda-setting powers in Congress to delay and resist comprehensive legislation.

Menem's successor, President Fernando De la Rúa (1999–2001), at first backed the idea of an FOI law. But serious allegations of a vote-buying scheme in the Senate and resistance to transparency on the part of unions and other political allies sapped De la Rúa's enthusiasm, and he pocketed the law early in his term. Efforts to move an alternate bill through Congress foundered in the face of the administration's parliamentary maneuverings.

Although opacity had played no small part in Argentina's descent into economic crisis during 2001, the postdefault administration of President Eduardo Duhalde (2002–2003) was reluctant to heed citizen demands for greater transparency. More than two-hundred organizations secured a signed promise from him in February 2002, yet approval in the Chamber of Deputies was delayed until a week before he left office. Once Néstor Kirchner became president in 2003 with majorities in both chambers of Congress, he hastily issued a presidential decree that provided for (limited) FOI. Decree 1172/03 still stands, but lacks the force of a comprehensive law.

When Senate amendments effectively killed an FOI bill in late 2004, advocates were left wondering what had happened. Argentina, unlike the United States and Mexico, had seen the media become seriously interested in a law only late in the campaign, when Senate changes to the law threatened press outlets and other private entities with unorthodox and contentious disclosure obligations. Since 2005, more than fifteen FOI proposals have failed to prosper in the Argentine Congress. Yet there is still hope: As of early 2011, a bill already approved by the Senate awaits passage in the Chamber of Deputies.

Although determined civic organizations have squeezed some remarkable successes out of the Argentine decree, it has generally proved suboptimal. In its first three years, the federal administration reported receiving only 2,543 FOI requests.¹³ In 2007, the government spent less than a half-million dollars administering the decree. By contrast, Mexico's FOI law generated more than fifty-thousand requests in its first

three years and is overseen by a semi-autonomous agency with an annual budget of about US\$20 million.

Baffled in Brazil

The Brazilian case exemplifies how presidents most able to enact strong FOI laws have also tended to be the least likely to do so. A deputy from the ruling Workers' Party introduced an FOI law in Congress in 2003. Yet with a stable coalition majority in Congress, then-president Luiz Inácio "Lula" da Silva's administration took till early 2006 to get its own bill ready, and introduced the actual proposed legislation only in 2009. The Chamber of Deputies, Brazil's lower house, approved a measure in May 2010, but Lula sat on the bill—Brazil's military establishment, among other important players, had concerns—and left the matter to his successor, Dilma Rousseff. There is no sign that the bill is a priority, and media outlets have maintained a conspicuous silence that makes stalling easier.

Prospects for a strong law are dim. In late 2010, Brazil's leading FOI advocates boycotted a government-sponsored international seminar on archives following the announcement that the records of the 1964–85 military dictatorship would remain sealed, breaking with previous government promises.¹⁴ Even as regional and global trends toward greater openness have gained force, Brazil has been a quiet FOI resister. Seminal decisions by the OAS's Inter-American Court have apparently been ignored, including a directive for the region's governments to pass FOI laws (*Claude Reyes v. Chile*, 2006) and grant citizens access to archives based on the "right to truth." This last decision (*Gomes Lund v. Brazil*, December 2010) judged Brazil's Amnesty Law, which immunizes the last dictatorship's human-rights abusers against prosecution, to be illegal. The government has yet to respond.

Political resistance to openness is also reflected by weaknesses in the FOI bill now being considered. In contrast to Mexico's law, which stipulates a period of twelve years for releasing classified information, Brazil's law provides for a 25-year reserve period, with the option to restrict access for a further 25. Information defined as "personal" can be withheld for a hundred years. The law also provides for three distinct tiers of secrecy and makes no provisions for a dedicated oversight agency to handle appeals, which are left to Brazil's already overburdened court system. Some progressive points do stand out, however: The law guarantees access to information in digitally open formats (Excel rather than PDFs, for example), and it extends to all levels and branches of government, including state-owned-enterprises.

Surprisingly, there has been little media criticism of either the law itself or the remarkable delays that it has faced. Despite organizational support emanating from professional media associations at the national

level, actual coverage has been notably weak, undoubtedly contributing to political inaction. It remains to be seen whether the Rousseff administration, which has powerful support in Congress, will embrace or eschew prospective legislation.

Success in Bulgaria

Bulgaria was among the first FOI adopters in post-Soviet Europe, passing a law in 2000. Unlike Mexico's clear legislative success and Argentina's disappointing executive decree, Bulgaria originally enacted a moderately weak law. Credit for the country's FOI regime belongs to favorable political conditions and FOI advocates' tenacious efforts, which have come together to improve implementation and push forward incremental strengthening amendments.

Agitation for FOI began early in Bulgaria, galvanized by the creation in 1996 of the Access to Information Programme (AIP), a dynamic organization composed of journalists, economists, and human-rights defenders. The AIP's 1997 statement of principles became a rallying point for journalists. They began reporting their difficulties in accessing government information to the AIP, while the AIP delivered legal advice and opinions that served as fodder for news stories on FOI. An independent news media has provided impressive support for the cause: To date, AIP members have appeared on more than 1,100 television and radio shows. Nor has it hurt that one of the AIP's founders is the owner of *Capital*, a well-connected newspaper read by business elites.

Largely thanks to the AIP and the media, FOI found its way onto the legislative agenda of Prime Minister Ivan Kostov's United Democratic Forces (ODS) following its landslide electoral victory in 1997. The government's response to the AIP's demands was tepid, however. It may have been understandable to defer action on FOI while officials were consumed with ambitious structural reforms. Yet it also seems that in Bulgaria, as in Argentina a few years later, the existence of credible corruption allegations may have weakened the commitment to transparency.

In the end, public pressure forced the ODS to act, albeit grudgingly. The government used its legislative clout to pass a questionable FOI law with little to no public consultation. The law provided an ambiguous definition of "public information," furnished no regulated administrative-appeals mechanism, and, alarmingly, subjected private media companies to disclosure obligations. Notwithstanding the law's weaknesses, demand for information exploded; in the law's first six months, the executive branch reported receiving more than fifteen-thousand requests.¹⁵

Enthusiasm for the law has persisted, and a period of sustained minority governments since 2001 has witnessed incremental strengthen-

ing reforms. The law's success is mainly due to strong implementation. Committed bureaucrats and the AIP have ensured relatively strong compliance, while EU directives and international organizations such as the OSI and Article 19 have helped to expand the scope and quality of the law. So have enterprising opposition legislators, though the most successful reform of the law so far was initiated with the help of an ODS deputy.

Demands for public information continue to run strong, attesting to the law's effectiveness. Bulgaria has one of the world's highest per capita numbers of reported information requests, and about half its citizens know about the FOI law—a high figure for the region. Bulgarian FOI advocates have gone on to achieve additional international milestones. The AIP is a cofounder of FOIANet, for example, a global network of more than five-hundred FOI professionals and almost two-hundred organizations.

Many challenges have yet to be overcome. As in other countries, requests are often met with refusals or claims that the information does not exist. Moreover, the supply of public information on websites is still weak. In 2010, the AIP reported that approximately 70 percent of government websites still lacked a section on how to gain access to public information. These disclosure obligations are relatively recent, however, and favorable conditions should lead to future gains.

India's "Right to Information"

The history of India's 2005 Right to Information (RTI) Act combines most of the outcomes examined in the previous cases: resistance, failure, success, and ongoing struggles to defend, implement, and enforce laws. Uniquely among the cases analyzed, India's law began with a grassroots movement, a village sit-in that took place in 1990 in the northwestern state of Rajasthan. Angry citizens sought answers to their questions about minimum wages, misappropriated benefits, and corruption. This movement gave rise to the Organization for the Power of Laborers and Farmers (which goes by the Hindi acronym MKSS), with the goal of demanding information as a right.

In 1996, MKSS members joined with the India Press Council to found the National Campaign for People's Right to Information (NCPRI) and the same year sent the government a model FOI bill. The government delayed, however, denying the bill consideration until a 2002 Supreme Court decision forced its hand. At the time, the federal government was led by the Bharatiya Janata Party (BJP), which in 2002 used its strong legislative majority to pass a weak FOI law that it never even bothered to publish in the parliamentary record (a technical maneuver which meant that the law could not take effect).

This act of legislative legerdemain prompted renewed demands. Be-

ing the traditional political party of the poor and disenfranchised—those behind the MKSS movement—the opposition Congress party and its United Progressive Alliance decided to seize on the need for a strong RTI law as a campaign issue. When Congress unexpectedly won the 2004 elections and put together a narrow parliamentary majority, it seemed as if the strong law would pass. In another surprising twist, however, party leaders tried to put the weak 2002 law into force instead. Advocates and media outlets raised the alarm. Aruna Roy, a founder of the MKSS and NCPRI, threatened to resign from her spot on the government's National Advisory Council. Sonia Gandhi, the Congress party's president, joined in backing a stronger law. The new government retreated under fierce press criticism, and by October 2005 the Right to Information Act had become law.

Like Mexico's, India's transparency law is exceptional. Among other features, it provides for a constitutionally guaranteed right to information, state and central information commissioners to decide on appeals and complaints, sixteen categories of information that governments must proactively disclose, and a unique 48-hour response time for information requests relevant to protecting "life or liberty."

Yet like any law of its genus, the measure faces significant window-dressing dilemmas. Some issues are legal: One ambiguous exemption, for example, bars officials from disclosing information "which would lead to incitement of an offence." Other issues are political. Just a year after the law's enactment, the government attempted to exclude "file notings" (notes used to make regulatory decisions), from public-disclosure obligations. The courts overruled the government's challenge, but more will arise. As one advocate admits, "every party and every bureaucrat has tried to weaken this law."¹⁶ Fortunately, some of the two-million people who used the law during its first thirty months—experiencing its potential force and reach—have galvanized movements against its weakening.

As in other countries, most of the challenges in India involve implementation and enforcement. Examining a large portfolio of data on the law's operation, FOI expert Alasdair Roberts examined the RTI's challenges.¹⁷ He found that they included infrequent use and weak awareness, insufficient bureaucratic capacity (both human and infrastructure-related), inadequate leadership, official intransigence, and an overload of appeals. In a country as large as India, the logistical challenges can be dizzying. As Roberts notes, the state of Maharashtra alone has 96 million people, and the sixteen-thousand appeals for information that they lodged in 2007 dwarfed the cognate figures from Canada and Britain, which averaged just 2,500.

Perhaps the most pressing challenge in promoting more widespread use of the right to information is the law's growing reputation for putting requesters in harm's way. More than ten attacks on information-

seekers were reported in 2010, and some have become sensations. On 22 January 2011, the *New York Times* reported that environmental activist Amit Jethwa had been gunned down in 2010 after he used the law to acquire documents regarding the destruction of protected forests by limestone quarrying, an illegal enterprise involving local politicians in the state of Gujarat. Murders and physical intimidation clearly illustrate that the struggles over information and information laws will take place both inside and outside the institutional arena.

The experiences of Mexico, Argentina, Brazil, Bulgaria, and India convey the extraordinary conditions required to pass and sustain strong FOI laws. The presence or absence of basic political preconditions, such as propitious legislative dynamics and a public-spirited news media, can help to drive laws forward or hold them back.

Other factors obviously play a part in explaining the adoption of FOI laws, but most tend to be less reliable. Grassroots movements and NGOs can help to push FOI policies, but must depend on media coverage to make their case heard. International actors can help too, but there is evidence that they care more about whether a country has an FOI law—*any* FOI law—on the books than about how sound that law actually is. Pakistan adopted an FOI “ordinance” as a condition for getting an Asian Development Bank loan in 1997.¹⁸ Yet advocates claim that the government has had “no intention of putting [the ordinance] into practice.”¹⁹ Latin American FOI specialists have also acknowledged the detrimental effect of “forced” adoptions.²⁰ Finally, political will and leadership can play an important role in advancing laws. But the will to open government up to public scrutiny is more often the product of institutional dynamics than of intrinsic beliefs—even well-disposed leaders may face pressures from allies to resist and delay.

In short, more attention needs to be paid to how basic political preconditions influence the strength and effectiveness of FOI laws. Where the firmaments of good government are undependable—where power is concentrated and the press is constrained—the emergence of meaningful FOI legislation is likely to be slow.

Perhaps this is only to be expected. The idea that, on demand, governments should provide information on how they spend money and follow (or fail to follow) rules must be counted among the most revolutionary political concepts to take hold in the last century. To call into question the state’s right to secrecy challenges deep-seated traditions and instincts. The idea of transparency is of course becoming less radical as it gains greater acceptance as a norm, not unlike universal suffrage, a professional civil service, unemployment insurance, or other relatively recent political innovations.

More than forty years after the UN mandated the norm in 1948, there were barely more than a dozen laws in existence. Diffusion has since accelerated. Even so, more than half the world’s governments still operate

without FOI regulations, and even optimistic experts agree that the vast bulk of current FOI laws are highly problematic on paper and in practice. In emerging and mature democracies and at all phases of the policy cycle, FOI laws continue to face numerous window-dressing dilemmas. Knowledge is power, and getting rulers to give it up to the ruled remains an uphill climb.

The increasing visibility and importance of transparency mechanisms nevertheless signal hope for more and better laws. The most promising trends are technological. Open-data advocates across the world are culling streams of information from governmental sources such as *www.data.gov* (a U.S. initiative) and *data.gov.uk* (a British initiative). Hackers and technologists are reusing, remixing, and combining data, creating visualizations and Web-based tools that make government information easier to use and understand. Public information is being freed from bureaucracies.

These trends should increase the popular use and prominence of FOI laws and open-data provisions, speeding the acceptance of the right to access public information and helping to encourage stronger measures and greater compliance. Socialization of this right is crucial to promoting effective laws, but will surely require several generations to take hold. The media are indispensable in attaining this goal, as are some—but not all—Internet-based initiatives.

Although the indiscriminate disclosures of WikiLeaks helped to publicize the extent of governmental secrecy, the effort may in the end be found to have had a countervailing effect on public disclosure. Technological subterfuge may compel governments to clamp down harder on information and develop cleverer strategies of concealment or deletion. What is certain is that increasing demands for access to public information portend significant power struggles and merit greater attention from scholars.

NOTES

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1. Andreas Schedler, "Authoritarianism's Last Line of Defense," *Journal of Democracy* 21 (January 2010): 70.

2. Bangladesh, Burkina Faso, the Cayman Islands, Chile, Guatemala, the Maldives, and the Philippines put laws into effect in 2009. Bermuda, Ethiopia, Indonesia, Liberia, Malaysia, Malta, Russia, Sierra Leone, and Uruguay passed or put laws into effect in 2010.

3. I gratefully acknowledge the help of Roger Vleugels, FOI expert and publisher of the *Fringe Journal*, who kindly provided his most up-to-date list of countries with FOI laws. I cross-referenced this list with other sources.

4. Scotland adopted its own law in 2002.

5. See Sam Archibald, "The Early Years of the Freedom of Information Act: 1955 to 1974," *PS: Political Science and Politics* 26 (December 1993): 726–31; and George Penn Kennedy, "Advocates of Openness: The Freedom of Information Movement" (PhD diss., University of Missouri–Columbia, 1978).

6. See, for example, Ivan Szekeley, "Central and Eastern Europe: Starting from Scratch," in Ann Florini, ed., *The Right to Know* (New York: Columbia University Press, 2007), 128.

7. Countries with FOI laws included: Armenia, Bulgaria, France, Mexico, Peru, Romania, and South Africa. Countries not in possession of full laws were: Argentina, Chile, Ghana, Kenya, Macedonia, Nigeria, and Spain.

8. See Marian Wang, "Watchdogs: Gov't Spent \$196 Keeping Secrets for Every \$1 Spent Declassifying Documents," *Propublica*, 7 September 2010, available at www.propublica.org.

9. Open Society Justice Initiative, *Transparency and Silence: A Survey of Access to Information Laws and Practices in 14 Countries* (New York: Open Society Institute, 2006).

10. According to the IFAI's María Marván Laborde, the IFAI workload doubled when it was given responsibility for the new (2010) Habeas Data law, yet its budget has only been increased by approximately 10 percent. Author's interview, Mexico City, December 2011.

11. Author's interview, Brasilia, Brazil, April 2009.

12. Fátima Monterrosa, "Corrupción en el Estado Mayor Presidencial." *Emeequis*, 28 April 2008, 36–41. Available at www.m-x.com.mx/xml/pdf/117/34.pdf.

13. Data provided to the author by Germán Stalker, director of the Access to Information Unit, Subsecretariat for Institutional Reform and Democratic Strengthening.

14. Greg Michener, "Government Decides to Keep Archives Closed: Opacity to Prevail Under Dilma?"; available at <http://observingbrazil.com/2010/11/05/opacity-to-prevail-under-dilma-brazils-access-to-public-information-law>.

15. Author's phone interview with Gergana Jouleva, executive director, Access to Information Program, Sofia, Bulgaria, January 2011.

16. The quotation is from Arvind Kejriwal. See Mehboob Jeelani, "Dangerous Knowledge," available at www.caravanmagazine.in/Story/668/Dangerous-Knowledge.html.

17. Alasdair S. Roberts, "A Great and Revolutionary Law? The First Four Years of India's Right to Information Act," *Public Administration Review* 70 (October 2010): 925–33.

18. Alasdair S. Roberts, *Blacked Out: Government Secrecy in the Information Age* (New York: Cambridge University Press, 2006), 111.

19. Naeem Sadiq, "Suppression of Information," *Dawn.com*, 28 January 2010.

20. Author's interview with Sandra Crucianelli, Belo Horizonte, Brazil, May 2008.