Institutionalizing Transparency: The Global Spread of Freedom of Information in Law and Practice

Daniel Berliner

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Reading Committee:

Aseem Prakash, Chair

Margaret Levi

James Caporaso

Program Authorized to Offer Degree:
Political Science

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Abstract

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Daniel Berliner

Chair of the Supervisory Committee:
Professor Aseem Prakash
Political Science

Transparency has been hailed as the key to better governance. Access to government information empowers citizens, enables journalists, constrains politicians, and exposes corruption. Yet for precisely these reasons, transparency is highly political. Most political actors prefer secrecy to openness, and oppose constraints on their range of action. Yet in over eighty countries, political actors have supported passage of freedom of information (FOI) laws. Even further, in most countries these laws are implemented and enforced in practice. What explains the global spread of freedom of information in both law and practice?

In order to understand the global spread of FOI laws, I offer a model of institutionalization in two stages. In the first stage, FOI laws institutionalize transparency in rules and procedures which are costly to weaken or revoke at a later date — thereby making government commitments to transparency more credible. In the second stage, FOI laws are implemented and routinized in regular practice. Only once doubly institutionalized will FOI laws be able to fulfill their promise of contributing to better governance. However, at both stages of institutionalization, political actors face powerful incentives to block adoption, take advantage of global norms, or decouple law from practice. Passage of FOI laws will only be compatible with domestic political

incentives when uncertainty over future power makes their institutionalization a boon, rather than a liability. Even though there are costs to failing to implement or enforce a FOI law, these costs can still be outweighed by other factors, leading to "window dressing" laws which exist in name only. And yet, even weak FOI laws can empower new actors, and can be strengthened by local capacity building by transnational advocates.

I support this model with individual quantitative studies of the timing of FOI passage across countries, and their strength both in law and practice, supplemented with illustrative case studies. The results of each chapter emphasize both the importance of domestic political interests, and the roles played at different stages by transnational advocacy networks. Finally, I show that FOI laws can have meaningful impacts, leading to increased inflows of foreign direct investment in developing countries.

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INTRODUCTION

"A popular government without popular information or the means of acquiring it is but a prologue to a farce or a tragedy, or perhaps both. Knowledge will forever govern ignorance. And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives."

–James Madison, Fourth President of the United States.[1]

"Freedom of Information. Three harmless words. I look at those words as I write them, and feel like shaking my head till it drops off my shoulders. You idiot. You naive, foolish, irresponsible nincompoop. There is really no description of stupidity, no matter how vivid, that is adequate. I quake at the imbecility of it."

–Tony Blair, Former British Prime Minister, expressing regret in his memoir for passage of the 2000 Freedom of Information Act.[2]

"Why do you want such a law? Just ask me for a file and I will give it to you."

–Mahinda Rajapaksa, President of Sri Lanka, speaking to newspaper editors.[3]

"We may have the best laws, but we have to implement them... I would like to thank to the Access to Information Programme because they made the court think over and apply the law. They made the court answer — sometimes correctly, sometimes not, but developing its practices due to the questions set forth."

–Konstantin Penchev, Former Chairman of Bulgaria's Supreme Administrative Court.[4]

Transparency has been hailed as the key to better governance (Banisar 2006, Hood and Heald 2006, Florini 2007). Access to information about government rules, decisions, and activities empowers citizens, enables journalists, constrains politicians, and exposes corruption. Yet for precisely these reasons, transparency is highly political. Most political actors, corrupt or not, prefer secrecy to openness and oppose

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[1] *Letters and other Writings of James Madison*, vol. 3, p. 276.

[2] Blair, Tony. 2010. *A Journey: My Political Life.* New York: Alfred A. Knopf. p. 511

[3] See http://sundaytimes.lk/110703/Editorial.html, last accessed June 8, 2012.

[4] See http://www.aip-bg.org/en/about/othersaboutus.php, last accessed June 8, 2012.

constraints on their range of action. For those who misuse public office for private gain, transparency increases the risk of exposure and decreases the expected returns to future wrongdoing. And yet, in over eighty countries around the world, political actors have supported passage of laws that constrain themselves in exactly these ways. Even further, in most countries these laws are actually implemented and enforced in practice. The laws in question are known alternately as freedom of information, access to information, or right to information laws, and the process and politics of their global spread is the topic of this dissertation.

Freedom of information laws create legal guarantees of the individual's right to request government information without need to give any reason, and require government officials to respond. Over the past several decades, over eighty countries have passed FOI laws, more than half of these since the year 2000. FOI laws have been passed in both developed and developing countries, and in both democracies and autocracies. There is also substantial variation among the resulting freedom of information regimes, on both *de jure* and *de facto* dimensions. Some FOI regimes are formally stronger than others, while others are stronger in practice, and still others are strong or weak on both dimensions. The freedom of information poses substantial costs for political actors — it impedes their ability to keep secrets, to obfuscate, to profit from the control of private information, and above all to use public office for private gain. Yet despite these costs, political actors in many countries have passed FOI legislation, implemented FOI procedures in government offices, and even acceded when appeals agencies ruled against them.

In order to understand the global spread of FOI laws, I offer a model of institutionalization in two stages. In the first stage, FOI laws institutionalize transparency in rules and procedures which are costly to weaken or revoke at a later date — thereby

making government commitments to transparency more credible. In the second stage, FOI laws are implemented and routinized in regular practice. Only once doubly institutionalized will FOI laws be able to fulfill their promise of better governance. However, at both stages of institutionalization, political actors face powerful incentives to block adoption, opportunistically take advantage of global norms, or decouple law from practice. Passage of FOI laws will only be compatible with domestic political incentives when uncertainty over future power makes their institutionalization a boon, rather than a liability. Even though there are costs to failing to implement or enforce a FOI law, these costs can still be outweighed by other factors, leading to "window dressing" laws which exist in name only. And yet, even weak FOI laws can empower new actors, and can be strengthened by local capacity building by transnational advocacy networks.

The next section of this chapter situates the freedom of information in three different contexts — as a policy innovation, as a global norm, and as the object of a transnational advocacy network. I then give a brief summary of the origins of FOI laws and their adoption in developing countries, with more success in some cases than in others. Finally, I discuss the goals of this dissertation and preview the subsequent chapters.

Freedom of Information as a Tool, a Norm, and a Goal

FOI laws are both a policy innovation to ameliorate political agency problems, a cascading global norm of transparency encouraged by international stakeholders, and the goal of a transnational advocacy network made up of local and international non-governmental organizations. As a policy innovation, FOI laws not only enable better monitoring of political agents by their principals, but they do so in a decentralized way.

They enable a diffuse body of actors to engage in "fire alarm" monitoring (McCubbins and Schwartz 1984) of politicians and bureaucrats, and they implement transparency in individual agency-level procedures which keep most routine disclosure decisions out of the executive's hands. FOI laws begin with a presumption of disclosure for any material not specifically exempted, and do not limit requests for information to legally interested parties. It is these features, advocates claim, that make FOI laws a unique instrument to make government more transparent. But it is also these features which may generate unwelcome consequences for political actors.

As a global norm, however, the freedom of information has been framed as a human right for much longer than it has been framed as a tool of good governance. In its very first session in 1946, the UN General Assembly adopted Resolution 59(I), stating that "Freedom of information is a fundamental human right and is the touchstone of all the freedoms to which the United Nations is consecrated" (United Nations 1946). Article 19 of the Universal Declaration of Human Rights, while pertaining mostly to the freedom of expression, notes the right to seek and receive information as well: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers" (United Nations 1948). Indeed, Article 19, a major international NGO working on FOI issues, named itself after this article at its founding in 1987. The International Covenant on Civil and Political Rights similarly recognizes the right to "receive and impart information and ideas of all kinds" as part of the freedom of expression. More recently, regional institutions around the world have agreed to documents recognizing the freedom of information as a human right, such as the 2000 Inter-American Declaration of Principles on Freedom of Expression, the 2002 Declaration of Principles on Freedom of Expression in Africa,

and several Joint Declarations by the United Nations, the Organization for Security and Cooperation in Europe, the Organization of American States, and the African Commission on Human and Peoples' Rights.

A new type of normative context to the freedom of information arose out of the increase in attention to corruption and good governance as keys to economic growth, spurred by NGOs like Transparency International (founded in 1993 by a former World Bank regional director), influential studies on corruption by economists, and the gradual embrace of an emphasis on governance by the World Bank and International Monetary Fund. In fact, in 2010 the World Bank adopted its own Access to Information Policy. Thus the "bridging" of the freedom of information between human rights and good governance discourses broadly coincided with the period in which the "norm cascade" of passage among developing countries began to take off (Finnemore and Sikkink 1998).

Finally, the freedom of information is also the object of a transnational advocacy movement composed of international NGOs based in the United States and Western Europe, hundreds of domestic NGOs in countries all over the world, and major funders like the Open Society Institute, with links to state information officers and international institutions like the World Bank and United Nations Development Program. Some NGOs in this network work specifically on FOI issues, while others have a primary focus as journalists' organizations, lawyers' organizations, or human rights activists. The organizations in this network share resources, expertise, research, and stories of their own experiences. Much of the communication in this network takes place via an email list, the Freedom of Information Advocates Network. Organizations in this network rely on different combinations of strategies, including direct engagement with governments and international institutions, "naming and shaming"

in global media campaigns, and various forms of local capacity building through trainings, workshops, and awareness promotion. Different members of this network also bring different normative approaches, from a focus on governance encouraged by international financial institutions, to a focus on human rights encouraged by the human rights advocacy community.

Freedom of Information Laws Around the World

The first FOI law was passed in Sweden in 1766, requiring that official documents "immediately be made available to anyone making a request" (Banisar 2006). The Swedish Freedom of the Press Act was updated and made part of the constitution in 1949. Finland's parliament passed the Act on Publicity of Official Documents in 1951. The canonical FOI law, however, is the United States' Freedom of Information Act, passed by Congress in 1966 after a decade of congressional hearings. The executive branch opposed the bill — in 1965 all 27 federal agencies and departments that presented testimony were opposed to it — and so did the President. Although President Johnson was eventually convinced by key staff members, Congressional leaders, and journalists who advocated the bill, Bill Moyers (then a White House aide) wrote (Blanton 2006):

> "But I knew that LBJ had to be dragged kicking and screaming to the signing He hated the very idea of the Freedom of Information Act; hated the thought of journalists rummaging in government closets and opening government files; hated them challenging the official view of reality."

Other industrialized countries passed their own similar laws over the ensuing decades, some earlier than others. For example, France, the Netherlands, Australia,

New Zealand, and Canada all passed FOI laws in the period 1978-1982, while the United Kingdom and Germany delayed until 2000 and 2005, respectively (see 3.1 in Chapter 3 for a full list of the dates of passage of FOI laws across countries). In the United Kingdom, after a civil society campaign for passage dating back to 1984, the Labour party made passage of a FOI law a campaign promise in the 1997 election. The law was not passed until 2000, and did not come fully into effect until 2005. And yet, former Prime Minister Tony Blair has called passage of the law his single greatest regret from his time in office, as in the quote at the beginning of this chapter, due to its frequent use by journalists.

Among developing countries, Colombia was the first to pass a FOI law, passing "Law 57 of 1985 by which the Disclosure of Official Acts and Documents is Ordered" in 1985 (Mendel 2009). The next FOI laws to be passed outside of the developed world were in Eastern Europe, with Hungary and Ukraine both passing them in 1992. By the end of 2000, 19 developing or transition countries had passed FOI laws. In many countries, however, passage was delayed for many years, or even blocked to this day.

In India, the Right to Information Act was not passed until 2005, despite years of advocacy by civil society groups and others. A FOI law was first proposed by V.P. Singh as an electoral promise in 1989, but no initial draft was ever offered. An initial law was passed in 2002, but was never actually ratified and made operative, and only after the Congress Party and its allies returned to power in 2004 was a new proposal introduced. In Nigeria, civil society groups have been advocating for passage of a FOI law since at least 1993 (Media Rights Agenda 2003). Yet despite several draft laws, Nigeria did not pass a law until 2011. President Obasanjo, who in 1999 declared "war on corruption", ultimately declined to present a draft law to the

legislature, and in fact used the anti-corruption tools he did implement as weapons against political opponents (Obe 2007). In Argentina, the Lower House passed an Access to Information law in the wake of the 2002 economic crisis (Neuman and Calland 2007). Yet as soon as political parties had regained legitimacy, the Senate blocked the law. Instead, access to information in Argentina is today governed by a 2003 Presidential decree which, notably, can be easily revoked at any time, and is widely considered ineffective (Pinto 2009).

After passage, FOI laws have fared very differently in different countries. In India and Mexico, the laws have been extensively implemented in the bureaucracy and are used by hundreds of thousands of requesters every year, although many challenges remain. In Zimbabwe, on the other hand, the 2002 Access to Information and Privacy Act actually served in practice to give the government greater powers to control the media and harass journalists (Banisar 2006), opportunistically taking advantage of the language of freedom of information while pursuing politically motivated goals. In other countries, like Angola, FOI laws were passed but simply never implemented.

Several other countries are explored in greater detail in brief illustrative case studies in subsequent chapters of this dissertation. Chapter 2 presents examples from of South Africa, highlighting the costs a government must face in attempting to weaken a FOI law, and Pakistan, highlighting the ability of even a weak law to empower new actors. Chapter 3 explores the timing of passage in South Korea and Nigeria, in light of changes in the competitiveness of the political environment in each country. Chapter 5 uses a case study of Bulgaria to investigate the mechanisms by which transnational advocacy networks can bolster the strength of FOI laws in practice, potentially making up for weak capacity and commitment by the state itself.

Goals of the Dissertation

This dissertation has two primary goals. The first is to explain the empirical patterns of passage, design, practice, and effects of FOI laws around the world, emphasizing both domestic and international politics. This goal has important implications for both scholarly and policy literatures on freedom of information and transparency. Little scholarly research has systematically studied these patterns across countries with the goal of empirically testing claims that have been made. This dissertation builds on the excellent research of Michener (2010), and McClean (2011) on the spread of FOI laws, but each of these authors focused on a narrower scope of countries and questions — Michener studied only Latin American countries and did not focus on questions of implementation and enforcement after passage, while McClean focused only on advanced, industrialized countries.

Among broader academic studies of transparency, as well as policy and advocacy research on the topic, attention to the political context in which new transparency and accountability emerge is sorely lacking. Further, no studies have attempted to bridge the micro-level principal-agent approach with the macro-level approach of models of global normative dynamics. While most scholars emphasize one of these aspects while obscuring the other, this dissertation seeks to incorporate both into a more unified approach.

The second goal of this dissertation is to use FOI laws as a case with which to test important arguments in international relations and comparative politics. These questions include:

- Why do political actors constrain themselves?
- How are international norms translated into domestic law?

- What are the limits of policy diffusion?

- How do institutions impact global economic flows?

Thus each empirical chapter of this chapter of this dissertation both seeks to explain empirical variation pertaining to FOI laws themselves, nested within a two-stage model of institutionalization, and to test broader arguments using FOI laws as a specific case. Methodologically, this dissertation relies primarily on the quantitative tools of regression analysis. However, several key points throughout are illustrated with case studies, which highlight my arguments at work in individual countries, including South Africa, Pakistan, South Korea, Nigeria, and Bulgaria.

Chapter 2 fully develops my theoretical approach to institutionalizing transparency, building on insights drawn from both principal-agent models and models of global normative dynamics. Chapter 3 seeks to explain variation in the timing of passage of FOI laws around the world, based on both domestic political competition and global diffusion pressures. Chapter 4 seeks to explain variation in the legal design of FOI laws, emphasizing the key role of international NGOs in the translation of global norms into domestic laws. Chapter 5 seeks to explain variation in the strength of FOI laws in practice, emphasizing both the importance of state capacity and commitment, and the surprising ability of local capacity building by transnational advocacy networks to overcome these barriers. Finally, Chapter 6 shows the power of FOI laws which have been doubly institutionalized in both law and practice to have meaningful impacts on global economic flows, in this case foreign direct investment.

Chapter 2

A THEORY OF INSTITUTIONALIZING TRANSPARENCY

Freedom of information laws are a policy innovation to ameliorate political agency problems. They also reflect a cascading global norm of transparency encouraged by international stakeholders. Yet they also represent the goal of a transnational advocacy network made up of local and international non-governmental organizations. The challenge in studying the freedom of information is to combine these three different visions into a single theoretical model. The goal of such a model must be to provide insight into the passage, design, practice, and effects of FOI laws — both in how they vary across countries and in how they fit into established models of political interaction.

Transparency is often conceptualized using a principal-agent model of interaction between a polity's public and its government, or between elected officials and appointed bureaucrats. This dissertation seeks to situate the principal-agent dynamic in a broader model of politics, in which an effective information regime is a surprising outcome given the incentives faced by self-interested politicians. Micro-level principal-agent interactions are embedded in macro-level political contexts, in which both domestic political competition and international normative dynamics play crucial roles. Whether or not new tools of agency control are adopted, and whether or not they are implemented and routinized, are questions which cannot be answered by a principal-agent model alone.

Structural models of global policy diffusion and normative change are often used to explain the spread of new policies and norms around the world. However, these models are also insufficient to explain why so many countries blocked or delayed FOI passage in the face of global pressure, and why there is so much variation in the strength of FOI laws, both *de jure* and *de facto*. This dissertation seeks to integrate these models with the domestic politics of transparency, and highlight the limits of diffusion wherein political actors can block the adoption of new norms, opportunistically take advantage of them, or decouple law from practice.

Building on all of these different approaches, I develop a two-stage model of institutionalization to apply to the global spread of FOI laws. I conceptualize the passage of freedom of information laws as the decision by political actors to institutionalize transparency in a set of rules, procedures, and organizations which are costly to weaken or revoke in the future. However, this first stage of institutionalization is not always complete. Even if there are costs to adopting a FOI law and subsequently failing to fully implement or enforce it, these costs are often outweighed by substantial benefits to political actors, especially in non-democracies or in contexts of weak state capacity. Thus, the second stage of institutionalization refers to the implementation, enforcement, and routinization of transparent norms and practices. Only once this stage is complete will the principal-agent dynamics of transparency be fully operative.

This chapter first introduces two existing sets of theoretical approaches which bear on the global spread of FOI laws — models of principal-agent interaction and models of global normative dynamics. These approaches are very different from each other in a multitude of ways. They come from different disciplinary origins — economics and sociology. They employ different levels of analysis — intra-organizational relationships and global structures. They also are based on different logics of action

— the logic of consequences on the one hand, and various combinations of logics of consequences, appropriateness, and even "arguing" (Risse 2000) on the other. However, in each of these regards, each difference among the approaches helps to usefully highlight certain features of the empirical spread of FOI laws around the world, while at the same time obscuring others. Rather than choosing one approach and ignoring those features of the empirical world which do not fit, this dissertation seeks to chart a middle route between these different approaches. Further, the goal of this dissertation is to better integrate the most important concept missing from both models of principal-agent relationship and global normative dynamics — political power. As such, the final sections of this chapter lay out my own theoretical approach, based on a two-stage model of institutionalizing transparency.

Principal-Agent Models

Principal-agent models are relevant to any relationship where authority has been delegated. A principal delegates some task to an agent who can accomplish it more efficiently, but faces the challenge of not being able to perfectly observe the agent's actions. The agent is assumed to have preferences diverging from those of the principal. The challenge in a principal-agent relationship is to devise mechanisms to incentivize the agent to act in a manner consistent with the principal's preferences.

Applications of the principal-agent model in economics tend to focus on the choice of contractual arrangement which can best minimize two problems (Eisenhardt 1989). The problem of moral hazard involves shirking, a lack of effort on the part of the agent, or the pursuit of individual goals. The problem of adverse selection involves the misrepresentation of ability by the agent, who may claim to have skills or abilities which the principal cannot verify either at the time of hiring or while the agent

is working. The classical formulation of agency theory focuses on the principal's choice between a behavior-based contract (payment based on the agent's actions and performance) and an outcome-based contract (payment based on the easier-to-observe outcomes, even though those outcomes may be the result of other factors than the agent's performance). The principal thus has two options: to monitor the agent by making costly investments in information systems, and then use a behavior-based contract; or to use an outcome-based contract which aligns the preferences of principal and agent but at the price of transferring risk to the more-risk averse agent (Eisenhardt 1989).

Political science applications of principal-agent models have tended to relax some of the assumptions of economic applications (Miller 2005), but have applied the concepts to a wide range of topics and political relationships. In international relations, these include relationships between the public as principal and the executive as their agent in foreign policy matters (Downs and Rocke 1994), and delegation of authority from states to international organizations like the World Bank (Nielson and Tierney 2003, Grigorescu 2010). In American politics, an extensive literature has focused on the problem of bureaucratic oversight, responding to the argument that legislators will be powerless in the face of the expertise and ability to misrepresent on the part of bureaucratic agencies to whom they have delegated authority. Instead, this literature focused on ways in which legislators could align bureaucratic incentives with their own preferences by creating less costly forms of monitoring or empowering third party monitors (McCubbins and Schwartz 1984, McCubbins et al. 1987).

In addition to bureaucratic agencies, the government itself can be seen as the agent of some principal — the voting public in democracies (Barro 1973, Ferejohn 1999, Besley and Burgess 2002) and a selectorate of elites in autocracies (Besley and

Kudamatsu 2007). In both cases, agents have private information about their own activities which are difficult for principals to monitor, potentially leading to corruption and other agency failures. Moe (1984, p. 756-766) summarizes the application of principal-agent models to politics at multiple levels:

> "Democratic politics is easily viewed in principal-agent terms. Citizens are principals, politicians are their agents. Politicians are principals, bureaucrats are their agents. Bureaucratic superiors are principals, bureaucratic subordinates are their agents. The whole of politics is therefore structured by a chain of principal-agent relationships, from citizen to politician to bureaucratic superior to bureaucratic subordinate and on down the hierarchy of government to the lowest-level bureaucrats who actually deliver services directly to citizens. Aside from the ultimate principal and the ultimate agent, each actor in the hierarchy occupies a dual role in which he serves both as principal and as agent."

The principal-agent model is commonly used to conceptualize transparency in general (Holmström 1979, Besley and Burgess 2002, Kaufmann and Bellver 2005, Breton et al. 2007) and freedom of information in particular (Cain et al. 2003, Bauhr et al. 2010, McClean 2011). By enabling citizens (the principal) a new means of monitoring their government (the agent), transparency increases the ability of the principal to observe the activities of the agent and the consequences of those activities. This increases the risk that actions not in the interests of the principal will be detected, which has two follow-on effects. The risk of exposure both deters wrongdoing by current and future agents, and increases the risk that wrongdoing which does occur will be punished. These effects apply to relationships between

citizens and agents at multiple levels — the government as a whole, specific leaders and parties, bureaucratic agencies, and even individual low-level officials. It is through these mechanisms that transparency is expected to lead to less corruption and better governance. Not all claims that transparency leads to better governance explicitly use the language of principal-agent models (Florini 1999, Stiglitz 2002, Banisar 2006, Hood and Heald 2006), but most rely on at least a similar logic of empowering the public with increased access to information about their government.

Many scholars have tested and found empirical support for this model in a variety of contexts (Besley and Burgess 2002, Blumkin and Gradstein 2002, Besley 2006, Islam 2006). Others have questioned the assumption that transparency will lead to better governance in all circumstances, identifying different potential scope conditions (Prat 2005, Lindstedt and Naurin 2010, Malesky et al. 2011). The primary focus of this dissertation, however, is not on whether or not transparency mechanisms work according to the expectations of principal-agent models.

Rather, my focus is on explaining how those mechanisms come to be in the first place. This is a question which the principal-agent model is ill-equipped to answer. Indeed, if transparency mechanisms increase the ability of principals to monitor their agents, and reduce the ability of agents to use public office to pursue private gain, then those agents should uniformly oppose such mechanisms. And yet nearly all real-world transparency mechanisms have been adopted by political agents themselves. Even in situations of mass public demand for transparency, politicians have exhibited an ability to block or delay the adoption of new policies which reduce their ability to keep secrets by empowering citizens with new tools of access to government information. That is, even when principals demand transparency, agents can usually use their delegated authority to refuse or blunt those demands. Understanding the origins of

new mechanisms of agency monitoring requires understanding the structures of power in which these institutions are embedded (Moe 2005).

Few attempts have been made to explain how political agents might find it in their interests to subject themselves to new mechanisms of accountability. Ferejohn (1999) argued that political agents may make themselves more accountable to their principals in order to gain more resources or political support. He shows how, in a principal-agent model, the agent could be better off by offering the principal a contract allowing greater monitoring, as the principal would be willing to allocate more resources to the principal under such a scenario. However, this model has two shortcomings. First, it assumes that promises of transparency are credible. This is at odds with the reality that election-time promises of transparency are rarely held to after the fact, and that unilateral, centralized practices of government transparency are easy to alter, remove, or subvert. It also ignores the presence of opposition groups competing for political control.

Thus, in attempting to apply the principal-agent model to the spread of FOI laws around the world, we are left with a puzzle. If FOI laws enable political principles to better monitor their agents, thereby increasing the risk and reducing the returns to corruption and other misuse of public office for private gain, why would political agents ever choose to constrain themselves in such a manner?

Global Normative Dynamics

Many scholars in multiple disciplines have focused on the global normative dynamics of how new policies arise, spread, and shape domestic practices around the world. The "world society" approach in sociology sees organizational forms as emanating from world-cultural models which define what is legitimate and appropriate behavior

for modern states (Meyer and Rowan 1977, Meyer at al. 1997). Research in this school has studied how the salience of global models and national embeddedness in the world society of international organizations — both state and non-state — drives the adoption of institutions and policies as far afield as women's suffrage (Ramirez et al. 1997), environmental ministries (Frank et al. 2000), international human rights treaties (Hafner-Burton and Tsutsui 2005), and the regulation of sexual activity (Frank et al. 2010).

However, while this approach expects a great deal of similarity in *de jure* policies around the world, it does not expect the same of *de facto* practices. Meyer et al. (1997, p. 151-152) summarize their argument:

> "First, nation-states exhibit a great deal of isomorphism in their structures and policies. Second, they make valiant efforts to live up to the model of rational actorhood. Third, and partly as a result of the second observation, they are marked by considerable, and sometimes extraordinary, decoupling between purposes and structure, intentions and results."

Decoupling is a powerful concept to apply to the disjuncture between law and practice in many areas of policy, freedom of information included. But as conceptualized by world society scholars, decoupling is a matter of capacity and resources alone for states which nonetheless make "valiant" attempts to match words with practices. This conception leaves out the potential for opportunistic adoption of legitimate, appropriate policy models in order to enjoy expressive benefits while avoiding changes in practice.[1] The world society approach is also explicitly structural, omitting any role

[1]See Hathaway's (2002) approach to expressive benefits in the ratification of international human rights treaties.

for the agency of either domestic political actors or transnational advocacy networks to shape the path of global norms.

Finnemore and Sikkink (1998) developed a model of the norm "life cycle" with three stages — norm emergence, norm cascade, and norm internalization. While their model incorporated non-state actors like transnational advocacy networks as key norm entrepreneurs in the emergence of new norms, it saw much less role for them at the cascade stage, and none at all at the internalization stage. Their model also gave no focus to the potential for decoupling between norms and practice, or to the potential for domestic political incentives to either block or take advantage of new norms.

Specifically in the context of human rights norms, Risse and Sikkink (1999) developed a "spiral model" of state socialization into international norms, comprising stages of repression, denial, tactical concessions, prescriptive status, and rule-consistent behavior. This model explicitly incorporates the possibility of opportunistic, superficial adoption of a norm without concomitant changes in practice, and emphasizes the extreme difficulty in reaching the "institutionalization and habitualization" of the final stage. The authors posit that this is most likely to occur through combined pressure from domestic, transnational, and international norm advocates.

Other authors, writing directly on transnational advocacy networks (or any number of related terms referring to coalitions of domestic and international NGOs and other civil society groups around the world), have offered different models of how they impact domestic politics, including shaping global norms and institutions (Price 1998, Florini 2000, Charnovitz 2006), "naming and shaming" norm-violating states (Keck and Sikkink 1998, Hafner-Burton 2008), persuasion through social interaction (Checkel 2001), or by "manipulating governing structures of global civil society"

(Wapner 1995, 320).

The literature on policy diffusion on international relations has sought to answer related questions of why, and how, policies and practices spread around the world, building on the original work of Everett Rogers (1962), who defined diffusion as "the process by which an innovation is communicated through certain channels over time among members of a social system." This literature situates global normative dynamics as only one set of explanations, along with coercion, competition, conditionality, learning, and others (Simmons, Dobbin, and Garrett 2006; Weyland 2005). Many debates in the policy diffusion literature have centered over the precise nature of the channels among countries through which policies and practices diffuse. These channels can include geographic proximity (Gleditsch and Ward 2006), shared language, religion, or colonial history (Simmons and Elkins 2004), observation of policy outcomes (Simmons and Elkins 2004, Lee and Strang 2006, Gilardi 2010), presence at international conferences (True and Mintrom 2001), the practices of fellow members in inter-governmental organizations (Pevehouse 2002, Greenhill 2010), and various types of economic linkages (Prakash and Potoski 2006, Greenhill et al. 2009, Cao and Prakash 2010). Few of these studies, however, take into account the potential limits of diffusion by focusing on how domestic politics can block or enable the spread of new policies, or lead to decoupling between law and practice.

Thus, in attempting to apply theories of global normative dynamics to the spread of FOI laws around the world, we are left with a dizzying array of potential models to choose from, each offering a different mixture of structure and agency, ideas and interests, teleology and contingency, decoupling and opportunism, and varying roles for domestic politicians and transnational non-state actors. Each model can shine a light, so to speak, on different relevant empirical facts. Yet no single existing

approach satisfactorily explains precisely how global normative dynamics interact with domestic politics, just how much agency transnational advocacy network have vis-à-vis domestic and global structures, or why there is so much variation in the timing of passage, institutional design, and strength in practice of FOI laws across countries.

A Two-Stage Model of Institutionalizing Transparency

Principal-agent models of transparency present a puzzle of why self-interested political actors ever adopt FOI laws, given that they increase political principals' ability to monitor their activities and increase the risks of exposure of corruption or other wrongdoing. Norm cascade, world society, and other models of global normative dynamics present a puzzle of why they resist, given the many different mechanisms of social pressure favoring adoption. No model seems to satisfactorily explain the mixed bag of opposition, opportunism, and genuine commitment that seems to exist across countries in terms of the passage, design, and practice of freedom of information.

In between the micro-level dynamics of the principal-agent model and macro-level dynamics of global normative approaches, I seek to develop a theory of how the state responds to these inner and outer demands for transparency in a manner consistent with the incentive structures of self-interested political actors themselves. While this relies on a rationalist conception of political actors, I also do not rule out the role of global normative dynamics, which can enter into those incentive structures by shaping the goals, strategies, and reactions of other actors, both domestic, transnational, and international. My approach seeks both to bring power and politics into the principal-agent framework, the agency of both domestic political actors and transnational advocacy networks into global normative dynamics, and a clearer sense

of limits to the study of policy diffusion

The key to this model is two different stages of institutionalization. Each stage refers to a subtly different meaning of the word "institutionalized." To make clear the differences between the two stages of institutionalization, a brief foray into semantics is worthwhile. Just as the term "institution" has had an almost endless variety of usages in international relations and comparative politics (let alone a multitude of other disciplines), and just as the term "institutionalism" can refer to a multitude of different theoretical perspectives, some of them at odds with each other on important points, so too does the term "institutionalized" have different meanings. The Oxford English Dictionary lists several definitions of the adjective "institutionalized." Of these, two are relevant here (with emphasis added):

- "Of a group or category of people, an organization, etc.: constituting or considered as an institution. Of a policy, course of action, etc.: carrying the mandate or authority of an institution, esp. in doctrine or law."

- "Of an attitude, pattern of thought or behaviour, activity, etc.: established in practice or by custom and usage; (in later use, freq. with negative connotations) endemic."

The first of these is *de jure* institutionalization — the establishment of an institution in laws or other rules. The second, on the other hand, is *de facto* institutionalization — the implementation, enforcement, and routinization of those rules in regular practice. Indeed, these two definitions align with a general distinction between formal and informal institutions. In making such a distinction, Douglass North (1990, 4) wrote: "Institutions include any form of constraint that human beings devise to shape human interaction. Are institutions formal or informal? They can be either, and I

am interested in both formal constraints — such as rules that human beings devise — and in informal constraints — such as conventions and codes of behavior." However, as Bratton (2007, 96-97) notes, "most practitioners of the new institutionalism disregard North's qualification and focus only on formal institutions." Indeed, Levitsky and Murillo (2009, 116) warn against equating "parchment rules" with institutions, since "although these assumptions often hold up well in studies of advanced democracies, where underlying rule-making frameworks are stable and effective states ensure that most rules are regularly enforced, they do not travel as well to the developing world."

In the case of FOI laws, the first stage refers to the passage of laws to institutionalize the freedom of information in law on the books. The key importance of this stage is that institutionalization creates a credible commitment to transparency through two related mechanisms: By raising the costs to subsequently weakening transparent practices, and by empowering new domestic actors to serve as a constituency in favor of greater transparency. The second stage refers to the institutionalization of FOI laws in practice by being implemented, enforced, and widely used. While implementation and enforcement are expensive and inconvenient, domestic and international pressure and local capacity building can make up for a lack of state capacity and potentially overcome a lack of commitment by the state. The next sections explain these stages in greater detail.

Freedom of Information Laws as Credible Commitment

How do FOI laws raise the costs to subsequent weakening of transparency? FOI laws not only grant members of the public the right to access government information, they also institutionalize a set of rules and procedures that bind future governments

to maintain that right. Indeed, it is telling that no FOI law has ever been revoked. Transparent practices can, of course, exist in the absence of FOI laws. But in such a case there is less assurance that those practices will be sustained in the future or implemented in an impartial way. For example, Argentina's "Presidential decree" for access to information is widely criticized as ineffective compared to the FOI laws of other Latin American countries (Pinto 2009). Former Nigerian President Obasanjo's promises of transparency and anti-corruption when he took office in 1999 were rapidly superseded by political contingencies, and either went un-implemented or were used as tools to target political rivals (Obe 2007).

What such costs do FOI laws generate to future revocation, weakening, or failure to implement or enforce transparent practices? First, the fact that they are written into law makes transparent practices more binding on future governments, as they cannot be so easily weakened or revoked in the future without generating widespread attention and criticism in the form of domestic and international audience costs (Fearon 1994, Lohmann 2003). Even opportunistic passage of a FOI law followed by failure to implement and enforce it can lead to naming and shaming from transnational advocacy networks, pressure from international institutions, and other actors. Second, FOI laws are implemented (if indeed they are) in numerous individual agencies, through new operating procedures and personnel such as information officers. This agency-level implementation is not only more difficult to root out at a later date, but also keeps most routine disclosure decisions out of the executive's hands.

FOI laws also generate new constituencies and empower new actors. By granting all citizens the right to request government documents, FOI laws create a vastly larger constituency than policies limited to specific issue areas such as environmental

or fiscal transparency, or limiting information requests to legally interested parties. This constituency represents a large body of actors who could potentially retaliate against political actors for revoking or substantially weakening access to information. FOI laws can also empower new actors with tools to impact domestic politics. These include direct tools, such as attempting to make information requests and appeal denials even in countries with FOI laws which are poorly implemented and enforced, and indirect tools, such as making appeals to transnational advocacy groups and international institutions for assistance or even pressure, similar to Keck and Sikkink's (1998) "boomerang model." Even individual information commissioners appointed to oversee otherwise weak FOI laws have, in some cases, turned out to be powerful advocates, using their expertise and limited position to push for greater transparent practices after passage.

A key point to emphasize is that even though not all FOI laws are fully implemented and enforced in practice, passage can still be considered a credible commitment to transparency. Credibility exists on a continuum, not as a dichotomy. Even though passage of a FOI law increases costs to subsequent weakening of transparent practices, those costs must be weighed against other factors which may still prevail. Yet by increasing the costs nonetheless, FOI laws make state commitments to transparent practices more credible than they could be otherwise. And by empowering new actors, FOI laws can even qualitatively change the nature of domestic political interaction over transparency issues.

Two brief cases, from South Africa and Pakistan, serve to illustrate these arguments. One of the most high-profile attempts to date to roll back a FOI law is ongoing in South Africa. The ruling African National Congress (ANC) party has been attempting since 2008 to pass a Protection of Information (POI) bill which

would substantially weaken the 2000 Promotion of Access to Information Act by making it far easier for officials to classify information as secret or otherwise exempt it from disclosure, weakening the appeals process, and instituting harsh punishments for whistleblowers or journalists who publish classified information. The bill has been opposed by hundreds of domestic and international NGOs, prominent individuals such as Archbishop Desmond Tutu, U2 singer Bono, and several Nobel laureates, and even by domestic groups like the Congress of South African Trade Unions which historically are ANC supporters.[2] A plea from the editors of a major newspaper called it "the first piece of legislation since the end of apartheid that dismantles an aspect of our democracy."[3]

Four years after its introduction, the bill has been passed by the lower house of South Africa's parliament but remains mired in debate in the upper house, while several of the most offending provisions have been slightly weakened. Most recently, South Africa "received widespread international condemnation" over the bill, after South Africa submitted a report to the UN Human Rights Commission.[4] At the meeting of a Commission working group, representatives of the United States, Canada, Czech Republic, Germany, Norway, Poland, Portugal, Sweden and Switzerland all expressed concern over the bill. Even if the POI bill is ultimately passed, the difficulty the ANC is facing in attempting to weaken the FOI law is testament to its institutionalization.

In Pakistan, the 2002 Freedom of Information Ordinance is usually considered a

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[2]See http://www.freedominfo.org/2010/08/campaign-kicks-off-against-south-african-foi-proposal and http://www.freedominfo.org/2011/02/tensions-arise-over-protests-against-anc-secrecy-bill. Last accessed May 20, 2012.

[3]See http://www.timeslive.co.za/politics/2011/11/22/editors-plea-on-secrecy-bill. Last accessed June 8, 2012.

[4]See http://www.guardian.co.uk/world/2012/jun/13/south-africa-secrecy-bill-un-condemnation. Last accessed June 14, 2012.

"window dressing" law (Commonwealth Human Rights Initiative 2003) passed largely at the behest of international lenders.[5] However, this has not stopped civil society groups from attempting to make information requests, on rare occasions with results, and reporting their successes and failures to other members of the transnational advocacy network. For example, the civil society group Centre for Peace and Development Initiatives reported the results of a June 2008 request for information about fees paid to lawyers representing the federal government before the Supreme Court. The denial of the request was covered in several newspapers, ultimately leading to partial disclosure which generated negative press for President Musharraf in the weeks prior to his August 2008 resignation (CPDI 2011). Individual officials have also been hailed for their commitment to transparency. On his retirement, the Secretary of the Election Commission of Pakistan (ECP) was hailed for having "turned the ECP into an 'island of free access to information' in a sea of secrecy," while most other agencies routinely ignored or denied all requests.[6]

The case of South Africa highlights the costs a government must face in trying to subsequently weaken a FOI law, even if those costs are ultimately overcome. Indeed, the ANC government clearly has interests in weakening what has become an incon-

[5]In July 2001, the newspaper DAWN reported that the law was one of seventeen conditions for a $130 million Asian Development Bank loan to support "administrative, judicial and police reforms." See http://www.lib.virginia.edu/area-studies/SouthAsia/SAserials/Dawn/2001/jul2801.htmltoen, last accessed June 8, 2012. A 2002 "letter of intent" from the government of Pakistan to the IMF, which "describes the policies that Pakistan intends to implement in the context of its request for financial support from the IMF", includes the following: "The reform of police and the judiciary under an AsDB [Asian Development Bank]-supported program is off to a good start with improved allocations for police and judicial reform in this year's provincial budgets; preparation of a draft 'Freedom of Information' Act; and passage of a police ordinance clarifying the role and powers of the police consistent with devolution, including the constitution of local citizen boards to enhance oversight over the local police." See http://www.imf.org/external/np/loi/2002/pak/03/index.htm, last accessed June 8, 2012.

[6]See http://www.thenews.com.pk/Todays-News-13-13709-A-bureaucrat-who-retired-honourably-with-his-head-high, last accessed June 8, 2012.

venient law. In the words of South African Nobel laureate Nadine Gordimer, "it is quite obvious why this bill has come about — the government is making no attempt to hide the truth that its intention is to aid the cover-up of corruption."[7] Yet the mobilization of domestic civil society and political opposition, and the generation of international and domestic audience costs, are at least slowing down if not fully halting the POI bill's progress. The case of Pakistan highlights the ability of even an opportunistically-passed "window dressing" law to empower civil society groups and individual bureaucrats to use the FOI law to create a constituency for transparency which may become more powerful over time.

Political Uncertainty and the Passage of FOI Laws

If FOI laws serve as a credible commitment to transparency, how does this explain their passage? If FOI laws are difficult to subsequently revoke or weaken after passage, should this not create even more reasons for self-interested political actors to oppose them? Yet this is not always the case. The very fact of institutionalization, combined with the nature of political uncertainty, means that under certain circumstances it can be in the interests of political actors to institutionalize transparency.

Political uncertainty means that while "some actors may be very powerful today they cannot count on maintaining their positions of power in the future" (Moe 1990). There are two mechanisms by which uncertainty can create incentives for the passage of FOI laws. First, political actors facing high uncertainty over future political control can pass FOI laws as an attempt to make a more credible commitment to future transparency in the eyes of voters or other principals. Second, when ruling parties face substantial uncertainty over whether they will hold power in the future, they can

[7]See http://www.guardian.co.uk/world/2012/jun/06/south-african-campaigners-secrecy-bill. Last access June 8, 2012.

institutionalize transparency as a form of insurance (Ramseyer 1994, Ginsburg 2003, Alt et al. 2006). FOI laws can ensure that they will not be shut out of access to government information in the event that they lose office, and can allow them greater tools to monitor the activities of those subsequently in power. The same costs which make FOI laws binding on themselves make them equally binding on any new set of political elites which should replace them. I argue that these political incentives for FOI passage will be greater when the political environment is more competitive, creating greater uncertainty over future control. It is the very institutionalization of FOI laws which, under such circumstances, can make the passage of an FOI law in the interests of political actors. Chapter 3 of this dissertation develops this approach in greater detail and supports it with empirical evidence from a quantitative study of the timing of passage of FOI laws across countries.

Translation, Opportunism, and the Design of FOI Laws

However, even given the decision by political actors to pass a FOI law, there is room for opportunism in the translation of international norms of freedom of information into domestic law. After all, FOI is not a treaty that nations choose whether or not to ratify, but rather a law which can vary in institutional design, in terms of scope, procedures, exemptions, sanctions for non-compliance, and other features. The translation of international norms into concrete policies can entail substantial conflict and contention, even among supporters of a given norm (Berliner and Prakash 2012). International non-governmental organizations, however, can serve as key normative agents in persuading political actors to pass stronger *de jure* laws than they otherwise would. Indeed, this is an activity for non-state actors which is not predicted in Finnemore and Sikkink's (1998) cascade model of norm life-cycles. Chapter 4 of this

dissertation develops this approach in more detail, describes the variation in design of FOI laws across countries, and shows evidence for the key role of international NGO persuasion in a quantitative model of legal design strength.

Capacity, Commitment, and the Practice of FOI Laws

Implementation and enforcement are expensive and inconvenient. They require both state capacity (to avoid decoupling) and commitment (to avoid late-stage opportunism). Despite the costs to political actors in failing to implement or enforce FOI laws in practice, these costs are sometimes outweighed by other considerations, especially in less developed or less democratic countries. However, in addition to the ability of international and domestic pressure to help "ratchet up" the practice of transparency (in cases like Pakistan) or prevent the state from "ratcheting down" those practices (in cases like South Africa), local capacity building by transnational advocacy networks can also play a key role. Local civil society groups with access to transnational resources and knowledge can undertake to promote awareness of FOI laws, train journalists, civil society, and individuals on how to use the laws and government officials on how to comply with them, and use legal strategies to strengthen the laws and assist denied requesters. These activities can be especially productive in countries which lack the state capacity to effectively conduct many of these activities themselves. Chapter 5 of this dissertation develops this approach in more detail, describes variation across countries in the implementation and enforcement of FOI laws in practice, and offers both a quantitative model of FOI practice and a case study of the role of one particularly active local NGO in Bulgaria.

The Transformative Promise of Effective FOI Laws

International norms of transparency, human rights, and good governance — once institutionalized — constrain the discretion of political actors with regard to FOI laws. FOI laws, by institutionalizing transparency, limit the discretion of political actors with regard to transparent practices. And transparent practices, finally, limit the actual discretion of political actors to abuse their office, by enabling better monitoring by their agents. Only by being doubly institutionalized — both in the *de jure* sense and in the *de facto* sense — can transparency be an effective tool of better governance. Chapter 6 tests these expectations by investigating whether or not — and which — FOI laws have an impact of foreign direct investment flows in developing countries. If FOI laws which are doubly institutionalized indeed provide new tools for political principals to monitor their agents, thereby deterring corruption and leading to better governance, then we should be able to observe meaningful effects on economic flows which have been shown to respond to political institutions. Indeed, I offer evidence that FOI laws which meet these criteria do lead to greater foreign direct investment.

Chapter 3

THE POLITICAL ORIGINS OF TRANSPARENCY

Introduction

Why do political actors establish institutions which constrain themselves? Over the past several decades, more than eighty countries have passed freedom of information (FOI) laws, which institutionalize transparency by creating legal guarantees of individuals' right to request government information, and requiring government officials to respond. While FOI laws have been praised for increasing transparency, accountability, and trust (Banisar 2006, Birkinshaw 2006, Florini 2007, Mendel 2008), they impose substantial costs on the political actors who must choose to institute them. Transparency impedes their ability to keep secrets, to obfuscate on policy issues, and above all to use public office for private gain. For corrupt political actors, transparency both increases the risk of exposure of past wrongdoing and decreases the expected utility of future wrongdoing. And yet political actors in numerous countries have passed FOI laws which subject themselves to these costs. This chapter argues that political uncertainty is the key factor driving the passage of these laws. Under conditions of uncertainty over future political control, political actors can pass FOI laws as a means of institutionalizing transparency, in order to make a more credible commitment to future transparency in the eyes of voters, and in order to bind their political opponents to transparency in the event that they should take power.

While FOI laws were passed primarily in developed countries through the 1980s, since the end of the Cold War they have spread rapidly through the developing world,

in both democracies and non-democracies, and even in countries with high levels of corruption. This chapter seeks to explain both the cross-national variation in the timing of FOI passage, and the puzzling question of the incentives of political actors involved. Such explanation requires taking into account the fact that the freedom of information brings not just costs, but also benefits.

Principal-agent models have commonly been used to understand the benefits to society of transparency and accountability mechanisms (Barro 1973, Przeworski et al. 1999, Besley and Burgess 2002). However, it is difficult to reconcile such models with the actual decisions by political actors to bind themselves with those mechanisms. Although Ferejohn (1999) has argued that political agents may make themselves more accountable to their principals in order to gain more resources or political support, this model has two major shortcomings: it ignores the presence of opposition groups competing for political control, and it assumes that promises of transparency are credible. Instead, I argue that political uncertainty is the key to explaining circumstances under which political actors themselves can benefit from new mechanisms of agency control.

Political uncertainty means that while "some actors may be very powerful today they cannot count on maintaining their positions of power in the future" (Moe 1990). There are two mechanisms by which uncertainty can create incentives for the passage of FOI laws. First, political actors facing high uncertainty over future political control can pass FOI laws as an attempt to make a more credible commitment to future transparency in the eyes of voters or other principals. Second, when ruling parties face substantial uncertainty over whether they will hold in power in the future, they can institutionalize transparency as a form of insurance (Ramseyer 1994, Ginsburg 2003, Alt et al. 2006). FOI laws can ensure that they will not be shut out of

access to government information in the event that they lose office, and can allow them greater tools to monitor the activities of those subsequently in power. These political incentives for FOI passage will be greater when the political environment is more competitive, creating greater uncertainty over future control. In both of these mechanisms, the key feature of FOI laws is not simply that they are a mechanism of transparency and accountability, but that they institutionalize transparency in sets of rules and procedures which are more difficult to revoke or weaken in the future than mere promises of transparency. That is, FOI laws make commitments to transparency more credible.

In addition to political uncertainty, we must also understand the role of international diffusion pressures in driving the passage of FOI laws. Political actors considering passage are often embedded in an international environment in which transparency in general, and FOI laws in particular, have become increasingly viewed as effective and legitimate tools of good governance. States may thus pass FOI laws simply as a form of symbolic position-taking, expressing values which other actors consider appropriate, in a manner similar to theories of expressive passage of human rights treaties (Hathaway 2002, Simmons 2009).

I find robust support for these arguments using an event history model of the timing of FOI law passage across countries. Understanding the political benefits of FOI passage can help us explain the puzzling nature of political actors' incentives to institutionalize transparency at substantial political cost to themselves. As global attention to transparency grows, it is increasingly essential to understand the political incentives involved.

Freedom of Information Laws

Freedom of information laws, also sometimes called access to information or right to information laws, give "citizens, other residents, and interested parties the right to access documents held by the government without being obliged to demonstrate any legal interest" (Ackerman and Sandoval-Ballesteros 2006). FOI laws are designed to guarantee government transparency by giving individuals the ability to request information or records from government bodies and requiring officials to respond.

The first FOI law was passed in Sweden in 1766, requiring that official documents "immediately be made available to anyone making a request" (Banisar 2006). The canonical FOI law, however, is the United States' Freedom of Information Act, passed by Congress in 1966. Following passage in the United States, other states in both the developed and developing worlds passed similar laws at an increasingly rapid rate. There is surprising variation in the timing of passage across countries, which does not clearly line up with regime type or development. France, the Netherlands, Australia, New Zealand, and Canada all passed laws between 1978 and 1982, but the United Kingdom and Germany did not until 2000 and 2005, respectively.

Colombia was the first developing country to pass a FOI law, passing the Disclosure of Official Acts and Documents law in 1985. The next FOI laws to be passed outside of the developed world were in Eastern Europe, with Hungary and Ukraine both passing them in 1992. Passage of FOI laws subsequently spread to every region of the world, such that by the end of 2008 they had been passed by 78 countries. Today FOI laws have been passed by countries on five continents, including both democracies and non-democracies. See Table 3.1 for a list of countries with years of passage.

Freedom of information laws are a costly proposition for political actors. They curtail their ability to use public office to pursue private gain by increasing the like-

Country	Year	Country	Year
Sweden	1766	Bosnia and Herzegovina	2001
Finland	1951	Panama	2001
United States of America	1966	Poland	2001
Denmark	1970	Romania	2001
Norway	1970	Angola	2002
France	1978	Jamaica	2002
Netherlands	1978	Mexico	2002
Australia	1982	Pakistan	2002
Canada	1982	Peru	2002
New Zealand	1982	Tajikstan	2002
Colombia	1985	Zimbabwe	2002
Greece	1986	Armenia	2003
Austria	1987	Croatia	2003
Italy	1990	Kosovo	2003
Hungary	1992	Saint Vincent and the Grenadines	2003
Ukraine	1992	Slovenia	2003
Portugal	1993	Turkey	2003
Belgium	1994	Antigua and Barbuda	2004
Belize	1994	Dominican Republic	2004
Iceland	1996	Ecuador	2004
Lithuania	1996	Serbia	2004
South Korea	1996	Switzerland	2004
Ireland	1997	Azerbaijan	2005
Thailand	1997	Germany	2005
Uzbekistan	1997	India	2005
Israel	1998	Montenegro	2005
Latvia	1998	Uganda	2005
Albania	1999	Honduras	2006
Czech Republic	1999	Macedonia	2006
Georgia	1999	China	2007
Japan	1999	Jordan	2007
Liechtenstein	1999	Kyrgyzstan	2007
Trinidad and Tobago	1999	Nepal	2007
Bulgaria	2000	Nicaragua	2007
Estonia	2000	Bangladesh	2008
Moldova	2000	Chile	2008
Slovakia	2000	Guatemala	2008
South Africa	2000	Indonesia	2008
United Kingdom	2000	Uruguay	2008

Table 3.1: Countries which had passed freedom of information laws through the end of 2008, with years of passage.

lihood that corrupt actions will become public. They limit the range of actions that both elected and unelected political actors can take to pursue survival in office. They also limit the extent to which political actors can obfuscate on policy and policy-making matters. Indeed, the dominant understanding of FOI laws in the existing literature is that they are vehemently opposed by political actors, and must be forced on them in a valiant struggle by local and international civil society advocates (Ackerman and Sandoval-Ballasteros 2006, Banisar 2006, Florini 2007, Puddephatt 2009). This conventional wisdom regarding the interests of political actors is best expressed by Ackerman and Sandoval-Ballasteros (2006, p.121):

> "Although in the long run they [FOI laws] significantly improve governance, they do not represent an immediate benefit for those who are in power. FOI laws open the government to external scrutiny, making elites much more vulnerable to outside criticism and significantly empowering civil society. There are numerous individual freedom of information pioneers within governments throughout the world. But government leaders 'as a group' do not favor FOI laws because it is not in their interests to do so."

However, while civil society campaigns for FOI laws were dramatically successful in some countries, in many others those same campaigns persisted for decades without success. Michener (2011a) provides a good summary of three success stories for civil society campaigns — Mexico, India, and Bulgaria — alongside continued defeat and delay in Brazil and Argentina.[1] Other scholars have focused on other explanatory factors for variation in where and when FOI laws were passed, but still tend to con-

[1]Brazil recently passed a FOI law, signed into law on November 18, 2011.

ceptualize the incentives for FOI passage as arising outside of the domestic political system. Grigorescu (2003) emphasizes pressure from international organizations providing competing sources of information in his study of FOI laws in Eastern Europe. Roberts (2006) emphasizes a combination of pressure from international institutions and transnational activists and the increasingly important role of transparency as a global norm.

More recent work has addressed the role of domestic politics more directly. Michener (2011b) argues that presidential strength is a key factor explaining the timing of passage and the strength of FOI laws in Latin America. However, he sees the main impact of presidential strength in the ability to delay and resist the passage of FOI laws — where weak presidents are more likely to prove unable to resist pressure arising from other domestic or international actors. McClean (2011) sees different political configurations as likely to lead to the passage of FOI laws under different circumstances, but finds that among developed democracies two-party competition and presidential systems are more likely to lead to open political opportunity structures. While all of these works offer nuanced and important explanations, they share a tendency to see the passage of FOI laws as part of a "big push" by various international and domestic stakeholders, while unwilling political actors can either succeed or fail in resisting their pressure. I argue that, while these stakeholders have all played important roles, we can better understand the passage of FOI laws by shifting the focus to political actors themselves, and seeking to identify the circumstances under which FOI passage can be in their interests, rather than simply pressured upon them by other actors.

An important concern, however, is whether FOI passage is genuinely a result of political uncertainty, or simply tends to follow democratic transitions or similar

political openings, as in Moravscik's (2000) argument for the case of the European Convention on Human Rights. However, while in some countries FOI laws were passed following the end of a period of dominance by a single party,[2] this factor alone fares poorly at explaining the timing of FOI passage across countries. Most FOI laws were not passed under such circumstances, and many newly elected leaders who promised to pass FOI laws failed to do so, or delayed for long periods of time. Instead, political uncertainty best explains the timing of FOI passage in comparison with timelines of political turnover.

To highlight the role of political uncertainty, we must look to cases where the political competitiveness increased even while the governing party remained in power. The cases of South Korea and Nigeria illustrate the plausibility of the role of insurance incentives in cases where the political environment became more competitive yet incumbent parties retained control of the executive. While we are unlikely to observe political actors explicitly making insurance arguments in favor of FOI laws (such public admissions of vulnerability should be extremely rare), comparing the chronology of the laws' development and passage with changes in the political environment can illustrate the argument and provide anecdotal support to the results of quantitative models.

South Korea

In South Korea, the Act on Disclosure of Information by Public Agencies was enacted on December 31, 1996 (Banisar 2006). However, the history of the law and the timing of its passage highlight the importance of political competition and uncertainty.

[2]Mexico's law, for example, was passed in June 2002, less than two years after the July 2000 elections won by the National Action Party (PAN), the first time in 71 years that the office had not been held by the long-dominant Institutional Revolution Party (PRI). However, the PAN at first promoted a weak draft law, while the PRI supported a stronger draft (Pinto 2009).

Indeed, Hong (2000, p. 54) noted that the law was "the culminating point in the development towards the legal guarantee of freedom of information, though it was relatively late and delayed considering the growing popular pressure for institutionalizing free access to information."

In 1987, a democratic transition took place as President Chun Doo-Hwan, a former general who had come to power in a 1980 coup, agreed to leave office and accede to the outcome of elections. However, Chun's ally Roh Tae-Woo won the presidential election as the two main opposition candidates split much of the vote. In 1989, the Constitutional Court ruled that there was a constitutional right to information, arguing that fulfillment of the constitutional right to freedom of expression required access to government information (Youm 1994, Banisar 2006, Peled and Rabin 2011). However, as with many similar court rulings in other countries, specific implementing legislation by the government was required to actually create the information regime called for in the court ruling. Also in 1989, the Korean Public Law Association prepared a draft FOI law, the first time such a law had been proposed (Sung 2009). Other NGOs advocated for similar drafts, including the Citizens Coalition for Economic Justice (Sung 2009).

During the 1992 presidential campaign, both Roh Tae-Woo and the two opposition candidates made promises to enact a FOI law once elected (Sung 2009, Lee and Moon 2011). The election was won by Kim Young-Sam, who became the first civilian president in decades. Nonetheless, although he pledged a massive anti-corruption campaign, embarked on many economic and political reforms, and arrested his two predecessors on corruption charges, passage of a FOI law was delayed for several years until political conditions changed. The government published "Guides for Managing Disclosure of Administrative Information" in March 1994, but this was simply

a proclamation with no actual effect (Sung 2009). While a committee to draft legislation was organized in July 1994, and the law was submitted to the national assembly in 1995, actual passage of the law was delayed (Sung 2009, Lee and Moon 2011).

In the April 1996 parliamentary elections, three years into Kim Young-Sam's five-year term, his ruling New Korea Party (formerly the Democratic Liberal Party) lost its absolute parliamentary majority. In the December 1997 presidential elections following the Asian financial crisis, his party (he was constitutionally limited to a single term), now renamed the Grand National Party, was defeated and opposition leader Kim Dae-Jung was elected.

The timing of the law's passage is illustrative of the role of political competition and uncertainty. While Kim Young-Sam's party's control of both the executive and legislative branches prior to the April 1996 elections could have allowed more rapid passage of the information disclosure law, passage was delayed until December 1996. The law was passed only once the strong electoral performance of the opposition signaled a more competitive political environment and greater uncertainty over the outcome of the upcoming presidential elections for the ruling party. Passage was not, however, delayed until the next administration. This pattern of timing — after gains by opposition parties but before any turnover in executive control — is consistent with explanations based on incentives for insurance. While numerous factors likely played a role in the specific timing of the information disclosure law's passage, the insurance argument highlights the ruling party's interest in insurance: Binding a future government not to deprive them of access to government information, and institutionalizing oversight that might impede any potential future government predation.

Nigeria

A similar pattern can be seen in Nigeria, where the Freedom of Information Act was signed by President Goodluck Jonathan on May 28, 2011, over eleven years after a similar law was first submitted to the country's legislature in 1999. Civil society activity on the issue in Nigeria actually began in 1993, when three NGOs — Media Rights Agenda, Civil Liberties Organisation, and the Nigeria Union of Journalists — began working together to campaign for enactment of a FOI law, producing the first draft law in 1994 (Media Rights Agenda 2003). Despite a series of workshops with other civil society groups, and subsequent draft laws, the campaign was unable to make any progress under the military rule of Sani Abacha. The Executive Director of the Civil Liberties Organisation was even among those jailed by the Abacha regime (Obe 2007).

Work on the issue began again during the transition period following Abacha's 1998 death. In March 1999, Media Rights Agenda joined with the Nigerian National Human Rights Commission and the international NGO Article 19 to hold a conference attended by members of domestic and international NGOs, United Nations representatives, and even some Nigerian politicians. The workshop produced a consensus document and new changes to the draft law, and resulted in a new campaign to pressure newly-elected President Olusgun Obasanjo to present the law to the National Assembly (Media Rights Agenda 2003).

The election of Obasanjo initially offered extremely optimistic signs for the FOI advocacy movement. Although he had previously served as military head of state in the late 1970s, Obasanjo had gone on to speak out against the Abacha regime's human rights abuses, and even served on the board of the international anti-corruption NGO Transparency International. In his May 29, 1999 inaugural address, Obasanjo

pledged to make the eradication of corruption a cornerstone of his administration, calling corruption "the greatest single bane of our society today" and pledging that "all rules and regulations designed to help honesty and transparency in dealing with government will be restored and enforced" (Media Rights Agenda 2003, Obe 2007).

Yet Obasanjo declined to present the FOI law draft, in favor of his own anti-corruption approach. His Independent Corrupt Practices Commission, however, resulted in no convictions by the end of his first term in 2003, and in fact "was soon perceived as a weapon with which the executive branch of the federal government was undermining and threatening political opponents both in the federal legislature, and in the state governments" (Obe 2007). While the draft legislation was ultimately introduced by individual legislators later in 1999, it took almost five years for the law to be approved by the House of Representatives, and two more years to be approved by the Senate, during which time it was intermittently criticized by Obasanjo. The two versions were finally harmonized and sent to President Obasanjo for his signature in February 2007, shortly before the end of his final term in office. Obasanjo not only refused to sign the bill, citing unspecified concerns over national security, but also refused to return it to the legislature, meaning that the bill lapsed when the legislative term ended.[3]

Edetaen Ojo of the Media Rights Association summarized the draft law's experience in the Obasanjo era:

> "The Legislature was constantly fighting to ward off the influence of an overbearing president; the Legislature recognized the need for a Freedom of Information law; the legislators resisted subtle opposition to the Bill by the Executive; Legislators in both chambers passed the Bill unanimously.

[3]See http://234next.com/csp/cms/sites/Next/Home/5590720-146/no_right_to_know__.csp.

> Ironically, President Obasanjo who came to power professing transparency and accountability, refused to sign the Bill into Law."[4]

Civil society advocacy also continued through this period, led by a coalition of over 150 Nigerian NGOs called the Freedom of Information Coalition. International NGOs including Article 19, the Open Society Justice Initiative, the Carter Center, and the Commonwealth Human Rights Initiative also provided resources and attempted to exert international pressure for the Nigerian government to pass the law. Obasanjo's chosen successor, Umaru Yar'Adua, was elected in April 2007 in elections that were marked by violence and widely considered fraudulent. While the FOI law was re-submitted to both houses of the National Assembly, delays continued, with legislators often refusing to hear reports on the bill and frequent attempts to water down its language. This pattern of delay, legislative opposition, and absence of executive leadership on the issue persisted following Yar'Adua's May 2010 death and succession by his Vice President Goodluck Jonathan.

Beginning in January 2011, however, legislative action on the FOI law surprisingly resumed, and President Jonathan vowed not to veto it as had Obasanjo in 2007. The law passed the House of Representatives on February 24 and the Senate on March 16, while a harmonized version was passed by both houses on May 24.[5] While one of President Jonathan's top advisers strongly opposed the law, calling it irresponsible, unpatriotic, and unconstitutional,[6] he nonetheless signed the bill into law on May 28, 2011. The sudden success of Nigeria's FOI law after so many years of delay could be

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[4]See http://allafrica.com/stories/201008190151.html.

[5]See http://www.freedominfo.org/2011/02/nigerian-house-passes-foi-bill; http://www.freedominfo.org/2011/03/nigerian-senate-passes-modified-foi-legislation; http://www.freedominfo.org/2011/05/nigerian-assembly-passes-harmonized-foi-legislation.

[6]See http://www.freedominfo.org/2011/03/adviser-to-nigerian-president-opposes-foi-legislation.

attributable to numerous proximate factors, including decisions by key figures such as the Chairman of the House Committee on Information and the Speaker of the House of Representatives, troubling disclosures of corruption from releases by WikiLeaks, or increasing pressure from international actors. However, there is a strong case to be made that the increased competitiveness of the political system played a key role.

The political system remained uncompetitive for the majority of the period of Nigeria's history in question, in that the incumbent head of state could use their control of military force, patronage networks, or ability to manipulate election results to ensure that they or their supporters would remain in power. The only exception to this pattern, until recently, was the initial election of Obasanjo in 1999. That particular instance of increased competition did not lead to FOI passage, however, given Obasanjo's unwillingness to support the law and his generally insincere approach to anti-corruption efforts.

While Obasanjo's 2003 reelection and the 2007 election of his chosen successor Yar'Adua were largely uncompetitive due to fraudulent elections, the unexpected transition from Yar'Adua to Jonathan brought a political outsider (and former zoologist) to power. The April 2011 presidential elections, in which Jonathan was returned to power, were hailed as among the country's fairest elections ever.[7] Given Jonathan's apparent unwillingness to use electoral fraud to maintain power, his support for the FOI law must be understood in the context of the possibility that he might lose the upcoming elections. While Jonathan won the elections with over 58 percent of the vote and the best-performing opposition candidate only received roughly 32 percent, the same opposition party had received roughly 19 percent of the vote in the 2007 presidential election. The 2011 opposition performance thus demonstrated, for the

[7]See http://www.nytimes.com/2011/04/19/world/africa/19nigeria.html.

first time in years, the viability of the opposition in fair elections, and thus the potential for future turnover in party control. Importantly, the long delays in passage occurred despite strong advocacy from domestic civil society groups and pressure from international NGOs.

While these are only illustrative examples, they highlight the importance of political uncertainty in cases where the political environment became more competitive, yet incumbent parties retained control of the executive. The next sections explain in detail the theoretical role of political uncertainty.

Institutionalizing Transparency

Understanding the passage of freedom of information laws requires taking seriously the incentive structures facing political actors, and the informational effects of institutionalizing transparency. There are three salient features of FOI laws: their effect on access to information as an end in itself, their effect on access to information as a means of monitoring, and their institutionalization in rules and procedures which cannot easily be revoked in the future.

The first feature of FOI laws is their ability to enable increased access to government information as an end in itself. When political actors control access to information, they can benefit from that control in numerous ways, demanding bribes in exchange for access, steering government contracts and other benefits to allies, obfuscating the nature of policy actions and goals, and restricting information about the policy process to members of privileged groups. As Pinto (2009, p. 45) notes, "information as a commodity permits officials to allow selective access and can result in strategic leaks, patronage networks and rent-seeking behaviors." By guaranteeing the ability of individuals to request information from the government, effective FOI

laws limit the ability of political actors to maintain such control over government information, and thereby their ability to benefit from that control.

The second feature of FOI laws is their ability to enable increased access to information not as an end in itself, but as a means of monitoring. When political actors control access to government information, they can benefit from the difficulty faced by other actors in monitoring their actions. Principal-agent theory applies here in two forms. The government can be seen as the agent of some principal — the voting public in democracies (Barro 1973, Ferejohn 1999, Belsey and Burgess 2002) and a selectorate of elites in autocracies (Besley and Kudamatsu 2007). Bureaucratic agencies can also be seen as agents of both the executive and legislative branches which delegate authority (McCubbins et al. 1987). In both cases, agents have private information about their own activities which are difficult for principals to monitor, potentially leading to corruption and other agency failures. Indeed, by creating a decentralized information regime allowing anyone to request any type of information not specifically exempted, FOI laws can serve as a form of fire-alarm monitoring (McCubbins and Schwartz 1984).

While most examples of FOI laws as tools of political monitoring involve their use by journalists, civil society groups, and ordinary citizens, they are also used by politicians and parties seeking to expose wrongdoing or scandal on the part of their opponents. For example, in Bulgaria in 2003, opposition members of parliament filed an information request with the Minister of Public Administration, under the Access to Public Information Act, for information on a contract signed with Microsoft.[8] In South Africa in 2005, the opposition Democratic Alliance party filed a request with the state oil company, under the Promotion of Access to Information Act, in an

[8]See http://www.aip-bg.org/library/dela/case53.htm. Last accessed May 20, 2012.

attempt to investigate alleged secret donations made to the ruling African National Congress party.[9] In India, opposition parties in several states have used Right to Information requests to attempt to expose corruption or poor government by ruling parties.[10]

The third relevant feature of FOI laws concerns not the transparent practices which they enable, but the institutionalization of those practices. Not only do FOI laws grant members of the public the right to access government information, they also institutionalize a set of rules and procedures that bind future governments to maintain that right. There are several features of FOI laws which contribute to this institutionalization. First, the fact of being written into law makes transparent practices more binding on future governments, as they cannot be so easily weakened or revoked in the future. This contrasts with less institutionalized policy practices which, unlike a FOI law, can be easily revoked at any time. The fact that passage of FOI laws tends to be a high-profile event widely covered by media and civil society means that the government could face domestic and international audience costs should it be revoked (Fearon 1994, Lohmann 2003). Second, FOI laws are implemented in numerous individual agencies, through new operating procedures and personnel such as information officers. This agency-level implementation is not only more difficult to root out at a later date, but also keeps most routine disclosure decisions out of the executive's hands. Finally, by granting all citizens the right to request govern-

[9]See http://www.iol.co.za/news/politics/da-seeks-answers-about-anc-oilgate-1.241986. Last accessed May 20, 2012.

[10]For examples of Bharatiya Janata Party (BJP) requests in Congress Party-controlled states, see http://zeenews.india.com/news/states/goa-bjp-files-cases-of-corruption-against-top-bureaucrats_357846.html and http://articles.timesofindia.indiatimes.com/2008-10-22/delhi/27948550_1_rti-act-rti-reply-information-from-government-departments. For an example of Congress requests in a BJP-controlled state, see http://www.business-standard.com/india/storypage.php?autono=337226. All last accessed May 20, 2012.

ment documents, FOI laws create a vastly larger constituency than policies limited to specific issue areas such as environmental or fiscal transparency, or limiting information requests to legally interested parties. This constituency represents a large body of actors who could potentially retaliate against political actors for revoking or substantially weakening access to information. Indeed, it is telling that no FOI law has ever been revoked, and that the ongoing attempt by the government of South Africa to weaken its law has been met with so much mobilization by both domestic and international opposition (see Chapter 2).

These three salient features of FOI laws lead to the key question: If FOI laws make it more difficult for political actors to benefit from their control of government information, increase the likelihood that corruption will be exposed, and create new rights which are difficult to revoke once implemented, why do political actors ever pass them? Why would political actors sacrifice the perks of office which come with the ability to keep secrets effectively?

The answer lies in the fact that FOI laws bring not just costs, but also benefits. The very institutionalization of FOI laws is the key to their political benefits. Ruling parties facing uncertain political futures can pass FOI laws as credible commitments to future transparency, both to appeal to the public for support and to ensure that they will not be shut out of access to government information and monitoring tools in the event they lose office.

Political Uncertainty and Competition

Competition between political parties can create circumstances where political actors see potential benefits from the passage of FOI legislation. We can conceive of the competitiveness of the political environment as the extent to which incumbents face

uncertainty over future political control by themselves or their allies. Given such an environment, incumbents face two types of incentives to pass FOI laws as a credible commitment to future transparency.

The first is to gain greater support from a public which values transparency as a means of ensuring the accountability of political agents. Indeed, while Ferejohn (1999) argued that greater accountability can lead the public to grant politicians greater resources or support, his model assumes that promises of transparency are credible. This is at odds with the reality that election-time promises of transparency are rarely held to after the fact, and that unilateral, centralized practices of government transparency are easy to alter, remove, or subvert. Institutionalizing transparency through the passage of a FOI law, however, makes it more difficult to subsequently reduce the level of government transparency, thus making promises of transparency more credible. Under circumstances of high political uncertainty, making a credible commitment to future transparency may garner an incumbent political actor needed support.

Under the second incentive, political actors who anticipate they may soon be out of power have incentives to institutionalize transparency in order to guarantee their own future access to information. This is a process akin to "insurance" models of judicial independence (Ramseyer 1994, Ginsburg 2003). Similarly, Alt et al. (2006) see increases in the level of fiscal transparency among U.S. states as attempts to impose constraints on future officeholders from opposing parties, to remove their informational advantages in fiscal policymaking.

Political actors who use their control of government information for private gain may not want to lose access to information once they are out of power. In order to guarantee future access, they must institutionalize transparency with a set of rules which cannot be easily revoked in the future, thereby ensuring access to information

both as an end in itself and as a means of monitoring. Further, if political actors in power expect that they may soon be out of power, then they face a considerable likelihood that the costs of exposure created by a FOI law will be borne in the future by their political opponents. This calculation may reduce the expected costs of exposure at the same time that the political incentives for insurance are at their greatest.

What circumstances should lead political actors to look to FOI laws as a means of institutionalizing transparency? The competitiveness of the political environment — uncertainty over future political control — should lead to both of the aforementioned incentives. Particularly, when opposition parties pose credible challenges to those in power, and where frequent turnover in office has taken place, political uncertainty will by higher. It is in such circumstances where, all else equal, FOI passage will be more likely. While differences in cultural and institutional contexts are certainly important in explaining the cross-national variation and timing of FOI law passage, focusing on the costs and benefits faced by political actors can yield generalizable propositions that should apply across different national contexts.[11] As such, the preceding theoretical discussion leads to the following hypotheses:

Hypothesis 1: Passage of FOI laws will be more likely where opposition parties pose credible challenges to those in power.

Hypothesis 2: Passage of FOI laws will be more likely where turnover of party control of the executive has been frequent.

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[11]While FOI laws vary in whether or not they apply disclosure requirements to legislative actors, the argument offered in this chapter applies to the decision process of the executive. Even where legislatures favor FOI laws, executive leaders have been willing and able to block their passage in numerous cases.

Data and Model

I test these hypotheses using an event history approach to model the timing of FOI passage across countries. FOI passage should be more likely to take place, and occur sooner, where political competition and uncertainty create incentives for institutionalizing transparency. In any given country, FOI passage should be most likely when these factors are at their greatest.

My primary focus is on the factors driving FOI passage among developing countries in the post-Cold War period from 1990 to 2008. The change in the international environment taking place with the end of the Cold War provides a natural starting point from which to study the spread of FOI laws. Only one developing country (Colombia) passed a FOI law before 1990, and many countries in the former Soviet Union were not yet independent. It is debatable whether most developing countries could be considered "at risk," to use the terminology of event history modeling, of FOI passage prior to 1990. I also restrict the primary analysis to countries outside of Western Europe, the United States, Canada, Australia, and New Zealand. Many of these were among the earliest adopters of FOI laws, and those which passed laws relatively late may have done so for idiosyncratic reasons. Many aspects of open government which FOI advocates hope to achieve were already very much present in, for example, the United Kingdom and Germany even before those countries passed FOI laws in 2000 and 2005. Nonetheless, robustness checks show that the main results do not depend on the universe of cases chosen.

Dependent Variable

The dependent variable is a binary indicator of the year in which a country passed a FOI law (coded from Banisar 2006 and Vleugels 2010). Given the event history

modeling approach, only observations "at risk" of passage are included in the sample. As such, country-years following passage of a FOI law in a given country have been omitted, whereas countries that had not yet passed a law by 2008 are included but considered right-censored (Box-Steffensmeier and Jones 2004). Following Beck, Katz and Tucker (1998), I use a logistic regression model including duration-dependent dummy variables for every possible number of years a country can be "at risk" of FOI passage, in order to capture the changing baseline hazard of passage. This approach is equivalent to a Cox proportional hazards model with time-varying covariates, but yields logit coefficients which are more familiar to most readers.

Political Competition

I measure political competition in two primary ways: the strength of credible opposition parties, and the frequency of changes in party control of the executive. To test the extent to which these measures influence the timing of FOI passage, I capture each through moving five-year windows. The variable Opposition Strength is based on data from the Database of Political Institutions (DPI).[12] I first take the legislative vote share of the largest opposition party in the most recent election, as a higher vote share means the ruling party faces a more credible challenge to their power. However, levels of this variable alone might not very well reflect variation in political competition across countries, due to differences in systems of party competition. A vote share of 0.35 for the largest opposition party might mean a very competitive political context in one party system, but an uncompetitive one in another. A good measure of political competition must both account for these differences and capture

[12]I use the 2010 update of the dataset. All variables are lagged one year to avoid simultaneity bias, except for the variables derived from data in the DPI which are already measured as of January 1 of each year.

the timing of changes in the competitiveness of a political environment. To do so, I measure the difference between the largest opposition party's vote share in each year and the average vote share over the prior four years (that is, the difference between vote share in year t and the average of vote shares in years $t-5$ through years $t-1$). Thus, the Opposition Strength variable measures deviation from the short-term mean in the extent to which opposition parties pose a credible challenge to those in power. The resulting variable ranges from -0.43 to 0.46. As robustness checks, I also use a variable based on deviation from the longer-term mean (going back ten years prior), as well as the more basic levels of vote share of the largest opposition party.

The variable Turnover Frequency measures the number of changes in party control of the executive over the previous five years. This variable is based on the DPI's measure of how many years the party of the chief executive has been in office. For each year, I code the number of times a new party has taken office in that year or in the four years prior (between year t and year $t-4$).[13] The source variable from the DPI codes as missing cases where there are no political parties, where the executive is independent of any parties, or where the army is the ruling elite. I consider changes to and from spells of such missing values to be changes in party control.[14] Due to the coding of the source variable, multiple instances of turnover in a single year will register as only a single instance. For purposes of measuring political uncertainty that

[13]The DPI measures political control as of January 1 of each year. Thus a new party in power in year t reflects a change that took place over the preceding year. This avoids any potential temporal issues wherein a change in political control in, for example, November of a given year is misconstrued as having a causal impact on the passage of a law earlier in that year.

[14]This measurement choice is necessary in order to avoid the loss of large numbers of observations to missing data. Unfortunately, it means that changes from one elite group to another in systems with no parties or under military rule will not register as instances of turnover. This is, however, a minor concern, as during the period under observation most countries, even if autocratic, had political parties. Where spells of missingness in the source variable are present, most are cases where one elite group ruled for the entire period under study.

might create incentives to enact FOI laws for insurance, however, this shortcoming should not be problematic. Three changes in elite control evenly spaced over several years should create such incentives to a much greater extent than three changes in elite control just weeks apart but followed by a period of stability. Finally, I use turnover of the party in power rather than the individual chief executive, as changes in individual control while the same elite maintains power should not lead to the same kind of political uncertainty as changes in elite control. The resulting measure takes integer values from 0 to 4 (a value of five is possible but was not observed in the dataset). In a robustness check, I test for non-linear effects of each level of this variable.

International Diffusion

We must also take into account the role of international diffusion pressures in driving the passage of FOI laws. The freedom of information has taken the shape of a global norm, following a pattern of norm cascade across countries (Finnemore and Sikkink 1998). As more countries pass such laws, they increasingly become seen as an appropriate policy choice for states seeing themselves as members of the liberal order. Scholars of international human rights treaties have similarly argued that ratification of those treaties may be pursued for their expressive benefits: expressing a position which others consider appropriate (Hathaway 2002), and receiving positive press or improved image with international audiences (Simmons 2009). These same benefits apply to the passage of FOI laws. While FOI laws are not international treaties, their passage similarly serves as the legal adoption of internationally-recognized principles that have been imbued with symbolic meaning by advocates. Political actors may also have interests simply in avoiding pressure over non-adoption, or in staunching

criticism over poor governance practices.

All else equal, the effects of these international diffusion pressures on a state will be greater when more countries in its region have passed FOI laws, and when it interacts with other countries in inter-governmental settings where FOI law passage has become the norm. I incorporate these into the model by measuring the extent to which the international social context of a country favors FOI passage. The Regional Context variable measures the proportion of other countries within 500 miles of a country's borders which have passed FOI laws. The IGO Context variable represents the socialization pressure for FOI passage emanating from inter-governmental organizations (IGOs) to which a country belongs. This variable is an average of the proportion of FOI adoption among each state's IGO partners. Construction of this variable first calculates the proportion of FOI adoption among member states of each IGO to which a country belongs (excluding the practices of that country in calculating these averages). The mean of these IGO-level proportions is then taken over each IGO that a country belongs to in a given year. Data on IGO membership comes from the Correlates of War project. Similar approaches have been used to measure the impact of IGOs on human rights practices (Greenhill 2010) and democratization (Pevehouse 2002).

Additional Control Variables

In addition to these variables measuring various forms of political competition and international diffusion pressures, I also include a series of important control variables which might affect the timing of FOI law passage. It is essential to control for the general democratic nature of a regime in addition to more specific measures of political competition, otherwise the competition variables might simply be proxying for

underlying regime characteristics. I measure Democracy with the Polity 2 index from the Polity IV dataset. To address the possibility that wealthier countries may be more likely to pass FOI laws, I control for Economic Development, measured with the logged value of GDP per capita. To address the possibility that integration with the global economy drives passage, I control for Trade Exposure, the logged ratio of the total value of imports and exports to the size of the economy.

To assess whether political actors pass FOI laws as a result of conditionality from international donors or lenders, I include measures of Aid Dependence and IMF Credit. The first of these is the logged value of foreign aid as a percentage of GDP, and the second is a dummy variable indicating the use of IMF credit in a given year.[15]

A series of additional controls assess the role of important alternative explanations grounded in domestic politics. It is possible that newly democratic regimes are likely to pass FOI laws as part of a general period of reform, even where political actors are not driven specifically by political uncertainty. One might even be concerned that the Turnover Frequency variable is merely just proxying for such a tendency. Thus it is essential to include an indicator of countries which have newly transitioned to democracy. The New Democracy dummy variable takes a value of 1 in the first five years following a democratic transition. If the political competition variables remain significant even when this control is included, it will bring greater confidence that their results are not driven simply by regime transitions.

Given the attention to the role of transnational civil society in the global spread of FOI laws, it is also essential to control for the strength of such transnational influence in each country. While indicators of FOI-related advocacy at past points in time are not available, I follow the approach taken by many scholars of international

[15]Data on the previous four variables are from the World Bank's World Development Indicators.

human rights and policy diffusion (Hafner-Burton and Tsutsui 2005, Neumayer 2005) by using data from the Yearbook of International Organizations (Union of International Associations 2009). The International NGOs variable is the logged number of international NGOs which have members in each country in each year. While this variable measures the aggregate number of all types of NGOs — whether focused on the FOI issue or not — having many international NGOs present in a country both creates more network ties to transnational civil society and creates an environment where NGOs working specifically on the FOI issue can most easily be effective.

Corruption is another important control variable in the analysis, especially given the fact that the political costs of passage should be related to the extent of political corruption. However, there are reasons why we might not expect a clear relationship between corruption and the timing of FOI passage. Even though greater corruption should increase the political costs of potential exposure and decreased ability to pursue private gain, greater corruption can also increase the salience of incentives to pass FOI laws as insurance or for political support. Countries with reputations for corruption may also be under greater pressure from international stakeholders to undertake reforms. Thus expectations regarding the effects of corruption are unclear. I measure Corruption using data from Transparency International's Corruption Perceptions Index. This measure ranges from 0 to 10, where lower numbers reflect more corruption while higher numbers reflect less corruption. Since this measure is not available for the entire period under study, and given how slowly corruption tends to change over time in each country,[16] I use the average for each country over all available years up through 2008.

Finally, it is possible that the independence of the media plays an important role in

[16]The average within-country standard deviation over the period in question is only 0.37 on a range from 0 to 10.

explaining FOI law passage. Indeed, this factor plays an important role in Michener's (2011b) study of FOI laws in Latin America. I measure Press Freedom with Freedom House's Freedom of the Press measure, which reflects whether the media is not free, partly free, or free. However, since data on this measure is available for fewer countries than the other variables used in the analysis, I include it only in a robustness check.

Results

The model results strongly support the role of political competition in explaining variation in the timing of passage of FOI laws. I first present a baseline model, then introduce the two measures of political competition. Table 3.2 presents results from these models. Model 1 is a baseline model with neither competition measure. Model 2 includes the Opposition Strength variable, Model 3 includes the Turnover Frequency variable, while Model 4 includes both. Each of the two political competition measures has a positive and statistically significant effect on the likelihood of FOI passage, even when both are included simultaneously. FOI passage is more likely when opposition parties have recently increased in strength, and where turnover in party control of the executive has been frequent, both factors which I argue result in greater political uncertainty and thus a more competitive political environment. It is also worth noting that the effect of the Democracy variable becomes attenuated once the political competition variables are included, indicating that some portion of what might otherwise be labeled democracy's effect on the likelihood of FOI passage is in fact attributable to these specific forms of competitiveness, rather than any broader democratic characteristics of the polity.

Figure 3.1 illustrates the substantive impact of Opposition Strength and Turnover Frequency in comparison with the impact of Democracy, all from simulations based

	Model 1	Model 2	Model 3	Model 4
Opposition Strength		3.948 **		3.810 **
		(1.612)		(1.631)
Turnover Frequency			0.611 ***	0.598 ***
			(0.214)	(0.217)
Democracy	0.116 ***	0.109 ***	0.081 **	0.074 **
	(0.035)	(0.035)	(0.036)	(0.037)
IGO Context	6.780 **	7.134 **	7.074 **	7.457 **
	(3.041)	(3.078)	(3.058)	(3.098)
Regional Context	2.116 **	2.302 **	2.072 **	2.257 **
	(1.035)	(1.044)	(1.030)	(1.039)
New Democracy	-0.278	-0.406	-0.458	-0.561
	(0.604)	(0.610)	(0.621)	(0.627)
International NGOs	-0.066	-0.025	-0.054	-0.021
	(0.303)	(0.305)	(0.308)	(0.310)
Corruption	0.015	-0.015	0.100	0.090
	(0.175)	(0.177)	(0.182)	(0.185)
Economic Development	-0.047	-0.025	-0.112	-0.101
	(0.270)	(0.272)	(0.268)	(0.269)
Trade Exposure	-0.043	-0.056	0.063	0.021
	(0.363)	(0.365)	(0.354)	(0.357)
Aid Dependence	-0.124	-0.133	-0.183	-0.199
	(0.228)	(0.234)	(0.227)	(0.233)
IMF Credit	-0.084	-0.022	-0.138	-0.057
	(0.399)	(0.399)	(0.400)	(0.401)
N	2033	2033	2033	2033
AIC	420.830	417.098	415.027	411.774

Standard errors in parentheses

* significant at $p < .10$; ** $p < .05$; *** $p < .01$

Table 3.2: Results of event history models of FOI passage. Logit coefficients are presented, along with standard errors in parentheses. Constant term and duration-dependent dummy variables included but not presented to save space. Model 1 is a base model. Model 2 includes Opposition Strength. Model 3 includes Turnover Frequency. Model 4 includes both.

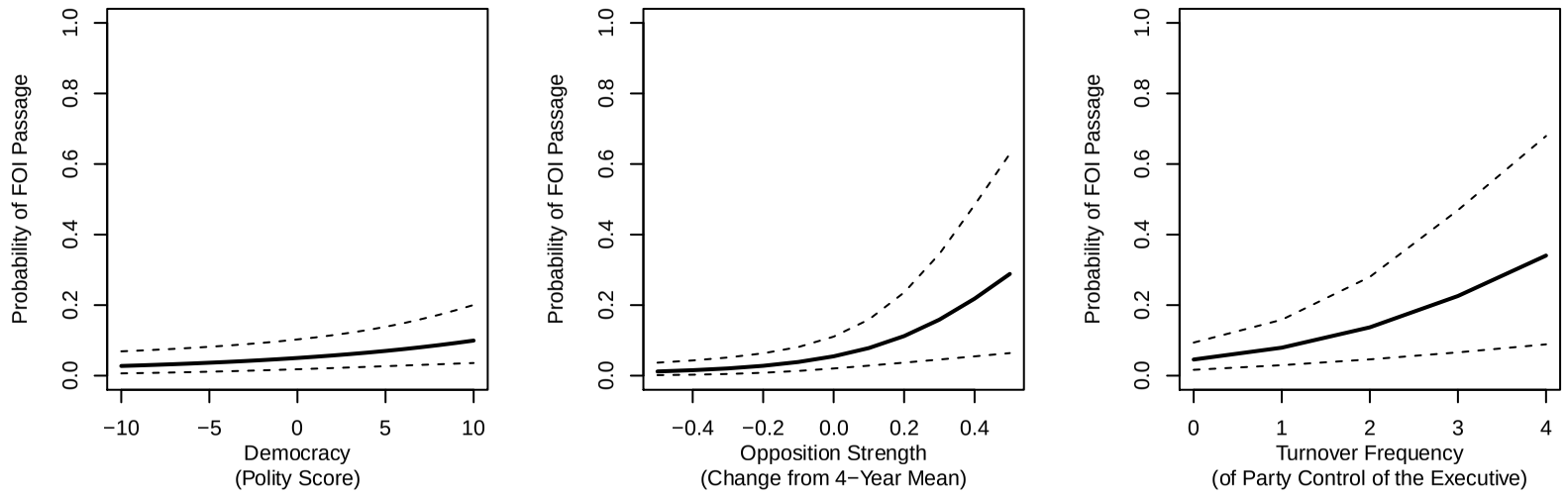

Figure 3.1: Substantive effects of democracy and political competition variables, based on simulations from Model 4. Each panel is the result of simulations varying the variable in question, holding all other variables constant at their mean 2008 levels. The black line shows the predicted probability of FOI passage for a hypothetical country with the value of Democracy, Opposition Strength, or Turnover Frequency indicated on the x-axis. The dashed lines indicate a 90 percent confidence interval.

on the results of Model 4. These simulations vary the value of one single variable in question for a hypothetical observation, while holding all other variables constant at their 2008 mean levels. The figures highlight the substantive importance of the political competition variables. While the Democracy measure is statistically significant in Model 4, the figure shows that the magnitude of its substantive impact is small: even at the highest end of the Polity democracy index, the probability of a FOI law being passed in a hypothetical country is only 0.1.

Changes in Opposition Strength, on the other hand, have larger substantive effects. The probability of FOI passage in a hypothetical country where the vote share of the largest opposition party remained constant over a five-year period is only 0.05. For an observation where the vote share is 0.2 above the mean of the previous four years, the probability of passage rises to 0.11, and for an observation where the vote share is 0.4 over the past mean, the probability of passage rises to 0.22. It must be noted, however, that such large increases are rare. Only 5 percent of observations in the dataset have values of this variable of 0.2 or higher, while 65 percent have values within 0.05 of zero. Nonetheless, when substantial increases in the extent to which opposition parties pose a credible challenge to those in power do occur, they considerably increase the likelihood of FOI passage. The frequency of turnover in party control of the executive has similarly large substantive effects. For a hypothetical observation where no such turnover has taken place in a five-year window, the probability of FOI passage is only 0.05. However, for observations where such turnover has occurred one, two, three, or four times, the probability rises to 0.08, 0.14, 0.23, and 0.34, respectively. Such turnover creates political uncertainty which can result in incentives to pass FOI laws in order to institutionalize transparency.

I conduct several robustness checks which are relevant for discussion of the role

of political competition, using alternative measures of Opposition Strength, Turnover Frequency, and Democracy. Table 3.3 presents several of these checks. Model 5 and 6 include alternative measures of opposition strength. Model 5 uses the basic levels of the vote share of the largest opposition party, without incorporating changes over time. Model 6 incorporates changes over time, but based on the difference from the mean over the prior ten years, rather than four, in case changes from the long-term mean have a different effect than changes from the shorter-term mean. In both of these models, Opposition Strength remains statistically significant, yielding greater confidence that the results are not artifacts of any particular operationalization of this variable.

Model 7 addresses a potential concern regarding the Turnover Frequency variable: the possibility that the only salient effect of turnover in party control of the executive is that new ruling parties are likely to pass FOI laws in their first few years in power, as was the case in Mexico, India, and many other countries. If this effect were strong, then it is possible that the difference between observations with zero recent instances of turnover and observations with greater than zero such instances could be driving the magnitude of the Turnover Frequency coefficient. We can test for this possibility by including each level of the Turnover Frequency variable in the model as separate dummy variables. Model 7 includes three such dummy variables: an indicator for one turnover instance, an indicator for two instances, and an indicator for three or four instances. Since only one observation in the sample had four instances of turnover in the preceding years, I group that observation together with those which had three instances. An indicator for observations with no turnover instances in the preceding years is omitted as the reference category. If the coefficients for two turnover instances and three turnover instances are smaller or similar in magnitude

to the coefficient for one turnover instance, then we can conclude that the presence of any turnover at all, rather than political uncertainty, is driving the model results. However, the results in Model 7 show that this is not the case. Rather, the coefficient for one instance of turnover is 0.97, while the coefficients for two and three instances of turnover are 1.25 and 1.86, respectively, and all three are statistically significant. This supports the interpretation of these results as evidence of the role of political uncertainty in driving FOI passage as a form of insurance. Even beyond the effect of one occurrence of turnover in party control of the executive over the preceding years, greater frequencies of turnover make FOI passage even more likely.

Model 8 employs an alternative measure of Democracy from Freedom House to ensure that the statistical significance of the political competition variables does not depend on the particular measure of Democracy included as a control variable. Indeed, Opposition Strength and Turnover Frequency remain statistically significant in this model.

While inclusion of the Press Freedom variable leads to a smaller sample size due to missing data, I test for its effect in an additional robustness check. In Model 9, Press Freedom has no significant effect on FOI passage, and its inclusion in the model does not change the sign or significance of the political competition or international socialization variables. In Model 10, I include a dummy variable for Presidential systems. This variable is not significant, and its inclusion does not change the sign or significance of the main results. I also check for interactive effects between the two political competition variables and Presidential systems, in Model 11. Neither interaction term is statistically significant, and their inclusion offers no improvement to the model's fit. However, the results do indicate that the effects of political competition are attenuated, though still positive, under Presidential systems.

Returning to the main results presented in Table 3.2, the role of international diffusion also receives support. The IGO Context and Regional Context variables are both positive and statistically significant. Figure 3.2 illustrates the substantive impact of these variables. For a hypothetical observation with all other variables held at their 2008 mean values and an IGO Context of 0.4, the probability of FOI passage is 0.06. For a similar observation with an IGO Context of 0.6 — the highest observed value of the variable among countries which had not yet passed FOI laws — the probability of FOI passage rises to 0.22. For a hypothetical observation with a Regional Context of 0.95 — the highest observed value for this variable — the probability of FOI law passage is 0.28. Thus the passage of FOI laws is also driven by social influence in regional neighborhoods or through IGOs.

Beyond the two political competition variables, the two international diffusion variables, and Democracy, no other variable has any statistically significant impact on the likelihood of FOI law passage. New Democracies are no more likely to pass FOI laws than other countries, whether the political competition variables are included or excluded from the model. While some individual FOI laws appear to have been passed as part of a broader period of reform following a democratic transition, no such effect is apparent across all cases, indicating that passage as a form of commitment specifically by new democracies — Moravscik's (2000) argument for the case of the European Convention on Human Rights — is not at work here.

There is a similar lack of support for the effect that International NGOs might have by strengthening transnational civil society linkages. This does not deny the impact of NGOs and other advocates in many countries, but simply reflects the lack of cross-national evidence for any systematic role that they might play in the timing of passage. For every momentous civil society victory, there are countries where ad-

vocates were met with delay and defeat for years or even decades. The results do not support any significant role for Corruption either. This may be because Corruption can have opposing effects on the likelihood of FOI passage, simultaneously increasing both the costs and benefits of passage. Neither of the control variables for Economic Development and Trade Exposure had any significant effect in the models. Interestingly, the measures of Aid Dependence and IMF Credit, which could highlight the role of material benefits from international stakeholders in driving FOI passage, yield no such evidence. The impact of such material benefits may, in fact, be limited to a few cases such as Pakistan (see Chapter 2), rather than exerting any systematic influence on the likelihood of FOI passage across countries.

Further robustness checks used different universes of cases than those used in the primary models, to ensure that the results are not an artifact of the choice of countries and time period under study. While I believe that developing and transition countries in the period from 1990 to 2008 comprised the most sensible universe of cases, other choices are possible. Table 3.4 presents the results of these models. Model 12 includes all countries for the period from 1990 to 2008. Model 13 includes only developing and transition countries, but beginning in 1983, the earliest point at which data on all variables was available. Model 14 includes all countries going back to 1983. In all such alternative models, the two political competition variables and the two diffusion variables remain positive and statistically significant. Further, beyond these variables and Democracy, no other variable has any significant effect on FOI law passage. Thus the results remain supportive of my approach even under different modeling choices regarding the relevant set of observations.

	Model 5	Model 6	Model 7	Model 8	Model 9	Model 10	Model 11
Opposition Strength				2.948 *	3.794 **	4.016 **	6.733 **
				(1.531)	(1.609)	(1.647)	(2.728)
Turnover Frequency				0.571 ***	0.559 ***	0.550 **	0.740 **
				(0.209)	(0.215)	(0.221)	(0.307)
Opp. Strength (Levels)	2.260 *						
	(1.350)						
Opp. Strength (Long Term)		3.124 **					
		(1.512)					
Turnover Frequency: 1			0.972 **				
			(0.405)				
Turnover Frequency: 2			1.250 **				
			(0.538)				
Turnover Frequency: 3			1.858 **				
			(0.924)				
Democracy	0.083 **	0.107 ***	0.072 *		0.037	0.069 *	0.074 *
	(0.040)	(0.035)	(0.038)		(0.047)	(0.037)	(0.038)
Dem. (Freedom House)				0.773 ***			
				(0.266)			
Press Freedom					0.524		
					(0.335)		
Presidential						-0.413	0.057
						(0.382)	(0.572)
Pres. × Opp. Strength							-3.852
							(3.318)
Pres. × Turnover Freq.							-0.309
							(0.402)
IGO Context	7.493 **	7.079 **	7.496 **	12.942 ***	8.588 ***	6.820 **	6.748 **
	(3.069)	(3.102)	(3.071)	(4.492)	(3.023)	(3.182)	(3.255)
Regional Context	2.119 **	2.262 **	2.037 **	1.674	2.015 **	2.330 **	2.354 **
	(1.034)	(1.052)	(1.027)	(1.086)	(1.022)	(1.049)	(1.055)
New Democracy	-0.275	-0.457	-0.501	-0.350	-0.498	-0.640	-0.630
	(0.608)	(0.622)	(0.624)	(0.538)	(0.615)	(0.641)	(0.644)
International NGOs	-0.084	-0.039	-0.053	-0.184	-0.054	0.000	0.025
	(0.307)	(0.304)	(0.307)	(0.242)	(0.346)	(0.319)	(0.333)
Corruption	0.019	-0.039	0.113	-0.044	0.012	0.066	0.111
	(0.174)	(0.179)	(0.185)	(0.194)	(0.190)	(0.188)	(0.191)
Economic Development	-0.088	0.002	-0.121	-0.022	-0.151	-0.071	-0.112
	(0.271)	(0.273)	(0.270)	(0.269)	(0.272)	(0.269)	(0.272)
Trade Exposure	-0.072	-0.067	0.059	-0.025	0.022	0.003	0.031
	(0.371)	(0.366)	(0.357)	(0.360)	(0.365)	(0.354)	(0.369)
Aid Dependence	-0.161	-0.154	-0.177	-0.083	-0.271	-0.186	-0.196
	(0.230)	(0.233)	(0.228)	(0.212)	(0.245)	(0.234)	(0.240)
IMF Credit	-0.078	-0.008	-0.172	-0.040	0.036	-0.026	0.046
	(0.399)	(0.399)	(0.410)	(0.394)	(0.398)	(0.402)	(0.408)
N	2033	2033	2033	2044	1989	2033	2033
AIC	420.031	418.563	417.788	423.404	419.580	412.639	414.541

Standard errors in parentheses
* significant at $p < .10$; $^{**}p < .05$; $^{***}p < .01$

Table 3.3: Robustness checks. Constant term and duration-dependent dummy variables included but not presented to save space. Models 5 and 6 include alternative operationalizations of Opposition Strength variable. Model 7 treats Turnover Frequency as individual categories for each level. Model 8 uses an alternative measure of Democracy. Model 9 includes Press Freedom. Model 10 includes a dummy variable for Presidential systems, and Model 11 interacts this dummy variable with the two political competition measures.

	Model 12	Model 13	Model 14
Opposition Strength	3.501 **	3.494 **	2.549 *
	(1.575)	(1.604)	(1.525)
Turnover Frequency	0.491 **	0.586 ***	0.472 **
	(0.209)	(0.210)	(0.197)
Democracy	0.082 **	0.087 **	0.101 ***
	(0.036)	(0.037)	(0.036)
IGO Context	5.520 *	7.869 ***	6.568 ***
	(3.009)	(2.628)	(2.466)
Regional Context	2.345 **	2.143 **	1.942 *
	(1.010)	(1.065)	(0.999)
New Democracy	-0.567	-0.489	-0.518
	(0.596)	(0.587)	(0.565)
International NGOs	0.000	0.021	-0.066
	(0.275)	(0.302)	(0.283)
Corruption	-0.120	0.049	-0.142
	(0.154)	(0.180)	(0.145)
Economic Development	0.003	-0.118	-0.017
	(0.264)	(0.262)	(0.252)
Trade Exposure	0.197	0.071	0.209
	(0.347)	(0.349)	(0.334)
Aid Dependence	-0.195	-0.223	-0.258
	(0.219)	(0.226)	(0.214)
IMF Credit	-0.095	-0.059	-0.122
	(0.396)	(0.399)	(0.391)
N	2112	2681	2825
AIC	464.303	446.304	518.177

Standard errors in parentheses

* significant at $p < .10$; ** $p < .05$; *** $p < .01$

Table 3.4: Robustness checks. Constant term and duration-dependent dummy variables included but not presented to save space. Model 12 includes all countries for the period from 1990 to 2008. Model 13 includes only developing and transition countries, but beginning in 1983, the earliest point at which data on all variables was available. Model 14 includes all countries going back to 1983.

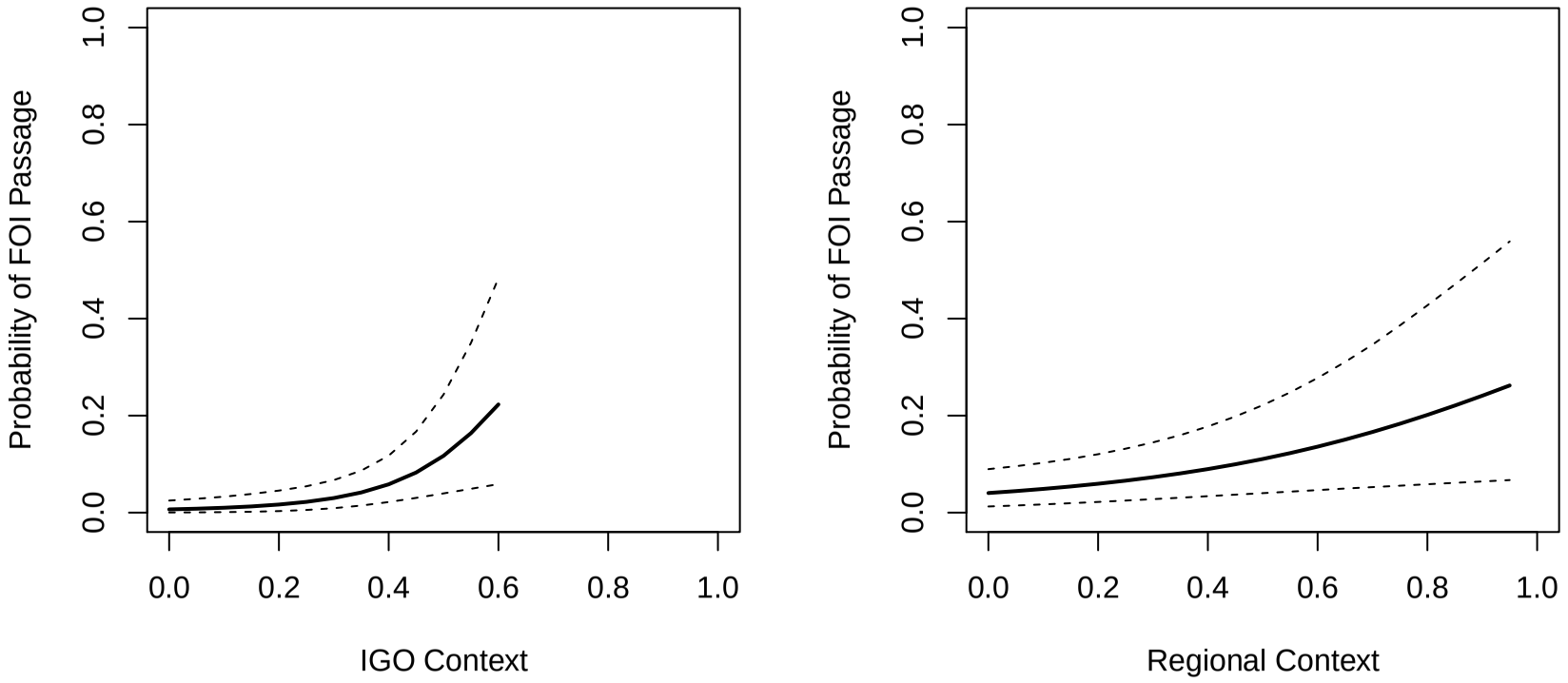

Figure 3.2: Substantive effects of IGO Contest and Regional Context variables, based on simulations from Model 4 in Table 1 of the main text. Each panel is the result of simulations varying the variable in question, holding all other variables constant at their mean 2008 levels. The black line shows the predicted probability of FOI passage for a hypothetical country with the value of IGO or Regional Context indicated on the x-axis. The dashed lines indicate a 90 percent confidence interval. Note that since the highest observed value of IGO Context in the data is only roughly 0.6, while the highest observed value of Regional Context is roughly 0.95, simulations are only conducted through those values in order to avoid extrapolation.

Conclusion

Freedom of information laws create substantial costs for political actors. By increasing public access to government information and ability to monitor the activities of those in power, FOI laws make it more difficult for political actors to profit from the control of government information or to use public office for private gain. By increasing the risks of exposure of corrupt activity, FOI laws reduce the expected utility of wrongdoing. Successful FOI laws also institutionalize these transparent practices, binding future governments to maintain them. In order to explain why political actors pass FOI laws, we must understand what circumstances or factors might create benefits which outweigh these political costs.

In this chapter, I have argued that under circumstances where competitive political environments lead to high levels of political uncertainty, FOI laws can create benefits as well as costs for political actors. When political actors in power face uncertainty over their future control, they may have incentives to institutionalize transparency in order to credibly commit to transparent practices in the future, or to ensure that they will not be shut out of access to government information and tools of monitoring those in power in the future. International diffusion through inter-governmental organizations and within geographic neighborhood can also drive FOI passage.

The results presented here support this approach. Two measures of political competition and two measures of international diffusion pressure are all significantly associated with the passage of FOI laws. Aside from these variables and a control variable for Democracy, no other variable in the models was statistically significant. While several other factors have been highlighted as playing a role in FOI passage in individual cases, such as transnational civil society, democratic transitions, and IMF conditionality, there is no evidence that these have a systematic effect across

countries.

This chapter highlights the importance to scholars of understanding the incentives that political actors face when considering FOI laws, and indeed any institution which constrains future action. Under circumstances of high uncertainty, political actors are willing to constrain themselves in order to constrain their opponents as well. For scholars of policy diffusion, this chapter highlights the potential for domestic politics to block and delay adoption despite strong international pressure. For policymakers involved with new transparency and accountability mechanisms like budget transparency and open government data, this chapter highlights the need to consider the domestic politics which might lead those mechanisms to succeed or fail.

The next chapter studies the design of FOI laws, and in doing so seeks to show evidence of the key role of international NGO in shaping the translation of international norms into domestic law.

Chapter 4

INTERNATIONAL NGOS AND THE DESIGN OF FREEDOM OF INFORMATION LAWS

Introduction

How are international norms translated into domestic law? A major concern in research on international norms, especially norms pertaining to human rights and democratic practices, is the inadequate translation of international norms into domestic law and practice. Norms are often translated into weak laws in ways that undermine the intent of the norm, potentially becoming less efficacious tools to shape behavior of domestic actors. While much research in international relations has studied the compliance problem — normative slippage on the way from international treaties to domestic practice (Hathaway 2002, Hafner-Burton and Tsutsui 2005, Simmons 2009), less research has addressed the separate problem of normative slippage on the way from international norms to domestic laws. Not all international norms are adopted by the ratification of treaties. Instead, many are adopted when states individually write them into domestic law, opening up an entirely different context in which normative slippage can take place, either through outright opportunism — whereby states pass weak laws that take advantage of opportunities for normative "recognition" while actually making lesser commitments — or simple lack of needed information or expertise for states to design laws that best balance their own situations with international norms.

Why, when adopting international norms into domestic law, do some states pass

stronger laws and others weaker laws? I argue that the process of translation into domestic law is a key access point for the influence of international NGOs using the tools of transnational advocacy. International NGOs have been recognized as key norm entrepreneurs — actors who contribute to the emergence of new norms by calling attention to issues, creating new issues, putting norms on the international agenda, and convincing initial states to adopt (Finnemore and Sikkink 1998). In this case, however, international NGOs' role as norm entrepreneurs extends beyond the norm emergence stage to the process of domestic translation.

Studying the design of freedom of information (FOI) laws, this chapter finds that international NGOs are able to assess draft legislation and persuade domestic political actors to pass laws which are stronger, and more in line with international norms, than they would pass otherwise. They are able to do so through both information politics — using their policy expertise to provide credible and useful information — and symbolic politics — using their role as norm entrepreneurs to bestow recognition of adherence to, or divergence from, international norms in a particular policy area (Keck and Sikkink 1998).

FOI laws are a policy innovation that has been passed in over eighty countries, with well over half of those passages taking place since 2000. The global spread of FOI laws reflects the growth of an international norm of transparency. However, some FOI laws make stronger commitments to this norm than others, in terms of their scope, procedures, sanctions, and other dimensions of legal design. Since 1999, the London-based international NGO Article 19, one of the most active and high-profile advocates working on FOI issues, has been conducting and publishing legal analyses of draft FOI laws in many countries. These analyses highlight portions of the draft laws that Article 19 considers to be not in keeping with international norms,

and offer public recommendations for changes to strengthen their legal design. I find that in countries in which Article 19 conducted legal analyses, the legal design of the subsequently passed FOI laws was significantly stronger than in countries which were not subject to such analyses. Further, I demonstrate that this finding is not an artifact of any strategic selection process by Article 19 of where to focus its efforts.

This chapter is in the tradition of past research on the role of international NGOs in influencing state policies. Scholars of transnational advocacy have posited that NGOs can influence state policies through several different mechanisms, including shaping international norms and institutions (Finnemore and Sikkink 1998, Price 1998, Florini 2000, Charnovitz 2006, Cichowski 2007), "naming and shaming" norm-violating states (Keck and Sikkink 1998, Hafner-Burton 2008), empowering domestic social movements (Risse and Sikkink 1999), and monitoring state compliance and providing information to enable action by other actors (Raustiala 1997, Mitchell 1998, Dai 2002). The direct influence of international NGO persuasion in the translation of international norms into domestic law, however, has been under-studied. While some policy diffusion studies have focused on the role of state embeddedness in transnational advocacy networks in speeding the time to adoption of a specific policy innovation, they do not consider the design of those policies (True and Mintrom 2001).

The second section of this chapter details the measurement of the legal design of FOI laws. The third section theorizes both the domestic and transnational determinants of the strength of FOI laws, with specific attention to the role of the international NGO Article 19. The fourth section develops empirical models of the strength of FOI laws and presents their results. The fifth section concludes.

Measuring the Legal Strength of FOI Laws

I measure the design of FOI laws using data from the Global Right to Information Rating, a "comprehensive comparative analysis of the legal frameworks for accessing information in each of the 89 countries where such a system exists" (Centre for Law and Democracy 2011). The NGOs Centre for Law and Democracy and Access Info Europe co-sponsored the development of this rating system, in consultation with 79 experts from all over the world, and released the information in September 2011. Each FOI law was scored on 61 different indicators, most ranging from 0-2 points each, but some higher. This coding system yielded a total possible score of 150 points for a country's FOI law, although in practice the observed scores range from 39 to 135.[1] These indicators, in turn, comprise seven different categories, listed in Table 4.1 below.

The four categories accounting for the most points are Scope, Requesting Procedures, Exceptions and Refusals, and Appeals. Scope concerns the agencies and branches of government to which the law applies. Requesting Procedures concern procedures such as time limits for response, fees, and assistance for requesters with special needs like illiteracy. Exceptions and Refusals concern the categories exempt from disclosure (such as national security and privacy) and the existence of public interest tests to override them. Appeals concern independent appeals agencies and other avenues for denied requests. Among the other categories, Right of Access concerns the framing of the law as a human right, Sanctions and Protections concern sanctions for non-compliant officials, and Promotional Measures concern public awareness, trainings for officials, and reporting of statistics on information requests. There

[1] A full list of all 61 indicators and the number of points associated with each is available at: http://www.law-democracy.org/wp-content/uploads/2011/09/Indicatorsfinal.pdf

is substantial variation in the total strength of FOI laws across countries. Figure 4.1 illustrates the incidence of laws of varying legal strength in different regions.

Determinants of the Legal Strength of FOI Laws

What determines the legal strength of FOI laws? A conventional approach would look to domestic factors, such as regime type, level of development, corruption, and legal structure. In this chapter, I argue that in addition to these factors, transnational influences in the form of international NGO persuasion also powerfully shape legal design. In fact, some domestic factors that might be expected to play an important role turn out to be unimportant determinants in models of legal strength.

International NGOs

In this chapter, I argue that transnational advocacy by international NGOs can shape the design of new laws and policies through persuasion, making use of both informative politics and symbolic politics. Finnemore and Sikkink defined persuasion as the process by which advocates "seek to change the utility functions of other players to reflect some new normative commitment" (Finnemore and Sikkink 1998, 514). Checkel called persuasion "a mechanism through which preference change may occur" (Checkel 2001, 562). Persuasion combines the use of factual information with principled arguments — both information politics and symbolic politics, to use the terms of Keck and Sikkink (1998).

To capture the role of international NGOs in influencing the strength of FOI laws, I focus on the activities of Article 19, an international NGO and prominent member of the transnational advocacy network focused on transparency and Freedom of Information. Article 19, named after the corresponding article of the Universal Decla-

Category	Points
Right of Access	6
Scope	30
Requesting Procedures	30
Exceptions and Refusals	30
Appeals	30
Sanctions and Protections	8
Promotional Measures	16
Total Points	150

Table 4.1: Categories in Global Right to Information Rating.

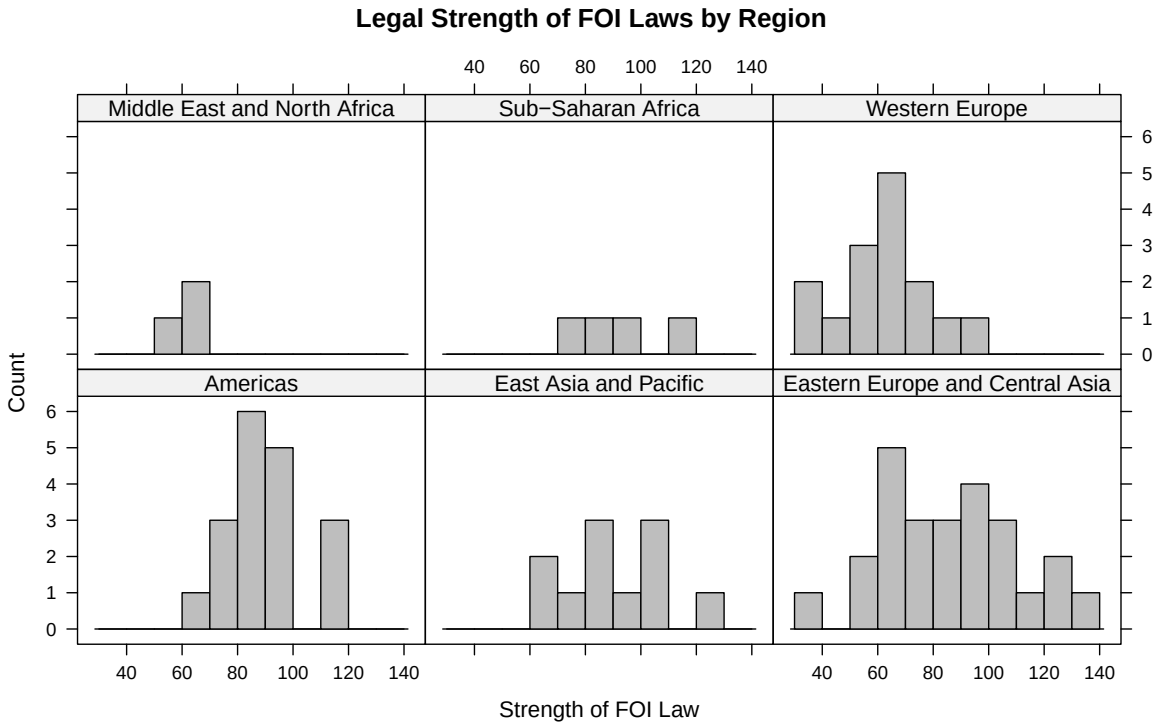

Figure 4.1: Histograms of the legal strength of FOI laws in each region of the world.

ration of Human Rights, was founded in 1987 and in the mid-1990s began engaging in advocacy for the passage of FOI laws around the world. Article 19 published several key documents raising the global profile of the FOI issue, and highlighting issues of legal design. These include the 1996 "Johannesburg Principles on National Security, Freedom of Expression and Access to Information," and the 1999 publication "The Public's Right to Know: Principles on Freedom of Information Legislation," both of which were endorsed by the UN Special Rapporteur on Freedom of Opinion and Expression. In 1999, Article 19 began publishing detailed legal analyses of draft FOI laws, aimed both at assisting the drafting process in countries with limited resources, and at persuading countries to pass stronger laws with greater protections and fewer limitations. In 2001, Article 19 published "A Model Freedom of Information Law," which was referenced by most subsequent legal analyses.

Experts from Article 19 had access to the tools of both information politics — by virtue of their status as legal experts in an epistemic community (Haas 1989) — and to the tools of symbolic politics — by virtue of their role as norm entrepreneurs(Finnemore and Sikkink 1998). Their legal analyses both provided technical recommendations on the ramifications of different choices of legal language and features of institutional design, and made normative arguments about the principled value of the freedom of information and its recognition by international treaties and institutions.

In terms of symbolic politics, most analyses presented the freedom of information as a fundamental human right, and made principled arguments that it is important for democracy and good governance. They grounded these arguments in references to freedom of information in international treaties, such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. They

also often referenced statements and declarations made by other international and regional bodies — even when the country in question was not in the relevant region (for example, referencing statements by the Inter-American Commission on Human Rights and the African Commission on Human and Peoples' Rights in an analysis of Nepal's draft law). This highlights the importance of symbolic arguments in these cases, rather than direct institutional membership. Legal analyses also often pointed out how many other countries have passed FOI laws, and reviewed principles of design considered as best practice by Article 19.

In terms of information politics, analyses often highlighted some sections of draft laws for commendation, while reviewing sections which Article 19 considered problematic in terms of scope, procedures, exceptions, sanctions, or other design features, often making a case that specific features would have negative consequences for the freedom of information in practice. Analyses also often pointed out inconsistencies between different sections of a draft law, and highlighted omissions, such as oversight bodies or proactive disclosure requirements. Most importantly, legal analyses made clear recommendations of changes to draft legislation. Finally, in cases where Article 19 had already published an analysis in the same country, legal analyses often compared positive and negative changes from previous drafts.

Of course, not all legal analyses included all of the aforementioned components, as some were longer and more elaborate than others. Additionally, while most legal analyses were published solely by Article 19, some were in collaboration with domestic civil society groups. Finally, in some cases, the legal analyses were accompanied by physical visits to the country and meetings with key political figures involved in the drafting process. Thus, while some legal analyses differed from others in these regards, all used tools of both symbolic politics and information politics in seeking to persuade

political actors to pass stronger FOI laws.

While other organizations have also published legal analyses of draft FOI legislation in various countries, including the Commonwealth Human Rights Initiative and the Carter Center, Article 19 was both the first and the most consistent advocate engaged in shaping legal design in countries worldwide, and by far the most frequent in its use of legal analyses as a strategy. I measure these activities by recording every legal analysis published by Article 19 of draft FOI laws. I consider only analyses published prior to the passage of each country's FOI law, as critical analyses after passage cannot shape the design of those laws.[2] I also consider only legal analyses of countries which passed FOI laws during the period under study, through 2008. Table 4.2 lists the countries whose draft laws were subjects of Article 19 legal analyses, along with the years those analyses were published and the year the law was passed in each country.

Domestic Factors

In addition to the role of international NGOs, several domestic factors can be expected to shape the strength and design of FOI laws. Democracies can be expected to pass stronger laws than autocracies for a variety of reasons. Democracies tend to already be more open regimes, so the costs of a strong information regime to political actors are lower for democratic leaders than for autocratic leaders. Democracies are more likely than other states to be home to domestic interest groups that advocate for transparency, such as organizations of journalists, lawyers, or environmental or human rights organizations. Finally, democracies are likely to be more responsive to

[2]I also exclude two analyses published so shortly before passage that it is doubtful that they can be considered eligible to have had an impact: One analysis in Slovakia, published two days before passage, and one analysis (out of four total) in Macedonia, published fifteen days before passage. Main results are robust to including these, however (results available from author upon request).

Country	Years of Legal Analyses	Number of Analyses	Year of Passage
Armenia	2002, 2003	2	2003
Azerbaijan	2003, 2005	2	2005
Bangladesh	2004, 2008	2	2008
Bulgaria	1999	1	2000
Croatia	2003, 2003	2	2003
Guatemala	2000, 2003	2	2008
India	2000	1	2005
Jordan	2005	1	2007
Kyrgyzstan	2006	1	2007
Lithuania	1999	1	2000
Macedonia	2003, 2004, 2005	3	2006
Mexico	2001	1	2002
Moldova	1999, 2000	2	2000
Montenegro	2003, 2003, 2004, 2004	4	2005
Nepal	2004, 2006	2	2007
Pakistan	2000	1	2002
Peru	2002	1	2002
Romania	2000, 2001	2	2001
Serbia	2001, 2003, 2003, 2004	4	2004
Uganda	2004, 2004	2	2005

Table 4.2: Article 19 legal analyses of draft FOI laws included in the model. Excludes analyses where no laws had yet been passed as of 2008.

such citizen or interest group demands for transparency. I measure democracy using the Polity2 measure from the Polity IV project, which ranges from -10 to 10. In a robustness check, I use an alternative measure of democracy from Freedom House.

Economic development should be an important determinant as well, but its effect could work in different directions. Wealthier countries have more resources to devote to legislative drafting and are likely to face stronger citizen demands for post-materialist values like transparency, but at the same time tend to have large government bureaucracies (Cusack et al. 1989, Boix 2001) which can resist disclosure. I measure economic development using the log of GDP per capita from the World

Development Indicators.

Corruption is another important factor which may work in different directions. On one hand, more corrupt political actors can be expected to resist initiatives to increase accountability, as Bussell found in the case of public service reforms using new information technologies, both for Indian states and across countries (Bussell 2010, 2011). This would lead us to expect that when more corrupt countries are passing FOI laws, they will tend to pass the weakest laws, in order to appease international or domestic audiences while changing little in terms of the exposure of their activities to scrutiny. On the other hand, corrupt countries which do pass FOI laws may have reason to pass particularly strong laws, either out of a genuine commitment to reduce corruption, or because passage is intended opportunistically, and political actors seek to reap the maximum expressive benefits by passing a strong law, even if that law will end up as mere window dressing. I measure corruption using the Control of Corruption measure from the World Bank World Governance Indicators, in which higher values reflect less corruption while lower values reflect more corruption. Since this measure is not available for the entire period under study, and given how slowly corruption tends to change over time in each country, I use the average for each country over all available years. In a robustness check, I use corruption data from the International Country Risk Guide, which is available for a longer period of time (although for fewer countries), obviating the need to use country averages.

The influence of international financial institutions may be another important factor, especially since the World Bank and International Monetary fund have become involved in encouraging states to pass FOI laws, in some cases materially supporting political processes of building support for them, and in other cases including them in conditionality agreements. For instance, in March 2011, the World Bank pledged

fifty thousand dollars in support for Ghanaian politicians to hold a series of consultations around the country on the content of the draft FOI legislation. This came after parliamentary leaders originally "requested hundreds of thousands of dollars to conduct meetings in virtually all regions of Ghana, attended by many members of Parliament," a proposal which was rejected by the World Bank as too ambitious (Freedom Info 2011). In the case of Pakistan, on the other hand, passage of a FOI law in 2002 was part of the conditionality agreement for a $1.4 billion concessional loan under the IMF's Poverty Reduction and Growth Facility program as well as having been part of an earlier agreement with the Asian Development Bank (see Chapter 2). However, as with many potential determinants, there are reasons to expect the role of international financial institutions to have both positive and negative effects on the strength of FOI laws. While involvement of international experts from these institutions may result in stronger laws, countries which pass FOI laws under pressure may also pass weak laws in order to meet their requirements and nothing more. I measure international financial institutions' role with a dummy variable indicating whether a country is currently (at the time of passage) under an IMF credit or World Bank loan agreement, using data from the World Development Indicators.

Finally, the design of FOI laws may be shaped by the legal structures which they enter into. A large literature has focused on the different implications of legal systems with common law and civil law origins for outcomes such as financial growth (Beck et al. 2000) and international human rights agreements (Simmons 2009). Indeed, many scholars have noted that common law systems tend towards more transparency (Beck et al. 2000). I include a dummy variable indicating whether a country has a common law legal system. However, most common law countries are also English-speaking former British colonies, so the results for this variable may, in fact, be proxying for

the effects of one of those factors.

Modeling the Legal Strength of FOI Laws

I first present basic models of the determinants of the legal strength of FOI laws, before including measures of legal analyses in the models. The dependent variable is the total score on the Centre for Law and Democracy's measure of the legal strength of FOI laws. I use OLS regression, as the dependent variable is continuous and relatively normally distributed. While the measure of legal strength ranges in theory from zero to 150, the observed values range from 39 to 135, with a mean of 83.27.

The universe of cases comprises all FOI laws passed between 1966 and 2008. This excludes Sweden and Finland, both of which passed laws at earlier dates when insufficient data was available on the independent variables. Additionally, insufficient data was available for the Cook Islands, Kosovo, and Taiwan. Seventy-five observations remain. The small size of this dataset sets a relatively high bar for any relationships in the data to emerge as statistically significant.

The independent variables for each observation are, except where noted otherwise, the values observed for the year in which each law was passed. Thus the observation for Angola includes data on the independent variables for the year 2002, while the observation for Germany contains data for 2005. As noted previously, this is not the case for the corruption measure from the World Governance Indicators, which has been averaged across all years due to limited temporal coverage.

Baseline Models

The results of the first set of models are presented in Table 4.3.[3] The first model highlights four factors as statistically significant determinants of the strength of FOI laws: time, democracy, development, and legal origin. The effect of time is positive and statistically significant at a 95% confidence level: the more recently a FOI law was passed, the stronger its legal design is likely to be. Since this variable is a transformation of the calendar year (based on the assumption of a logarithmic relationship moving backwards in time), the coefficient is best interpreted with examples. A law passed in 1995 is likely to be 3.76 points stronger than a law passed in 1985, while a law passed in 2005 is likely to be 8.08 points stronger than a law passed in 1995. Indeed, this reflects the increasing global normative salience of transparency and the increasing emphasis on strong legal design as reflected in publications by international NGOs and international institutions (Mendel 2008).

The effect of democracy is positive and statistically significant at a 99% level. More democratic countries are likely to have stronger FOI laws than less democratic ones. On average, a one unit increase on the Polity2 scale of democracy (ranging from -10 to 10) is associated with a 1.64 point increase in the legal strength of a country's FOI law. Thus, a fully democratic country would be likely to have a FOI law 32.8 points stronger than a fully autocratic country. The effect of GDP per capita, on the other hand, is negative and statistically significant at a 95% level. This relationship is logarithmic: a country with an average annual income of five thousand dollars is likely to have a law 12.87 points weaker than a country with an average income of one thousand dollars, while a country with an average annual income of fourteen thousand

[3]Non-constant error variance tests fail to reject a null hypothesis of no heteroskedasticity for every single model presented in this paper, save for the "Sanctions" model presented in Table 4.6. As heteroskedasticity is thus not an issue, I do not employ adjusted standard errors.

	Model 1	Model 2	Model 3	Model 4	Model 5	Model 6	Model 7	Model 8	Model 9	Model 10
Time	7.35 *	8.24 *	14.19 **	7.43 *	7.25 †	7.39 †	5.71	11.34 †	12.36 *	7.57 *
	(3.67)	(4.02)	(5.18)	(3.70)	(3.85)	(3.71)	(3.78)	(5.72)	(5.95)	(3.68)
Democracy (Polity)	1.64 **		1.80 *	1.63 **	1.57 *	1.63 **	2.43 **	1.75 *	1.75 *	1.18 †
	(0.58)		(0.72)	(0.58)	(0.60)	(0.59)	(0.77)	(0.67)	(0.68)	(0.63)
Log GDP per Capita	-8.00 *	-9.21 *	-9.36 *	-8.10 *	-6.33	-7.82 †	-6.62 †	-8.47 †	-8.32 †	-4.87
	(3.79)	(4.05)	(3.94)	(3.82)	(4.20)	(4.08)	(3.85)	(4.37)	(4.38)	(4.32)
Corruption (WGI)	-1.44	-2.05		-1.52	-2.77	-1.50	-0.70	-3.27	-2.63	1.91
	(4.85)	(5.25)		(4.89)	(5.14)	(4.92)	(4.82)	(6.31)	(6.37)	(5.11)
IMF/WB	-6.79	-8.41	-13.05	-6.34	-6.00	-6.89	-6.18	-12.69	-12.47	-4.43
	(7.38)	(7.98)	(10.64)	(7.53)	(7.61)	(7.48)	(7.31)	(8.95)	(9.26)	(8.32)
Common Law	13.73 *	11.94 *	11.03	13.36 *	14.43 *	13.81 *	14.77 **	13.56 *	13.67 *	12.53 †
	(5.19)	(5.49)	(6.87)	(5.32)	(5.55)	(5.27)	(5.18)	(6.20)	(6.28)	(6.52)
Democracy (Freedom House)		13.96 **								
		(4.82)								
Corruption (ICRG)			-3.23							
			(3.39)							
Presidential Systems				-1.93						
				(5.35)						
Trade Openness					0.01					
					(0.07)					
Foreign Aid/GDP						0.01				
						(0.11)				
Press Freedom							-10.10			
							(6.45)			
International NGOs								-0.00		
								(0.00)		
Inter-governmental Organizations									-0.17	
									(0.23)	
Region Dummies	No	No	No	No	No	No	No	No	No	Yes
N	75	71	53	75	73	75	75	63	62	75
R^2	0.30	0.30	0.33	0.31	0.28	0.30	0.33	0.31	0.32	0.38
Resid. sd	19.03	19.42	20.00	19.15	19.32	19.17	18.83	20.28	20.34	18.62

Standard errors in parentheses
† significant at $p < .10$; $^{*}p < .05$; $^{**}p < .01$; $^{***}p < .001$

Table 4.3: Baseline models of FOI law strength. All models use OLS. Constant term not displayed to save space

dollars is likely to have a law 2.69 points weaker than one with ten thousand dollars.

Finally, a country with a common law legal system is likely to have a FOI law 13.73 points stronger than other countries, and this relationship is statistically significant at a 95 percent level. However, given that nearly all common law systems are also former British colonies and English-speaking countries, it is not clear what this finding truly represents. Indeed, if an indicator for English language is included in the place of this variable, it is also statistically significant, while when both are included, neither is significant. It is possible that strong FOI laws are a better institutional fit with common law systems, but it is also possible that English-speaking countries are likely to pass stronger laws as a result of the activities of predominantly English-speaking international NGOs.

While one might expect more corrupt countries to pass weaker laws, corruption in fact has no effect on the strength of FOI laws. The coefficient is both small and far from statistical significance. Finally, countries participating in IMF or World Bank loan programs are likely to have laws which are 6.79 points weaker on average, but this finding is not statistically significant. Nonetheless, it reflects the fact that countries which have passed laws as a result of conditionality pressure may in fact pass weak laws, out of a desire to fulfill requirements and nothing more.

The remaining models presented in Table 4.3 conduct a series of robustness checks, which largely confirm the findings already discussed. Using a different indicator of democracy (Freedom House) yields a similar positive and statistically significant coefficient. Using a different indicator of corruption (ICRG), which varies over time but reduces the sample size, yields a similar finding that corruption has no effect. Several potential additional determinants of the strength of FOI laws are found to have no effect. Finally, in Model 10, I include dummy variables for each region of the world,

thus considering only variation within each region (defined here as the six regions presented in Figure 4.1). Time, democracy, and common law each still have positive and statistically significant effects, while the effect of GDP per capita is no longer significant in this model. Nonetheless, the first three factors still have clear effects, even in this most conservative model, which accounts for any region-specific omitted variables which might potentially bias the results.

The Effects of Legal Analyses

I now proceed to build on this baseline model of the legal strength of FOI laws by incorporating a measure of the role of persuasion by international NGOs, thus including not just domestic factors, but transnational influences as well. To do this, I measure the number of legal analyses of draft laws published by the organization Article 19 prior to the passage of each country's FOI law. Article 19 published such analyses prior to passage in twenty countries, twelve of which were subject to multiple analyses. However, Article 19 did not publish the first of these until 1999. This presents an issue of temporal coverage for the models testing the effect of legal analyses. In order to make a fair assessment of their effects, I only include FOI laws passed in the year 1999 or later — 53 out of the total 75 considered in earlier models. This compares the strength of FOI laws which were subject to legal analyses with the strength of those which were "eligible for," in a temporal sense, but did not receive legal analyses. A robustness check shows that the results for the effects of legal analyses do not depend on this choice of time period.

Table 4.4 presents the results for these models. Model 11 in this table first presents baseline results for the same variables as Model 1 in Table 3, but restricts the data to consider only FOI laws passed in 1999 or later. With this smaller set of observations,

the effects of time, democracy, and common law systems remain statistically significant. The effect of GDP per capita remains negative, but is no longer statistically significant. Model 12 adds a measure of the number of legal analyses published by Article 19 of each country's FOI law before passage (empirically ranging from zero to four). Legal analyses have a positive effect, which is statistically significant at a 95 percent level. The results show that each additional legal analysis is associated with a law being 6.5 points stronger. These results expect a country receiving the maximum observed number of four legal analyses to have a law which is 26 points stronger than a country which received no legal analyses — on a scale which empirically ranges from 39 to 135. This is clear evidence that persuasive activity by legal experts and advocates from Article 19 has a considerable effect on the legal design of FOI laws around the world.

A series of robustness checks confirm these results. Model 13 tests the same model on the full set of FOI laws, not just those passed in 1999 or later, to ensure that the choice of temporal range is not driving the results. Model 14 treats legal analyses as a dichotomous variable, comparing countries which received any number of analyses with those which received none. Modeled in this manner, the effect of legal analyses is statistically significant at a 90 percent level, and shows that countries which were subject to them are likely to have laws 12.11 points stronger than countries subject to no legal analyses.

Models 15 and 16 address the potential confounding role of international NGOs in general, as opposed to the specific role of persuasion by Article 19. Indeed, many scholars working in the World Society approach have found that the embeddedness of a country in international NGO networks drives policy diffusion (Frank et al. 2000, Schofer and Hironaka 2005, Koo and Ramirez 2009). I first include the commonly

	Model 11	Model 12	Model 13	Model 14	Model 15	Model 16	Model 17
Time	11.56 †	10.06 †	5.75	11.64 †	14.65	9.83 †	13.04 †
	(5.98)	(5.80)	(3.63)	(5.84)	(8.89)	(5.82)	(7.32)
Democracy (Polity)	1.78 *	1.60 *	1.53 **	1.80 **	1.74 *	1.61 *	1.19
	(0.68)	(0.66)	(0.56)	(0.66)	(0.74)	(0.66)	(0.76)
Log GDP per Capita	-5.24	-2.84	-5.85	-2.92	-2.28	-2.29	1.51
	(5.21)	(5.14)	(3.79)	(5.24)	(5.82)	(5.18)	(6.50)
Corruption (WGI)	-5.02	-3.48	-1.28	-5.60	-9.52	-5.39	0.03
	(7.97)	(7.70)	(4.70)	(7.78)	(10.32)	(8.00)	(9.07)
IMF/WB	-6.03	-1.82	-4.58	-6.37	-12.17	-2.47	1.24
	(9.65)	(9.49)	(7.21)	(9.41)	(11.59)	(9.53)	(10.57)
Common Law	14.66 †	15.87 *	14.47 **	15.53 *	16.10 †	13.18 †	17.37 †
	(7.51)	(7.25)	(5.04)	(7.34)	(8.15)	(7.84)	(10.29)
Legal Analysis (Count)		6.50 *	6.02 *		8.90 *	6.32 *	6.10 †
		(3.00)	(2.61)		(3.74)	(3.02)	(3.30)
Legal Analysis (Dummy)				12.11 †			
				(6.59)			
International NGOs					0.00		
					(0.00)		
Human Rights NGOs						0.08	
						(0.08)	
Region Dummies	No	No	No	No	No	No	Yes
Limited to Post-1998	Yes	Yes	No	Yes	Yes	Yes	Yes
N	53	53	75	53	46	53	53
R^2	0.27	0.34	0.36	0.32	0.38	0.35	0.43
Resid. sd	21.27	20.47	18.45	20.74	21.28	20.51	20.04

Standard errors in parentheses

† significant at $p < .10$; $^{*}p < .05$; $^{**}p < .01$; $^{***}p < .001$

Table 4.4: Models including Legal Analyses. All models use OLS. Constant term estimated but not displayed.

used measure of the number of international NGOs which have members in each country, from the Yearbook of International Organizations. This variable has no statistically significant effect, and its inclusion does not alter the significance of the legal analyses variable. However, this measure includes NGOs working on all issue areas, not necessarily those relevant to transparency. To remedy this shortcoming, I coded the number of NGOs in each country registered with the United Nation's Department of Economic and Social Affairs which included "human rights" as one of their topical areas. While this variable measures the number of NGOs in each country working on a more specific issue area of relevance to FOI laws, it is measured at only one point in time — 2011. Thus, the observation for a country passing a FOI law in 1999 would nonetheless receive the 2011 value for this variable, as it is not available for past years. The Human Rights NGOs variable has no statistically significant effect on the strength of FOI laws. Inclusion of a similar count of NGOs including "governance" as one of their topical areas yields similar results, as do models which included logged forms of either the international NGO or human rights NGO variables.[4] Thus the effect of legal analyses on the strength of FOI laws remains strong even when controlling for two different measures of the presence of NGOs, though each measure has different shortcomings. These results highlight that the evidence here supports the role of international NGO persuasion specific to the FOI issue, rather than of other potential mechanisms of transnational influence.

Model 17 tests the effect of legal analyses while including regional dummy variables. This model allows only variation within individual regions of the world to affect the results, and controls for any potential omitted variables at the regional level. This very conservative model shows that, even within individual regions, countries which

[4]Results available from author upon request.

were subject to transnational persuasion in the form of legal analyses of their draft laws tend to have stronger FOI laws. Finally, two models in Table 4.5 present additional robustness checks. Model 18 employs an outlier-resistant MM-estimator, to ensure that the results are not driven by the presence of outliers. Model 19 uses an alternative method of measuring the independent variables, using averages over the last five years at the time of passage, rather than data from the year of passage itself. Both of these models confirm the key results of this paper.

	Model 18	Model 19
Time	8.60	9.11
	(5.96)	(5.86)
Democracy (Polity)	1.66 **	1.56 *
	(0.68)	(0.71)
Log GDP per Capita	-3.64	-4.94
	(5.28)	(5.33)
Corruption (WGI)	-1.82	-1.06
	(7.91)	(7.66)
IMF/WB	2.05	-3.26
	(9.75)	(9.72)
Common Law	15.84 *	14.52 *
	(7.45)	(7.22)
Legal Analysis (Count)	6.71 *	6.28 *
	(3.09)	(3.05)
Limited to Post-1998	Yes	Yes
N	53	53
R^2	0.33	0.32
Resid. sd	18.55	20.65

Standard errors in parentheses

† significant at $p < .10$; $^{*}p < .05$; $^{**}p < .01$; $^{***}p < .001$

Table 4.5: Robustness checks. Model 18 employs an outlier-resistant MM-estimator. Model 19 uses 5-year averages of all independent variables, except Time.

I also investigate whether Article 19 legal analyses have different effects on different

subcomponents of FOI law strength. Table 4.6 presents results of these models. In order to compare the magnitude of effects across subcomponents, I first standardize each subcomponent measure. The first model in the table is identical to Model 12 in Table 4.4, except for employing the standardized total legal strength score as the dependent variable. Comparing the coefficient for legal analyses in this model to those in the subsequent models allows us to evaluate which subcomponents of legal design are most influenced by the efforts of Article 19. The results show that the Right of Access, Scope, Exceptions, and Promotion components of legal strength are all stronger in countries with legal analyses, although each coefficient is of a smaller magnitude than the coefficient in the Total strength model, and each is significant at only a 90 percent level. For the Sanctions subcomponent, however, the coefficient for legal analyses is considerably larger than the coefficient in the Total strength model, and its effect is statistically significant at a 99.9% level. The coefficients for legal analyses in the Procedure and Appeals models, however, are of small magnitude and not significant. These results highlight that, even though most of the subcomponents of FOI legal strength have been influenced by Article 19's efforts, the greatest impact has been on the strength of sanctions for non-compliance included in the laws.

Endogeneity Concerns

Endogeneity poses a potential concern for modeling the effect of Article 19 legal analyses on the strength of FOI laws. There is no plausible instrument which might explain the occurrence of legal analyses but not be associated with the strength of FOI laws through any other causal channel. Nonetheless, by closely examining the precise forms of endogeneity that might potentially be at work, I can show that they are unlikely to be fatal problems for the results of this study. The concern here is not

	Total	Right	Scope	Procedure	Exceptions	Appeals	Sanctions	Promotion
Time	0.43 †	0.03	0.13	0.12	0.29	0.34	0.10	0.75 **
	(0.25)	(0.25)	(0.24)	(0.28)	(0.27)	(0.28)	(0.19)	(0.25)
Democracy (Polity)	0.07 *	0.07 *	0.08 **	0.06 †	0.05	0.01	0.07 **	0.05 †
	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)	(0.02)	(0.03)
Log GDP per Capita	-0.12	0.01	-0.35	-0.29	-0.01	-0.10	-0.01	0.36
	(0.22)	(0.22)	(0.21)	(0.24)	(0.24)	(0.24)	(0.17)	(0.22)
Corruption (WGI)	-0.15	-0.21	-0.23	0.15	-0.27	0.04	0.04	-0.46
	(0.33)	(0.33)	(0.32)	(0.37)	(0.36)	(0.37)	(0.26)	(0.33)
IMF/WB	-0.08	0.89 *	-0.29	-0.20	-0.28	-0.04	0.28	0.51
	(0.41)	(0.41)	(0.39)	(0.45)	(0.45)	(0.45)	(0.31)	(0.41)
Common Law	0.68 *	0.25	-0.17	0.40	0.49	0.79 *	1.39 ***	0.55 †
	(0.31)	(0.31)	(0.30)	(0.35)	(0.34)	(0.34)	(0.24)	(0.31)
Legal Analysis (Count)	0.28 *	0.25 †	0.23 †	0.17	0.25 †	0.06	0.46 ***	0.25 †
	(0.13)	(0.13)	(0.12)	(0.14)	(0.14)	(0.14)	(0.10)	(0.13)
N	53	53	53	53	53	53	53	53
R^2	0.34	0.33	0.38	0.18	0.19	0.18	0.60	0.34
Resid. sd	0.88	0.88	0.85	0.97	0.97	0.97	0.68	0.88

Standard errors in parentheses

† significant at $p < .10$; $^{*}p < .05$; $^{**}p < .01$; $^{***}p < .001$

Table 4.6: Results for separate models of each subcomponent of legal strength. All dependent variables have been standardized.

over direct reverse causality, but rather over two potential forms of endogeneity. In the first, some unobserved variable might be causally related both with the publishing of legal analyses and with strong FOI laws. In the second form, Article 19 might strategically choose to issue legal analyses for countries whose laws they expected to be stronger. Either of these situations might result in biased results showing a strong effect for legal analyses when the true effect was smaller. I will address each of these possibilities in turn, and then present results using propensity score matching to further address the issue.

In any quantitative study, some possibility remains that an unobserved variable jointly determines the outcome and a key independent variable, and the researcher can only do their best given available data to avoid this possibility. Given that this is not a panel study, it is not possible to include country fixed effects. However, I do show in Model 17 that the main results hold even when including region-specific dummy variables, thus controlling for any unobserved variables at the regional level, such as cultural or historical patterns. Beyond this, I can only argue that the independent variables which I have included in the models and robustness checks are comprehensive of any factors which could potentially be causally related with both the publishing of legal analyses and the strength of FOI laws.

The second possible form of endogeneity concerns the potential that Article 19 strategically issues legal analyses of draft legislation which it expects will result in strong FOI laws. This would lead to a finding of a strong relationship when the true relationship was not a causal one. While research has shown that international NGOs do act strategically in terms of where they target their activities (Ron, Ramos, and Rodgers 2005), this is a picture clearly at odds with the reality of the analyses provided by legal experts at Article 19 and of the countries where they are directed.

Instead, Article 19 targets their legal analyses towards laws which they expect to be particularly weak, a situation which they wish to redress. Most legal analyses focus on rectifying language of draft laws which is seen as not meeting international best practices, such as broad exemptions to coverage of the law, potential barriers to its use, or the absence of independent appeals agencies and sanctions for non-compliance.

In terms of the characteristics of the countries where Article 19 focuses attention, legal analyses appear more likely to be published in less favorable situations for strong FOI laws to emerge. Among countries which passed FOI laws in 1999 or afterwards, the mean Polity2 democracy score of countries which received no legal analyses was 6.84, while the mean score of countries which received one or more analyses was 3.9; those which received analysis were more autocratic, on average. Were Article 19 strategically targeting countries it expected to pass strong laws, it would not be publishing legal analyses of draft laws in countries like Azerbaijan, Pakistan, and Uganda. If Article 19 instead targets countries which it expects to have weak laws, the only direction in which this would bias the coefficient for the legal analysis variable is downwards — if legal analyses had no causal effect on legal strength, we would expect to find a negative relationship. In fact, this makes the finding of a statistically significant positive effect even more noteworthy.

Finally, as one last means of addressing the potential for endogeneity, I present results using propensity score matching. This procedure matches each observation which received one or more legal analyses with another observation which received no legal analyses, yet is as similar as possible on all other independent variables. The resulting "matched" pairs of similar countries can be compared with a simple difference in means test or be employed in a model. I use propensity score matching with two datasets, one restricted to the post-1998 time period when Article 19 was

publishing analyses and the other unrestricted. Effectively, the first approach matches each country which was the subject of legal analyses with another country which was not and which also passed a FOI law post-1998. The second approach, on the other hand, potentially matches legal analysis countries with other countries which passed FOI laws at earlier points in time, if those countries are the best matches in terms of the other independent variables. Each procedure results in 21 matched pairs, for a total of 42 countries.

For the dataset matched only among post-1998 laws, the difference in means is 12.86 with a p-value of 0.05. For the dataset matched using all FOI laws, the difference in means is 11.86 with a p-value of 0.07. Results from modeling the strength of FOI laws using these matched datasets are presented in Table 4.7. In both Model 20 and Model 21, the effect of Legal Analyses is positive and statistically significant. While both coefficients for legal analyses are statistically significant at only a 90 percent level, this is understandable given the small number of observations remaining following the matching procedure. While propensity score matching cannot definitively rule out endogeneity, these results are further evidence of the positive effect of Article 19 legal analyses on the strength of FOI laws.[5]

Conclusion

This chapter offers evidence that international NGOs play a key role in the translation of international norms into domestic law. They can do so by persuading policymakers to alter legal design to better reflect international norms, using the tools of both information politics and symbolic politics. While the design of FOI laws provides

[5]The effects of legal analyses are also robust to the use of a two-stage Heckman probit selection model, which takes into account the selection process whereby states pass FOI laws. Results available from author upon request.

	Model 20	Model 21
Time	10.11 †	8.87 †
	(5.62)	(4.94)
Democracy (Polity)	1.75 *	1.75 *
	(0.67)	(0.66)
Log GDP per Capita	-0.31	-1.05
	(5.60)	(5.42)
Corruption (WGI)	-9.79	-12.15
	(8.78)	(8.85)
IMF/WB	-7.01	-17.67
	(11.36)	(10.92)
Common Law	11.90	8.10
	(8.20)	(8.34)
Legal Analysis (Dummy)	12.36 †	10.73 †
	(6.37)	(6.21)
Limited to Post-1998	Yes	No
N	42	42
R^2	0.30	0.31
Resid. sd	19.62	19.28

Standard errors in parentheses

† significant at $p < .10$; $^{*}p < .05$; $^{**}p < .01$; $^{***}p < .001$

Table 4.7: Results of models using propensity score matching for Legal Analyses.

political actors an opening to opportunistically sign on to global norms while actually making lesser commitments in the specifics of institutional rules and features, key normative agents can help mitigate this risk by providing information and drawing attention to design shortcomings.

Nonetheless, strong legal design does not always mean strong institutions. Indeed, in many countries freedom of information laws are only poorly implemented and enforced, regardless of their design. The next chapter investigates how the *de jure* element of the design of FOI laws is related to the *de facto* element, and how

transnational advocacy plays a role in the latter as well.

Chapter 5

LAW, POLITICS, AND CIVIL SOCIETY: THE STRENGTH OF FOI LAWS IN PRACTICE

Introduction

The previous chapter sought to explain variation in the legal design of FOI laws, and offered evidence that international NGO persuasion can result in stronger laws. But an important question remains — to what extent is strength in law matched by strength in practice? Given the amount of attention that the transnational advocacy community pays to the design of FOI laws, it is a question of paramount importance whether laws which are strong on the *de jure* dimension tend also to be strong on the *de facto* dimension. Indeed, it is the freedom of information in practice — the ability of individuals to request information from officials without undue barriers, and to receive that information in a timely fashion — which is the ultimate goal of FOI advocates. If these abilities are undercut by procedural barriers, an absence of appeals mechanisms, poorly enforced appeals mechanisms, or even a lack of awareness of the law among officials or potential users, then the mechanisms by which transparency can ameliorate political information failures and bring about better governance will break down. To be truly institutionalized — both in the legal sense and the normative sense — FOI laws must be implemented, enforced, and used in practice.

While little cross-national, comparable data is yet available about the strength of FOI laws in practice, this chapter leverages what is available thus far, and finds a marked disconnect between FOI in law and FOI in practice. Instead, turning to

investigate the other potential drivers of the strength of FOI laws in practice, I find that the institutionalization of transparency is eminently political — shaped by the preferences and capacities of state leaders and bureaucracies. However, I also find important evidence that transnational advocacy networks play an important role in bolstering the strength of FOI laws in practice. A case study of Bulgaria highlights the importance of local civil society activities like promoting awareness, legal mobilization, and holding trainings for journalists, civil society members, and even government officials themselves. While transnational resources and information are important in supporting such local activities, traditional international NGO activities like naming and shaming are less important at promoting the strength of FOI laws in practice.

Freedom of Information in Practice

It is relatively straightforward to define the strength of FOI laws in terms of legal design, by the presence or absence of key institutional features which have been accepted as best practices by norm entrepreneurs and legal experts. It is more difficult, however, to define the strength of FOI laws in practice. Building a strong information regime, in which information requests are able to solve political information failures and deter poor governance, requires four interlocking processes to be at work: implementation, use, response, and enforcement.

First, FOI laws must be implemented in government agencies. Individual agencies must have designated officials and procedures for handling information requests. Where FOI laws create national-level agencies like information commissions, budgets must be appropriated and officials appointed. Often, these tasks are delayed or incomplete. For example, while Liberia's Freedom of Information Law was passed in October 2010, only in May 2012 was the national-level Information Commissioner

appointed.[1] In Albania, a 2005 report by the Center for Parliamentary Studies found that "of 20 national government institutions monitored, only two had complied with the legal obligation to prepare and approve internal regulations for implementation of the law" (USAID 2007, 28). Such implementation is expensive, and can demand resources beyond the budgetary capacity of many developing countries. Roberts (2006, 115-116) noted that "The budget for central guidance of the British FOI implementation effort exceeded the budget of the Jamaican Access to Information Unit (with its staff of four); the government's Archives and Records Department; the other parts of the Prime Minister's Office; and the Jamaican Houses of Parliament combined."

Second, individuals must use the law to make information requests. This requires awareness of the law and knowledge of how to use it among relevant groups like journalists, civil society organizations, and ordinary citizens. In some countries, this is very limited. For example, a 2007 report by Article 19 wrote of Angola's law: "It is significant that in the four and a half years since the Law was enacted, it has barely been used and does not register among journalists as a tool they can rely upon to gather information."[2]

The third important process is the manner in which officials tend to respond to information requests. There are a whole range of potential non-compliant responses, such as demanding unlawful fees, taking longer than legal time limits, or erecting other forms of barriers for requesters. A major problem in many countries is "administrative silence" or "mute refusals" whereby information requests are ignored altogether (OSJI 2006). For example, in a 2011 monitoring exercise by the Freedom of Information Center of Armenia, ten applicants sent in a total of 250 information

[1]See http://allafrica.com/stories/201205211447.html.

[2]See http://www.article19.org/data/files/pdfs/publications/angola-foe-elections.pdf, p. 18.

requests to numerous different government agencies. The results were mixed in terms of the responses received: "In 56 percent of cases complete answers were provided, 30 percent of requests were left unanswered, 8 percent were turned down, with only one lawfully."[3] Many officials also cite unlawful reasons for rejecting requests, such as the lack of legal standing as an interested party. An official in Rawalpindi, Pakistan, rejected an information request for local budget data with a letter noting that "the information sought for, can not be conveyed to every a, b or c, who might exploit it according to his own sweet will and designs."[4]

Finally, there must be functioning and independent enforcement mechanisms to allow individuals to appeal denied (or ignored) requests and to sanction non-compliant officials. Neuman (2009) notes that there are three commonly used enforcement models to allow denied requesters to make appeals — judicial review, an information commissioner or appeals tribunal with the power to issue binding orders, and an information commissioner or ombudsman with the power to make recommendations. However, any of these forms can be ineffective if the expense or amount of time required is overly burdensome to requesters, if sanctions are absent or small, or if the process is politicized and biased against disclosure. For example, a 2010 review of Indonesia's law noted that "specific concerns relate to the lack of clarity about information classifications, an absence of sufficient sanctions to enforce compliance and a lengthy appeals process that could dog formal requests for sensitive material."[5]

While ideally, there would exist comparable, cross-national data on FOI practice

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[3]See http://www.freedominfo.org/2011/12/results-of-monitoring-study-in-armenia-released-by-center.

[4]See http://www.thenews.com.pk/Todays-News-13-13709-A-bureaucrat-who-retired-honourably-with-his-head-high.

[5]See http://www.freedominfo.org/2010/12/researcher-identifies-concerns-with-new-indonesian-law.

which could distinguish between these different dimensions, no such data exists yet. Several groups are currently engaged in intensive data collection projects, and a task for future research may be to combine existing single-country studies of FOI practice in a systematic way. This chapter, however, seeks to leverage the data available at present to gain a general understanding of the contexts and institutional features likely to be associated with stronger or weaker FOI practice as a whole. In order to make the best use of the available data, I am not able to distinguish between different dimensions of practice, and so treat it as a unified characteristic. In general, strong implementation, use, response, and enforcement are each likely to generate positive feedback loops amongst themselves, and so performance across the dimensions can be expected to vary together from country to country.

I measure the strength of FOI laws in practice using indicators from Global Integrity's Global Integrity Report. The Global Integrity Report relies on in-country researchers and journalists to assess "the existence, effectiveness, and citizen access to key governance and anti-corruption mechanisms through more than 300 actionable indicators" (Global Integrity Report 2009). In each year from 2006 to 2011, Global Integrity researchers scored countries on five different questions for the indicator of "Is the right of access to information effective?" These are:

- In practice, citizens receive responses to access to information requests within a reasonable time period.

- In practice, citizens can use the access to information mechanism at a reasonable cost.

- In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

- In practice, citizens can resolve appeals to information requests at a reasonable cost.

- In practice, the government gives reasons for denying an information request.

For each question, researchers assigned the country a score of 0, 25, 50, or 100, and then the indicators were averaged to yield the overall indicator for that country's access to information effectiveness in practice. As different sets of countries were surveyed in each year (anywhere from 28 to 47 in each year), and some countries were scored multiple times while others only once, I average all the scores available for any year for each country, to yield that country's overall score. Given that these are relatively noisy data, potentially biased by idiosyncracies of the perceptions of individual respondents, I choose to average responses across all of the questions, rather than treat them individually. This is the primary dependent variable used in this chapter. Unfortunately, even after averaging available years, this indicator is only available for 49 countries in my already-limited sample. This small sample size establishes a relatively high bar for relationships to emerge as statistically significant. I also employ two different approaches to attempt to ameliorate potential problems of sample bias, using a Heckman selection model and multiple imputation.

The Global Integrity Report surveys included ratings on these features of access to information practice in countries both with and without FOI laws. This allows us to compare the average practice measure in each group. Among the 41 countries with no FOI law, the average measure was 24.77, while among the 49 countries with FOI laws, the average measure was 53.91. A t-test shows that the difference is statistically significant with a p-value below 0.001. However, there is substantial variation in the measure among countries with FOI laws, which is the focus of the next sections of

this chapter.

Does Legal Design Shape Practice?

Given the attention given to the design of FOI laws, one might expect that laws stronger on their *de jure* dimension are also stronger on their *de facto* dimension. There is, however, no evidence that this is the case. The RTI Rating measure used in the previous chapter provides a way to assess the relationship between strength in law and strength in practice. Figure 5.1 below plots the practice measure against the legal strength measure, for the countries for which both measures are available. The plot illustrates the wide covariation among countries on these two dimensions. In fact, there are even more countries in the strong law-weak practice and weak law-strong practice quadrants of the figure than there are in the strong-strong and weak-weak quadrants. This is reflected in the slightly downward-sloping bivariate regression line in the figure. Even further, the strongest law by design, in Serbia, is even weaker in practice than the weakest law by design, in Lithuania! Meanwhile the strongest and weakest laws in practice, in South Korea and Angola, are very similar to each other in overall legal strength.

I use several regression models to further investigate the relationship between legal design and practice. Table 5.1 shows the results of multiple bivariate models, each regressing FOI practice on either total legal strength or a subcomponent measure, for different subsets of countries. In the full sample of FOI laws, FOI practice is negatively and significantly related to legal strength. No single design characteristic is positively related to FOI practice either, and indeed many show a negative relationship. Even laws with greater *de jure* sanctions for non-compliance tend to be weaker in practice. Even among sub-samples of FOI laws restricted to countries low or high in terms of

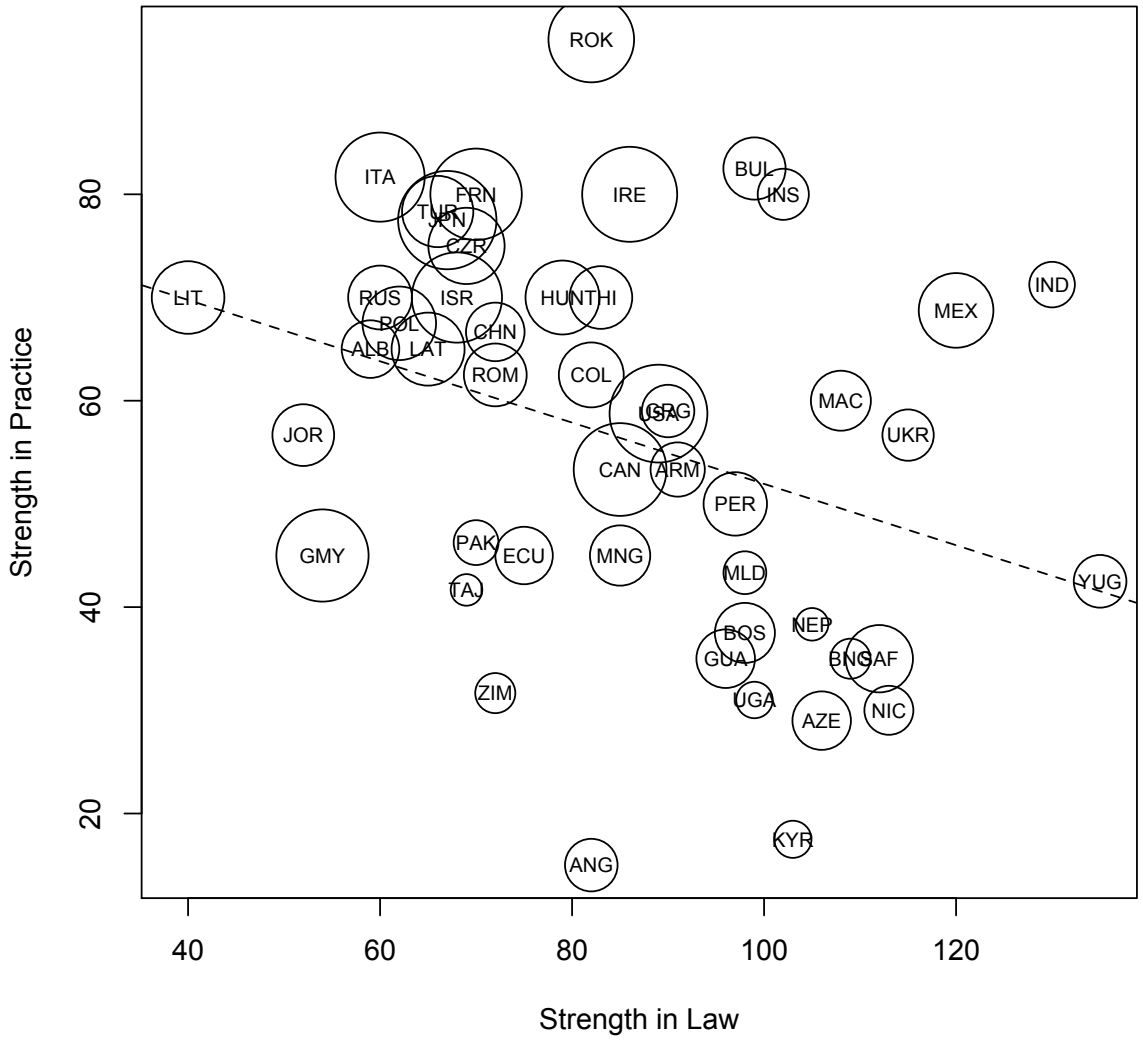

Figure 5.1: Strength of FOI laws in law and in practice. The size of each circle reflects logged GDP per capita, while the dashed line shows a bivariate relationship between the two variables.

development or democracy, no measure of legal design is significantly associated with stronger FOI laws in practice, and indeed several design characteristics are associated

with weaker laws in practice.

What explains this puzzling disconnect between law and practice? The answer lies in two dynamics: First, domestic context matters for the institutionalization of transparency, and even once laws are passed, both political commitment and state capacity are needed. As Neuman and Calland (2007, 10) write: "Effective implementation demands political commitment from the top, both to ensure that the necessary resources are allocated and to overcome entrenched mind- sets of opacity. The resource demands are significant, particularly in societies where a culture of secrecy has dominated the past and where there are no processes already in place to facilitate the archiving and retrieval of documents."

Second, this context highlights the limits of diffusion. As more and more countries have passed FOI laws, and advocates have grown more sophisticated in encouraging best-practices in legal design, the diffusion process has tended to spread to political contexts which are less and less favorable for strong transparency in practice to take root. Figure 5.2 and Figure 5.3 highlight this dynamic. As global diffusion progressed, and more and more countries passed FOI laws, the diffusion process increasingly spread to poorer and less democratic countries, lacking the political commitment and state capacity which create favorable contexts for strong institutionalization of FOI laws into practice. While a few of these more "out-of-context" laws have become strong in practice, most remain weak.

Structural context, however, is not the only thing that matters. The agency of civil society groups, using tools of local capacity building, can bring about stronger laws even in less favorable situations. The next sections illustrate these dynamics with a series of quantitative models, and a case study of civil society activity in Bulgaria.

Sample of FOI Laws	N	Total	Right	Scope	Procedure	Exceptions	Appeals	Sanctions	Promotion
All	78	-0.297 **	-3.009 *	-1.1 **	-0.794	-0.839 *	-0.298	-2.297 *	-0.559
		(0.123)	(1.682)	(0.52)	(0.485)	(0.444)	(0.363)	(1.322)	(0.571)
Low Democracy	38	-0.326 *	-2.89	-1.531 *	-1.193 *	-0.817	-0.46	-2.526	-0.307
		(0.179)	(2.273)	(0.788)	(0.675)	(0.82)	(0.51)	(1.86)	(0.855)
High Democracy	40	-0.138	-1.795	-0.219	-0.076	-0.429	0.164	-2.677 *	-0.419
		(0.146)	(2.136)	(0.583)	(0.564)	(0.441)	(0.42)	(1.432)	(0.626)
Low GDP per cap.	39	-0.205	-2.542	-0.862	-0.599	-0.446	-0.446	-0.071	-0.044
		(0.153)	(1.956)	(0.649)	(0.567)	(0.58)	(0.413)	(1.621)	(0.792)
High GDP per cap.	39	0.044	1.228	1.132	0.095	0.342	0.257	-2.544	0.05
		(0.183)	(2.28)	(0.724)	(0.643)	(0.593)	(0.429)	(1.708)	(0.579)

Table 5.1: Results from models of FOI strength in practice. Each coefficient shows the results of a single bivariate model, regressing FOI practice on either Total legal strength, or an individual subcomponent indicator of legal strength. Each such model was run on a different sample of countries, indicated by the rows of the table. Low Democracy and Low GDP per capita comprise countries below the median values of each variable, while the High samples comprise countries greater than or equal to the median.

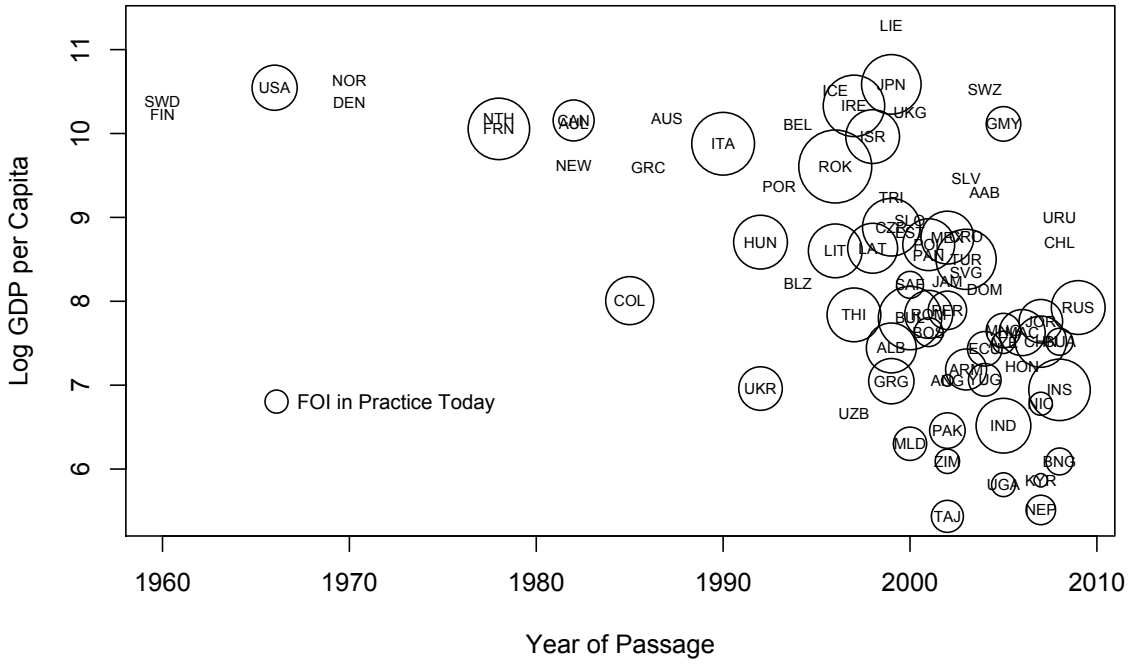

Figure 5.2: Illustration of levels of development (at present) for each country with a FOI law, plotted against the year of passage. The size of each circle reflects the strength of FOI in practice today, if the measure is observed for a given country.

Modeling the Strength of FOI Laws in Practice

I model the strength of FOI laws in practice as a function of several key variables. I measure Legal Strength using the same RTI rating used previously. I measure Time in Effect as the logged number of years since passage. I use Log GDP per Capita as a proxy for state capacity, as wealthier countries have more resources to devote to implementation, and tend to have better-developed bureaucratic structures. I use Democracy, measured with the Polity project's Polity2 index, to proxy for democratic commitment to transparency. With data on the strength of FOI laws in practice for

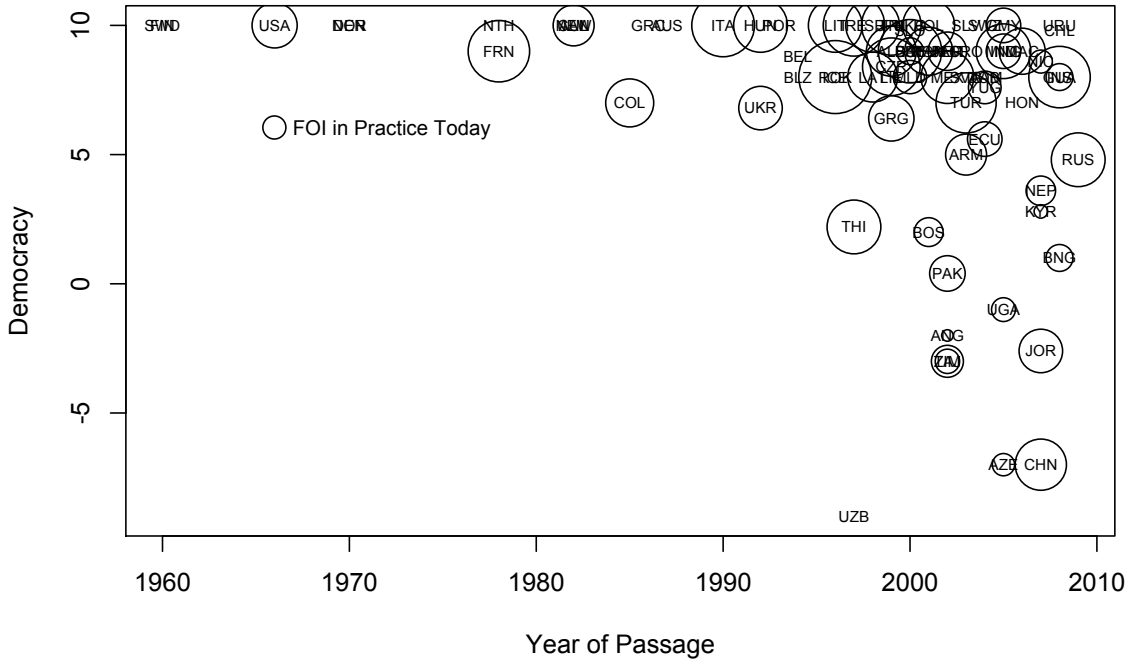

Figure 5.3: Illustration of levels of democracy (at present) for each country with a FOI law, plotted against the year of passage. The size of each circle reflects the strength of FOI in practice today, if the measure is observed for a given country.

so few countries, it is not possible to tease out more nuanced relationships regarding political competition, as was done in Chapter 3. As corruption is likely to shape FOI practice in potentially complex ways, I control for the Control of Corruption measure from the World Governance Indicators. The last three variables are drawn from the same data sources as in the previous chapter, and are averaged over the years 2005 to 2009 to ensure that the results are not biased by any year-to-year noise in the data.

I use two key independent variables to measure the role of transnational advocacy networks. The first is the number of international NGOs which have members in

each country. This data is taken from the Yearbook of International Organizations (Union of International Associations 2009). While this variable measures the aggregate number of all types of international NGOs - whether they are focused on the FOI issue or not - having many international NGOs present in a country both creates more network ties to transnational advocacy networks and creates an environment where NGOs working specifically on the FOI issue can most easily be effective. This environment includes a greater availability of organizational, financial, and human resources which civil society groups can mobilize. I average this variable over the years 2005 to 2009. Finally, I log the variable, as the relationship should intuitively be non-linear: an increase from 100 to 200 international NGOs present in a country should have a much greater effect than an increase from 3000 to 3100.

However, I also use a second measure which better reflects local civil society working specifically on the FOI issue. This Log FOI Issue NGOs variable is coded from the lists of member organizations of the Freedom of Information Advocates Network, partner organizations of the international NGO Article 19, and members of the International Freedom of Expression network. I count the number of local NGOs in each country which are members of one of these networks — organizations which are members of more than one are not counted multiple times. This process counts 447 total organizations in countries around the world. Unfortunately, this variable was coded in February 2011 and is not available for prior points in time. Since the variable is a count of organizations, I employ a log transformation.

In a robustness check, I also include a variable to proxy for the role of global campaigns of naming and shaming against countries with poor FOI laws in practice, in order to differentiate such global discursive efforts from local capacity-building. I use the set of Article 19 publications described in the previous chapter, but instead

of including only legal analyses published prior to passage of a FOI law, I include all publications (legal analyses, press releases, and calls for action) which were published after passage of each FOI law. The dummy variable Article 19 Publications takes a value of one for the 27 countries which were the target of any non-zero number of such publications.

I use three different modeling approaches in order to address the fact that the dependent variable is only measured for 49 countries (one of which, Montenegro, drops out of most of the models because it is missing data on other key independent variables). The first modeling approach uses ordinary least squares to model FOI practice using only the cases for which the dependent variable is available, making the assumption that the pattern of missingness does not bias the results. The second approach uses a Heckman selection model to explicitly model the determinants of being measured on the dependent variable for all countries with FOI laws, before taking this selection process into account in modeling FOI practice. The third approach uses multiple imputation to impute the missing FOI practice data based on the independent variables in the model, taking the uncertainty inherent in this process into account in subsequently modeling FOI practice on the full set of countries with FOI laws.

Results

Table 5.2 presents the main results from OLS models of FOI practice. The results confirm that there is no positive relationship, and in some models even a negative relationship, between the strength of FOI laws in law and strength in practice once other covariates are included in the models. Laws which have been in effect longer tend to be stronger than more recently passed laws, although this effect is not statistically

significant. There are, however, strong relationships between each of the level of development and democracy and the strength of FOI laws in practice. Based on the results from Model 1, moving the level of development from one standard deviation below the mean to one standard deviation above the mean, for an otherwise average hypothetical country, is expected to result in a 24-point increase in FOI practice. A similar movement for democracy is expected to result in a 11.73-point increase. On a scale which runs from 0 to 100 in theory and 15 to 95 in practice, these are clearly substantively meaningful effects.

	Model 1	Model 2	Model 3	Model 4
Constant	-8.144	-73.578 **	-9.484	-103.272 **
	(32.122)	(34.481)	(32.585)	(41.976)
Legal Strength	-0.167	-0.175 *	-0.197	-0.276 **
	(0.116)	(0.103)	(0.136)	(0.125)
Time in Effect	0.984	2.040	1.073	4.014
	(3.368)	(3.031)	(3.407)	(3.227)
Log GDP per Capita	8.668 **	4.321	8.797 **	19.952 ***
	(3.583)	(3.427)	(3.630)	(4.838)
Democracy	1.233 **	0.859	1.219 **	0.780
	(0.577)	(0.538)	(0.584)	(0.547)
Control of Corruption	-7.831	-11.143 **	-8.225	-8.799 *
	(5.557)	(5.024)	(5.684)	(5.156)
Log INGOs		14.292 ***		
		(4.158)		
Log FOI Issue NGOs			1.766	65.770 ***
			(4.073)	(20.684)
Log GDP per Cap. * Log FOI Issue NGOs				-7.432 ***
				(2.363)
N	48	47	48	48
R^2	0.450	0.583	0.452	0.561
Resid. sd	14.768	13.129	14.913	13.519

Standard errors in parentheses

* significant at $p < .10$; **$p < .05$; ***$p < .01$

Table 5.2: Results of OLS models of FOI practice.

The Control of Corruption has a negative and fairly large coefficient, which is

statistically significant in some of the models in Table 1. It may seem odd for countries which are less corrupt (higher control of corruption) to have weaker FOI laws in practice. In fact, however, Control of Corruption has a non-linear, inverted-U shaped effect. Figure 5.4 presents the relationship between Control of Corruption and FOI practice based on a model which includes a squared term for Corruption. This highlights the complex relationship between the quality of bureaucratic institutions and FOI practice. In the most corrupt countries, weak bureaucratic capacity and endemic bribery impede the institutionalization of transparency. Among the least corrupt countries, however, even powerful and more capable bureaucracies can also oppose transparency in order to hold on to long-standing practices of secrecy and bureaucratic privilege. This is highlighted, for example, by Germany's relatively low practice score of only 45.

Models 2, 3, and 4 include different measures of transnational civil society activity. In Model 2, the effect of international NGOs is very large and statistically significant. The expected impact of an increase in the measure from one standard deviation below to one standard deviation above its mean, for an otherwise average hypothetical country, is a 22.9-point increase in FOI practice. Model 3 includes the measure of FOI issue area NGOs. While its coefficient is positive, it is not statistically significant. However, FOI-specific NGOs are likely playing different roles in more and less developed countries. It is likely only in poorer countries, typified by weaker state capacity, where they are engaging in activities of local capacity building. As such, Model 4 includes an interaction term between the level of development and FOI issue NGOs. While the interaction term is highly statistically significant, the substantive meaning of this model is best interpreted graphically. Figure 5.5 shows the expected impact of an increase on the number of FOI issue NGOs in a country, from one stan-

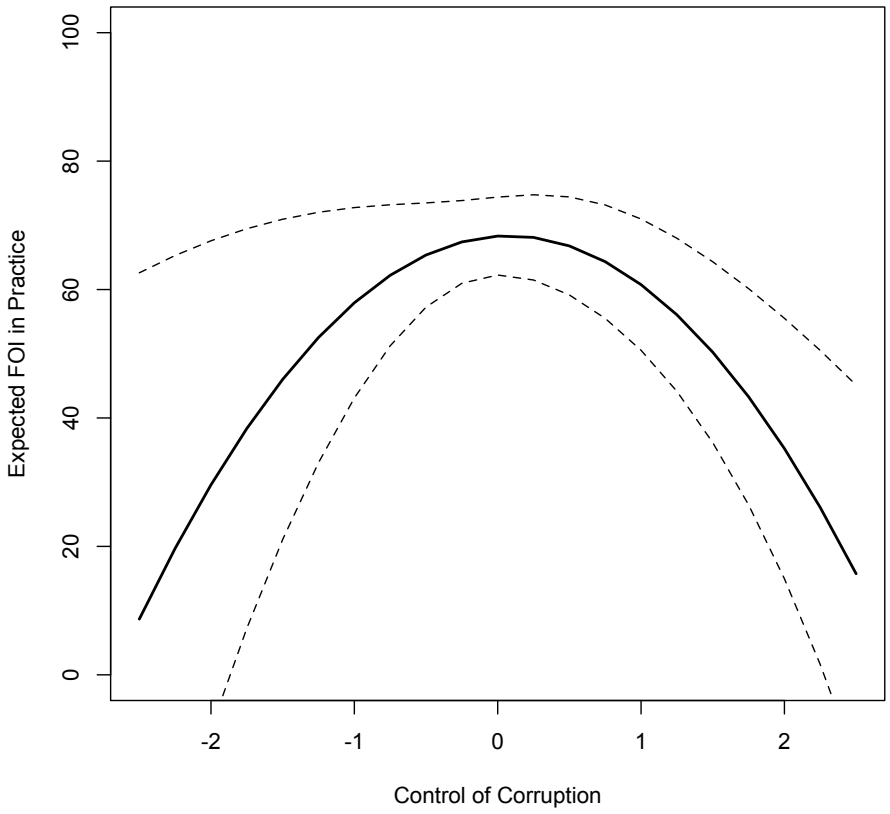

Figure 5.4: The relationship between varying levels of Corruption and the expected level of FOI in practice. Based on results of a model adding a quadratic term for Corruption to the variables included in Model 1. Dashed lines show 95 percent confidence intervals.

dard deviation below to one standard deviation above its mean, for varying levels of logged GDP per capita. Among countries at lower levels of development, the effect of FOI issue NGOs is positive and statistically significant — a full 32.79 points at its greatest. Among countries wealthier countries, however, this effect is not statistically significant.

Table 5.3 presents the results of several robustness checks. Model 5 includes an

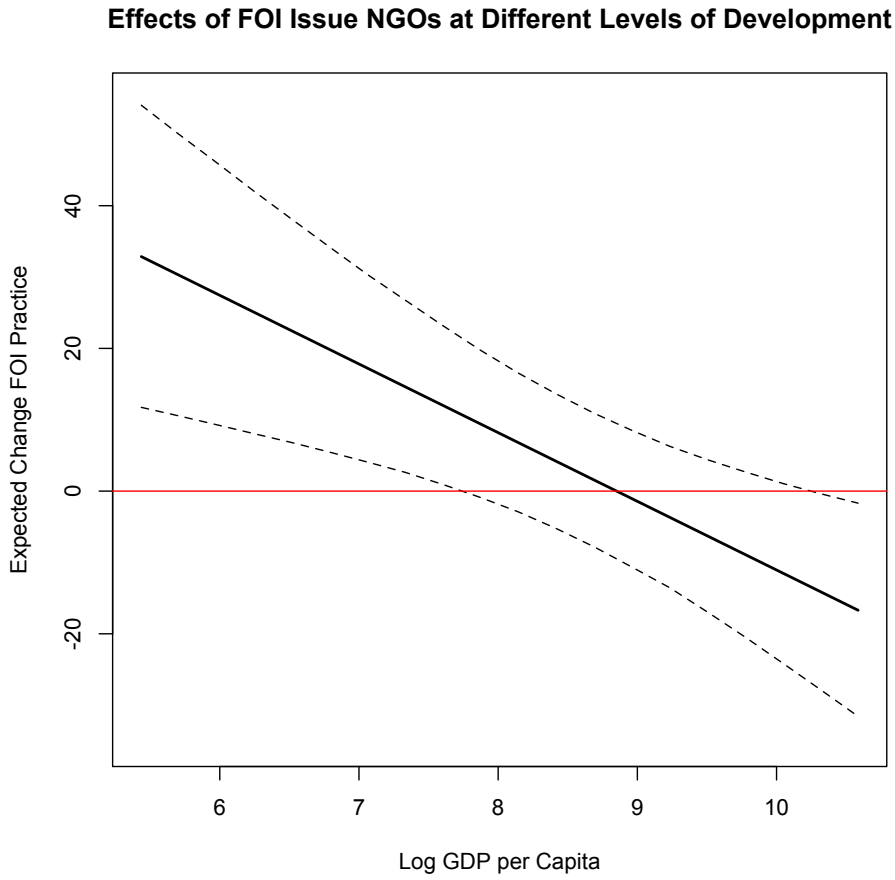

Figure 5.5: Graphical illustration of the interactive relationship between FOI issue NGOs, development, and FOI practice, based on the results of Model 4. The bold line shows the effect of an increase in the logged number of FOI issue NGOs in a country, from one standard deviation below the mean to one standard deviation above the mean, at different levels of development. Dashed lines show 95 percent confidence intervals.

indicator for countries which were the target of Article 19 publications "naming and shaming" their laws for either subpar design or practice, but the results show no significant differences between these and other laws. The remaining models in Table 3 include measures IMF or World Bank credit, foreign aid, press freedom, veto players (using Henisz's political constraints measure), presidential systems, and common law

legal systems. The only one of these with a statistically significant effect on the strength of FOI laws in practice is foreign aid, which is associated with slightly weaker laws in practice.

I also employ two additional modeling approaches to address the fact that the FOI Practice measure coded from Global Integrity Report data is only available for 49 countries with FOI laws. Table 5.4 presents the results of the second stage of a Heckman selection model. This approach first models whether or not countries are observed on the dependent variable, as a function of the other variables included in the model, and then adjusts the ultimate results based on this selection process. In Model 12, before including any measure of NGOs, no variable in the model is statistically significant, although the coefficient for logged GDP per capita is substantively large. In Model 13, including the international NGO measure shows a positive and statistically significant effect, similar to that in the OLS model. Model 14 and 15 include the FOI issue NGO measure, and its interaction term with GDP per capita, respectively. Similar to the results of the OLS models, FOI issue NGOs do not have a statistically significant direct effect, but have a very large and significant effect among countries at low levels of development.

I also use the Amelia software package (Honaker et al. 2011) to multiply impute missing data on the FOI practice variable. Multiple imputation uses all available information to impute values for missing data, but takes into full account the increased uncertainty generated therein, by generating multiple versions of the imputed dataset, running the model on each, and combining the results. In the results presented in Table 5.5, the effect of Democracy is positive and statistically significant in all models, while the effect of GDP per capita is positive in all but only statistically significant in the latter two models. The effect of international NGOs is still positive

	Model 5	Model 6	Model 7	Model 8	Model 9	Model 10	Model 11
Constant	-8.117	-13.853	21.659	-7.926	-6.628	-8.899	-9.794
	(32.514)	(34.482)	(35.289)	(32.573)	(37.275)	(32.134)	(34.350)
Legal Strength	-0.166	-0.175	-0.151	-0.167	-0.179	-0.170	-0.172
	(0.119)	(0.118)	(0.113)	(0.117)	(0.135)	(0.116)	(0.121)
Time in Effect	0.986	1.210	0.567	0.915	0.352	-0.933	-0.927
	(3.408)	(3.430)	(3.286)	(3.471)	(3.564)	(3.368)	(3.429)
Log GDP per Capita	8.670 **	8.998 **	5.215	8.606 **	8.450 **	9.090 **	8.889 **
	(3.626)	(3.679)	(3.969)	(3.673)	(3.989)	(3.608)	(3.918)
Democracy	1.230 **	1.246 **	1.282 **	1.192 *	1.186 *	1.198 **	1.257 **
	(0.586)	(0.583)	(0.563)	(0.703)	(0.687)	(0.578)	(0.606)
Control of Corruption	-7.855	-6.344	-4.941	-8.046	-8.618	-9.354	-8.326
	(5.639)	(6.388)	(5.637)	(5.981)	(6.360)	(5.764)	(6.534)
Article 19 Publications	-0.263						
	(4.532)						
IMF/World Bank		4.843					
		(9.967)					
Foreign Aid/GDP			-0.270 *				
			(0.148)				
Press Freedom				0.656			
				(6.218)			
Political Constraints					5.813		
					(12.060)		
Presidential Systems						-4.709	
						(4.728)	
Common Law							0.900
							(6.059)
N	48	48	48	48	45	48	48
R^2	0.450	0.453	0.491	0.450	0.455	0.463	0.450
Resid. sd	14.946	14.904	14.376	14.945	15.230	14.769	14.943

Standard errors in parentheses

* significant at $p < .10$; ** $p < .05$; *** $p < .01$

Table 5.3: Robustness checks: OLS models of FOI strength in practice.

	Model 12	Model 13	Model 14	Model 15
Constant	-28.270	-96.940 **	-13.892	-117.092 **
	(100.290)	(47.122)	(39.275)	(44.805)
Legal Strength	-0.133	-0.174 *	-0.331	-0.189
	(0.344)	(0.100)	(0.201)	(0.177)
Time in Effect	-2.049	2.508	2.824	3.236
	(10.561)	(3.021)	(4.303)	(3.657)
Log GDP per Capita	17.583	2.432	6.954	23.374 ***
	(11.922)	(4.268)	(4.579)	(6.045)
Democracy	0.617	0.823	1.035	0.839
	(1.863)	(0.533)	(0.729)	(0.619)
Control of Corruption	16.635	-15.269 **	-14.557 *	-4.147
	(20.549)	(7.445)	(8.443)	(7.897)
Log INGOs		19.023 **		
		(7.794)		
Log FOI Issue NGOs			13.336	68.769 ***
			(11.084)	(19.719)
Log GDP per Cap. * Log FOI Issue NGOs				-8.789 ***
				(2.628)
N (censored)	30	30	30	30
N (observed)	48	48	48	48
R^2	0.499	0.588	0.470	0.567

Standard errors in parentheses

* significant at $p < .10$; **$p < .05$; ***$p < .01$

Table 5.4: Second-stage results of Heckman selection models of FOI strength in practice.

and statistically significant. Finally, while the interaction term between FOI issue NGOs and GDP per capita is not statistically significant in the results of Model 19, the coefficients remain in the expected direction, with a large positive relationship between FOI issue NGOs and the strength of FOI laws in practice among poorer countries. While neither of these two means of addressing missing data is perfect, and future work should focus on the assembly of more complete datasets, they both confirm the importance of both domestic structural context and the agency of NGOs. The next section uses a case study of Bulgaria to investigate the precise mechanisms

through which the role of NGOs works.

	Model 16	Model 17	Model 18	Model 19
Constant	14.345	-62.178 *	5.260	-27.201
	(31.118)	(35.299)	(30.992)	(44.475)
Legal Strength	-0.198 *	-0.177 *	-0.255 **	-0.272 **
	(0.117)	(0.105)	(0.125)	(0.125)
Time in Effect	3.343	2.463	3.576	4.203
	(3.482)	(3.101)	(3.441)	(3.600)
Log GDP per Capita	5.223	4.095	6.021 *	9.794 **
	(3.269)	(2.787)	(3.248)	(4.823)
Democracy	1.339 **	0.855 *	1.162 **	1.022 *
	(0.584)	(0.508)	(0.565)	(0.581)
Control of Corruption	-5.998	-9.692 *	-6.173	-6.690
	(5.021)	(4.937)	(4.952)	(5.055)
Log INGOs		12.860 ***		
		(3.506)		
Log FOI Issue NGOs			5.994	28.643
			(3.719)	(19.517)
Log GDP per Cap. * Log FOI Issue NGOs				-2.582
				(2.187)
N	78	78	78	78
R^2	0.428	0.564	0.447	0.481

Standard errors in parentheses

* significant at $p < .10$; ** $p < .05$; *** $p < .01$

Table 5.5: Models of FOI strength in practice with data imputed using Amelia.

Civil Society Capacity-Building in Practice: The Case of Bulgaria

In order to investigate the mechanisms by which transnational advocacy networks lead to stronger FOI laws in practice, I focus on the case of Bulgaria, where the Access to Public Information Act (APIA) was passed in 2000. Not only does Bulgaria have the second-highest FOI practice score of any country (with South Korea scoring first), but it is clearly out-of-pattern with the other countries in its region.

Figure 5.6 shows the countries of central and eastern Europe for which data is avail-

able on the FOI practice measure, plotted against Freedom House's Nations in Transit Democracy score. This is a measure developed specifically to track the democratic development of post-communist countries, and lower scores reflect better democratic progress. While there is a clear relationship between democratic progress and the strength of FOI laws in practice, Bulgaria far outperforms the FOI practice which would be predicted by its democracy score. It even outperforms countries like Poland and the Czech Republic, which acceded to the European Union earlier and are usually considered transition "success stories." Indeed, Bulgaria is usually considered (along with Romania) one of the "laggards" of central and eastern European EU accession countries in terms of political and economic transition (Noutcheva and Bechev 2008), where "severe problems with corruption, judicial quality and state capacity remain" (Spendzharova and Vachudova 2012, 39-40).

There is evidence of Bulgaria's unusually strong FOI regime in other data sources as well. In 2006, the Open Society Justice Initiative published the results of a survey in which a total of 1,926 information requests were filed in fourteen different countries (OSJI 2006, 11). In each country, seven different requesters submitted numerous questions to 18 different public institutions. Of the fourteen countries surveyed, Bulgaria had the highest rate of compliance with its law, with 64 percent of requests receiving compliant responses. Information was actually received for 48 percent of requests, while 12 percent received compliant written refusals, and 3 percent received other forms of compliant responses (OSJI 2006, 74). Bulgaria also had the second lowest rate of "mute refusals," whereby requests received no response whatsoever. Only 24 percent of requests in Bulgaria were met by mute refusals, with a lower rate found only in Mexico (OSJI 2006, 43).

What explains Bulgaria's surprisingly strong FOI law in practice is the presence

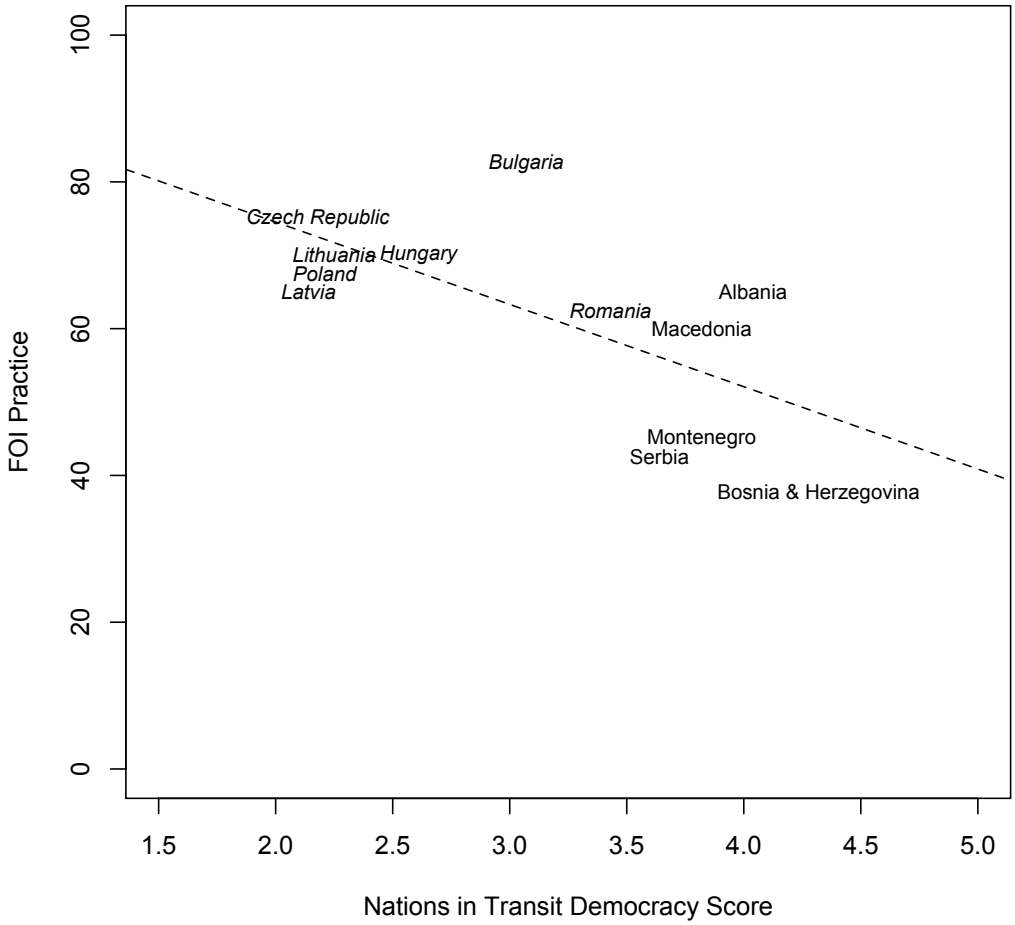

Figure 5.6: Illustration of Bulgaria's surprisingly strong FOI law in practice compared to other countries in central and eastern Europe. The x-axis is the Democracy Score from Freedom House's 2011 Nations in Transit report. This is a measure constructed specifically to assess democratic transition among countries in the region, with lower values reflecting greater democratic progress. Country names in italics reflect European Union members. The dashed line reflects the fit of a bivariate regression of FOI in Practice on the Democracy Score.

of the Access to Information Programme (AIP), one of the most active domestic civil society groups working on FOI issues in the world. By monitoring implementation of

the law, promoting awareness among the public, conducting trainings of journalists, other civil society groups, and even government officials themselves, engaging in legal mobilization through the court system, and benefitting from transnational resources and information sharing, AIP has been able to create a much stronger information regime than would otherwise exist in Bulgaria.

AIP was founded in 1996, in the context of growing attention to issues of transparency in Bulgaria. The organization was founded by eleven individuals with varying motivations for interest in transparency, including lawyers, journalists, economists, and human rights activists (Puddephatt 2009, 6). Not only did they play an important role in campaigning for passage of the APIA in 2000, but they continued working afterwards to focus on implementation of the law in practice.

AIP has been widely recognized for its key role in promoting strong FOI practices in Bulgaria. In a review of the role of civil society working on the issue around the world, Puddephatt (2009, 13) praised the group, writing that "Internally, it is a highly professional organization that was built upon a diverse group of professionals and that subsequently has worked hard to establish itself as a center of expertise. These professionals understand international and national laws and standards, are media savvy, and are generally more knowledgeable than those around them. Externally, they initially benefited from linking ATI [access to information] to international and local movements." In 2006, as AIP celebrated its tenth anniversary, Bulgaria's Deputy Minister for State Administration and Administrative Reform said "Access to information in Bulgaria is associated with your organization. Without AIP the law most likely would not have been adopted in 2000. Without your strictness, the state administration would not be so open to citizens and businesses. I am very happy that

we are partners."[6]

What has the organization done that brought it such praise? AIP defines its goals as "to assist the exercise of the right of access to information," "to encourages the citizens' demand for government held information through civic education in the freedom of information area," and "to advocate for enhanced transparency in the work of public institutions at central and local level." On its website "About" page, AIP lists the following thirteen key activities:

- AIP monitors the freedom of information legislation in Bulgaria and participates in the debates for its compliance with the international standards in the area.
- AIP works with an established network of journalists in 26 cities throughout the country that monitors the access to information implementation practices and gives recommendations for their improvement.
- AIP prepares and performs special access to information surveys.
- AIP provides consultations on cases concerning the right of access to information — in more than 4,000 cases already.
- AIP provides legal help in individual cases of information seeking.
- AIP raises public awareness on the right of access to information through the media, publicly expresses opinion on current problems and debates related to the access to information and its misuse at all levels
- AIP organizes workshops, seminars and conferences on access to information.

[6]See http://www.aip-bg.org/en/about/othersaboutus.php.

- AIP holds specialized freedom of information trainings for civil servants and local administration officials, journalists, and nongovernmental organizations.

- AIP prepares information materials and publications for the central and local press.

- AIP maintains an Internet site with up-to-date information about the developments in the access to information area in Bulgaria and abroad.

- AIP prepares and publishes handbooks on how to exercise the right of access to information, as well as publications clarifying particular aspects of the access to information legislation.

- AIP issues and disseminates a monthly electronic Newsletter which contains national and international access to information related news.

- AIP is an active member of the International Freedom of Information Advocates Network.

Four types of these activities are worthy of extra attention, as they are relatively unusual (or at least were when AIP first began undertaking them) for domestic civil society groups working on FOI issues. These are their particularly effective awareness promotion efforts, their trainings for government officials, their skilled use of legal mobilization, and their high level of involvement with the transnational advocacy network working on FOI issues around the world.

First, AIP has been very effective at promoting awareness of the law among potential users, by holding trainings for journalists, students, and NGOs, participating in television and radio shows, writing articles, and giving annual awards praising

well-performing public agencies. On their website, they report that "public awareness about the right of access to government held information has increased from 3% in 2000 to 39% in 2010."[7] Indeed, Bulgarian government statistics in 2008 recorded 24,372 registered information requests, up from 22,482 the previous year.[8] A 2010 survey also found that 41 percent of respondents were specifically aware of AIP itself, testament to their important public role.[9]

Second, while many civil society groups around the world hold similar FOI trainings for journalists and civil society, AIP actually holds trainings for government officials themselves.[10] In 2006, Open Society Justice Initiative reported that AIP not only conducts training workshops "for 200-300 civil servants each year," but also "assists the administration in elaborating internal rules and systems for transparency" (OSJI 2006, 75). Puddephatt (2009, 12) reported that some of these trainings involved the "participation of Dutch and Slovakian experts to present their experience of implementation of access to information acts." Importantly, these activities fill a gap in the government's own training of its officials, as "IPAEI, which is an official training institute for the government departments, to date has not included the ATI [Access to Information] Law in its compulsory training program" (Puddephatt 2006, 12). In this case, the activities of AIP are actually substituting for an implementation task which ordinarily would be provided by the government itself.

Third, AIP has engaged in legal mobilization in order to assist denied information

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[7]See http://www.aip-bg.org/en/about.

[8]See http://www.freedominfo.org/regions/europe/bulgaria/bulgaria.

[9]See http://www.aip-bg.org/pdf/ati_2010_all%20results_eng.pdf.

[10]While the international NGO Article 19 supported trainings of public officials by local NGOs in several Eastern European countries in 2003 and 2004 (see Article 19 2004), only in Bulgaria has this been a consistent strategy over such an extended period of time. Indeed, AIP's annual reports list trainings held specifically for public officials as early as 2001.

requesters in making appeals through the court system. Unlike many other FOI laws passed in the last two decades, Bulgaria's APIA created no internal appeals mechanism or independent oversight body. Thus, the primary means of appeal is through regional courts or the Supreme Administrative Court (Banisar 2006). AIP reports that they have "provided legal consultation to over 4,000 cases and have brought to court over 190 cases" related to the APIA.[11] AIP's 2010 report on its key achievements noted that "In 2010, AIP legal team prepared 98 complaints and written defenses on behalf of citizens (35), organizations (36) and journalists (27)." The report also noted that "forty-six court decisions and rulings were delivered on litigation assisted by AIP (Supreme Administrative Court – 19; Administrative Court – Sofia City – 22; administrative courts in the country – 5). In 29 cases the court ruled in favour of the information requesters, while in 17 in favour of the public bodies."[12] Given that AIP's legal activities are in large part directed to assistant individual requesters in using the court system as an appeals mechanism, its activities are helping to substitute for a robust enforcement process which in many countries is provided by the law itself and official state Information Commissions.

AIP has also helped bring about court rulings which affected the strength of FOI in practice in more direct ways. For example, the 2006 Open Society Justice Initiative report notes that "in a case brought during 2001 by the Center for Independent Living, with legal support from the Access to Information Programme, Bulgaria's Supreme Administrative Court upheld the right of citizens to file complaints based upon administrative silence, despite the absence of any specific provision of the APIA. In 2003, the court found that administrative silence constituted a breach of procedural

[11]See http://www.aip-bg.org/en/about.

[12]See http://store.aip-bg.org//publications/finstate_achievements_eng/achievements10.pdf, p. 8.

law" (OSJI 2006, 45).

The final activity to be highlighted here is AIP's high level of involvement with the transnational advocacy network focused on FOI issues around the world. While AIP has received most of its funding from external donor groups and agencies interested in democratization and promoting transparency, it has also shared knowledge with NGOs in other countries, helped build new links among organizations in the transnational network, and in some cases inspired activities emulated by other organizations in the network.

Puddephatt (2009, 7) notes that after its founding, AIP "received initial funding for the implementation of its activities from the Netherlands Organisation for International Development Cooperation (Novib). This initial funding was progressively followed by grants coming primarily from the Open Society FoundationBulgaria, Novib, the Charles Stewart Mott Foundation, the Open Society Institute (OSI), EU's PHARE Programme, ProMedia USAID, and ABA CEELI." After the passage of the APIA in 2000, when AIP's mission and continued relevance might have been in question, it "secured funding from the EU's PHARE Programme Development of Civil Society (in 1998 and in 2006)one of the EU's preaccession' financial instruments to assist the applicant countries of Central and Eastern Europeto continue its activities of implementation and improvement of the existing legislation" (Puddephatt 2006, 10-11). Today, AIP lists 22 donor organizations on its website, including state aid agencies (such as EEA grants from the governments of Iceland, Liechtenstein and Norway), international organizations (such as the UN Development Program and the Council of Europe), and major foundations or coalitions of foundations (such as the Open Society Institute and the Trust for Civil Society in Central and Eastern Europe).

However, AIP has also contributed a great deal to the transnational network

working on FOI issues. In 2002, AIP launched the Freedom of Information Advocates Network email list, which today is a major avenue of information sharing among the more than 400 list members. AIP maintained the email list and associated website, with financial support from the Open Society Justice Initiative, until 2008 when those tasks were taken over by the Madrid-based Access Info Europe.[13] AIP's co-founder and Executive Director, Gergana Jouleva, contributes her expertise to many other major organizations, servng on the Steering Committee of the Freedom of Information Advocates Network, the Editorial Board of Freedominfo.org, and the Advisory Boards of Access Info Europe and Privacy International.[14]

AIP has also inspired activities by other organizations. The Open Society Justice Initiative-conducted surveys which employed numerous information requests submitted to multiple agencies, by multiple requesters, in multiple countries, were in part inspired by AIP's early efforts to monitor the implementation of the APIA in Bulgaria. In celebration of AIP's tenth anniversary, Helen Darbishire, Executive Director of Access Info Europe and co-author of the 2006 OSJI report, said that:

> "Groups like AIP sometimes lead the way and set standards, often even moving ahead of developed democracies. In Bulgaria AIP has developed a number of different strategies, including litigation strategies, training programs for public officials, and campaigns to raise public awareness. Monitoring is also one of their activities. The monitoring methodology that was developed in Bulgaria then has been used by a number of other organizations to create a international monitoring methodology, in which Chile performed very poorly and Bulgaria performed very well. This ev-

[13]See http://www.foiadvocates.net/en/about-foianet.

[14]See http://www.aip-bg.org/en/about/team.php.

> idence was used by lawyers and played an important role in the recent decision of the Inter-American Court of Human Rights to recognize access to information as a human right."[15]

AIP also helped pioneer the celebration of every September 28 as International Right to Know Day as a tool for advocacy groups around the world to gain publicity for the issue and bring attention to the challenges each face in their own countries. The first Right to Know Day was celebrated in 2002, "when freedom of information organizations from around the world came together in Sofia, Bulgaria and created the FOI Advocates Network."[16] In celebration of AIP's tenth anniversary, the head of the Albanian group Center for the Development and Democratization of Institutions said, "Your organization was the first to celebrate Right to Know Day, which you then — let's use that word — exported' to all international organizations that are working on freedom of information."[17]

Thus, while much recent literature on the relationships between international and domestic NGOs has emphasized the extent to which local NGOs in the developing world simply borrow organizational forms from more established groups in developed countries (Longhofer and Schofer 2010) or adopt the models demanded by their Western funders (Bob 2002, Henderson 2002), the case of AIP offers some evidence of the reverse relationship. Not only has AIP played a major role in constructing the infrastructure of the transnational network itself, but it has also "exported" models to organizations in other countries, even to powerful Western groups like the Open Society Institute.

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[15]See http://www.aip-bg.org/en/about/othersaboutus.php.

[16]See http://www.freedominfo.org/regions/global/rtk-day.

[17]See http://www.aip-bg.org/en/about/othersaboutus.php.

However, for AIP's role in bolstering the implementation, enforcement, and use of the APIA in Bulgaria, its skilled marshaling of transnational resources — primarily funding — is key. By using those resources to promote awareness of the law, train officials to comply with the law, enable individuals to appeal denied requests, and mobilize through the legal system to bring about favorable court rulings, AIP has contributed to a stronger FOI regime in practice than would otherwise exist in Bulgaria.

Conclusion

Policy diffusion often brings changes in law without concomitant changes in practice. The circumstances under which this does or does not happen is a major question that has been neglected by too many scholars of diffusion. Indeed, I find no evidence that stronger FOI laws in their institutional design tend also to be stronger in practice. Instead, strength in practice is shaped by both structural contexts of political commitment and capacity, and the agency of civil society groups with access to transnational resources. I support these arguments with cross-national evidence on the strength of FOI laws in practice, and a case study of the contributions of one particularly active NGO, the Access to Information Programme, to Bulgaria's unusually strong FOI law.

The case of Bulgaria helps illustrate the mechanisms by which NGOs contribute to stronger FOI laws in practice. While AIP is one of the most active and successful NGOs working on the FOI issue area in the world, many other groups employ similar activities, especially promotion of their laws with trainings for journalists and civil society, lobbying their governments for better implementation, monitoring implementation and attempting to publicize shortcomings, and pursuing court cases. What these activities highlight, from the point of view of the transnational advocacy net-

work as a whole, is the importance of local capacity building as opposed to high-profile global campaigns. Indeed, the quantitative model results showed that the targets of naming-and-shaming campaigns were not likely to have any better laws in practice.

As diffusion spreads to more and more countries, an innovation tends to be adopted by countries where it is more and more out of place, in terms of the institutional contexts which tend to encourage institutionalization. The risk of "window-dressing" adoption thus becomes much greater, and it takes sustained, on-the-ground capacity-building by civil society to ensure that institutionalization proceeds. The task for transnational advocacy networks, then, becomes not one of principled persuasion or naming-and-shaming, but rather the much more mundane local partnerships, trainings, and sometimes even lawsuits which can help bring about more transparent practices.

Chapter 6

THE IMPACT OF FREEDOM OF INFORMATION LAWS ON FOREIGN DIRECT INVESTMENT IN DEVELOPING COUNTRIES

Introduction

Can the freedom of information increase foreign direct investment to developing countries? If FOI laws really do increase transparency, reduce political information failures, and bring about better governance, then we should be able to observe their effects on downstream economic dynamics which respond to these changes. This chapter seeks to examine the effects of FOI laws on foreign direct investment (FDI) inflows in developing countries.

Little attention has been paid to the potential for economic effects of FOI laws. Do they increase FDI inflows to developing countries? Do they have an immediate impact, or are their effects delayed due to the challenges of implementation? Do all FOI laws increase FDI, or is there a difference between those which are strong in practice and those which are mere "window dressing"? The answers to these questions have important implications not only for the literature on institutions and investment, but also direct policy implications for countries considering passage of FOI laws. Using a panel study of developing countries over the years 1985 to 2008, I find that those countries which have passed FOI laws received significantly greater FDI inflows than those which have not, but only when considering laws in effect for three or more years. An instrumental variables approach confirms these results. However, I also

find that the strength of FOI laws in practice matters for their effects on FDI — only strong laws have the hypothesized effects. Freedom of information laws can increase FDI in two ways: they can lead to greater direct transparency, and they can increase policy credibility. FOI laws lead to greater transparency by increasing the quantity, quality, and accessibility of information about the business environment, domestic political actors' preferences, and the policymaking process. This information in turn reduces investor uncertainty about potential host country attributes, and increases the likelihood of advance warning in the case of future policy changes or expropriation. FOI laws can increase policy credibility by placing monitoring and sanctioning ability in the hands of a greater number of domestic actors, making future policy reversals less likely.

The potential effect of FOI laws on foreign direct investment is important for several research literatures. First, the literature on determinants of FDI has only focused attention on broad institutional qualities, such as democracy, political risk, and political constraints, usually relying on aggregated indices or surveys of investors' perceptions. By focusing on a single policy instrument, this chapter brings new insight to the specific mechanisms connecting domestic political variables with FDI. Second, this chapter will bring to the existing literature on freedom of information laws a rigorous quantitative study of the effects of such laws across developing countries, building on past work which has focused on single-country or comparative case studies. Indeed, a review of literature on transparency and accountability initiatives noted that "systematically-produced evidence of impact is so sparse in the FOI arena" (Calland 2010). Finally, a finding that the freedom of information is "good for business" would have important policy implications for countries considering passage of such laws.

This chapter is organized into seven sections. The following section describes

common elements of FOI laws, their passage, implementation, and usage. The third section reviews the literature on determinants of foreign direct investment and explains the theoretical mechanisms of transparency and policy credibility. The fourth section details the data and modeling approach. The fifth section presents the main results, while the sixth section address endogeneity with an instrumental variables approach. Finally, the seventh section concludes.

Freedom of Information Laws

Freedom of information (FOI) laws, also sometimes called Access to Information or Right to Information laws, give "citizens, other residents, and interested parties the right to access documents held by the government without being obliged to demonstrate any legal interest" (Ackerman and Sandoval-Ballesteros 2006). FOI laws are designed to guarantee government transparency by giving individuals the ability to request information or records from government bodies, and requiring officials to respond. Unique among accountability and good governance initiatives, FOI laws seek to institutionalize a right for all individuals to request all types of information that are not specifically exempted, rather than focusing on disclosure in specific sectors or for specific uses. Table 6.1 lists countries which passed FOI laws through 2008, along with the years those laws went into effect. Given that the focus of this chapter is on the impact of FOI laws, the dates they went into effect, in some cases different from their dates of passage, are the relevant dates for analysis.

Neuman (2009) argues that there are four distinct phases in the establishment of an access to information regime: passage of the law, implementation, use, and enforcement. Implementation requires that procedures for dealing with information requests be put in place in individual government agencies. Use — individuals actually

Country	Year in Effect	Country	Year in Effect
Sweden	1766	Slovakia	2001
Finland	1951	South Africa	2001
United States	1967	Trinidad and Tobago	2001
Denmark	1970	Angola	2002
Norway	1970	Bosnia and Herzegovina	2002
France	1978	Pakistan	2002
Netherlands	1978	Panama	2002
Australia	1982	Poland	2002
Canada	1983	Tajikstan	2002
New Zealand	1983	Zimbabwe	2002
Colombia	1985	Armenia	2003
Greece	1986	Croatia	2003
Austria	1987	Kosovo	2003
Italy	1990	Mexico	2003
Hungary	1993	Peru	2003
Ukraine	1993	Slovenia	2003
Portugal	1993	Antigua and Barbuda	2004
Belgium	1994	Dominican Republic	2004
Belize	1994	Ecuador	2004
Iceland	1997	Jamaica	2004
Thailand	1997	Serbia	2004
Uzbekistan	1997	Turkey	2004
Ireland	1998	Azerbaijan	2005
Latvia	1998	India	2005
South Korea	1998	Montenegro	2005
Albania	1999	United Kingdom	2005
Israel	1999	Germany	2006
Bulgaria	2000	Honduras	2006
Czech Republic	2000	Macedonia	2006
Georgia	2000	Switzerland	2006
Liechtenstein	2000	Uganda	2006
Lithuania	1996	Jordan	2007
Moldova	2000	Kyrgyzstan	2007
Estonia	2001	Nepal	2007
Japan	2001	Nicaragua	2007
Romania	2001	China	2008

Table 6.1: Countries whose freedom of information laws went into effect through 2008, with year in effect (in some cases different from year of passage).

making use of the law to request government information — requires that the public be aware of the law, be informed of how to use it, and not be overwhelmed by fear of reprisal. Finally, enforcement "includes receiving appeals when the requester is denied all or partial access or there is a dispute over cost, investigating the complaints, and issuing a finding" (Neuman 2009). Enforcement requires some form of external, independent review which can enforce individuals' right to information when requests are inappropriately ignored or denied.

In many countries with FOI laws, compliance of government agencies with the laws is spotty at best, and enforcement through appeals or oversight may be limited. A 2006 study conducted by the Open Society Justice Initiative submitted hundreds of information requests in fourteen countries, and found that even in countries with FOI laws, results were often poor. Requesters in countries with FOI laws received information only 33 percent of the time — although this is higher than in countries without FOI laws, where requesters received information only 12 percent of the time. The usage of FOI laws by the media, civil society, and other groups also varies from country to country. The extreme case of a sham FOI law is Zimbabwe, where the 2002 Access to Information and Privacy Act actually served in practice to give the government greater powers to control the media and harass journalists (Banisar 2006). Of course, even developed countries such as the United States, the United Kingdom, and Canada face challenges and shortcomings in terms of implementation and enforcement of FOI laws (Roberts 2006).

The case of India provides an example of the challenges of implementation and enforcement even with a relatively strong law in a democratic state. India's 2005 Right to Information Act implemented an independent oversight body and strong promotional measures, and is binding on both national and state governments (Mendel

2008). However, a nationwide survey published in 2009 found many remaining challenges. Many of the survey's respondents (forty percent in rural areas and fifteen percent in urban areas) cited harassment from officials and uncooperative information officers as barriers in exercising their right to information. Public Information Officers themselves cited lack of training, unfamiliarity with rules, deficiencies in information requests, poor record management, and lack of cooperation from colleagues as barriers to performing their jobs. Information Commissions charged with enforcement cited inadequate budgets, staff shortages, lack of infrastructure and office space, and public officials ignoring their rulings as major problems (RTI Assessment and Analysis Group 2009, Roberts 2010).

Nonetheless, the survey estimated that in the first two and a half years of the FOI law's existence, 1.6 million information requests were filed in urban areas, and 400,000 in rural areas (RTI Assessment and Analysis Group 2009). The most common occupational area of urban requesters was "Business," accounting for twenty percent, followed by "Private Sector" and "Government," each at fifteen percent. While the vast majority of rural requests (65 percent) sought personal information, urban requests were more evenly divided among "town/village" information (35 percent), personal information (30 percent), state information (15 percent), and "other issues" (20 percent) (RTI Assessment and Analysis Group 2009). The report also found evidence that government agencies changed their decision-making procedures in response to the law:

> "Over 20% of the rural and 45% of the urban PIOs [Public Information Officers] claimed that changes had been made in the functioning of their offices because of RTI. Over 60% of these changes pertained to improving record maintenance, but interestingly in 10% of the rural PAs [public

> authorities] and 25% of the urban PAs what had resulted were changes in procedures of functioning and decision making" (RTI Assessment and Analysis Group 2009).

In most countries, the use of FOI laws by the business community has not received as much attention as its use by journalists, civil society, and ordinary citizens. But in the United States, at least, studies have shown that the majority of information requests are actually made by commercial requesters.[1] There is also anecdotal evidence that foreign businesspeople make direct use of the law in some countries. The book Doing Business in India for Dummies includes a section entitled "Putting India's Right to Information Act to Good Use," claiming that the law has proven useful in "clearing Indian business hurdles," especially by speeding regulatory delays. The section notes that "as a foreigner, you may not be able to take advantage of the act directly, but you can always get your Indian contacts to submit information requests on your behalf. And you (or your Indian contacts) don't even have to say why you need the requested information - you just have to provide your contact details" (Manian 2007). In Jordan, the NGO Al Urdun Al Jadid Research Center held a two-day workshop in February 2009 training participants from the business and investment sectors in making information requests and submitting appeals. The group also held workshops for journalists and public sector officials. In a report, the group wrote that Jordan's 2007 Right of Access to Information Law "provides for endorsing a transparent and competitive climate for the business sector, whilst promoting the flow of foreign investment into Jordan. Investors feel more secure and confident when investing in a transparent environment that makes information, facts and figures,

[1]Coalition of Journalists for Open Government. "Frequent Filers: Businesses Make FOIA Their Business." July 3, 2006. Available at: http://www.cjog.net/documents/Who_Uses_FOIA.pdf.

legislations and economic regulations easily available."[2]

This chapter uses quantitative models of foreign investment across developing countries to test for the economic impact of FOI laws. I argue that increased transparency and more credible policy are two important mechanisms by which FOI laws increase FDI inflows in developing countries. The next section of this chapter reviews existing literature on the institutional determinants of foreign direct investment, and explains the theoretical mechanisms by which FOI laws lead to increased FDI.

Theoretical Approaches

Foreign direct investments are the establishment of a lasting interest by an enterprise in one economy in an enterprise in another economy, involving a long-term relationship and the direct or indirect ownership of 10% or more of voting power (OECD 2010). FDI reflects an explicit decision by firms to transfer advantages within their own organization, rather than sell them on the global market (Dunning 1988). FDI involves large initial costs leading to long-term revenue streams, and often highly specific, immobile assets. This leads to the problem of the "obsolescing bargain" (Vernon 1971). A bargain reached between an investor and the host country government over distribution of benefits becomes obsolete as soon as the firm's costs are sunk — the government can expropriate assets or increase regulatory or tax burdens almost at will. Though host governments have an incentive to refrain from such activity in order to remain an attractive location for investment, they face a problem of time-inconsistent preferences wherein short-term benefits from expropriation can sometimes outweigh the long-term costs.

Even though outright expropriation of assets has been rare over the last two

[2]Available at http://www.freedominfo.org/wp-content/uploads/documents/Information%20is%20Right%20for%2
%20Eng%202.pdf

decades, ex post changes in regulation, tax burdens, tariffs, and selective law enforcement remain an issue - often called "creeping expropriation" (Jensen 2003). Surveys of investors have identified unpredictable policymaking, uncertainty over tax policy and customs rules, and frequent policy reversals as among the challenges posed to investment by political uncertainty (Brunetti, Kisunko, and Weder 1998). Due to the difficulty in specifying complete contracts, investment disputes with governments are bound to occur even in countries with excellent property rights enforcement. These myriad challenges are collectively referred to as "political risks," and indeed, multinational firms often purchase investment insurance covering political risks over the ensuing fifteen years (Jensen 2008).

It is in the context of these challenges that numerous scholars have focused on institutional arrangements which can make potential host countries more attractive locations for investment, by constraining the ability of the government to engage in expropriation, and by signaling a commitment to uphold the rule of law and protect property rights. Henisz (2000a, 2000b) has focused on the role of domestic political constraints, a structural measure based on veto points and preference distributions, in constraining the ability of government to change policies. Jensen (2003) found that democratic regimes received more FDI (2003) and received better political risk insurance ratings (2008), as they constrained political actors and increased audience costs for illiberal policy. On the other hand, Li and Resnick (2003) found diverging effects of two different aspects of democracy. Overall democracy led to lower FDI inflows, while the increased protection of property rights engendered by democracy was associated with increased FDI. Neumayer and Spess (2005) found that developing countries that signed more Bilateral Investment Treaties with developed countries received increased FDI inflows. Büthe and Milner (2008) focused on the role of international

institutions seemingly unrelated to investment — preferential trade agreements and WTO membership, in serving as credible commitments to liberal economic policy.

In this chapter I demonstrate that a single domestic policy instrument, more specific than broad measures of democracy and political constraints, has a significant effect on FDI inflows. There are two mechanisms by which FOI laws can make countries more attractive locations for multinational firms' investment. FOI laws can directly increase the transparency of a country, and they can make its policy commitments more credible. The rest of this section will detail these mechanisms, and address how the challenges of implementation and enforcement might shape the relationship between FOI laws and FDI inflows.

Direct Transparency

FOI laws, when well implemented and enforced, should lead to greater availability of information about the preferences of government actors and the process by which policy is made. This information is valuable to multinational firms on two accounts. It decreases the uncertainty of the information they hold about a country's value as a location for investment. It also increases the likelihood that they will have advance warning in the case of any future attempt to expropriate or increase regulatory or tax burdens, thereby allowing them opportunity to exercise either political voice or exit.

Consider a change in regulatory rules: If the process is open and transparent, then a firm may attempt to lobby against the rules, or to soften them. They may accept that the rule will be changed and so begin implementing potentially lengthy and costly processes of adjustment, so that they will not be so adversely affected when the rule is implemented. They could even consider moving some or all of the investment out of country, if sunk costs are not too great. Each of these options will

be vastly curtailed, more costly, or even impossible if the policymaking process is not transparent.

Existing survey and interview research has shown that investors, especially in developing countries, see policy uncertainty as both a major burden and barrier to investment (Brunetti, Kisunko, and Weder 1998) and see the availability of information as important for investment decisions (Jensen 2008). Indeed, Jensen (2008) argued that transparency was one of the major mechanisms by which democratic regimes lead to decreased political risk and thus greater investment, by allowing firms to observe the legislative process and anticipate policy changes. Jensen also noted that while democracy allows both foreign and domestic firms formal avenues by which to seek to influence the policymaking process, domestic firms may be advantaged by their "deeper knowledge of local markets and domestic politics" (Jensen 2008, p. 1042). By making domestic politics more transparent to outsiders, FOI laws may even the odds for foreign firms, mitigating their information shortfall.

The 2002 OECD report "Foreign Direct Investment for Development: Maximising Benefits, Minimising Costs," highlighted transparency as an area where new policies could attract FDI in developing countries. The report noted that a lack of transparency not only "heightens the risk of operating in the host-country business environment," but also "raises the risk of information asymmetries that would in most cases benefit the market incumbents" (OECD 2002, 176). The report argued that greater transparency increases "the degree of clarity that investors can obtain regarding future legal and regulatory changes," as well as helping to ensure that foreign investors are not unduly disadvantaged vis--vis domestic investors, noting that "since locally owned enterprises often have better knowledge of the intentions of national policy makers, it is a particular challenge for host country authorities to ensure that

all parties have equal access to information" (OECD 2002, 178).

In April 2007, a roundtable on "Companies and the Right to Access Public Information" was held in Buenos Aires, Argentina, sponsored by Asociacion por los Derechos Civiles, the World Bank Institute, the Inter-American Investment Corporation, and the British Embassy in Buenos Aires. The resulting report spoke to the benefit of FOI laws for both domestic and multinational firms:

> "The right to access public information yields information related to regulations, decisions by government organizations and agencies (such as procurement plans, statistics, and market data), and other important trade information that many times only the government can generate. Exercising our right to know promotes economic development because it enables us to better plan business activities, favors legitimate competition, and reduces barriers to business operations, all of which in turn is beneficial for the country" (Asociacion por los Derechos Civiles et al. 2008, 5).

The report specifically noted that FOI laws were useful when assessing potential factory locations, when making bids for government contracts, in dealing with potential lawsuits or administrative claims by the government, and in leveling the playing field between those with and without clientelistic political connections.

While foreign investors or their local agents may make direct use of FOI laws, this mechanism does not depend on representatives of MNCs themselves directly requesting and receiving information from the government. Rather, information requested by domestic actors, especially the media or civil society advocates, may be published in forms accessible to MNC decisionmakers. Media outlets and civil society may both serve as conduits for information gathered by FOI requests to make its way to the

public and to international observers, including investors. FOI laws may be used by businesspeople themselves as well as by journalists and NGOs for purposes that increase the overall availability of information. And while most governments already publish important economic statistics and information on regulatory, judicial, and contracting procedures, firms may have little confidence that this information is not distorted or poorly collected. If journalists and civil society groups are empowered to request government information, including information on the process by which official statistics are compiled, businesses should have greater confidence in the accuracy of official reports. Thus, if FOI laws shed "sunlight" on the business environment, the preferences of key political actors, and the processes by which policy is made, investors should observe this change and see a country as a more favorable destination for investment, even if they are unaware of the FOI laws themselves.

Policy Credibility

Policy credibility is fundamentally a problem of time-inconsistent preferences. It may be in a policymaker's long-term interests to implement an efficient policy to encourage investment, such as property rights, lower corruption, or attractive regulatory or tax policy, but at future points in time that policymaker will be faced with opportunities to alter the policy for short-term gain. Investors will anticipate these political risks and invest at a lower rate, as long as the policymaker has the authority to make ex post changes to the rules.

What can make policies more credible? The literature on institutions and credible commitment has focused on mechanisms that tie the hands of policymakers, foreclosing opportunities for future discretion in a manner that makes policy commitments trustworthy to observers (North 1990; North and Weingast 1989). However, credibil-

ity is not a dichotomous attribute, but rather can exist on a range of values. It is also important to note that credibility is a dynamic between host country and investor, not an attribute residing solely at the domestic level. Without investors to observe domestic institutions and update their beliefs about the probability of political risks, credibility has little meaning. Thus, any institution which decreases the probability of unanticipated policy change at a later date should lead investors to update their perceptions of policy credibility, and therefore increase investment to match the decreased political risk.

Previous work on institutions and investment has seen political constraints arising from the number of institutional veto players, and the potential for audience costs imposed by democratic electorates as important potential constraints on policy change which can enhance policy credibility (Henisz 2000a, 2000b; Jensen 2003, 2008). While constraints on policy changes should make it more difficult to pass any new policy, good or bad, constraints are still desirable to investors. This is because multinational firms choose to locate in a host country at a point in time when they know conditions there are favorable to their future profits — if conditions were unfavorable, they would not invest. It is future policy changes — unforeseen and beyond their control — that pose political risks to investment. Jensen (2008, p. 1041) notes that policy stability — the absence of unpredictable policy change — means that "multinationals can enter into foreign markets with the assurances that policies will not change dramatically after entry."

Constraints on policymakers, such as veto players and audience costs, can increase policy credibility and thereby make a host country more attractive to multinational firms. I argue here that freedom of information laws can serve as a constraint by giving the ability to monitor and sanction government bodies and officials to a greater

number of actors in society. FOI laws, when implemented and enforced, allow actors in society even without demonstrable legal interest in the actions of government to request information about those actions. When political actors abandon a policy they have publicly committed to, engage in unpredictable policymaking, or even in acts as simple as corruption, the existence of an FOI law gives numerous domestic stakeholders the ability to gain more information and to potentially sanction those political actors. These stakeholders can include voting publics, opposing politicians, rival bureaucratic agencies, media, and civil society groups. Sanctions can take the form of scandal, bad publicity or other reputational harm, public protest, or electoral sanction in legislative or executive elections. Bureaucratic actors may suffer sanction from supervisors. Even unelected leaders can be subject to sanction by their supporters or powerful elites. By creating diffused monitoring and sanctioning power in the hands of numerous actors, FOI laws establish a form of oversight through fire alarms, rather than police patrols (McCubbins and Schwartz 1984). Further, by implementing FOI procedures in individual government agencies, governments place the practice of transparency at least partially outside the executive's control.

While it is unlikely that a ruler intent on nationalization of foreign-owned industries will refrain on account of a FOI law, the less serious political risks that make up "creeping expropriation" may be affected. Leaders who publicly commit to an economic policy and later face short-term incentives to abandon it may be less prone to do so — FOI laws limit their ability to minimize publicity or to pin the blame on other members of the government — in essence increasing the likelihood of domestic audience costs. Domestic audiences may punish their leaders for reneging on commitments and for unpredictable, inconsistent, rapidly changing policy. By giving monitoring and sanctioning powers to numerous actors in society, FOI laws both

increase the likelihood that such actions will become public and the likelihood that those responsible will see reputational or electoral sanction. Even if the difference is only marginal, this possibility can make political actors less likely to engage in such behavior. If investors observing the passage and implementation of a FOI law recognize this decrease in the probability of political risks to investment, the greater policy credibility will lead to increased FDI inflows.

Implementation and Enforcement

Just because a law is passed does not mean that it will be implemented or enforced. This is especially true in developing countries, where the rule of law is widely variable. It is also especially true for legislation involving rights — as the extensive literature on compliance with human rights agreements can attest. Case studies of FOI implementation provide ample evidence of the challenges of implementation and enforcement (Florini 2007). Even after laws are passed, it takes time to implement procedures to handle information requests in government agencies, and even longer to change entrenched bureaucratic norms of secrecy. For FOI laws, once implemented, to change institutional incentives such that the credibility of policy is increased should take even longer. Thus, there are strong theoretical reasons to expect that the effects of FOI laws on FDI inflows should not be observed immediately, or even after a one-year delay.

In addition to allowing for time delays to account for implementation and changes in incentives and behavior, any systematic study of FOI laws must also confront the strong possibility that many of the extant FOI laws in the world go unenforced. Leaders, especially of autocratic countries, may have strong reasons to pass FOI laws to blunt international criticism over secrecy or human rights practices, to curry favor

with international lenders and donors, or even to satisfy domestic civil society groups. Such laws may never go beyond the status of window-dressing. The ultimate case of a sham FOI law is Zimbabwe, where the 2002 law is actually used by the government to control the media and harass journalists (Banisar 2006). It makes theoretical sense to distinguish between "real" and "sham" FOI laws, where the real ones will be implemented and enforced and the sham ones will not. I leverage the available data on the strength of FOI laws in practice in order to assess whether only certain laws have the hypothesized effects on FDI.

Whether the mechanisms of direct transparency and policy credibility are at work individually, or in concert, FOI laws should lead to increases in foreign direct investment. These increases, however, may only occur after a delay of several years, or only in countries where FOI laws are strong in practice. The next section introduces the modeling approach and data used in the analysis.

Data and Model

This chapter assesses the impact of FOI laws with a series of panel models of FDI inflows across 80 developing countries from 1985 to 2008. These models employ country fixed effects to capture unobserved country heterogeneity, year fixed effects to account for the global trend of increasing FDI over time, and a lagged dependent variable to capture temporal dependence. All OECD member states have been omitted, as the causal factors of FDI inflows in developed countries are likely to be substantially different than in developing countries (Büthe and Milner 2008), and it is primarily developing countries which need to demonstrate institutional credibility to potential investors. Countries with populations under 1 million have been omitted from the dataset, as determinants of investment to very small countries are likely to be id-

iosyncratic. Limited temporal coverage of key variables limits the panel length to the years 1985 to 2008.

The dependent variable is FDI inflows as a percentage of GDP, the most commonly used measure of FDI in literature on its political determinants. Scaling by total GDP incorporates automatically one of the strongest predictor of foreign direct investment, total size of the economy, and helps reduce the impact of outliers. This data is from UNCTAD (2010), the most reliable source of FDI data for developing countries due to lower rates of non-reporting than other sources. FDI inflows are new investments made in each country by firms based in other countries. When FDI inflows are negative, it reflects that divestment by foreign firms is greater than new investment in that year. This is different from FDI outflows, which are new investments made abroad by a country's domestic firms. Each model also includes a lagged dependent variable to account for temporal dependence. All models employ robust standard errors corrected for heteroskedasticity and autocorrelation.

The key explanatory variable is a dichotomous indicator of whether or not a Freedom of Information law has been passed and gone into effect, coded from multiple sources (Banisar 2006, Mendel 2008, Mendel 2009, Vleugels 2008). This variable takes a value of 1 for countries with a FOI law, and 0 otherwise. Lagged versions of this variable assign values of 1 only to countries which have had FOI laws in effect for at least one, two, three, or four years. These variables (FOI Law in Effect 1 Year, FOI Law in Effect 2 Years, FOI Law in Effect 3 Years, and FOI Law in Effect 4 Years) test whether time delays to account for implementation matter for the effect of FOI laws.

I control for several other variables which have been identified as potential determinants of foreign direct investment. Political Constraints is an index compiled

by Witold Henisz (2000a, 2000b) measuring the number of effective veto players in a country, weighted by the distribution of preferences across those veto players. This variable ranges from 0 to 1. High levels of political constraints make it more difficult for state leaders to engage in predatory policy changes or expropriation, and should encourage investment. Political Instability is a standard control variable in analyses of FDI, usually associated with lower levels of investment. This variable is measured as the logged sum of political event counts (Assassinations, General Strikes, Guerilla Warfare, Government Crises, Purges, Riots, Revolutions, and Anti-Government Demonstrations) from Arthur Banks's Cross-National Time-Series Data Archive (Banks 2009). The effect of Bilateral Investment Treaties on FDI inflows has been the subject of debate, but Neumayer and Spess (2005) and Büthe and Milner (2008) found it to be positive and significant, so I include the logged number of such treaties each country is party to in each year, drawn from the UNCTAD Foreign Direct Investment Database (2010).[3]

I also include controls for economic variables which scholars have considered important determinants of FDI inflows. Market Size, indicated by the log of total population, is a major advantage to multinational location in a given country. The log of GDP per capita, reflecting the level of Economic Development, should also be an important determinant of FDI. However, past work (Li and Resnick 2003) found insignificant or even negative coefficients for level of development in models of FDI, and concluded that its effects may work through other variables already included in the model. GDP Growth should be associated with increased FDI, as investors are attracted to future market opportunities of growing economies. Trade Openness is also included, measured as the log of total exports plus imports as a percentage of

[3]For both the Political Instability and Bilateral Investment Treaties variables, I first add a value of one to all values so that the logarithmic transformation is mathematically possible.

GDP. Following Neumayer and Spess (2005), I include the Inflation rate as a proxy for macroeconomic stability. Natural Resources are another important determinant of FDI, as resources such as oil and mineral wealth attract investment independent of the institutional setting. This variable is measured as the logged sum of fuel exports and ores and metals exports as a percentage of total exports. All the aforementioned independent variables are taken from the World Bank's World Development Indicators.

I also model the effects of the strength of FOI laws in practice on FDI, in order to take into account the differences between laws which are actually enforced and those which are mere window-dressing. In order to do so, I use data from the Global Integrity Report, supplemented by a multiple imputation model to fill in missing values. The Global Integrity Report relies on in-country researchers and journalists to assess "the existence, effectiveness, and citizen access to key governance and anti-corruption mechanisms through more than 300 actionable indicators" (Global Integrity Report 2009). In each year from 2006 to 2011, Global Integrity researchers scored countries on five different questions for the indicator of "Is the right of access to information effective?" These are:

- In practice, citizens receive responses to access to information requests within a reasonable time period.

- In practice, citizens can use the access to information mechanism at a reasonable cost.

- In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

- In practice, citizens can resolve appeals to information requests at a reasonable cost.

- In practice, the government gives reasons for denying an information request.

For each question, researchers assigned the country a score of 0, 25, 50, or 100, and then the indicators were averaged to yield the overall indicator for that country's access to information effectiveness in practice. As different sets of countries were surveyed in each year (anywhere from 28 to 47 in each year), and some countries were scored multiple times while others only once, I average all the scores available for any year for each country, to yield that country's overall score, scaled to range from zero to one. Unfortunately, even after averaging available years, this indicator is only available for 49 countries with FOI laws. Thus I use a multiple imputation model, using the software package Amelia (Honaker et al. 2011), to impute values for the remaining countries with FOI laws. I impute the strength of FOI laws in practice based on the level of democracy, GDP per capita, the level of corruption, the length of time each country's law has been in effect, and a measure of the *de jure* strength of each law's design (Centre for Law and Democracy 2011). Since imputation involves some measure of uncertainty, I create ten imputed datasets and run each model using the variable once with each dataset, combining the results. Additionally, the practice variable has been scaled to range from zero to one.

Since this measure is only available for a cross-section of countries, including it in the models of FDI requires making the assumption that the strength of FOI laws in practice does not vary over time once a law has been implemented. While this assumption may be questionable, it is still worthwhile to investigate whether different types of FOI laws have different effects. For each country, the FOI Strength in Practice

variable takes a value of zero for all years before the law went into effect, and the value of the imputed practice measure afterwards.

The inclusion of country fixed effects account for any unobserved, omitted variables that are invariant over time. Thus any underlying propensity of a given country to receive more or less foreign investment will not affect the results. This is useful in ensuring that certain countries are not both more likely to pass FOI laws and to receive more foreign investment, due to factors such as geography, legal system, or long-run institutional quality. While country fixed effects are useful in avoiding this specific form of endogeneity, a subsequent section of the paper uses an instrumental variables approach as well. Finally, the inclusion of year fixed effects accounts both for the upward global trend in foreign investment over time, and for any year-specific positive or negative shocks that have global impacts.

Results

Table 6.2 presents the results of these empirical models. Model 1 is a baseline model including only control variables, while Models 2 through 5 include measures of Freedom of Information laws at varying time lags. FOI laws have a positive and statistically significant effect on FDI inflows, but not immediately after passage. Rather, their impact is positive and significant only after the law has been in effect for at least three years. Thus in Models 4 and 5, the coefficients for the FOI law variables are 0.851 and 0.873, respectively, and both are statistically significant and a 95 percent confidence level. These coefficients reflect increases in FDI inflows equivalent to almost 0.9 percent of a country's GDP. For a country with the sample median GDP of roughly $15 billion (in constant 2000 dollars), a coefficient of 0.873 reflects a roughly

$130 million increase in the value of FDI inflows in a given year.[4]

The effects of the control variables are very similar across the five models. Political Constraints have a significant and positive relationship with FDI inflows. There is no significant effect for Political Instability. The effect of Bilateral Investment Treaties is positive, but not quite statistically significant at a 90 percent level. Market Size and Economic Development are associated with less inward FDI, indicating that larger and wealthier markets actually receive less inward FDI as a percentage of GDP. However, while these variables are important controls to avoid biased estimates of the effects of FOI laws, the potential dependence between total GDP as the denominator on the left-hand side of the model, and GDP per capita and population on the right-hand side, should lead to caution in interpreting their coefficients. GDP Growth has a negative coefficient which is not statistically significant, while the effect of Trade Openness is positive but not statistically significant. Inflation is significantly associated with less inward FDI, as expected. Finally, the effect of natural resources, as measured by their percentage of total exports, is not statistically significant.

Model 6 in Table 6.2 includes includes a measure of the strength of FOI laws in practice, in order to differentiate between laws which are actually enforced and those which are mere window dressing. In this model, the coefficient for FOI laws is negative and statistically significant, while the coefficient for practice is positive and statistically significant. In order to better interpret the substantive significance of these results, I present them graphically in Figure 6.1. This figure is based on ten

[4]One potential concern is that the results for varying time lags are an artifact of the fact that the panel ends in the year 2008. To investigate this, I repeated the analyses presented in Table 6.2, but omitted the last one, two, or three years of the panel. For each such analysis, the results still showed a statistically significant positive effect for FOI laws after either two or three years in effect. This shows that despite a smaller sample size, the results are substantively similar even with an earlier final year of the panel. Only after omitting the last four years of the panel were the effects of FOI laws no longer significant, but by that point the sample size had been reduced by a full 21% from that of the models in Table 6.2. Results available from author upon request.

	Model 1	Model 2	Model 3	Model 4	Model 5	Model 6
FOI Law in Effect 1 Year		-0.193				-6.112 **
		(0.480)				(2.828)
FOI Law in Effect 2 Years			0.321			
			(0.378)			
FOI Law in Effect 3 Years				0.851 **		
				(0.407)		
FOI Law in Effect 4 Years					0.873 **	
					(0.383)	
FOI Strength in Practice						10.721 **
						(4.493)
Political Constraints	0.610 *	0.594 *	0.625 *	0.628 **	0.604 *	0.462
	(0.317)	(0.325)	(0.321)	(0.319)	(0.316)	(0.339)
Political Instability	0.007	0.003	0.014	0.021	0.017	0.024
	(0.135)	(0.138)	(0.136)	(0.133)	(0.134)	(0.133)
Bilateral Investment Treaties	0.199	0.201	0.201	0.210	0.217	0.275 *
	(0.137)	(0.138)	(0.136)	(0.136)	(0.136)	(0.145)
Market Size	-2.942 *	-3.037 *	-2.730	-2.280	-2.296	-2.398
	(1.677)	(1.701)	(1.668)	(1.640)	(1.652)	(1.650)
Economic Development	-1.442 **	-1.428 **	-1.462 **	-1.475 **	-1.467 **	-1.700 **
	(0.698)	(0.678)	(0.694)	(0.708)	(0.701)	(0.758)
GDP Growth	-1.905	-1.862	-1.924	-1.844	-1.759	-1.378
	(2.875)	(2.798)	(2.885)	(2.871)	(2.875)	(2.575)
Trade Openness	0.119	0.107	0.129	0.155	0.147	0.018
	(0.362)	(0.364)	(0.358)	(0.356)	(0.360)	(0.369)
Inflation	-0.011 **	-0.011 **	-0.011 **	-0.012 ***	-0.011 **	-0.011 **
	(0.004)	(0.004)	(0.004)	(0.004)	(0.004)	(0.005)
Natural Resources	-0.023	-0.020	-0.027	-0.036	-0.038	-0.002
	(0.097)	(0.097)	(0.097)	(0.097)	(0.097)	(0.101)
Lagged FDI per GDP	0.606 ***	0.606 ***	0.607 ***	0.605 ***	0.601 ***	0.577 ***
	(0.055)	(0.056)	(0.055)	(0.056)	(0.055)	(0.068)
Number of Observations	1280	1280	1280	1280	1280	1280
Adjusted R^2	0.591	0.591	0.591	0.592	0.592	0.599
Residual Standard Error	2.388	2.388	2.388	2.384	2.384	2.363

Robust standard errors in parentheses
* significant at $p < .10$; **$p < .05$; ***$p < .01$

Table 6.2: Results of time-series cross-section models of FDI as a percentage of GDP in developing countries over the period 1985 to 2008. Model 1 is a baseline model with only control variables. Models 2 through 5 include indicators for freedom of information laws in effect for one through four years. Model 6 includes a measure of the strength of FOI laws in practice. All models include country and year fixed effects.

thousand simulations of the results of Model 6, and depicts the expected effect of FOI laws with varying levels of strength in practice. This expected effect is calculated as the difference between the expected FDI inflow for a country with a FOI law of a given strength, and the expected FDI inflow for a country with no FOI law, in both cases with all other independent variables held at their mean levels. The dashed lines reflect 95 percent confidence intervals around this expected effect.

The figure shows that, for a country with a weak FOI law, the level of FDI is not expected to be significantly different from that of a country with no FOI law. For countries with the weakest laws, the level of FDI may even be significantly lower. However, for a country with a strong FOI law in practice, the expected level of FDI is significantly higher than for a country with no FOI law. The threshold level of strength in practice. above which the effect of FOI is statistically significant at a 95 percent level, is roughly 0.63 on a scale from 0 to 1, where the mean value of the practice measure is 0.55. The next section addresses the possibility of endogeneity by using an instrumental variables approach.

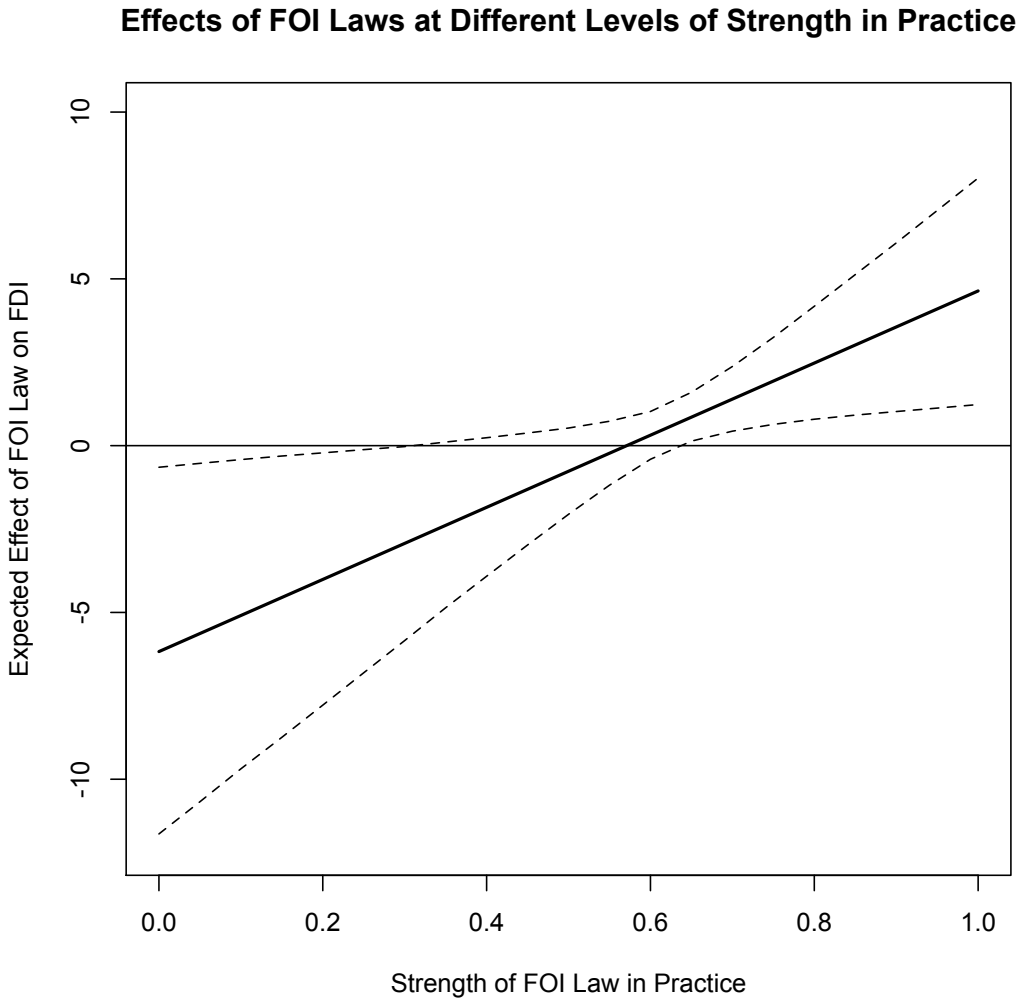

Figure 6.1: Expected effect of FOI laws on FDI inflows at varying levels of the strength of FOI laws in practice, based on simulations of the results of Model 6. The expected effect is calculated as the difference between the expected FDI inflow for a country with a FOI law of a given strength, and the expected FDI inflow for a country with no FOI law, in both cases with all other independent variables held at their mean levels. The dashed lines reflect 95 percent confidence intervals around this expected effect.

Endogeneity and Instrumental Variables

There are two types of endogeneity that could potentially affect the analysis. The first is reverse causality, whereby FDI inflows might make the passage of FOI laws more likely. The second is a form of omitted variable bias, whereby some variable might be associated both with FDI inflows and with the likelihood of FOI law passage. Several factors argue against concern over either of these forms of endogeneity being problematic for the present analysis, however. Reverse causality is unlikely to be a concern for these models for two reasons. First, FOI laws persist long after the conditions which lead to their passage. No country has repealed an FOI law to date. Second, if reverse causality did play a role, and increased FDI inflows were spurring the passage of FOI laws, then we would expect to find strong effects for FOI laws soon after going into effect. This is not the case, and in fact results show that FOI laws only increase FDI inflows after three years in effect. The use of country fixed effects also wards against endogeneity in the form of omitted variable bias. Any fixed features of countries, such as geography, legal system, or long-run institutional quality, that might be associated both with higher FDI inflows and a higher probability of passing FOI laws, is automatically controlled for by the fixed effects. Only variation within a given country over time, conditional on any unique characteristics of that country, enters into the analysis.

Nonetheless, some scholars have argued that flows of foreign direct investment can impact domestic governance. Ahlquist and Prakash (2008) found that inward FDI was associated with stronger protection of property rights in developing countries, measured by the use of contract-intensive money. Malesky (2008) found that the presence of foreign investment could enable policy autonomy by Vietnamese provinces. To address any lingering concerns over endogeneity, I include an instrumental vari-

ables approach to capture the exogenous component of the potentially endogenous indicators for FOI laws. If my instruments are valid, then the instrumental variables analysis can estimate the effect on FDI inflows of only the exogenous component of the FOI indicators. A valid instrument must be correlated with the potentially endogenous independent variable, but must not explain the outcome of interest through any other causal channel.

Good instruments are notoriously hard to find in the social sciences. I use two instruments which plausibly meet the two instrument validity conditions: International NGOs and FOI Laws in Region. The first of these is the logged count of international non-governmental organizations which have members in each country in a given year, from the Yearbook of International Organizations. This takes advantage of the key role of international NGOs and transnational civil society networks in advocating for the passage of FOI laws in developing countries. Organizations such as Transparency International, Article 19, the Open Society Institute, the Carter Center, and others have encouraged passage of FOI laws via global media campaigns, providing legal advice to states and other advocates, funding local groups, organizing conferences, and other activities. While data does not exist over time on the activities of organizations working specifically on the FOI issue, overall international NGO density in a country is a reasonable proxy as it provides a more favorable organizational environment for issue-specific groups. Other common aims of international NGOs, such as states' human rights practices, are less likely to have an effect on FDI inflows. The aims of environmental NGOs, if they have any effect on FDI inflows, would likely have a negative and not a positive effect. The International NGO variable is positively correlated with the presence of FOI laws — a correlation of 0.28 with the indicator

of FOI laws in effect for 1 year.[5]

The second instrument is a measure of the proportion of countries in the same region that have passed FOI laws, excluding the reference country. The regions used to calculate this measure are the Americas, East Asia and the Pacific, Eastern Europe and Central Asia, the Middle East and North Africa, and Sub-Saharan Africa.[6] This takes advantage of the spatial diffusion of FOI laws over time, a common strategy for identifying instruments (see Büthe and Milner 2008). Countries were more likely to pass FOI laws when others in their region had already done so. The FOI Laws in Region variable is positively correlated with the presence of FOI laws — a correlation of 0.49 with the indicator of FOI laws in effect for 1 year.[7]

I estimate one instrumental variables model for each of the FOI indicators, using Stata's *treatreg* command. The selection-stage models include the two instruments, all other independent variables used in the models of FDI inflows, and first-, second-, and third-order polynomials of time as independent variables. Table 6.3 reports the results of these models, showing that the effect of FOI laws on FDI inflows remains positive and statistically significant after three and four years in effect. Further, the results of Wald tests of independent equations cannot reject the null hypothesis that the equations are, in fact, independent of each other. This supports the conclusion that endogeneity is not a major concern for this analysis.

Conclusion

The results of this chapter confirm that FOI laws increase FDI inflows per GDP, but only after they have been in effect for several years, and in countries where the law is

[5]Correlations with the indicators for laws in effect for 2, 3, and 4 years are 0.28, 0.26, and 0.25.

[6]Countries from Western Europe are excluded from the analysis as developed countries.

[7]Correlations with the indicators for laws in effect for 2, 3, and 4 years are 0.47, 0.44, and 0.41.

	Model 7	Model 8	Model 9	Model 10
FOI Law in Effect 1 Year	-0.215			
	(0.601)			
FOI Law in Effect 2 Years		0.728		
		(0.726)		
FOI Law in Effect 3 Years			1.513 **	
			(0.707)	
FOI Law in Effect 4 Years				1.938 **
				(0.819)
Political Constraints	0.674 **	0.698 **	0.691 **	0.647 **
	(0.283)	(0.279)	(0.278)	(0.278)
Political Instability	-0.012	-0.012	-0.012	-0.014
	(0.015)	(0.015)	(0.015)	(0.015)
Market Size	-4.270 **	-3.597 *	-3.015 *	-2.895
	(1.858)	(1.851)	(1.751)	(1.766)
Economic Development	-1.363 **	-1.374 **	-1.348 **	-1.382 **
	(0.675)	(0.691)	(0.686)	(0.695)
GDP Growth	-0.020	-0.022	-0.021	-0.019
	(0.027)	(0.028)	(0.028)	(0.028)
Trade Openness	-0.102	-0.060	-0.036	-0.050
	(0.301)	(0.300)	(0.302)	(0.307)
Inflation	0.000 ***	0.000 ***	0.000 ***	0.000 ***
	(0.000)	(0.000)	(0.000)	(0.000)
Natural Resources	0.020	0.016	0.010	0.004
	(0.093)	(0.093)	(0.094)	(0.094)
Lagged FDI per GDP	0.619 ***	0.618 ***	0.612 ***	0.608 ***
	(0.105)	(0.105)	(0.105)	(0.105)
Selection Equation				
International NGOs	0.001 ***	0.001 ***	0.001 ***	0.001 **
	(0.000)	(0.000)	(0.000)	(0.000)
FOI Laws in Region	1.531 ***	1.510 ***	1.380 ***	1.285 ***
	(0.210)	(0.213)	(0.219)	(0.226)
Political Constraints	0.421 *	0.591 **	0.739 ***	1.023 ***
	(0.237)	(0.261)	(0.284)	(0.302)
Political Instability	0.034 ***	0.040 ***	0.046 ***	0.053 ***
	(0.012)	(0.012)	(0.012)	(0.013)
Market Size	-0.205 ***	-0.160 **	-0.128 *	-0.057
	(0.074)	(0.075)	(0.076)	(0.075)
Economic Development	-0.011	0.038	0.057	0.107
	(0.077)	(0.078)	(0.080)	(0.081)
GDP Growth	0.022	0.011	-0.002	-0.007
	(0.017)	(0.017)	(0.014)	(0.015)
Trade Openness	-0.109	-0.010	0.037	0.112
	(0.139)	(0.143)	(0.152)	(0.161)
Inflation	0.000	0.000	0.000	-0.001
	(0.000)	(0.000)	(0.000)	(0.001)
Natural Resources	-0.033	-0.025	-0.007	0.018
	(0.035)	(0.039)	(0.041)	(0.043)
Lagged FDI per GDP	0.018	0.005	0.006	0.004
	(0.013)	(0.016)	(0.018)	(0.020)
Year	-3.256	-0.553	2.379	5.969 **
	(2.239)	(2.331)	(2.485)	(2.911)
Year^2	1.987	0.217	-1.644	-3.803 **
	(1.446)	(1.499)	(1.586)	(1.805)
Year^3	-0.318	0.034	0.397	0.798 **
	(0.285)	(0.295)	(0.311)	(0.348)
Number of Observations	1215	1215	1215	1215
Wald Test of Indep. Equations: p-value	0.513	0.318	0.237	0.194

Robust standard errors in parentheses
* significant at $p < .10$; ** $p < .05$; *** $p < .01$

Table 6.3: Instrumental variables models of FDI as a percentage of GDP in developing countries over the period 1985 to 2008, estimated using Stata's *treatreg* command. Each outcome equation model includes country and year fixed effects.

actually enforced. The findings highlight the importance of addressing the challenges of implementation and enforcement when studying the effects of policy changes. If a new policy requires substantial changes at multiple levels of government, such as the creation of new agencies or new roles within existing agencies (such as information offices or officers), new practices (such as new systems to manage documents), and new types of behavior (openness as opposed to secrecy), then implementation should be expected to take time. Any study expecting to identify results of such a new policy immediately after it goes into effect will likely have misleading conclusions. Enforcement is another challenge, especially where officials may be reticent to change long-entrenched patterns of behavior, and where executives, judiciaries, or independent agencies may be unwilling or unable to serve monitoring and sanctioning roles. Distinguishing "window dressing" FOI laws from those which actually go enforced is a challenge for any study of their effects. Using a measure of the strength of FOI laws in practice, I find that only strong laws have the hypothesized effects on FDI.

This chapter's findings also confirm the relationship between institutions and investment, and show that such results are not dependent on aggregate indices of institutional qualities such as democracy and political constraints, but can also be found in the effects of a single policy instrument. Freedom of information laws are not important solely for their much-touted benefits to democracy, accountability, free press and civil society. They also play an important role in shaping economic incentives to which investors respond. FOI laws can increase transparency in ways that decrease investor uncertainty and solve information asymmetries. They can also increase the credibility of policymakers' commitments, by giving potential sanctioning power to a diffuse body of domestic actors. Given the importance of information in the global economy, it is surprising how little research has addressed the role played by infor-

mation policy itself. The freedom of information appears to be, in fact, good for business.

Chapter 7
CONCLUSION

Introduction

This dissertation examined the passage, design, practice, and effects of freedom of information laws around the world. It did so through individual studies grounded in an overarching model of institutionalization in two stages. The key motivation of this approach is the insight that both micro-level models of principal-agent relationships and macro-level models of global normative dynamics take insufficient account of politics and power.

While transparency mechanisms may empower citizens, enable better monitoring of political agents by their principals, and incentivize better governance, none of these features can explain why self-interested political actors would actually adopt such mechanisms, thereby exposing themselves to greater scrutiny and constraining their range of action. And while the global spread of freedom of information laws takes on the broad shape of a norm cascade, this approach obscures substantial agency of domestic political actors to block or delay passage, adopt opportunistically, or decouple law from practice; as well as obscuring the possibilities for international and domestic NGOs in transnational advocacy networks to act as key normative agents, encouraging stronger freedom of information in both law and practice through persuasion and local capacity building.

The first stage of my model is *de jure* institutionalization — the establishment of an institution in laws or other rules. The second stage is *de facto* institutionalization

— the institutionalization of those laws in practice by being implemented, enforced, and widely used. In the first stage, FOI laws institutionalize transparency in rules and procedures which are costly to weaken or revoke at a later date — thereby making government commitments to transparency more credible. In the second stage, FOI laws are implementated and routinized in regular practice. Only once doubly institutionalized will FOI laws be able to fulfill their promise of better governance. However, at both stages of institutionalization, political actors face powerful incentives to block adoption, opportunistically take advantage of global norms, or decouple law from practice. Passage of FOI laws will only be compatible with domestic political incentives when uncertainty over future power makes their institutionalization a boon, rather than a liability. Even though there are costs to failing to implement or enforce a FOI law, these costs can still be outweighed by other factors, leading to "window dressing" laws which exist in name only. And yet, even weak FOI laws can empower new actors, and can be strengthened by local capacity building by transnational advocacy networks.

Each chapter of this dissertation explored a different component of this model. What do the results of these chapters tell us about the global spread of freedom of information laws, and what are their implications for broader theories of domestic and international politics? This chapter summarizes the findings of this dissertation, and then discusses the broader implications.

Summary of Findings

In Chapter 3, I tested whether the institutionalization of FOI laws leads political actors to pass them under circumstances of high political uncertainty, when the very features which ordinarily lead them to oppose passage lead instead to passage being

in their interests. When political actors in power face uncertainty over their future control, they may have incentives to institutionalize transparency in order to credibly commit to transparent practices in the future, or to ensure that they will not be shut out of access to government information and tools of monitoring those in power in the future.

The results supported the credible commitment approach to the FOI laws, as well as confirming the important role of international diffusion. Two measures of political competition and two measures of international diffusion pressure were all significantly associated with the passage of FOI laws. Aside from those variables and a control variable for Democracy, no other variable in the models was statistically significant.

In Chapter 4, I tested the role of international NGOs as key normative agents in the translation of international norms into domestic law. This translation process offers states an opening for opportunism by passing weak laws that take advantage of opportunities for normative "recognition" while actually making lesser commitments. The results highlighted the ability of international NGOs to assess draft legislation and persuade domestic political actors to pass laws which are stronger, and more in line with international norms, than they would pass otherwise. I found that in countries in which Article 19 conducted legal analyses, the legal design of the subsequently passed FOI laws was significantly stronger than in countries which were not subject to such analyses. I also demonstrated that this finding was not an artifact of any strategic selection process by Article 19 of where to focus its efforts.

In Chapter 5, I focused on the second stage of institutionalization — the implementation, enforcement, and routinization of transparency in practice. Laws on the books do not always shape *de facto* practices. The implementation and enforcement of FOI laws can be expensive and inconvenient. They require both state capacity (to

avoid decoupling) and commitment (to avoid late-stage opportunism). Despite the costs to political actors in failing to implement or enforce FOI laws in practice, these costs are sometimes outweighed by other considerations, especially in less developed or less democratic countries.

I found no evidence that stronger FOI laws, in terms of institutional design, tended also to be stronger in practice. Instead, strength in practice was shaped by both structural contexts of political commitment and capacity, and the agency of civil society groups with access to transnational resources. A case study of Bulgaria helped to illustrate the mechanisms by which NGOs contribute to stronger FOI laws in practice, focusing on the activities of the Access to Information Programme, one of the most active and successful NGOs working on the FOI issue area in the world. Yet many groups in other countries also employ similar activities, such as promotion of their laws with trainings for journalists and civil society, lobbying their governments for better implementation, monitoring implementation and attempting to publicize shortcomings, and pursuing court cases.

My two-stage model of institutionalizing transparency expects that only FOI laws which are institutionalized both in law and in practice will actually lead to decreased corruption and better governance through the mechanisms of the principal-agent model. I tested this expectation in Chapter 6, in a study of foreign direct investment inflows in developing countries. Indeed, I found evidence that the positive effect of FOI laws on investment can be found only in laws which have been in effect for multiple years, or which rate highly on a measure or FOI in practice. These results not only highlight the importance of FOI laws, via their ability to have a substantive economic impact, but also confirm the importance of institutionalization for transparency mechanisms to function as expected by principal-agent models.

Implications for International Relations and Comparative Politics

This dissertation also offers important implications for the broader study of politics, using FOI laws as a case with which to test broader ideas. From Chapter 3, the key role of domestic political competition in driving the passage of FOI laws highlights the importance in understanding why, and under what circumstances, political actors will bind themselves by making credible commitments. The results offered here support political competition as an important driver of such commitments. From Chapter 4, the key role of international NGOs as normative agents in the translation of international norms in domestic law suggests that scholars of international relations rethink and expand the role of such actors in models of norm life cycles, which have tended to restrict them to the norm emergence stage, and also pay greater attention to the diffusion of policy design, rather than simply the adoption of policies. From Chapter 5, a different role for transnational advocacy networks emerges as of key importance in the actual implementation and enforcement of new policies, through local capacity building activities which can, in some cases, substitute for roles that the state itself would ordinarily play. Chapter 5 also highlights the surprising decoupling between law and practice, supporting calls to pay greater attention to institutional weakness, and the divergence between formal and informal institutions, especially in developing countries.

As a whole, the results of these three chapters suggest a pressing need for greater attention to the limits of policy diffusion. Despite social pressure through both changing global normative structures and increasingly active transnational advocacy networks, domestic political actors have opportunities at multiple stages to limit the diffusion of new policies and norms. They can block or delay adoption when it is not in their immediate political interests. They can also sign on to a norm in principle

but opportunistically translate it into a weak law, or decouple law from practice by failing to implement or enforce it. Indeed, the results here highlight that the decoupling between law and practice can become more extreme over time. Even as norm entrepreneurs learn from individual country experiences and develop new strategies of advocacy and best practices in institutional design, successful diffusion processes naturally spread beyond the set of countries where institutionalization in practice is relatively easier, and adoption becomes more frequent in countries where the domestic context — in terms of state capacity and commitment — is much less favorable.

Finally, the results of Chapter 6 should inform any research that seeks to find impacts of domestic institutions on economic outcomes. Such studies should not ignore the potential divergence between *de jure* and *de facto* dimensions of those institutions. However, the results I find confirm the efforts of many political scientists to demonstrate that domestic institutions shape foreign direct investment flows in important ways.

The road to institutionalizing global norms is a long and hard one, and particularly so for norms which directly implicate the relationships among political principals and agents. Transparency may offer the key to better governance, or it may not, but only if transparency is institutionalized both in law and in practice will polities around the world have the opportunity to find out.

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VITA

Daniel Berliner completed his Ph.D. in Political Science in Summer 2012. For the 2012-2013 academic year, he will be a Post-Doctoral Fellow at Freie Universität Berlin, at the Research College "The Transformative Power of Europe."