

CONCLUSION

These questions are very nice for seminars, but if you allow me the intellectual indulgence...from a more Machiavellian perspective, these are laws presented by people who will never reach a position of power.¹

—Juan José Álvarez, Minister of Justice under Argentine President, Eduardo Duhalde (2002-03)

The quotation above reflects the central challenge of surrendering secrecy: the arrogance that pervades secretive political landscapes. As this study has shown, secrecy remains pervasive where power is concentrated, the evasive tactics of politicians go unexposed and the demands of transparency advocates reverberate little beyond the confines of seminar boardrooms and donor roundtables. However, when news media coverage of reform is strong and weak leaders preside, the cloak of secrecy will often be traded for greater legitimacy.

I began this dissertation by examining two polar outcomes of reform efforts: a sweeping transparency law in Mexico (Chapter Two) and a failed comprehensive reform in Argentina (Chapter Three). These outcomes were then compared with those of eleven other nations across Latin America (Chapter Four). I marshaled evidence to develop a theory in which strong laws were more likely to be enacted under a) presidents lacking decisive control over the legislative agenda, and b) political systems in which the news media strongly supported reform efforts through voluminous coverage.

My theory fills a void in the literature on transparency reform, which is both empirically and theoretically underdeveloped. Although current approaches point to the importance of civic advocacy and political will, they have not specified what it is about these factors that drives reform. While civil society organizations (CSOs) are important to promoters of reform, their influence typically reaches only as far as their voices. Without salient coverage in the news media it is much less likely that CSOs promoting transparency will have decisive influence over the strength of reforms adopted. Political

¹ Personal interview, November, 2007.

will is also important, but in the current literature the degree to which such will is present or absent only appears to be clear in retrospect. By contrast, I propose a theory that contains predictive power: all else being equal, weaker presidents will be more likely to enact sweeping reform.

The influence of the study's central explanatory variables was especially vivid in Chapters Two and Three on Mexico and Argentina. In Mexico, the *Grupo Oaxaca's* media-powered campaign engendered support for sweeping access to information reform among the executive branch and opposition parties, triggering a credit-claiming contest that helped bid up the strength of Mexico's law. Vicente Fox (2000-06), Mexico's "president of change," possessed weak constitutional and partisan powers and experienced grave difficulties in advancing his legislative agenda. Fox gave up secrecy for the legitimacy he needed and Mexico enacted a law that has since become a global standard. By contrast, relatively weak news media coverage of a law in Argentina provided politicians with few incentives to support transparency. Shielded from broad-based exposure and criticism, successive Argentine presidents deployed partisan and constitutional powers to delay and resist the enactment of a comprehensive access to information law. Five years after advocates had championed a model law and nearly two years after receiving sanction in the Chamber of Deputies, the access to information bill was effectively killed in the Senate. President Nestor Kirchner (2003-2007) did issue a limited decree in 2003 (1172/03), but this reform may have weakened the campaign for a comprehensive law and transparency infrastructure.

Ensuing developments in Mexico and Argentina reflect the extent to which these countries surrendered secrecy. Opacity played no small part in Argentina's descent into economic crisis in 2001-02. The country's inability to follow through with a strong transparency law in the immediate aftermath of crisis has helped maintain a culture of secrecy and corruption in Argentina, which has contributed to institutional weakness and the country's ongoing exclusion from international credit markets. The country's financial missteps have led to further institutional erosion; the Argentine Central Bank was

recently pillaged—by presidential decree— in order to pay back debt.² The persistence of a strong president and a divided opposition in Argentina³ continue to distort policy in that country, privileging presidential rather than national interests.

Despite its sweeping reform, Mexico has not shone like the “crystal house”⁴ promised by President Vicente Fox. The country’s transparency law has, however, cast light into Mexico’s dark recesses, prompting an ongoing struggle with secrecy in which federal politicians have taken few shortcuts. Progressive reforms strengthening the country’s transparency infrastructure culminated in 2007 when a constitutional reform committed all levels of government to minimum standards for access to public information. Greater transparency has gradually exposed the corruption of local and state governments, which has no doubt helped to underwrite President Felipe Calderon’s controversial war on Mexico’s drug cartels. The war has undeniably led to the abuse of civil rights. But a balanced distribution of power among parties and strong media coverage—the same factors that helped ensure strong transparency reform—continue to safeguard minimum standards of government accountability.⁵

Clearly, grave problems continue to afflict both Argentina and Mexico. But while the latter submits itself to a national purge, the former stagnates institutionally.

Presidential and News Media Power

It comes as no surprise that the concentrated nature of political power in Argentina has not been conducive to openness. Executives in Argentina—presidents, governors and mayors—have few reasons to open themselves up to greater scrutiny and they typically have the power to block access to information laws. The dominance of one

² See, “Central Bank Robbery.” *The Economist*. 6 February, 2010. Page 42.

³ In constitutional terms, the Argentine president is only surpassed by the Russian President. See Shugart and Haggard (2001, 80).

⁴ President Fox used the term, “una casa de cristal,” throughout his election campaign to refer to the outcome of greater transparency.

⁵ The Supreme Court has taken up the case of Teresa González and Alberta Alcántara, two women wrongly sentenced to 21 years (each) after police allegedly fabricated evidence and manipulated the judicial system. The PRI has called for a committee in Congress to investigate the case, in collaboration with prominent human rights advocates. See, “Mexico: Supreme Court gets involved.” *Latinnews.com, Latin American Weekly Report*, 18 March, 2010.

political party, the *Partido Justicialista* (PJ), has provided PJ leaders with even fewer incentives to reform.

Strong presidents in Argentina were not alone in their opposition to sweeping transparency reform. The cross-national analysis in Chapter Four showed that in those Latin American countries where presidents controlled the legislature through partisan majorities, access to information laws were significantly weaker than in those countries presided over by minority presidents. Evidence also showed that strong presidents enacted laws late, typically during the last third of their terms of office. By contrast, minority governments enacted stronger laws on average and they typically passed them during the first quarter of a president's term. These results demonstrate that whereas stronger presidents will tend to resist, delay, and debilitate access to information laws, weaker presidents will often embrace them, enacting stronger and earlier measures. This finding may also explain why those presidents that adopt strong laws at the outset of their terms also tend to do a better job of implementing them.

These findings suggest that rather than being harbingers of legislative stasis and institutional decay, minority government and weak presidents may indeed help strengthen the quality of democracy. Whereas strong presidents are best able to enact sweeping reforms because of their legislative faculties, this study has illustrated that they are least likely to do so with regard to transparency reform. The incentives generated under weak leaders lend themselves to commitments to transparency reform. And once proposed, such reform can only be opposed by incurring considerable political costs, especially if media attention is strong. Instead, parties vie for credit by bidding up the provision of public goods such as transparency reform. The connection between legislative weakness and good governance reform contains clear policy implications, as well as theoretical relevance for the ongoing debate regarding the virtues of majority versus minority balances of power.

Countries where majority governments held sway also tended to produce less news media support for access to information reform. Strong presidents in Argentina, Brazil, the Dominican Republic, Panama and Uruguay experienced only weak media

campaigns for access to information, while in Chile, Guatemala, Mexico, Nicaragua and Peru, presidents facing uncertain legislative support were met by strong access to information campaigns that helped drive the enactment of stronger laws. Chapter Two showed why news media will tend to support access to information reform under weaker presidents and more competitive political arenas.

The onset of minority government in Mexico beginning in 1997 marked a period in which power shifted from the president to Congress. Vigorous competition led political parties and legislators to seek out favorable publicity from the news media. Within this context, federal legislators could ill afford to be openly hostile towards the press. This resulted in greater press freedom, independence and influence, whereby the media, in a process referred to as “reverse subordination,”⁶ came to exercise considerable sway over the nation’s legislators and policy priorities. Reliable, easily gathered information of public relevance became of greater value to the press, especially in a highly competitive media market.⁷

In the wake of Vicente Fox’s election to the presidency in 2000, the owners of Mexico’s leading newspapers on the left, center and right (*La Jornada*, *El Universal* and *Reforma*) all became strongly committed to the cause of the right-to-information. In 2001, these newspapers joined with numerous academics, experts and civil society organizations under the banner of the *Grupo Oaxaca* to launch a campaign for freedom of information. During a 30 month period, *El Universal* and *Reforma* published an average of 12 news items per month on this topic. The newspapers projected the voices of advocates, engendered political commitments and monitored the legislative process, all of which helped to ensure the emergence of a strong law.

By contrast, Chapter Three showed how the news media in Argentina failed to aggressively promote reform. News coverage of Argentina’s largest newspaper, *Clarín*, was weak in volume (2.8 news items per month), focus and institutional support. *La Nación* fared better, with “moderately strong” coverage (6.8 news items per month). Yet a

⁶ The term is accredited to journalist Raúl Trejo in Carreño Carlón (2004, 6).

⁷ Top four firms in Mexico account for 45 percent of the market, 14 percent below the average for all countries analyzed.

decisive institutional commitment on the part of *La Nación's* owners was also wanting. Moreover, approximately a third of this newspaper's coverage was penned too late, in the last 6 months of the campaign, and responded to the threat of an access to information bill that jeopardized media interests. In Argentina the news media has not served as a sentry for democratic integrity or renewal. Weak coverage of policies such as transparency reform has undoubtedly contributed to the Argentine government's ability to resist reforms in other policy areas as well.

Concentrated political power is partly to blame. Chapter Two reviewed the historical evidence on how compliant media firms in Argentina enjoyed the carrots of favorable regulation, revenue and relationships with key policymakers, while critical firms received the stick. With some exceptions, the media in Argentina has been far too eager to please powerful presidents.

These findings on the connection between presidential control and media support for transparency reform provide further theoretical support for treating the news media as a political institution (Cook 2006; Sparrow 1999; Schudson 2002; Iyengar and Reeves 1997). News media behavior can be explained in part by shifts in political balances of power. These findings are consistent with indexing theory in the political communication literature, which has focused principally on foreign policy (Bennett 1990; Hallin 1986; Baumgartner and B. D. Jones 1993; Robinson 2000; Wolfsfeld 1997).

This study has also illustrated the relationship between concentrated ownership, centralization and media behavior. Argentina is a centralized country where close to a third of the population lives in one city and where media ownership is concentrated in a few firms. Ownership concentration and demographic centralization increase media familiarity with public officials, augment opportunities for collusion, and create the false illusion of deep access to quality government information. Concentration and centralization promote consonant coverage, diminish the diversity of views and allow officials to spot dissenting coverage with greater ease, making it easier for firms to be punished. Moreover, where competition is low and centralization high, firms and journalists tend to exhibit informational jealousies. As the Director of External Relations

for Argentina's *Clarín* asserted, "professional advantage is viewed to be accentuated by the absence of an access to information law."⁸ Journalists fear that a law will devalue their long-cultivated sources, and oligopolistic firms seek to prevent the democratization of an exclusive resource— quality government information.

Chapter Four provided further evidence on how ownership concentration and centralization shape media support for reform. On average, the top four newspaper firms in countries under analysis controlled 59 percent of their respective markets. In countries where the news media strongly supported reform, this figure was ten percent lower, at 49 percent on average. In countries where the news media did not strongly support reform, four-firm concentration levels averaged 64 percent, a full 15 percent higher than in countries that experienced media support and enacted stronger laws, and five percent above the regional average. The weaker outcomes of transparency legislation in Uruguay, Panama, the Dominican Republic and Argentina correlate with media ownership concentration levels well above the regional average and these were among the most centralized countries under analysis. Taken together, these results suggest that high media ownership concentration and market centralization lead to weaker news media support for transparency, which in turn begets weaker laws.

This study therefore provides empirical backing for the claim that concentrated news media ownership weakens the press as a political institution, and undermines its role in safeguarding democratic integrity (Amaral and Guimaraes 1994; Bagdikian 2004; Baker 2002, 2007; Cajías de la Vega and López 1999; Compaine 2002; Compaine and Gomery 2000; Corneo 2006; Coulson and Lacy 2003; Djankov et al. 2003; Hollifield 2006; Horwitz 2005; Iosifides 1999; Leys 1999; Mastrini and Becerra 2006; McChesney 1999). This study also suggests that the literature on media concentration should examine the degree of media market centralization, and not just the level of ownership concentration, because the former variable may also undermine media diversity and lead to cozy and collusive relationships between the media and the press.

⁸ Personal interview, Martín Etchevers, November, 2007.

Political capture does not necessarily signify that media systems cannot and will not change. The Mexican press serves as perhaps the world's most oft-cited example of how a captured press transformed into an independent and even heroic political institution. Importantly, it has been the publishers and editors of private media firms, such as *Reforma* and *El Universal* that have driven change. In Argentina, the leading private newspaper, *La Nación*, promoted access to information reform more aggressively than the leading publicly-traded media corporation, *Clarín*. Beholden to international shareholders, a public-spirit may come second to the profit motive in the case of publicly-traded companies. Although current scholarship supports the inference that publicly-traded companies are more susceptible to capture than their private equivalents (see, for example Baker 2007, 37-41), more research is needed to generalize the hypothesis.

The study also showed how private media firms tended to exercise greater influence than professional press associations. In Brazil and Uruguay, such journalist associations forcefully supported access to information. But most of this support did not translate into coverage. By contrast, in Mexico and Guatemala there was limited organizational support for an access to public information law. Instead, it was private media companies that staked out forceful editorial positions in these two countries. This suggests that it is vested editorial support and concomitant coverage that wields real influence. This influence is especially pronounced when firms support the same policy in a coordinated fashion and do not exhibit disagreement on major principles that may allow leaders to claim that consensus on policy does not exist.

Yet some people question whether the media should, in fact, lobby for reforms. After the dissolution of the *Grupo Oaxaca*, the Chief Editor of *El Universal*, Roberto Rock expressed some doubts:

We discussed what our role should be; should we be creating laws, stimulating debate, or just cooking the issues as they come along...and we said, well let's do this, but then let's come back to the newspaper. I had the doubt too, if it's in our nature to sit with congressmen... these same congressmen would ask us, 'are you an NGO, or is it the power of the newspaper that you represent?'⁹

⁹ Personal interview, September, 2007.

Rock raises important questions about the role of the news media within a democracy. Other Mexican media experts, such as José Carreño Carlón (2004, 6), go even further. Carreño Carlón views the news media as bullying politicians in a certain sense. He sees "diluted political power prostrate before an oversized media." Yet whatever its dangers, a press that champions citizens' rights is eminently preferable to a press that remains silent as political leaders systematically ignore demands and evade responsibilities.

Media advocacy of reform is needed to compensate for several glaring deficiencies on the part of more traditional political actors. CSOs, for example, often have limited influence and legitimacy. Chapter Two illustrated how leaders in Argentina perceived a hidden first world agenda in CSOs' support for anti-corruption policy (Saba 2006). In the case of Argentina, these accusations were not without basis: the country's overabundant CSO sector is generously provisioned by large influxes of donor capital. Around the developing world, foreign-funded CSOs risk being perceived as the minions of first world interests¹⁰ (Wiarda 2003, 99-106). By advancing the same agenda, the news media gives these organizations renewed legitimacy.

When the media adopts a strong transparency reform agenda it tends to take on the traditional role played by parliamentary opposition. The experience of Argentina and the case studies of Chapter Four showed that support for transparency among opposition parties is unreliable. In Argentina, opposition legislators were too riven by divisions and defections to secure an early approval for the access to information bill in the Chamber of Deputies. Meanwhile, old-guard parties in Uruguay and Guatemala clung to secrecy to protect historical secrets or shield business dealings. Even in Chile, the opposition UDI did not act as the forceful advocate of openness as one might reasonably expect. These findings provide a reason to assess on a case-by-case basis the common assumption that opposition parties will automatically seek to check the party in power. Undependable

¹⁰ Recently, similar suspicions have arisen in the Nicaragua. The New York Times reports: "Officials have talked about introducing legislation to prohibit nongovernmental groups from engaging in 'political' activities — it would be permissible, for instance, to feed the poor, but not to work to change antipoverty policy. Government officials are also discussing instituting a requirement that all foreign donations (which finance virtually every organization in Nicaragua) be approved by the foreign ministry." See, "The Many Stories of Carlos Fernando Chamorro." *New York Times Magazine*. 20 March, 2009. The suspicion of CSOs appears to be more common among left-leaning leaders.

opposition-based support for reform and weak legislative oversight mean that media advocacy is crucial.

Yet the media itself is a rather inconsistent watchdog and champion of reform. Chapter Four's cross-national analysis showed how the news media only inconsistently supported reform across countries. While the media led campaigns in Mexico, Guatemala and Peru, the Chilean media only supported reform once the country's president came on board. Similarly, Guatemala's media remained silent on the issue until 2008, even though a CSO-based advocacy campaign had lobbied for a law since 2001. Taken as a whole, the countries analyzed suggest that the media's support for this key democratic reform is highly contingent on political and market conditions: the media will be less disposed to make demands in countries that have strong, controlling presidents and concentrated and centralized media markets. My findings therefore lend credence to the idea that politics continues to be the "primary definer" of news media behavior (Hall 1978). Findings also suggest that the accountability function of a news media involves not just acting as a watchdog and digging up individual abuses, but also covering prospective reforms that represent potential solutions to systemic problems.

This study contributes to the literature on comparative politics by bringing in the news media as a central explanatory variable. The vast majority of the comparative politics literature that deals with the news media has treated the press as a dependent variable (Alves 2005; Blankson and Murphy 2007; Ferreira 2006; Fox 1989, 1997; Gunther and Mughan 2000; Hackett and Zhao 2005; Hallin and Mancini 2004; Hughes 2007; Jakubowicz; A. Jones 2002; Milton 2001; Rockwell 2007; Rockwell and Janus 2003; Skidmore 2001; Sparks 2005; Tettey 2006; Waisbord 2000b, 2000a). A few studies have contended that the press has served as an engine of reform (see, for example, Lawson 2003), but they have focused mainly on how the news media have accelerated the atrophy of authoritarian systems, rather than the conditions under which the media contribute to institution-building reform.

Directions for Future Research

The findings of this study speak to the hundred-odd countries yet to adopt transparency and access to information laws, to donors promoting greater transparency,¹¹ and to the many nations that ought to be contemplating strengthening reforms. The findings suggest that the prevailing approaches to transparency reform may be casting resources too broadly and thinly. Instead, efforts should center on strengthening the key drivers of good government reform: reforming media systems and institutions that control the distribution of political power. The proviso here is that it is extremely difficult to reform these institutions.

Efforts to reform the news media inevitably lead to accusations that government is trying to impose “gags,” as I discussed in both Chapters Two and Three. This problem appears to be universal and largely intractable throughout Latin America. It is difficult to encourage legislators to support media reform when they depend so heavily on the media’s good graces for reelection. Nevertheless, governments can influence media behavior in a variety of ways. Concentration levels, for example, may be brought into check through regulation and transparent, deliberate outlays of state advertising. To its credit, Argentina enacted media reform in 2009, in a measure that was largely imposed by a powerful President.¹² The ultimate outcome of this reform has yet to be seen, however.

It appears that two types of reform may be needed to encourage political systems to embrace good government reforms. The first is relatively simple but difficult to execute: limiting presidential power. Strong presidents may have been required to drive through first and second generation democratic reforms, but within the current political context they frequently appear to be more destabilizing than beneficial. The second needed measure would be to adopt an electoral reform that might give rise to a party system conducive to effective policy deliberation and moderate distributions of power.

New Zealand is a good example of a country with such a system. It has consistently ranked among the least corrupt and most transparent countries in the world and its

¹¹ I define a donor as any non-national organization that supplies resources for development purposes to other countries, including money or other forms of assistance.

¹² See, “Senate Approves Media Reform Bill.” *Latinnews.com*, *Latin American Weekly Report*, 15 October, 2009.

access to information law is widely perceived as an international model. According to New Zealand's Minister of Justice, Annette King, the primary reason for her country's stellar good government performance was its 1996 adoption of a Mixed-Member Proportional Representation (MMP) electoral system. King claims that MMP has led to fewer majority governments, a more balanced distribution of power, and "more debate, more consensus, and more national dialogue about governmental policies before they are enacted" (see, for example, Lawson 2003). Coincidentally, Mexico adopted a virtually identical MMP system in 1996-97 (Molinar Horcasitas and Weldon 2003). While these examples suggest that more research is needed to understand how electoral systems contribute to good governance reform, they reinforce this study's assertion that minority government appears to be a driver of strong good governance reform.

In order to generalize the results of this study, the findings presented here require statistical testing on a larger number of cases. Methodologically, this study also reveals the need to develop more precise measurement tools to assess the strength of access to information laws and the long run operational effectiveness of such laws. While the focus of this study was exclusively on explaining the legal strength of laws, it would be interesting to see whether the variables identified here can also explain the long run operational effectiveness of laws. A few examples suggest that they might. As we have seen, in the last few years Mexico has strengthened an already strong law thanks in part to consistently weak presidents and strong media support for reform. Presidential strength and media activism also have played a role in the strengthening of access to information in the U.S. The original 1966 law enacted under Lyndon B. Johnson's was weak,¹³ but major reforms in 1974,¹⁴ 1976, 1996¹⁵ and 2007¹⁶ under legislatively weak presidents much improved the functioning of the U.S. Freedom of Information Act. The

¹³ The law was enacted under the majority Democrat government of President Johnson after news media supporters and legislative entrepreneurs had lobbied for more than 15 years. See, Archibald (1993), or for a more extensive account, Kennedy (1978).

¹⁴ Under the divided government of Republican President, Gerald Ford. the Democrats dominated both Houses of Congress. The 1976 reform took place under the divided government of President Jimmy Carter.

¹⁵ President Bill Clinton enacted E-FOIA reforms in 1996, shortly after losing both Houses of Congress to the Republicans in 1995 elections.

¹⁶ The 2007 reform occurred subsequent to President George W. Bush's 2006 loss of majorities in both the House and the Senate.

media has been particularly instrumental in promoting reform. In the 2007 reform, *The Sunshine in Government Initiative*,¹⁷ which was composed of nine large national media associations, helped coordinate coverage among associated publications. The Initiative helped secure commitments from Democrat congressional leaders for a reform to the secrecy infrastructure erected by the Bush administration.

While compliance with its dictates is perhaps the more important indicator of strength for an access to information law, the adoption of a strong law may usher in a slow process of “reverse-engineering,” much like the one Mexico has been undergoing for almost a decade. Disclosure requirements stimulate a professionalization of the public sector by improving the pervasiveness of information technology,¹⁸ archiving methods, the training of officials, stimulating more careful policymaking processes and encouraging greater government-public interaction. These processes are particularly beneficial for countries with low state capacity. Thus, despite those who doubt whether underdeveloped countries can successfully implement freedom of information regimes (see, for example, Roberts 2006, 110-117), it is perhaps not the implementation of these laws themselves that matters most but rather the institutional groundwork that they help to drive forward.

The requirements of a long-lasting surrender of secrecy are numerous and extend far beyond simply adopting a strong freedom of information law. Openness requires strong institutions, dispersed political power, an educated populace and a change in political culture the likes of which most advanced democracies have yet to attain. This dissertation has focused on a small but important piece of this process, the adoption of a law that addresses the issue of secrecy frontally. Freedom of information laws may not function effectively right away, but a strong freedom of information law on the books is

¹⁷ *The Sunshine in Government Initiative* was composed of the American Society of Newspaper Editors, the Associated Press, the Association of Alternative Newsweeklies, the Coalition of Journalists for Open Government, the National Association of Broadcasters, the National Newspaper Association, the Newspaper Association of America, Radio-Television News Directors Association, Reporters Committee for Freedom of the Press, and the Society of Professional Journalists.

¹⁸ According to Mexico’s IFAI Commissioner, Juan Pablo Guerrero (2007, 1): “The most relevant component for the implementation of the Federal Law for Transparency & Access to Information (LAI) in Mexico approved in 2002 and enacted in June 2003 has been the use of Internet technology. So far, nothing has proven to be more important.”

better than a window-dressing law or no law at all. Moreover, expectations that laws will serve as windows into government are not likely to fade. Transparency and access to public information laws signal credibility and serve as useful tools for economic and democratic advancement.