

Towards an Agenda-Setting Theory of Freedom of Information Reform: the Case of Latin America¹

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About half of the 90 or so countries that have enacted freedom of information (FOI) laws have done so within the past decade, and Latin America has passed an over-representative share: eleven FOI laws and two decrees since 2002.² Latin America's ostensible rush to embrace openness and transparency is striking, especially in light of a legacy of authoritarianism, human rights abuses, corruption, and poor governance. Undeniably, these adoptions are suspect for the very same reasons. Can countries marked by legacies of secrecy make good on transparency policies that are at once politically onerous and difficult to enforce?³

Preliminary evidence is somewhat encouraging, but wide variation in the strength of FOI laws promises to produce divergent results across Latin America. Mexico, for instance, was among the last countries in Latin America to cast off authoritarianism, yet it passed a law whose stunning political and technical success is cited by experts with pavlovian regularity. Chile and Peru also appear to be making inroads. Yet experts have been stumped by other important countries in the region. In Brazil, for instance, issues of transparency and openness have attracted little attention and a sub-optimal⁴ FOI bill still languishes in the Senate. Argentina also puzzles observers. Despite more than eleven years of vigorous activism by well-organized civil society organizations (CSOs), and over 20 legislative proposals, the country has yet to secure more than a presidential decree lacking in scope, resources, and congressional legitimacy.

What can explain the striking variation from Mexico down to Argentina? The region's countries resemble each other in more ways than any other region in the world: they are invariably presidential democracies mainly focused on commodity production, and they share similar Iberian cultures and roughly equivalent human development indicators. What factors have led some governments to endorse dramatic surrenders of secrecy, while others have enacted mere window-dressing, or still delay and resist? What factors lead to strong freedom of information laws?

² Refer to section 4.1 for a list of laws and their dates of enactment, or visit <http://gregmichener.com/Dissertation.html>

³ For a discussion of freedom of information as window-dressing, please refer to my most recent article in this year's April edition of the *Journal of Democracy* (22:2), "Freedom of Information around the World."

⁴ Among other shortcomings, the law lacks a dedicated oversight agency, includes three tiers of secrecy, and the reserve periods are excessively long: 25 years for the initial reserve and the possibility to renew for 25 more years.

Drawing from a Ph.D. dissertation⁵ and forming the core of an upcoming book for Cambridge University Press, this paper presents a theory to explain the strength of freedom of information laws and marshals evidence from Latin America to support it. I argue that the *strength of legislation* and *electoral timing* of reforms are strongly influenced by two factors: 1) the degree to which presidents are able to use their legislative negative agenda-setting powers—parliamentary majorities and constitutional powers—to delay and resist strong laws; and, 2) the degree to which the news media transmit coverage for freedom of information. In simplified terms, I present an agenda-setting theory in which strong news media and weak presidents advance robust freedom of information laws.

My research shows that presidents who lack control over the legislature are more likely to pass strong laws and typically do so within the first third of their terms of office. Conversely, stronger presidents tend to delay until the last third of their mandates and pass weaker laws. I also find that well-organized movements for FOI come up short when they lack the support of prominent media outlets. When and why media transmit coverage on issues of transparency and FOI is another question I broach in this limited space, albeit peripherally. My research suggests coverage depends on press independence, which is in turn influenced by the degree of presidential control and market competition.

This paper is organized into five sections. First, I examine how scholars and advocates have explained freedom of information reform. Second, I flesh out the components of my central argument in greater detail. In the third section I lay out scores for the face-value legal strength of laws across Latin America based on an original evaluation, and discuss alternative hypotheses to explain observed variation. In the fourth section I present the methodology used to test my argument and evidence from analyses of reform processes across Latin America. To demonstrate that the argument travels beyond correlation, I explore two vivid case studies: Mexico's sweeping freedom of information success and Argentina's abortive attempts to bring about comprehensive legislation (1999-2005).

I. LACUNAE IN THE LITERATURE: EXPLAINING THE VARYING STRENGTH OF LAWS

⁵ *The Surrender of Secrecy: Explaining the Emergence of Strong Access to Information Laws in Latin America*, Defended in April, 2010, the Department of Government, University of Texas at Austin. Please see: <<http://gregmichener.com/Dissertation.html>>

The greater the difficulty of implementing and enforcing a certain type of law, the more important it becomes to ensure that legal provisions are optimal before enactment. Prime examples include whistleblower laws, campaign finance regulation, media reforms, and of course, freedom of information laws. Notoriously difficult to adopt, implement, enforce, reform, or even repeal, freedom of information laws must be drafted with care. The *de jure* legal strength of laws rarely tells the whole truth about their *de facto* performance, but experts nonetheless understand that getting laws right on paper is the best foundation for future effectiveness.⁶

Answers to whether laws emerge from the legislative process whole or full of holes are particularly consequential for Latin America, a region where institutionalization is relatively weak and window-dressing laws tend to proliferate (Levitsky and Murillo 2006, 21-23).

Given the importance of examining legal strength, it is surprising that almost no works in the transparency and disclosure literature examine this question. The major obstacle is the lack of quantitative determinations regarding legal strength. Excellent qualitative assessments of laws from around the world and Latin America do exist (Banisar 2006; Basterra 2006; Mendel 2008; 2009). As of yet, however, no cross-national indices provide scores or grades to determine if one law is legally more robust than the next. Without this knowledge, we are left to guess which factors were more important in bringing stronger laws about.

Thus the literature explains reform, but not strong reform. Some have examined the important question of *effectiveness* (Finkelstein 2000; Fung, Graham, and Weil 2007; Fung, Graham, Weil, and Fagotto 2004; Knight Center 2011; Open Society Justice Initiative 2006). Others have looked at the reasons countries adopt laws (Ackerman and Sandoval 2005; C. Bennett 1997; Dorhoi 1999; Rely 2006; Roberts 2003). Still others analyze questions of diffusion: bottom-up or top-down, neighborhood effects, and normative emulation (Berliner 2010; Roberts 2003).

This literature does not speak directly to the issue of legal strength. Effectiveness is not the same as legal strength; a professional public sector, for instance, may render a technically deficient

⁶ Within the last year three major organizational initiatives to score the face-value strength of freedom of information laws have emerged: The first index is being developed by Article XIX, based on a binomial index developed by FUNDAR, Mexico; the second is an index with an ordinal scale developed by Access Info Europe in partnership with the Center for Law and Democracy; and the third initiative is a database of 88 laws by the World Bank. The Bank will not release the scores—see “World Bank Publishes Major Database on FOI Laws.” Freedominfo.org. Available at: < <http://www.freedominfo.org/2011/04/world-bank-publishes-major-database-on-foi/>>.

law effective in practice. The literature on why countries pass reforms, by contrast, implies binary, reform / no reform, conceptions of adoption, rather than aiming to explain degrees of strength. Moreover, understanding why countries adopt laws is less relevant now that FOI is a well-established norm. Finally, the literature on diffusion tells us more about patterns and less about whether diffusion is “spurious” (Gilardi 2003) or of real significance.

The literature has thus asked “what factors advance laws?” but not “what factors promote *strong* laws?” a much more specific and consequential question.

Without being able to refer to precise determinations (scores) of legal strength, the extant literature has asked general questions and produced general answers. Most analyses furnish laundry lists of ‘important’ drivers of reform. Others conflate drivers that lead to reform with those that lead to implementation or enforcement—a significant misspecification. I divide typical drivers into four theoretical approaches and list them in Table 1.

[Table 1 about here]

Finally, comparative studies are scarce; the literature consists mostly of descriptive single-case studies or collections thereof. Comparative studies of reform processes that employ a consistent methodology to analyze specific causal arguments are essential for replicable, verifiable, and significant inference.

II. AN AGENDA SETTING THEORY OF FREEDOM OF INFORMATION REFORM

The current research addresses these gaps in the literature through a comparative study of freedom of information (FOI) laws across Latin America. The following two sections examine the arguments that sustain the study’s central arguments.

2.1 The Negative Agenda-Setting Power of Presidents

The causal argument begins with a paradox: a strong president, one who has the means to enact a sweeping FOI law, is the type of president least likely to do so. Conversely, a leader who controls neither a majority of votes nor possesses the constitutional powers to forestall legislation is more likely to commit to robust legislation and do so early-on within the electoral cycle. In effect, weak presidents exchange secrecy for greater legitimacy. Legitimacy is a concern for weak presidents primarily because they experience difficulty in fulfilling their most important function—

enacting significant legislation.⁷ In turn, weak presidents compensate for their power deficits by seeking out *public*, *legislative*, and *administrative* legitimacy, which provides them with greater control and credit—the two central currencies of politics.

‘Strong’ Presidents

‘Strong presidents’ possess the power to keep freedom of information from being voted on or approved in Congress. They leverage negative agenda-setting powers (Cox and McCubbins 2005) to accomplish this task, most typically by controlling a majority of seats in the legislature. As several scholars have noted (Morgenstern, Negri, and Pérez-Liñán 2008; Shugart and Carey 1992), some presidents also employ constitutional powers, such as scheduling privileges or exclusive rights of introduction, to delay and resist laws— even when they lack a majority of seats in one or both houses of Congress, as the case study on Argentina will show.

Strong presidents tend to delay and resist freedom of information laws, enacting weaker laws during the last third of their terms of office. Strong leaders may be well-intentioned, but bureaucratic and political allies will apply uncompromising pressures to delay and resist robust transparency reforms. By passing laws late, strong presidents retain allies, avoid being subject to FOI laws, and enjoy the considerable powers of secrecy. By passing weaker laws, they please important bureaucrats, hedge against their misdeeds being dug up by predecessors, and still gain some credit for enacting FOI.

‘Weak’ Presidents and Legislative, Public, and Administrative Legitimacy

By contrast, weak presidents are those who lack decisive negative agenda setting powers. They do not control a majority of seats in one or both houses of Congress⁸ or the constitutional powers to keep bills from being voted on. Their legislative weakness jeopardizes their legitimacy. Without the power to stop opposition parties from passing significant reforms, such as a FOI bill, they risk losing political capital.

The dangers of imposition are real. In 1974, Democrats advanced key FOI reforms that Republican U.S. President Gerald Ford proceeded to veto. Democrats—and even prominent Republicans— then overrode the veto, imposing tough executive oversight (Archibald 1993). A

⁷As David Mayhew has noted (1991; 2005), presidents who do not control the legislature are still able to pass significant legislation. However, they often experience difficulty passing critical structural measures, such as key economic and social policy reforms. This is especially known to be the case in Latin America (e.g. Madrid 2003).

⁸ This is the definition I use when I refer to ‘minority government.’

similar scenario played out when, fresh from a midterm landslide, Democrats imposed a FOI reform on George W. Bush in 2007.

Scholarship has shown that opposition parties seek to curtail the executive's discretionary power by implementing 'fire alarm'⁹ oversight reforms, especially during minority government (Ginsburg 2003; McCubbins and Schwartz 1984a; Montinola and Andrews 2004; Morgenstern and Manzetti 2003). Presidents and parties will often vie for credit by bidding-up the strength and scope of 'public goods'—such as FOI—under minority government, especially when press attention is intense (Schick 1993; Vogel 1993).¹⁰ Signaling the ability to pass significant legislation is important for weaker presidents, especially in internecine legislative arenas where reform victories are scarce. FOI provides presidents with important acclaim and legacy bragging rights.

Weaker presidents are also more likely to pass strong FOI reforms in order to avoid criticism.¹¹ While criticism has less bearing on whether stronger presidents can fulfill their legislative mandates, weaker presidents may find criticism erodes their support in Congress (e.g. Ostrom and Simon 1985; Rivers and Rose 1985). The institutional context under minority government is ripe for criticism of the executive; information flows more freely (Guerrero 2002), and the president and executive's regulators face greater scrutiny through investigative committees, among other mechanisms (Epstein and O'Halloran 1996; Ginsberg and Shefter 2002; McCubbins and Schwartz 1984b).

Because media outlets *index* coverage to prevailing institutional power structures (L. Bennett 1990; Hallin 1984), opposition parties' opinions and criticisms tend to gain weight when the locus of decision-making power resides in the legislature. Unsurprisingly, greater contestation makes presidents more responsive (Hobolt and Klemmensen 2008). Under minority government, presidents are more likely to stave off criticism (or make up for it) through emblematic, positively-charged reform endeavors, such as freedom of information reforms.

Finally, weak presidents pass strong freedom of information (FOI) laws early on in their terms to gain administrative legitimacy. Passing a law earlier permits presidents to ensure implementation and compliance with FOI laws, building administrative credibility, an institutional

⁹ The term is from McCubbins and Schwartz (1984), and signifies reforms that allow citizens and non-legislative agents to oversee the activities of the executive branch.

¹⁰ Schick provides the example of 1972 social security reforms in the U.S. Vogel provides the example of environmental legislation.

¹¹ Interestingly, Nicholson, Segura, and Woods (2002) note that divided government in the U.S. makes it more difficult for voters to assign blame and results in overall higher approval ratings for presidents. It is questionable whether Nicholson et al's findings apply to Latin America, where legislatures tend to be reactive (Cox and Morgenstern 2001) and people still tend to point the finger at presidents for policy failures.

legacy, and avoiding blame for failing laws. As chief of the executive branch, presidents establish their authority early on. They discipline and regiment bureaucracies with strong FOI laws, purging partisan elements left over from previous administrations, or exposing *ancien régime* cronyism and corruption for electoral purposes. Exposure of public sector pathologies may help leaders build cases for reform, such as tax, public sector, or judicial improvements.

But just because weak, legitimacy-seeking presidents are more likely to pass stronger laws does not mean that strong presidents will always be unlikely to do so. For instance, strong leaders cognizant that opposition parties will soon take their place in office may enact robust laws, as occurred in Canada.¹² The general rule, however, is that stronger presidents are less likely to exchange the mantle of secrecy for greater legitimacy.

2.2 The Positive Agenda-Setting Power of the Media

Last section suggested that media coverage exercises an important effect, particularly when politicians vie for public favor under heightened party competition. The news media support FOI by projecting advocates of openness into the public sphere. They transmit positive and negative publicity to rally the support of politicians and they monitor legislative efforts, calling out delay, or attempts at weakening and sabotage.

I argue that the greater the degree of press coverage dedicated to FOI, the more likely that FOI legislation will emerge from the legislative process strong. Coverage will vary among media outlets, but generally sectors behave monolithically. In this section I explain why media coverage of FOI advocates is so critical, why it happens, and why it does not.

Accounts of civil society reform successes often misattribute causation. Scholars analyze news reports on CSOs and attribute influence to CSOs rather than the news itself. If CSOs had not received news coverage, would they have achieved the same degree of success? In most cases—probably not. News coverage is especially critical if movements rarely ‘take to the streets.’ FOI is a relatively complicated policy, best communicated not by mass movement, but rather mass media.

The strong positive relationship between policy news coverage and political support is anchored in a voluminous literature on what appears in the news, what issues people are likely to consider most important, and what is likely to generate pressure for public policy reform (e.g. Cook

¹² Prime Minister Pierre E. Trudeau’s Liberals held a majority and approved a law a year before Brian Mulroney’s Conservatives swept to power in 1984. The law would prove a major headache for the Conservatives.

et al. 1983; Kennamer 1994; Kingdon 1984; Knight 2008; Linksky 1986; Paletz 1998; D. Protes and McCombs 1991; Schudson 2004; Walgrave, Soroka, and Nuytemans 2007).

Experts on FOI readily acknowledge the critical importance of the news media in reform processes. But they often lump the press into the amorphous category of ‘civil society’ and pay little systematic attention to *how much* strong FOI laws depend on the news media (Michener 2009c, 2009a).

Why does the press support FOI? A more appropriate question is why outlets do not. Accurate information is the lifeblood of the press. Disclosure laws lower costs associated with information-gathering, diminish the likelihood of expensive libel suits, decrease self-censorship, and provide a better product to attract consumers. Setting agendas for FOI allows the press to secure greater rights (Trotti 1999); which in turn help instill greater security and confidence when reporting on contentious policy matters. FOI is particularly relevant to smaller firms that lack the access to key sources. While often slow, FOI requests can produce constant streams of information for career-enhancing investigative reports. Simply put, news media support for access to information reform is a manifestation of the fourth estate looking out for its collective best interests.

FOI is also patently in the public interest. Although public-spirited, investigative news media still have relatively shallow roots in most developing countries, democratic journalistic norms have begun to spread.¹³ The public’s right to information resonates with most journalists and media owners. This should especially be the case in Latin America, where the press’ role in human rights campaigns contributed to the genesis of modern civil society (Carothers 1999).

Although news media outlets have lent decisive support to FOI campaigns in Canada, the U.S.—countries around the world—they have been conspicuously demure in others. I suggest that the degree to which the news media outlets will set an agenda for reform will depend on their independence from government, which is in turn influenced by a) the degree of presidential control, and, b) the degree of news media ownership concentration.

The next section examines laws across the region and assesses alternative hypotheses to account for their legal strength.

¹³ For more information, see Becker and Vlad (2005). *The Knight Center for Journalism in the Americas* at the University of Texas provides a leading example of an organization that trains journalists (online courses).

III. FINDINGS

3.2 Measuring the Strength and Timing of Laws in Latin America

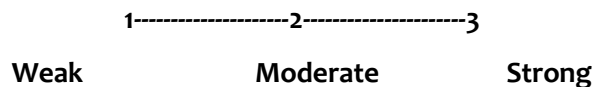
Legal Strength

Although enacted within a relatively similar time frame, the region's laws show marked variation. I measured the approximate face-value strength of national legislation upon adoption based on an original evaluative survey. This analysis does not account for subsequent reform or executive decrees; the latter renders comparison problematic because of weaker constitutional standing relative to laws. A more involved discussion of methodological issues is available online in the dissertation's appendix,¹⁴ as well as quantitative and qualitative results. While by no means exhaustive, the index is representative of a law's most important legal features.

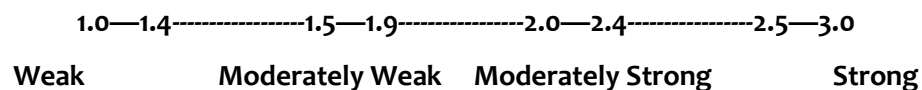
The evaluation asks 35 questions¹⁵ of laws from six categories representing the most important features of access to public information laws:

- a) Scope of the law: 8 questions
- b) Procedural Guarantees: 7 questions
- c) Duty to Publish and Promote Openness: 4 questions
- d) Exceptions: 7 questions
- e) Appeals: 6 questions
- f) Sanctions and Protections: 3 questions

The evaluation's questions were assigned clear benchmarks for scoring, which are based on the following simple ordinal scale:



In order to avoid indecisive interpretations, I also used benchmarks to divide the laws into two camps, strong and weak:



Overall scores were calculated by taking the sum of points scored in all questions and dividing by the number of questions.

¹⁴< <http://gregmichener.com/Dissertation.html>>

¹⁵ Four additional questions are asked of laws that possess oversight agencies. For more discussion on the methodology, see the appendix at the website below.

[Figure 1 about here]

As illustrated by Figure 1, seven of the 13 countries advanced weaker laws, or more than half. The region's average is 'moderately strong', close to the threshold at 2.0 / 3.0 and the median is 1.9. The average score for the stronger grouping of laws was 2.4, whereas the weaker grouping averaged 1.7, or 'moderately weak'. Thus the average gap between stronger and weaker laws is (.7)— more than one full benchmark-rating of difference. This figure illustrates the gap between stronger and weaker laws in the region.

Countries scored best on 'measures to promote openness' (2.3), the 'scope' of their laws (2.1), and 'procedures and guarantees' (2.2), which refer to the process of making a request and receiving a response. These qualities should facilitate the availability of information. Countries scored weakest on 'exceptions' (from disclosure), 'appeals,' and 'sanctions and protections' (1.8 for all three categories). These categories represent typical weaknesses for laws around the world.

Timing

[Figure 2 about here]

Figure 2 Illustrates the moment during each president's term of office when laws received definitive sanction from Congress. Clearly, laws that fell within the stronger benchmarks were enacted earlier— on average within the first third of a president's term of office. These include Nicaragua, Guatemala, Mexico, Peru, and El Salvador. Robust laws enacted earlier-on have stronger operational prospects; implementation teams have better 'raw material' to work with, longer time horizons for implementation, learning and working out kinks. For laws falling within the weaker benchmarks, enactment took place almost two-thirds through a president's term, on average. These laws belong to the Dominican Republic, Panama, Uruguay, and Brazil's bill 41/2010, passed in April 2010 by the Chamber of Deputies.¹⁶

Countries with stronger laws passed their measures twice as early as those with weaker laws. Two countries did not conform to expectations, Ecuador and Honduras, since their presidents passed moderately weak laws within the first third of their terms of office.

¹⁶ Although only half sanctioned, I include Brazil's bill in the analysis.

3.3 Considering Alternative Explanations

What can explain wide variation in the strength of laws across countries that enacted laws within a common timeframe (2002-11), experienced comparable pressures, and as region share the most similar political institutions and cultures anywhere?

External pressures provide a rather weak candidate explanation for the strength of access to information laws. While external pressures help place issues on the legislative agenda, they are much less decisive in determining the content of policies (see, for example, Weyland 2004). The substance of policies is decided at the enactment and customization phases (Karch 2007) in which external actors typically have little say. Research has shown that IFI pressure can backfire (Vreeland 2003), or result in little adherence to prescriptions (Hunter and Brown 2000). Moreover, countries that might 'need laws' because of high levels of perceived corruption have not necessarily passed weaker or stronger laws. Honduras and Ecuador might fit this category, but they passed weaker laws, unlike similarly developed countries, such as Guatemala and Nicaragua.

Similarly, results provide weak support for integration-based theories: Mexico, Chile, and El Salvador, enacted stronger laws, but so too did less integrated countries, such as Guatemala and Nicaragua. By contrast, U.S.-influenced Panama and Colombia passed weaker laws.

Other factors germane to the literature on diffusion center on ideational explanatory factors, such as cognitive heuristics (Weyland 2007), or ideology. Yet these factors emphasize the disposition of elites, whose stated commitments to transparency are unreliable. Leaders face untold political and bureaucratic pressures. Moreover, leaders frequently give the impression of leadership when they are in effect being led. Finally, ideology correlates poorly with legal strength. Right leaning Presidents were just as likely to pass strong laws as left-leaning Presidents. In short, these theories privilege leadership at the cost of overlooking key institutional incentives and constraints.

Similarly, theories centered on policymaking capabilities, bureaucratic capacity, and 'learning' unconvincingly account for the varying strength of laws. Uruguay and Brazil are recognized for their advanced policymaking capabilities (Stein and Tommasi 2008) yet elaborated weaker laws than countries known for their shallow state capacities, such as Guatemala and Nicaragua. 'Learning' may have some effect on legal strength; norms and standards emerge over time, providing leaders with legal benchmarks. Yet the evidence is inconclusive: later enactors Uruguay (2008) and Honduras (2006) passed weaker laws than Mexico and Peru, which enacted nearly half a decade earlier (both in 2002). Moreover, laws are sometimes well elaborated by the executive branch and then weakened by Congress.

The most popular explanation for strong FOI laws points to vigorous civic mobilizations. This paper, by contrast, contests the notion that mobilizations of citizens, domestic organizations and even entrepreneurial politicians are sufficient on their own. Upcoming evidence suggests the importance of the press and legislative dynamics, and subsequent case studies lend confirmatory proof to these findings.

IV. ASSESSING AN AGENDA-SETTING THEORY OF FREEDOM OF INFORMATION REFORM

To restate my principal argument: a) the degree of negative agenda-setting powers will negatively impact the strength of freedom of information (FOI) laws; and b) the degree of news media coverage will positively influence the strength of laws. This section tests these propositions.

4.1 Negative Agenda-Setting Variables

I consulted various sources of quantitative and qualitative data¹⁷ in order to assess partisan strength. Specifically, I sought to assess the number of seats controlled by the governing party or coalition.¹⁸ Numerous countries are governed by shifting coalitions. I tracked legislative seats during half a year preceding the enactment of FOI reforms to determine the share held by the president's party (or coalition) at the time of enactment. In this paper I discuss constitutional negative agenda-setting powers only in countries where they were relevant.

[Table 2 about here]

Table 2 suggests a strong positive relationship between legislative control and the strength of laws. Weaker presidents passed stronger measures: in Mexico (2.7 / 3.0), El Salvador (2.6), Guatemala (2.4), Chile (2.3), Nicaragua (2.3) and Peru (2.0). These laws were also passed during the first half of the electoral cycle. Two other countries, Colombia (1.4) and Ecuador (1.7), did not conform to expectations; their minority governments enacted weaker laws. As predicted, however, stronger presidents advanced weaker measures: in Argentina (decree), Brazil (1.8), the Dominican

¹⁷ For qualitative data, I principally used latin.news.org *Latin American Weekly Report* (Latin.news.org). For quantitative data, I consulted primarily national legislatures, Georgetown University's *Political Database of the Americas*, available at: <<http://pdba.georgetown.edu/elecdata/elecdata.html>>, and UC San Diego's *Elections of the World*, available at: <<http://libraries.ucsd.edu/locations/ssh1/resources/featured-collections/worldwide-elections-guide/elections-of-the-world.html#latin>>.

¹⁸ I specify this word as 'governing coalition' and consider 'electoral coalitions' as parties e.g. Chile's *Concertación de Partidos por la Democracia*.

Republic (1.5), Panama (1.7), Uruguay (1.7), and Honduras (1.9). With the exception of Honduras, countries that passed these weaker laws did so in the last third of their electoral cycles.

Stronger presidents therefore exhibited weaker commitments to transparency legislation. Argentine President Nestor Kirchner (2003-2007) retained comfortable majorities and, as the case study will discuss, the Senate effectively killed a half-sanctioned bill at the end of 2004.

In the Dominican Republic, President Hipólito Mejía assumed office with 57 percent support in the Chamber of Deputies and 80 percent in the Senate. Mejía passed a moderately weak law (1.5) in July 2004, a month and a half after losing the presidential election.¹⁹ Similarly, in Argentina and Brazil presidents exercised decisive legislative control as well as constitutional negative agenda-setting control: exclusive rights of introduction in the latter, and scheduling privileges for votes in the former.²⁰

The Honduran law was the strongest of the ‘weaker’ laws.²¹ President Manuel Zelaya (2006-09) narrowly missed securing a majority, winning 62 of 128 seats (48%) in the unicameral legislature. According to leading scholars on Honduran politics,²² the Zelaya government nevertheless effectively ruled through coalitions, at least until Zelaya’s alliance with Venezuela’s Hugo Chavez began to erode his support.²³

Unique among the stronger presidents examined, Panamanian President Mireya Moscoso came to power with only a third of the legislature’s 72 seats. But Moscoso quickly forged an alliance with four other parties to counter the dominant PRD.²⁴ The law Moscoso enacted at the beginning of her third year of office was widely decried for its flagrant weaknesses.²⁵

Countries that enacted stronger laws—Mexico, El Salvador, Nicaragua, Chile, Guatemala, and Peru—by contrast, were governed by presidents who came to power in positions of weakness. In

In two countries, evidence suggests that conservative traditional ruling parties sought to bind incoming presidents. In both El Salvador and Nicaragua, citizens elected presidents from parties that once represented the radical left—the FMLN and the Sandinistas, respectively. FOI laws were

¹⁹ Mejía lost his majority in the Chamber of Deputies in the midterm elections, but he forged an alliance with the PRSC to compensate for this loss. Moreover, Mejía retained his majority in the Senate.

²⁰ Refer to Article 61 (1) of Brazil’s Constitution. Argentina is discussed in section five.

²¹ Upon Zelaya’s “turn to the left,” Congress strengthened the law (Decree 64-2007).

²² Honduran political expert Natalia Ajenjo Fresno (2007, 166) writes, “The PLH with its 62 seats (48%) is practically guaranteed legislative stability with respect to support for the presidential agenda.”

²³ The Liberal Party of Honduras (PLH) ruled Honduras 17 out of 24 years prior to Zelaya taking power.

²⁴ Partido Revolucionario Democrático. The following parties were included in Moscoso’s coalition: the Solidaridad Party, the Christian Democrats, the Partido Liberal Nacional, and the Partido Renovación Civilista.

²⁵ See the Report from the Special Rapporteur for Freedom of Expression in the Americas (Inter-American Commission of Human Rights). <<http://www.cidh.org/RELATORIA/showarticle.asp?artID=348&IID=2>>.

elaborated before presidents came to power.²⁶ In Nicaragua, President Daniel Ortega (2007-) was elected with only 38 deputies in the 92 seat legislature. The law was passed within the first five months of his presidency, before Ortega had succeeded in co-opting the legislature (and later the Supreme Court). A moderate, El Salvador's President Mauricio Funes held 35 of 84 seats in a legislature run by a right-leaning coalition.

'Political transitions' of sorts played a part in three countries. El Salvador, as alluded to, had been governed by the ARENA party for twenty years (1989-2009), prior to the assumption of President Mauricio Funes (FMLN). With 26 percent of the 120 seat legislature, Peruvian President Alejandro Toledo (2001-06) assumed office in July, 2001, in the wake of the disgraced authoritarian President, Alberto Fujimori (1990-2000). Toledo enacted a law elaborated by the caretaker administration of President Valentín Paniagua (2000) one year after taking office, in July of 2002. The victory of President Vicente Fox (2000-06) also represented Mexico's 'transition' to a mature multi-party democracy.

Corruption scandals played a part in two countries. Guatemalan President Álvaro Colom (2008-) and his party, the *Unidad Nacional de Esperanza* (UNE),²⁷ held 30 percent of Guatemala's unicameral legislature and passed a law after the President's ally and Leader of the Assembly 'misplaced' \$82.8 million Quetzales.²⁸ Although Chilean President Michelle Bachelet (2006-2010) began her term as a majority president, twin scandals²⁹ in 2006 precipitated defections. When the right-to-public information law was enacted, the *Concertación* held 48 percent in the Chamber and 47 percent in the Senate. A seminal decision³⁰ by the Inter-American Court ordering Chile to establish access to public information also contributed to President Bachelet's commitment.

Two presidents did not meet expectations, those in Ecuador and Colombia. In Colombia, FOI formed part of Conservative Party President Belisario Betancur's 1985 constitutional reform (Willis, Garman, and Haggard 1999, 324-325). Betancur passed the reform in a political system historically controlled by the *Liberal Party of Colombia*, which likely sought a weaker reform.³¹ Explaining Ecuador's outcome is more difficult. It has been suggested that Ecuador's law emerged weak

²⁶ Personal Interviews: Emilio José Ortega Porras, Coordinator for the government's right-to-public information initiative in Nicaragua, December, 2009. Laura Rivera, member of the Grupo Promotor in El Salvador, March 2011.

²⁷ Unidad Nacional de Esperanza.

²⁸ About \$10 million U.S. dollars. See, "The 82.8 million Quetzales question is...." the *Guatemalan Times*. 3 August, 2008.

²⁹ Referred to as the Chiledeportes and Publicam Scandals, both broke in October 2006. See Wikipedia.

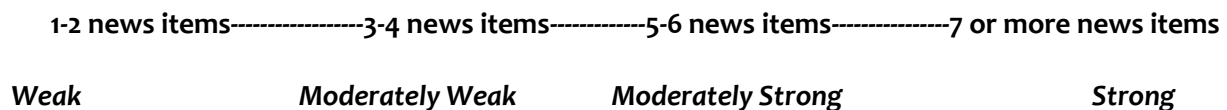
³⁰ *Claude Reyes et al v. Chile* (2006).

³¹ The Liberals governed from 1974 to 1982 and from 1986 until a Conservative was at last elected again in 1998.

because of legislators’ desire to put their “imprint” on the bill introduced by the executive (Villanueva 2004, 2). Ecuador is also recognized for its low-quality policymaking processes (Mejía Acosta, Araujo, Pérez-Liñan, and Saiegh 2008), and corruption in the legislature has gained the attention of scholars (e.g. Kunicova and Rose-Ackerman 2005) . Legislators may have weakened the law for fear of exposing rent-seeking. Ecuador, however, was the only significant exception to the confirming trend of findings.

4.2 News Media Variables

I used news media content analyses to calculate the strength of news coverage devoted to right-to-public information in six countries during a 12 month period prior to the congressional enactment of reforms.³² I tallied monthly news production for the most widely circulated daily newspapers in Argentina, Brazil, Chile, Guatemala, Mexico, and Uruguay in order to ascertain the strength of *news media agendas* (coverage) in those countries. The case studies on Argentina and Mexico examined the two largest newspapers for two and half years. Apart from these six countries, estimates of news media support for FOI were based on qualitative data— interviews and written testimonials from authoritative sources. I judge the strength of the news media agendas for freedom of information using the following benchmarks for monthly coverage:



[Figure 3 about here]

Figures 3 and 4 suggest that the news media actively supported freedom of information (FOI) in Chile, Guatemala, and Mexico, though much less so in Argentina, Brazil,³³ and Uruguay. In the latter countries, monthly news production on FOI did not surpass an average of three news items per

³² The content analysis used newspapers’ websites, confirming the accuracy of searches by comparing one week of news coverage (paper versions) and cross-referencing with paper and microfiche versions at the Benson Latin American Collection, University of Texas at Austin. News items are defined as any *bona fide* news that appears in newspapers. Keyword searches included: “right-to-public information”, “access to public information,” “transparency law,” and “right to information”. Articles were read. News items were coded by relevance: they had to refer to the *right* of right-to-public information in a political sense, or right-to-public information as *legislation*. I felt that inter-coder reliability was not needed as all items to be coded were binary and objective, either present or absent.

³³ Because Brazil’s law is still in the Senate, I examined coverage for twelve months before the bill 41/2010 received approval by the Chamber of the Deputies, in April 2010.

month. The least of the stronger grouping produced nearly three times the average coverage of countries with weaker media agendas.

[Figure 4 about here]

Figures 3 and 4 suggest a clear commitment gap between media outlets that supported the right to access government information and those that did not. The stronger campaigns of Mexico, Guatemala and Chile were more sensitized to events, turning them into news. Editorial commitments are also reflected by whether news items only mention FOI or focus directly on the issue. On average, Argentina, Brazil, and Uruguay barely surpassed one news item per month directly on topic. Mexico, Chile and Guatemala, by contrast, produced more than three times the amount of news items focused on FOI. Weaker agendas also tended to mention advocates less. In Uruguay, for example, *El País* mentioned the country's primary advocacy group, the GAIP,³⁴ only three times during the twelve months of coverage analyzed.

These results support the hypothesis that stronger news media agendas are associated with more robust laws. The stronger news media coverage of Mexico, Chile and Guatemala, correlates with stronger laws, the lowest score among them being 2.3 / 3.0. By contrast, the news media failed to aggressively advocate FOI in Argentina, which failed to pass a comprehensive law, Uruguay, where a "moderately weak" law (1.7) passed, and Brazil (1.8), which has yet to pass a law.

Qualitative evidence also suggests a positive relationship between news media agendas and legal strength. Peru scores among the region's "moderately strong" laws, and it was a group of media owners, the *Peruvian Press Council*, which led the campaign for a strong law in that country. According to one of the leaders of the *Council*, Ricardo Uceda (2003), in the wake of Fujimori's impeachment, voluminous coverage cowed a fragmented, disgraced legislature into supporting a transparency law.

A media campaign in Nicaragua was led by traditional media associated with leading political families.³⁵ José Emilio Ortigas Porras³⁶ cited pressure from *La Prensa*, closely tied to the Conservative Chamorro family and activist journalists Cristiana Chamorro and Carlos Fernando Chamorro.³⁷

Strikingly, much of the news media in Honduras appeared to be explicitly *against* a law. According to *World Bank* officials, "opposition to the bill came from the Honduran Private Sector

³⁴ Grupo Archivos y Acceso a la Información Pública.

³⁵ Personal interview, Silvia Acosta (OAS), April, 2009.

³⁶ Personal interview, December, 2009.

³⁷ Daughter and son of former President, Violeta Chamorro.

Council, the Association of Media Owners, and the Journalist Association [...] to preserve its monopoly over public information” (Bellver, Mendiburu, and Poli 2008, 2).

Evidence indicates that media support for laws in the Dominican Republic and Panama emerged only subsequent to passage. In Colombia, *El Tiempo* and *El Espectador* apparently supported a law.³⁸ In Ecuador, professional news media organizations such as the AEDEP³⁹ were also reported⁴⁰ to have supported a law. However, whether this support translated into actual coverage is uncertain, however; stated support from media organizations is one thing, but only salient coverage makes the critical difference.

To summarize, in at least eleven of the thirteen cases analyzed, the degree of news media agendas correlated with the strength of laws.

V. CASE STUDIES: MEXICO AND ARGENTINA

Having established the confirming direction of evidence, the following two cases provide a vivid illustration of how the specified causal mechanisms shape outcomes.

Mexico

Over the course of five years, successive reforms (2002, 2006, 2007) brought about one of the world’s most emulated freedom of information (FOI) laws. Prior to 2002, however, Mexico possessed few if any regional FOI precedents and had experienced only failed, half-baked attempts at reform. In 1977, an amendment to Article 6 of the Constitution providing for “the right to information,” proved symbolic at best. Similarly, a 1997 omnibus media bill containing a FOI provision evoked media protests and was effectively killed by President Ernesto Zedillo (1994-2000).⁴¹ How did this legacy lend itself to one of the most progressive FOI laws in the world?

Examining the relationship between press and politics is critical. For decades, successive PRI⁴² governments attempted to staunch the loss of political power by controlling the media and information. Government bribed the media with heavy subsidies, government-placed ads, or repressed it with violence and intervention (Alves 2005; Hughes 2003; 2006; 2007; Lawson 2002). Disinformation became prevalent during crises, such as the 1985 earthquake, the 1989 electoral

³⁸ Personal interview, Gerardo Reyes, October, 2007.

³⁹ *Asociación Ecuatoriana de Editores de Periódicos*.

⁴⁰ Personal interview, César Ricuarte, December, 2009. See also Villanueva (2004).

⁴¹ Principally because the media reform imposed other contentious conditions, such as an ethics council.

⁴² Institutional Revolutionary Party, which ruled for nearly 80 years, until 2000.

fraud, and the Tequila crisis of 1994-95. In tandem with growing political competition, especially after 1989, media demands for reliable information grew.

Press independence grew due to greater competition among outlets and political competition. The 1994-95 “Tequila Crisis” forced government to further limit its massive advertising budget, a first-order means of press cooptation. Absent these revenues, competition increased among newspapers for readers and advertisers. The result was better journalism, more vituperative media criticism of government (especially following crises), and a discernible media ambition to influence government’s agenda. Government’s dependence on a sympathetic press only grew as mounting political competition increased in intensity. The key turning point occurred when PRI lost Congress to the opposition in 1997. Alluding to a time when the media pandered to government, theorist Raúl Trejo Delarbre described the new relationship as “reverse subordination” (Carreño Carlón 2004, 6). Newfound media independence set the stage for a FOI campaign.

Politically, the election of Vicente Fox in 2000 did not initially augur well for a freedom of information law. The President lacked majority control of the legislature (refer to table 4) and faced a fractious Congress, which delighted in stymieing his key energy, tax, and indigenous reforms. To curry the legislative cooperation of the PRI, the President cancelled a promised Truth Commission, which indirectly increased the importance of a close substitute, a FOI law. And although Fox promised ‘transparency’ at every turn, his initial approach to a FOI law lacked commitment: the administration leaked a defective draft law in the spring of 2001. The draft stipulated, among other things, that the Comptroller would decide what information to reserve on a case-by-case basis.

Fearing the worst, a civic coalition called the Grupo Oaxaca mobilized public opinion in favor of a law. The group was composed of academic-experts as well as editors from newspapers representing the Right, Center, and Left, respectively— the country’s three largest newspapers and their affiliates: *Reforma*, *El Universal* and *La Jornada*. Using its academic integrants as news sources, the Grupo Oaxaca publications produced voluminous media coverage.

[Figure 5 about here]

Scathing criticism and demands immediately began to motivate President Fox and his cabinet, who overcame political and bureaucratic obstacles. Government made the law a priority, deploying the Comptroller, the Secretary of the Interior, the COFEMER⁴³ and the President’s Office to the elaborative effort. Armando Salinas, a leading PAN Deputy, availed that fellow congressmen

⁴³ Comisión Federal de Mejora Regulatoria.

came asking, “what are we doing about this law? It’s on the front page of my hometown newspaper.”⁴⁴

The government received the motivation it needed to commit to a strong law. Pressure from the press was a first factor; and the threat of imposition, a second. Javier Corral, a PAN Senator who had sponsored the failed 1997 media reform recalled:

There was will among the administration, but the government knew that if they didn’t do it, I would have proposed it, and so the President joined forces.⁴⁵

If the PRI and PRD had decided to support a policy entrepreneur, the President would have had no attributed powers to impede passage. Perhaps the most significant entrepreneur emerged in July of 2001. Ostensibly attracted by the news media spotlight, PRD⁴⁶ Deputy Miguel Barbosa Huerta introduced Mexico’s first standalone proposal for a FOI law. By that time, however, the Grupo Oaxaca had already elaborated a model law, and was actively seeking the sponsorship of opposition parties. As one deputy from the PRI recalled:

We were... I was, working on our own initiative...but when we saw the *Grupo Oaxaca’s* law, we saw that it was more advanced...we thought it was more honorable to sign their proposal than to steal their ideas and present them as our own [...] it was no minor group... imagine, that all the media agreed on the need for reform, to make the public sector transparent, everyday, day after day in the news.⁴⁷

Most incredibly, the Grupo Oaxaca’s expertise led the opposition parties to hand-over negotiations for the final law. The Group hammered out the final measure across from government representatives in Congress. As one newspaper editor was told by a government negotiator:

It’s difficult to negotiate with you guys, because it’s like negotiating with a pistol to your head... I can tell you that we can advance on this issue, but when I tell you we cannot advance on this, you put it on the front of 100 newspapers.⁴⁸

Saturated by the news media spotlight, parties competed to bid up the strength of the executive’s FOI law. The President and Congress sought to demonstrate their adherence to the newest buzzword for good governance —transparency.

⁴⁴ Personal interview, October, 2007.

⁴⁵ Ibid.

⁴⁶ Partido Revolucionario Democrático.

⁴⁷ Personal interview, October, 2007.

⁴⁸ Personal interview, Roberto Rock, October, 2007.

The perpetuation of similar media conditions and consecutive minority governments have led to incremental gains. In 2007 Mexico's constitutional reform extended disclosure obligations to all levels and branches of government.

Argentina

Unlike Mexico, Argentina possessed most of the preconditions associated with countries that pass strong FOI laws: by 1999, half a dozen Argentine provinces had enacted freedom of information laws, the 1994 Federal Constitution included FOI provisions, the corruption associated with President Carlos Menem (1989-99) led president-elect Fernando De la Rúa (1999-2001) to promise a FOI law and work with advocates on a participative elaborative effort (see Baragli 2004); and following the 2001-02 debt crisis, more than 200 CSOs made a FOI law one of their top priorities. Yet despite these propitious preconditions, successive Presidents stonewalled more than 20 legislative proposals. Why has comprehensive FOI law failed to prosper in Argentina?

Legislatively, two conditions have so far made it impossible to enact FOI. First, consecutive majority governments from 2003 to 2009 have given the government the *ex ante* power to avoid any vote that might advance the issue. Second, and most importantly, the plurality party (invariably the president's party) possesses key negative agenda-setting scheduling privileges in the Chamber of Deputies. Motions to schedule a vote in the Chamber can be won with a simple majority, but same-day scheduling is not permitted; plenary votes must be scheduled for future sessions. When the president's party arranges the schedule, FOI has invariably been placed among the last items of the day. These items are either never reached in the allotted time, or else the president's party and its allies—typically pork-seeking provincial parties (Jones, Hwang, and Micozzi 2008, 17)—invoke a failed quorum by leaving. As veteran legislator, Gerardo Conté-Grand, commented, “When *oficialismo* does not want a quorum, it does not happen.”⁴⁹

Much like Mexico's Vicente Fox, President Fernando was elected on a platform of transparency. Yet De la Rúa came under immediate pressure from coalition allies and Argentina's notoriously corrupt unions to delay and resist greater openness.⁵⁰ The President also had a personal reason to pocket the bill: in 2000 he stood at the center of a Senate vote-buying scandal. Dissident legislators nonetheless challenged the President to keep his promise. FOI legislative entrepreneur Elisa Carrió stewarded her own FOI bill through the approval process in committee. During 2001 Carrió won a motion to schedule a vote for October 5th, 2000, but the bill appeared as the day's

⁴⁹ Personal interview, November, 2007.

⁵⁰ See, for example, “Condiciones de la CGT para el Diálogo.” *La Nación*. 29 November, 2001.

second last order of business, superseded by a resolution congratulating Argentine Olympians for medals won in Sydney, 2000, and another resolution celebrating the *International Fair for the North of Argentina*, among other matters of national import. The same thing occurred a month later, in November of 2001.

Following the debt crisis, in February 2002 President Duhalde signed a pledge⁵¹ to pass a FOI law—advanced by the 200-plus CSOs of the *Argentine Dialogue*.⁵² Duhalde delayed. Several additional motions to schedule a vote were approved, but again, a plenary vote was prevented. President Duhalde did eventually give the go-ahead to pass the initiative in the Chamber of Deputies— five days before he handed over power to President Nestor Kirchner (2003-07).

With wide majorities in both Chambers, Kirchner ignored CSO demands for a prompt vote in the Senate. Six months after taking office he issued Presidential decree 1172/03 providing for FOI limited to the executive, a clear switch-and-bait meant to kill CSO pressure. But pressure continued. In response, President Kirchner’s wife, Cristina, took up the bill in the Constitutional Affairs Committee she chaired. Here, unorthodox amendments were inserted into the bill, ‘de-naturing it,’⁵³ and sending it back to the Chamber, effectively killing it. No FOI legislation received serious consideration during the majority governments of 2003-09. But a bill did move forward when President Cristina Fernandez de Kirchner lost control of both Chambers of Congress in 2009 parliamentary elections. At present (April 2011), a bill has passed the Senate and once again languishes in the Chamber of Deputies.

The media has largely abetted this delay and resistance. Figures 6 and 7 illustrate media coverage for Argentina’s two most widely circulated newspapers, *La Nación* and *Clarín*, from when President De la Rúa promised a law in 1999, to when the Senate effectively killed the law in 2004.

[Figure 6]

[Figure 7]

Coverage gained strength over time, and *La Nación*’s coverage was significantly stronger than *Clarín*’s. Coverage for both papers spiked near the end of the campaign. In fact, this stronger coverage in the last six months accounts for approximately two-fifths of *Clarín*’s total coverage from 1999-2004, and one-third of *La Nación*’s. The surge responded to Senate amendments that

⁵¹ Entitled, Federal Accord for the Reform of the Argentine Political System.

⁵² La Mesa de Diálogo Argentino

⁵³ Among other amendments, the law made the press and private companies subject to disclosure obligations. This threatened to put the Argentine media’s dubious past into the public spotlight (e.g. complicity with the brutal dictatorship of 1976-83), among other repercussions.

threatened the press' direct interests.⁵⁴ Content analyses also show that only 40 percent of *La Nación*'s coverage focused specifically on the law.

Moreover, coverage and interviews indicate weak news media support. The news media ignored key events, such as Deputy Carrió's winning motion to schedule a FOI bill (in the midst of the Senate corruption scandal). Ironically, legislative scholars found this a striking parliamentary success (Alemán 2006, 149).⁵⁵ Coverage was also viewed as tepid and lacking in editorial commitment. The political news editor at *La Nación*, Martín Yebra, reflected that "we were not against it, but there was no campaign to put it at the forefront of the agenda."⁵⁶ One of Yebra's journalists, Laura Zommer, commented:

They [the directors of *La Nación*] did not have a vision of access as a tool, and felt no sense of obligation[...] it was more than anything else because of a few reporters, who through the insistence of CSOs reported on it [...] the CSOs would insist, insist, insist, insist, and finally the paper became a little more interested.⁵⁷

Unlike in Mexico, where growing press independence and electoral competition gave media the upper hand in the mid 1990s, the Argentine news media-government balance of power has historically favored the state. Within the last fifty years, news media outlets have allied with two military dictatorships and dissident outlets got crushed (Blaustein and Zubieta 1998; Knudson 1997; Park 2002). Since the re-initiation of Democracy, the dominance of one party (the Justicialista Party) coupled with a presidency that enjoys the second most sweeping constitutional powers in the world (Shugart and Haggard 2001, 80), has meant that executives have been less apt to cultivate reputations for probity or court the media— as politicians in Mexico among most other countries.

Instead, ensuring favorable coverage has often been a question of manipulation. Heavy carrots and sticks are routinely used to elicit news media conformity. Biased allotment of government advertising is a first-order tool, but so is intimidation, tapping the phones of media outlets,⁵⁸ or regulatory manipulation.

Prior to the 2009 media reform that finally gave big media a reason to be critical, the government made changes to media regulation piecemeal, by decree, lacking any sort of public

⁵⁴ The changes would have opened up all private businesses to freedom of information requests, a highly unorthodox provision that

⁵⁵ It represented one of the few times an Argentine President gets "rolled" on a vote (government votes no, but loses).

⁵⁶ Personal Interview, November, 2007.

⁵⁷ Ibid.

⁵⁸ See, "Así Pinchan El Gobierno los Teléfonos de Noticias: Redacción Vigilada." *Noticias*. 20 October, 2007: 28-33. and "Los Pinchados de la SIDE." *Noticias*. 13 October, 2007: 34-36.

accountability, and favoring outlets allied with the government (Galperin 2000). These tactics inadvertently fostered one of the most concentrated media ownership structures in Latin America. The top four newspaper firms account for 63 percent of the market, and *Clarín's* circulation accounts for nearly a third of the total market. This figure contrasts markedly with the same figure for Mexico— 45 percent for the top four and less than 15 percent for the biggest newspaper, *Reforma*. In the Argentine market, media firms unsurprisingly tend to view FOI's potential to democratize information as jeopardizing the exclusivity of long-cultivated sources of official information and lowering industry barriers to entry. As an executive at *Clarín* put it:

Professional advantage is thought to be accentuated by the absence of an access to information law. The media consider it like a competition; the access that everyone would have [with an access to information law] is for them their value added; he who has more access has more power in the media.

As a result of the lackluster coverage among Argentina's top outlets, the country's advocates have been denied the most powerful platform to disseminate awareness and public pressure. Consequently, media outlets have granted politicians a shield of secrecy with which to delay and resist greater transparency with relative impunity.

Conclusion

The above case studies and the paper's general findings suggest a strong inter-relation between the strength of presidents and the degree to which news media will set agendas for FOI. Where presidents were weak, news media coverage tended to be strong and laws robust. Conversely, strong presidents coincided with weaker news agendas and laws with considerable shortcomings. This appears to be more than a coincidence; it is collinearity, and it deserves closer examination. Does this relationship hold for other policies? What is the effect on the quality of democracy?

Occam's razor might suggest that news media are simply behaving rationally. Stronger presidents have less to gain by limiting their discretion, and their legislative superiority or constitutional privileges allow them to keep FOI off the agenda. Why, would news media outlets invite resentment—and the loss of privileges this might entail— by supporting a policy that is legislatively not likely to advance? This point suggests that minority government—or at least weaker presidents—may figure as a precondition for strong coverage of measures that prove unattractive to stronger presidents, such as mechanisms that impose moral or ethical obligations.

The fact that some presidents retain control over the legislative agenda even under minority conditions might explain why media outlets in some countries, such as Argentina, have been reluctant to support policy reform. Argentina has always puzzled political scientists, who have come to regard its institutional weakness as *the* puzzle to be explained (Armony 2004; García Heras 2009, 284-287; Levitsky and Murillo 2007a; 2007b; Nino 2005; Spiller and Tommasi 2007). Perhaps the explanation herein constitutes an important piece of the policy puzzle.

While the adoption of strong FOI laws remains an important question, what needs greater attention is the degree to which these two factors, media support and negative agenda setting powers, affect the strength of laws beyond adoption.

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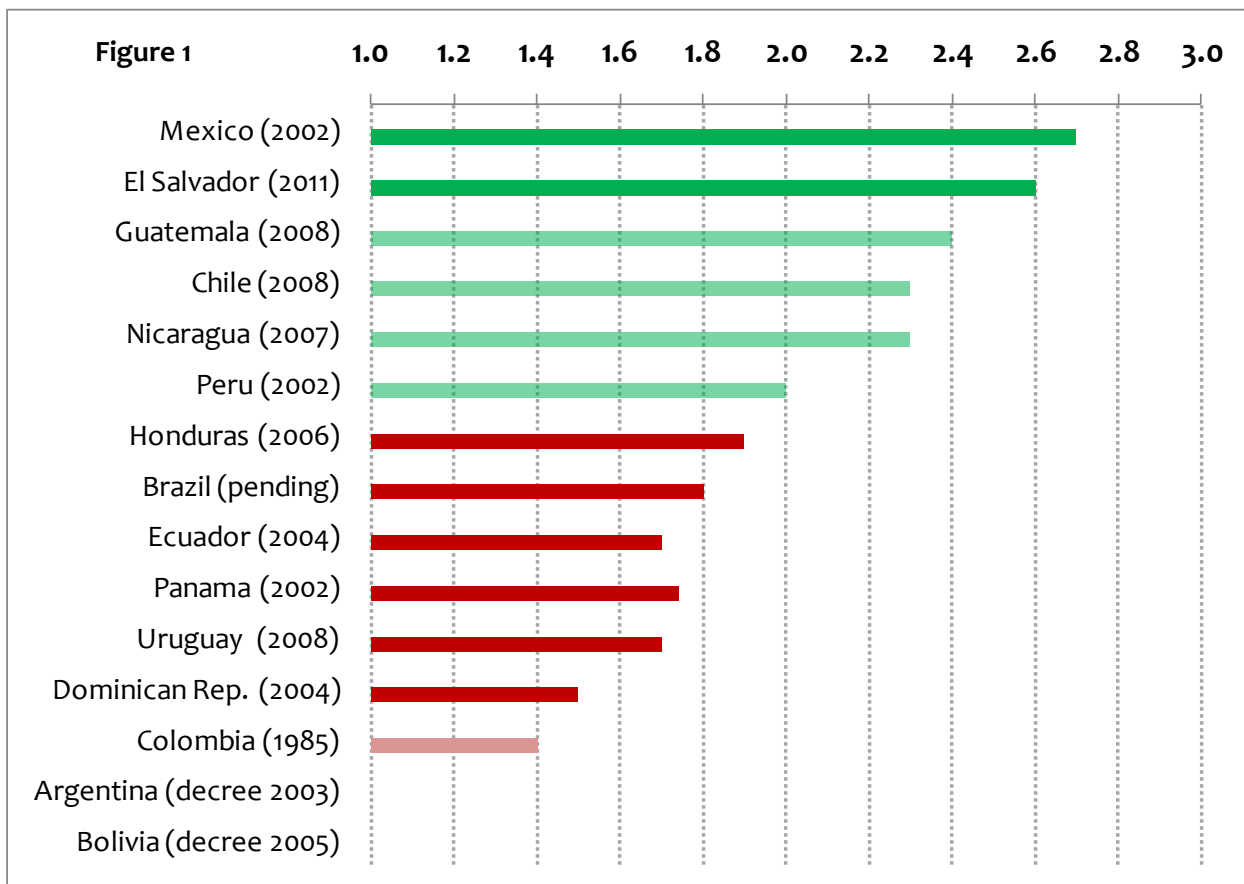
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Table 1

Institutional Drivers	Ideational Drivers	Leadership Drivers	International Drivers
Democratic transitions	Scandals	Heads of State	International Organizations e.g. UNESCO
Party alternations	Legitimacy	Entrepreneurial Ministers or Politicians	Regional Organizations e.g. OAS, EU
Party Competition and Divided Government	Political discourse	Civil Society Organizations	International Financial Institutions e.g. World Bank
Separation of Powers	Normative Emulation	Elite Movements	Transnational Movements e.g. Press Associations
Bureaucratic Cultures of Secrecy, Openness, or Compliance	International or Regional Integration	Grassroots Movements	Transgovernmental Pressure e.g. U.S. Pressure on Panama
	Timing	The News Media	
		Legal and Business Associations	



THE ELECTORAL TIMING OF ENACTMENT: FREEDOM OF INFORMATION LAWS IN LATIN AMERICA

Figure 2

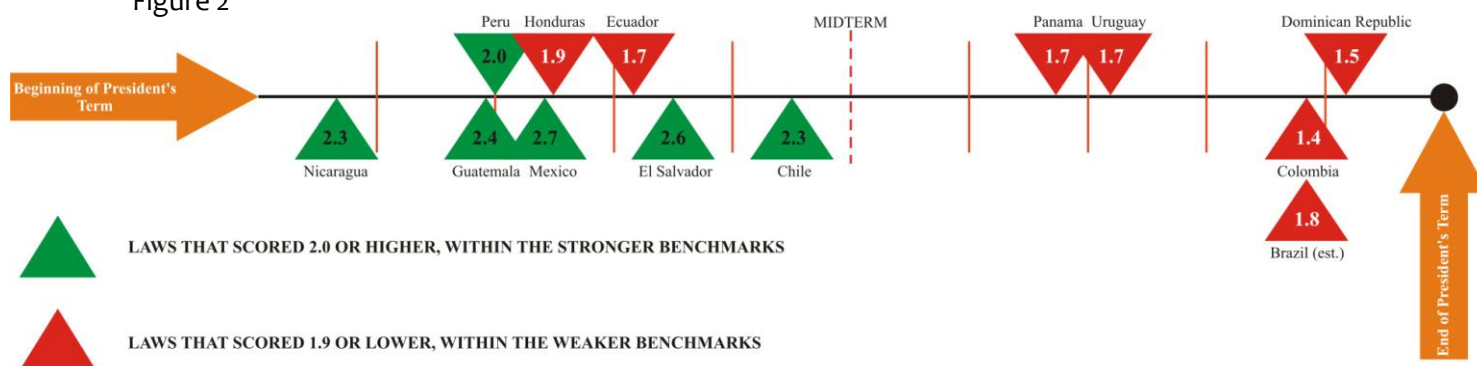


Table 2

STRENGTH OF LAW		PRESIDENTIAL LEGISLATIVE CONTROL				
Country, Year of Enactment	Score	Chamber of Deputies %	Senate %	President	Party or Coalition	
Mexico (2002)	2.7	41	40	Vicente Fox	Partido Acción Nacional (PAN)	Law in Stronger Benchmarks
El Salvador (2011)	2.6	37 (unicameral)		Mauricio Funes	Farabundo Martí National Liberation Front (FMLN)	Law in Weaker Benchmarks
Nicaragua (2007)	2.4	38 (unicameral)		Daniel Ortega	El Frente Sandinista de Liberación Nacional	Majority Control
Chile (2008)	2.3	48	47	Michelle Bachelet	Concertación de Partidos para la Democracia	Minority Control
Guatemala (2008)	2.3	30 (unicameral)		Álvaro Colom	Unidad Nacional de Esperanza (UNE)	
Peru (2002)	2	26 (unicameral)		Alejandro Toledo	Peru Posible	
Honduras (2006)	1.9	50 (unicameral)		Manuel Zelaya	Partido Liberal	
Brasil (pending)	1.8	68	N/A	Inácio Luiz Lula da Silva	Coalição Partido Trabalhador e outros	
Ecuador (2004)	1.7	9		Lúcio Gutiérrez	Partido Sociedade Patriótica	
Panama (2002)	1.7	54		Mireya Moscoso	Unión para Panama	
Uruguay (2008)	1.7	52	52	Tábare Vázquez	Frente Amplio	
Dominican Rep. (2004)	1.5	52	82	Hipólito Mejía	Partido Revolucionario	
Colombia (1985)	1.4	41	43	Belsário Bittencourt	Partido Conservador Colombiano	

Figure 3

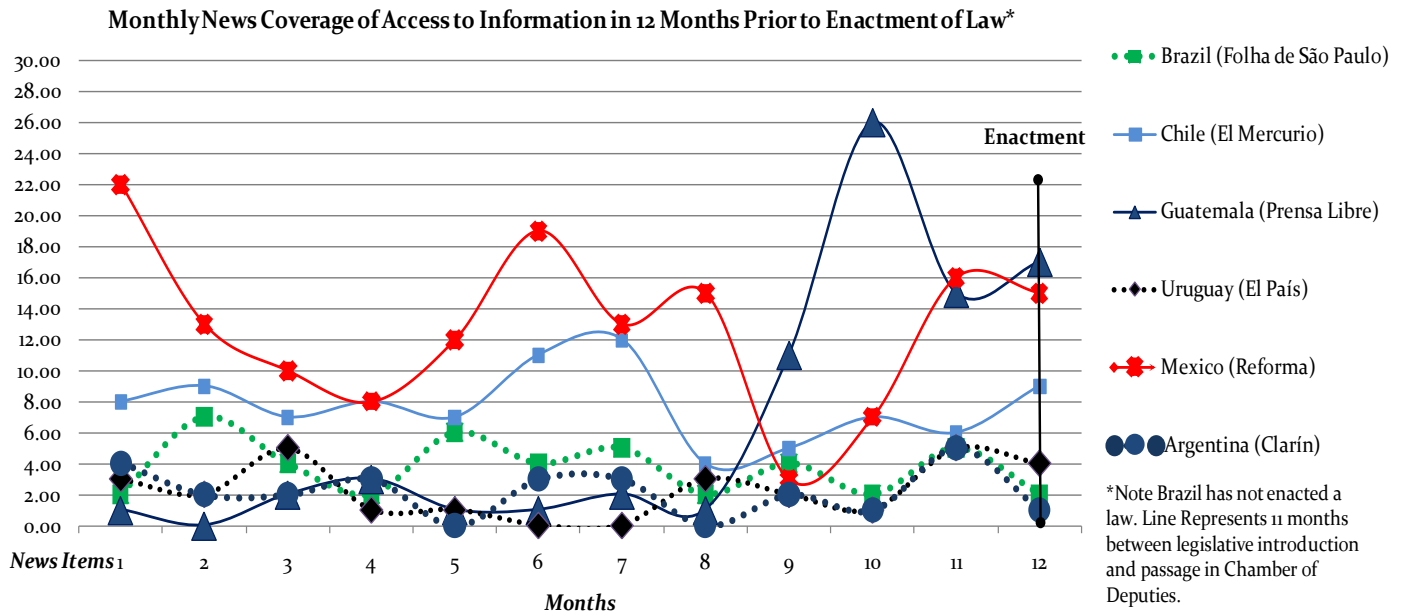
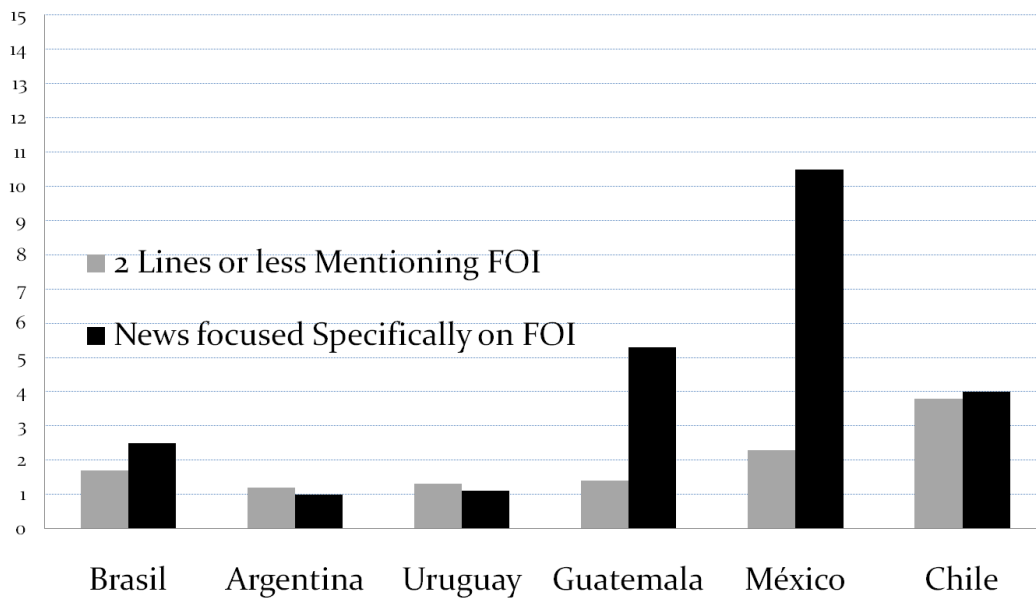


Figure 4

News Items on Access to Information for 12 Months Prior to Legislative Enactment



Access to Information News Agendas for El Universal and Reforma

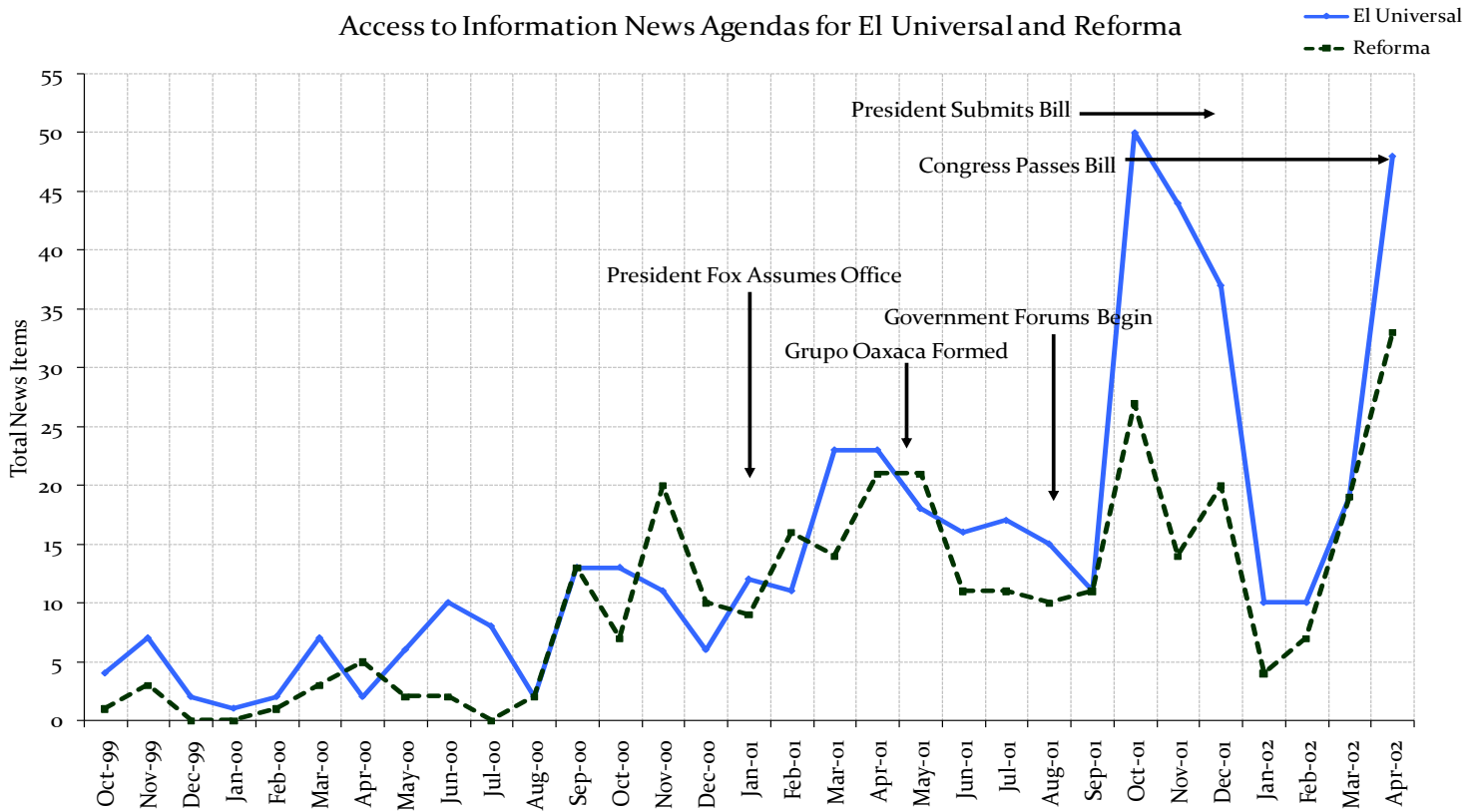
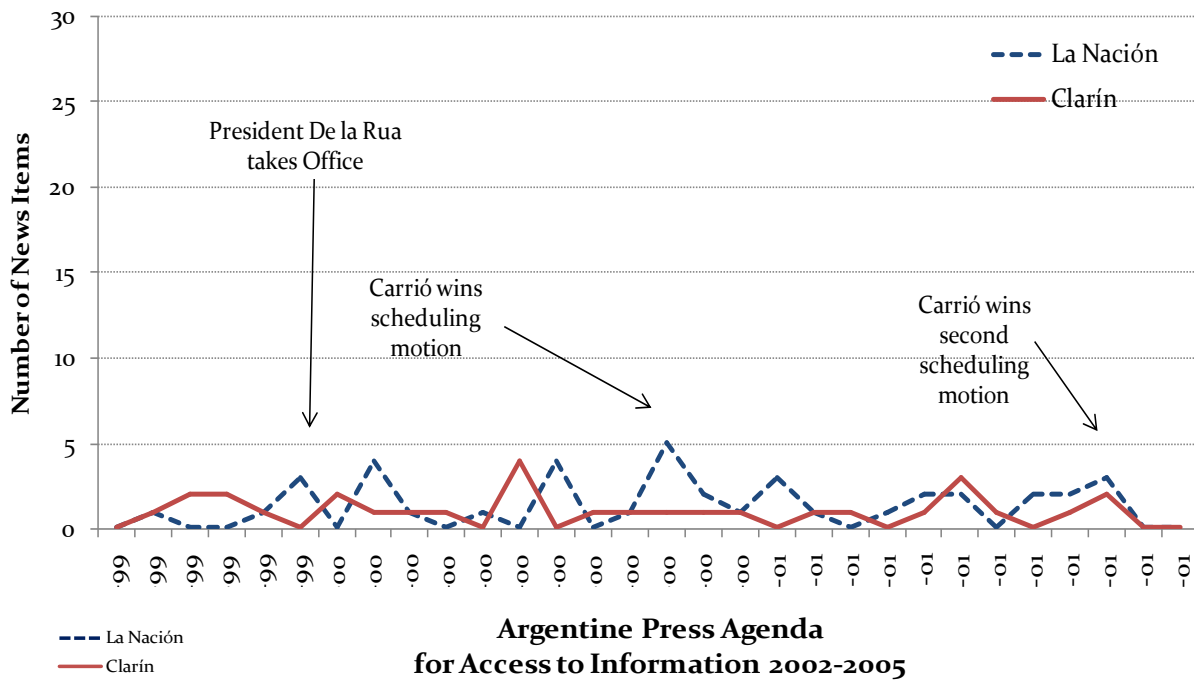


Figure 5

Figures 6 and 7

Argentine Press Agenda for Access to Information Prior to and During President De la Rúa 1999-2001



Argentine Press Agenda for Access to Information 2002-2005

