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BOOK PROSPECTUS

The Surrender of Secrecy: Media, Politics and Freedom of Information Reform in Latin America

Historically, secrecy in politics has been regarded in much the same light as greed in business or zealotry in religion—a seemingly inevitable human excess. Yet the issue of secrecy has rapidly evolved into one of the most important struggles of our time. This struggle signals a historic disjuncture, pitting traditional political instincts to conceal against advancing norms of democracy, organizational efficiency and technology.

The proposed book studies efforts to force the surrender of secrecy through the enactment of transparency and freedom of information laws. Over 80 countries have passed freedom of information laws, with two-thirds of these measures enacted since the year 2000. An astounding five billion people have, in historical terms, quite suddenly gained the legal right to access government information.

Current international imperatives for freedom of information are clear. What is less obvious is whether such efforts are leading public officials to surrender secrecy and promote effective openness and transparency. Politicians cling to secrecy as a key power resource. Improperly used, it is the malfeasant's first refuge and the incompetent's last resort—a means of protecting and concealing ill-acquired authority, misused public resources, and inefficient, unethical practices.

What factors lead officials to surrender secrecy? What conditions result in sustained openness and transparency? This book develops a theory on the determinants of strong transparency and freedom of information laws. It examines what reform campaigns and recent developments tell us about the performance and promise of freedom of information around the world.

The study focuses on Latin America, a landscape marked by legacies of secrecy, and a region that vividly captures the struggle between advancing norms of openness and the inertia of secrecy. Eleven Latin American countries have passed laws since 2002; two have established regulation through presidential decree; and three more countries, Argentina, Brazil and El Salvador, are now considering legislation.

The book first discusses the widely divergent strength of laws in the region and then analyzes the reform processes that brought them about. Two large case studies are examined: first, the successful surrender of secrecy in Mexico, and second, delay and resistance in Argentina. The book's theory is then tested on all countries in the region, paying particular attention to six secondary case studies: Brazil, Chile, the Dominican Republic, Guatemala, Peru and Uruguay.

Core Argument and Findings

As a relatively new area of scholarship, transparency reform has thus far spawned few comparative studies and no comprehensive theoretical frameworks. Using Latin America as its test case, this book

examines the region's laws and adoption processes and specifies the key causal mechanisms that lead to strong transparency and freedom of information laws.

In order to explain freedom of information reform, the extant literature highlights two drivers: a) domestic movements, dominated by civil society organizations (CSOs); and, b) the political will of well-disposed leaders. External pressure, emanating from international and regional organizations, is typically viewed as an enabling factor—contributing to the force of domestic movements and political will.

By contrast, my argument hones in on two powerful actors in national politics: the media and heads of state. While domestic movements are no doubt significant contributors to advancing freedom of information reform, the effectiveness of civic advocates depends on a well-disposed *news media* that can project their influence into the public and legislative agenda. Political will for strong transparency reform is also critical; however, it rarely stems from the intrinsic value politicians place on transparency. Rather, it is generated principally through institutional incentives and constraints and, more specifically, on the degree of legislative control wielded by *presidents*.

The study shows that laws tend to emerge legally stronger and earlier within the electoral cycle (on average within the first third of a president's term of office) when presidents lack decisive negative agenda-setting control and news media coverage is strong. Weaker laws on average receive three times less news media coverage and tend to be enacted under stronger presidents during the last third of their terms of office.

Empirically, some of the most remarkable findings are derived from understanding why the mainstream press does not aggressively promote freedom of information in certain countries. Employing original and secondary data, this study suggests that the degree of news media support for right-to-information laws depends on two factors: first, the competitiveness of news media markets, which is determined primarily by levels of ownership concentration, firm dominance and, more contingently, demographic centralization; and second, the degree to which the president or ruling party exercises control over the news media and state institutions.

Causal Mechanisms: Weak Presidents, Strong News Medias

Weak Presidents

This study begins with a paradox: a strong president, one who has the means to enact a sweeping freedom of information law, is the type of president least likely to do so. Unwilling to cede the power of secrecy, strong presidents resist demands for robust transparency laws. Even well-intentioned presidents will face uncompromising pressures to delay and resist robust transparency reforms. Key bureaucratic and political allies expect presidents to use their decisive constitutional and partisan powers to shield them from public scrutiny. Strong presidents may enact window-dressing measures, but they are generally less likely to enact sweeping transparency reform.

Conversely, a leader who controls neither a majority of votes in Congress nor the constitutional powers to forestall legislation is more likely to commit to strong legislation and do so early in the electoral cycle. Under pressure for greater transparency, weak leaders are frequently faced with a difficult choice. They can eschew reform and cling to secrecy. Or they can pass a weak and ineffectual law. But if they choose either of these options they risk suffering public criticism and the possibility of having a strong law imposed on them against their will.

Alternatively, they can preempt legislative challengers and would-be critics by supporting a strong freedom of information law early in their terms. By willingly advancing laws, they gain public acclaim, draw international support, assert authority over the public sector, and demonstrate a capacity to enact significant legislation. By opening their administrations up to public scrutiny, they signal transparency, credibility and a predisposition for cooperation. Thus, in order to boost their political support, leverage policy goals and preempt legislative challenges, weak leaders tend to enact stronger laws and they typically do so at the outset of their terms.

Strong News Media Agendas

Voluminous reporting by leading newspapers greatly improves the likelihood that politicians will commit to enact sweeping laws. Lacking the legitimacy afforded by strong parliamentary support, weak leaders are particularly susceptible to pressures emanating from the news media. Thus, laws tend to emerge legally stronger and earlier in the electoral cycle (on average within the first third of a president's term of office) when presidents lack decisive negative agenda-setting control and news media coverage is strong.

New media outlets have frequently led efforts to bring government secrecy under control. Altruistic motivations and public-spirited journalism aside, news media professionals seek access to information laws because information is the lifeblood of their work; they make a living off of reliable facts. By providing greater informational reliability, freedom of information laws increase public confidence in the media and media leverage over uncooperative public officials. At the same time, they diminish self-censorship and fears of personal or legal reprisal for publishing inaccurate information. In short, freedom of information laws empower the media.

The media serves three crucial roles in ensuring the passage of strong laws. First, it projects the demands of civic advocates onto the public and legislative agendas. Second, it provides incentives for members of the legislature to support laws: favorable publicity is proffered to political supporters of transparency and negative coverage for dissenters and shirkers. Third, the monitorial function of news coverage safeguards laws from underhanded attempts at weakening them during legislative processes. Experts, civil society organizations (CSOs) and committed legislators also represent important contributors to ensuring strong laws. But the book shows that without the decisive support of the news media, even broad-based advocate constituencies may find it difficult to drive the issue home and secure strong laws.

Scope and Contributions to Scholarship

As a scholarly and practical issue, the study of transparency and freedom of information possesses broad cross-cutting disciplinary reach. The book should appeal not only to political scientists and policy specialists, but also information and journalism studies, legal and public administration scholars, regional specialists on Latin America, as well as the large and growing freedom of information activist and policy community. The book's attractiveness resides in its current topical relevance, the broad array of issues it covers, and the study's overarching importance as a precedent-setting work in an empirically and theoretically undeveloped field of scholarship.

The book will make four critical contributions to the literature. First, it will be the first comprehensive study to examine the adoption of freedom of information laws and the determinants of their legal strength across Latin America. Second, it will be the first book to develop a coherent theory of the determinants of strong transparency and freedom of information laws. Third, it will be the first book to advance an up-to-date evaluation of transparency legislation that includes an assessment of their legal strength. Fourth, and related, it will utilize a wider diversity of empirical data and methods than do current works on transparency and freedom of information, which mostly present qualitative analyses with few quantitative metrics. I discuss each of these contributions in turn.

Few works have examined the adoption or implementation of transparency and freedom of information laws from a cross-national perspective. Most of the literature on adoption originates in the activist community and is composed of narrative-style single case studies (Dick 2005; Farmelo 2003; Florini 2007; López Ayllón 2005; Obe 2007; Pasquier 2006; Singh 2007; Uceda 2003; Villanueva 2003; Escobedo 2002; Luna Pla 2008; Archibald 1993; Blanton 2003; Martin 2008). The most recent comparative work, edited by Ann Florini (2007), presents a collection of narratives by FOI activists from around the world. These narratives deal with sundry issues, including key processes and actors in the adoption, implementation and enforcement of freedom of information laws. While valuable, these narratives present a broad panorama of experiences rather than a systematic attempt at comparison or theoretical development. Another large scale comparison of laws looks at compliance across countries (Open Society Justice Initiative 2006), but says little about the factors that brought about strong or weak compliance. In short, there are currently no large-scale comparisons of transparency reform processes, let alone regional comparisons.

By developing a comprehensive theory for transparency and freedom of information reform, the proposed book will also fill a large gap in an under-theorized field. Most works on transparency are written by specialists in public administration who seek to explain compliance and legal precedent rather than develop generalizeable understandings of how strong laws come about (Piotrowski 2007; Roberts 2006). The most prominent academic study on freedom of information (Roberts 2006: Cambridge University Press) provides valuable insights into the challenges laws face, but it presents no systematic comparison or development of theory. Another branch of the literature, germane to political science, explores why some countries are statistically more likely to adopt laws than others (Bennett 1997; Dorhoi 1999; Relly 2006; Rosendorff 2004). These studies, however, focus on

statistical correlations rather than trying to understand the causal mechanisms that promote strong laws.

There are several excellent analyses on the legal strength of measures, but none of these have been leveraged to understand how strong laws come to be. Works analyze current legislation or what strong laws should look like (Banisar 2006; Basterra 2006; Coronel 2001; Kranenborg 2005; Mendel 2003, 2009; Neuman and Calland 2007; Suominen 2002; Pasquier 2006; Torres 2009). My book builds on these studies, particularly the work of Toby Mendel (2009), who is widely regarded as the leading international expert on freedom of information legislation. My dissertation employed an original index to measure the strength of laws, and the FOI community has recently developed a more elaborate right-to-know index (still in draft form). I have provided feedback to help develop this new index and, once completed, I plan on using it to evaluate Latin American legislation. Quantitative measures of legal strength provide a basis from which to explain the factors that brought legislation about. The evaluation of legislation in Latin America will represent the first regional quantitative analysis of freedom of information laws.

The results of this evaluation will represent one of several quantitative and qualitative metrics used to assess freedom of information adoption processes. In addition to evaluating the strength of laws (the study's dependent variable), my study will provide extensive data on my explanatory variables, news media support for freedom of information and presidential control over the legislature. The book will contain original content analyses of news media coverage for transparency and freedom of information reform. It will also present original and secondary data on press freedom, independence from government, and the concentration of media ownership across Latin America. With respect to legislative control, the study closely examines partisan distributions of power and provides indicators of presidential negative agenda-setting powers. These powers determine the degree to which leaders are able to prevent votes on (transparency and freedom of information) legislation and thus obstruct the passage of laws.

Data and Methods

Using the comparative method and a similar systems (method of difference) framework, the book is based on extensive field research in Argentina (2005 and 2007), Brazil (2008-present), Mexico (2002, 2006, and 2007), Uruguay (2005), and multiple telephone interviews with politicians, journalists and activists in Chile (2009), the Dominican Republic (2010-), Guatemala (2009), Peru (2010-) and Uruguay (2009). I plan on deepening research in these last five countries. The book will add to 80 interviews already undertaken, over ten total years of news content analyses, as well as several original and independent surveys. It will also include secondary data on news media ownership concentration (four-firm ratios) in Latin America. Assembled at great length, these figures represent the most comprehensive data set of their kind anywhere. Indicators also include parliamentary seat counts at the precise time when access to information laws were being debated and then enacted. Finally, the book will take into account legislative documents, independent studies, and archival histories of political conditions across Latin America.

Audience and the Author's Profile

Freedom of information is quickly becoming one of the most important democratic battlefields. Over 100 countries have yet to enact laws and reforms are needed in many others. The current status of freedom of information signifies that policymakers and scholars will continue to look for answers to the challenges of enactment, implementation and enforcement. As referred to previously, Freedom of information not only attracts broad followers across academic disciplines—including law, political science, journalism, public administration, information studies, and management studies—there is also a very large community of activists. This community brings together archivists (historians and librarians), social and environmental activists, the open data (hacker) community, journalists, business organizations,¹ and human rights crusaders, among others.

My own work on the topic has already ignited substantial interest. My website (<http://gregmichener.com>), where my dissertation is summarized, has been cited and linked to by over a dozen organizations and individuals. I have been interviewed four times in the last two years, once by Brazil's leading newspaper, the *Folha de São Paulo*. I continue to receive invitations to give talks and participate in conferences. For example, I am being flown to Mexico in December to present at a conference held by the Mexican government on access to archives, transparency and freedom of information.²

This attention is in large part due to my work as an active researcher and activist. I continue to write articles for the leading freedom of information advocacy organizations (e.g. [here](#) and [here](#)), including the National Security Archive (freedominfo.org) and the Knight Center for Journalism in the Americas. I currently have two articles under review, [one](#) at the *Journal of Democracy* and [another](#) at the *International Journal of Press Politics*. I am now working on another article for the *British Journal of Political Science*. I am currently one of the more publicly recognized activists in Brazil. My current status, as a professor-in-waiting³ in Rio de Janeiro, provides me with the time and geographic proximity to research new developments in Brazil, Argentina, Uruguay, and Chile.

Expected date of completion

I expect to complete this book, which should be approximately 90,000 words in length, by August of 2011. I have already written a dissertation of 130,000 words on the topic, consisting of four chapters, two large case studies, four additional secondary case studies, and a comparative analysis of laws and adoption processes across Latin America. I plan on splitting up the large case studies into smaller, more focused studies, refining and adding to the secondary case studies, and expanding the quantitative comparison to include all countries within Latin America— not just those countries that have already enacted laws. At present, I am mainly focused on grant-writing and research, and foresee being able to complete this book in a timely fashion.

¹ Businesses typically account for 40-60 percent of requests for information an established law receives.

² Seminario Internacional de la Transparencia a los Archivos: el Derecho de Acceso a la Información.

³My Doctorate is currently being “re-validated” by the Brazilian bureaucracy (an expensive, time-consuming and frustrating process that all foreign degrees must undergo). A validated degree is a prerequisite for teaching.