

**A CASE STUDY IN THE RISE
OF PUBLIC SECTOR TRANSPARENCY:
UNDERSTANDING THE GLOBAL DIFFUSION OF
FREEDOM OF INFORMATION LAW**

By

Rhys Stubbs, BSocSc (Hons) (International Relations/Political Science)

Submitted in fulfillment of the requirements for a Degree of

Doctor of Philosophy,

University of Tasmania,

September 2011

DECLARATION OF ORIGINAL AUTHORSHIP

This thesis contains no material which has been accepted for a degree or diploma by the University or any other institution, except by way of background information and duly acknowledged in the thesis, and to the best of the candidate's knowledge and belief no material previously published or written by another person except where due acknowledgement is made in the text of the thesis, nor does the thesis contain any material that infringes copyright.

STATEMENT OF AUTHORITY OF ACCESS

This thesis may be available for loan or limited copying in accordance with the *Copyright Act 1968* (Cth)

Rhys Stubbs
September 2011

ABSTRACT

The thesis presents an analysis of the rise of public sector transparency by examining in depth the global spread of a chief reform, freedom of information law. The thesis utilizes a socio-legal approach to examine the diffusion of the law and this distinguishes it from much of the FOI literature, which tends towards legal formalism or empiricism (Chapter Two). The thesis provides an overview of the diffusion of FOI law amongst adopter countries and examines statistical similarities and differences between adopters and non-adopters (Chapter Three). It finds that levels of globalization are an important factor differentiating adopters and non-adopters, a finding that is later supported and explored within the thesis.

Theoretical foundations for understanding the rise of public sector transparency and the diffusion of FOI law are assessed. The largely implicit theoretical assumptions of existing studies are drawn out and critiqued (Chapter Four). Two foundations are identified as prominent within the literature: a ‘modernization foundation’ suggests the spread of FOI law is driven by capitalist development, while an ‘agent foundation’ suggests the spread of the law is best understood with reference to competing social actors. While these foundations have their own strengths and weaknesses, the thesis provides an alternative theoretical foundation: ‘transnational historical materialism’ (Chapter Five). The alternative foundation, grounded in global political economy, places the diffusion of the law and the rise of public sector transparency within an understanding of the changing nature of state institutions in modern history. Central to this understanding is the way the state apparatus relates to society within a given historical context, not just within particular countries, but across countries within historical periods of the modern world system.

Transnational historical materialism provides a macro-historical understanding of the diffusion of FOI law (Chapters Six and Seven). It places the emergence and early diffusion of the law, prior to the 1990s, within the historical development of a set of states that may be called ‘Lockean’. The law initially emerged and diffused amongst

‘Lockean’ states because the relationship between state apparatuses and society within those states developed as a consensual social contract facilitating a ‘right to know’. Outside these ‘Lockean’ states throughout much of modern history so-called ‘Hobbesian’ states prevented the further diffusion of the law. Within ‘Hobbesian’ states the authority of the state apparatus overshadowed weak civil societies and prevented the development of a ‘right to know’. However, towards the end of the twentieth century the ‘Lockean’/‘Hobbesian’ dichotomy of modern states began to break down and FOI law proliferated widely. ‘Hobbesian’ structures underwent a process of transformation in the context of an emergent global political economy that facilitated the further diffusion of the law, and public sector transparency.

The thesis conducts a comparative case study analysis of China, Mexico and India in order to examine the transformation of ‘Hobbesian’ states and the recent proliferation of FOI law in more detail (Chapters Eight and Nine). These cases have been chosen on the basis that they are important and interesting, and they demonstrate several key points. First, the cases highlight the importance of the historical relationship between the state apparatus and society in determining public information access. Second, China, Mexico and India also demonstrate the nature of the adoption process in ‘Hobbesian’ states within the context of the emergent global political economy and increased transnational relations. The adoption process is understood in each case as a ‘passive revolution’, wherein adoption is a unique national reflection of international developments. The recent proliferation of FOI law outside ‘Lockean’ states and across a wide range of ‘Hobbesian’ states has been made possible through the development of a transnational support network for transparency that provides a facilitative environment for unique national reflections.

ACKNOWLEDGEMENTS

I am indebted to my academic mentors at James Cook University—Surin Maisrikrod, Janine Hiddleston and Douglas Hunt—for the encouragement they gave me as a bewildered undergraduate. I might never have approached a PhD otherwise.

Family, supervisors and friends supported me in beginning and finishing this research project.

I am thankful for Maria's patience and love. She tolerated my thesis-related dramas and acted as a soundboard for my tangled ideas.

I am grateful also to my supervisors at the University of Tasmania. I originally moved to Hobart not knowing what to expect of them. As it turned out, they were enormously capable and considerate, and each brought something unique to the project.

Rick Snell was hands-on. He provided critical commentary on the chapters as they developed. On the other hand, Kate Crowley gave big picture encouragement and motivation from day one; while Richard Eccleston was an ever supportive research advisor.

Fellow PhD students and friends were a wonderful source of reinforcement and feedback, too. Akihiro and Weibing were especially generous companions. I thank them for that.

TABLE OF CONTENTS

ABSTRACT.....	3
ACKNOWLEDGEMENTS.....	5
TABLE OF CONTENTS.....	6
ABBREVIATIONS.....	8
LIST OF TABLES	9
LIST OF FIGURES.....	9
1: INTRODUCTION.....	10
1.1 Introduction	10
1.2 Rise of Public Sector Transparency.....	11
1.3 Case Study: the Diffusion of FOI Law	17
1.4 Theoretical Perspective: Transnational Historical Materialism.....	22
1.5 Methods: Macro-Historical Analysis with Comparative Case Studies	27
1.6 Chapter Outline	31
1.7 Conclusion	34
2: FOI LAW AND FOI LITERATURE	36
2.1 Introduction	36
2.2 FOI Law.....	37
2.3 FOI Literature.....	42
2.4 Lack of Socio-Legal Understanding	49
2.5 Conclusion.....	52
3: DIFFUSION OF THE LAW	53
3.1 Introduction	53
3.2 Mapping the Diffusion of FOI Law	54
3.3 Similarities and Differences amongst Adopters.....	63
3.4 Difference between Adopters and Non-adopters	75
3.5 Conclusion	76
4: THEORETICAL FOUNDATIONS OF CURRENT EXPLANATIONS	78
4.1 Introduction	78
4.2 Drawing Out Assumptions of Current Explanations	79
4.3 Modernization Foundation	87
4.4 Agent Foundation.....	96
4.5 A ‘Critical Turn’ in Foundations	107
4.6 Conclusion.....	112
5: TRANSNATIONAL HISTORICAL MATERIALISM	114
5.1 Introduction	114
5.2 Transnational Historical Materialism	115
5.3 State Formation and FOI Law	134
5.4 Contemporary State Formation and the Proliferation of FOI Law	145
5.5 Conclusion.....	155
6: MACRO-HISTORICAL VIEW I: EMERGENCE AND EARLY DIFFUSION.....	156
6.1 Introduction	156
6.2 Advent and Diffusion within the Modern Dichotomy of States	157
6.3 Lockean Heartland of States.....	160

6.4 Hobbesian Contender States.....	184
6.5 Conclusion.....	197
7: MACRO-HISTORICAL VIEW II: PROLIFERATION AND FUTURE.....	198
7.1 Introduction	198
7.2 Transformation in World Order and State Forms	199
7.3 Emergence of Transnational Support for Transparency.....	207
7.4 Passive Revolutions in Freedom of Information.....	214
7.5 The Future of Diffusion.....	218
7.6 Conclusions	223
8: COMPARATIVE CONTEMPORARY CASES I: HISTORY.....	225
8.1 Introduction	225
8.2 A Preface to Case Study Analysis.....	226
8.3 Comparative Twentieth Century Hobbesian States	230
8.4 Relative Information Restrictions	234
8.5 Late-Twentieth Century State Transformations.....	243
8.6 ‘Surrendering Secrecy’ in Different Ways	247
8.7 Conclusions	252
9: COMPARATIVE CONTEMPORARY CASES II: ADOPTION	254
9.1 Introduction	254
9.2 Supportive Transnational Factors	255
9.3 Primary National Factors.....	266
9.4 Signposts for the Future.....	282
9.5 Conclusion.....	289
10: CONCLUSIONS.....	291
10.1 Introduction	291
10.2 Understanding the Rise of Public Sector Transparency and FOI Law.....	292
10.3 Contribution to the FOI Literature.....	293
10.4 Macro-historical Diffusion	300
10.5 Contemporary Case Studies	305
10.6 Conclusion.....	311
REFERENCES	313

ABBREVIATIONS

CCP	Chinese Communist Party
CHRI	Commonwealth Human Rights Initiative
EU	European Union
IFAI	Federal Institute for Access to Public Information (Mexico)
ILO	International Labor Organization
IMF	International Monetary Fund
INC	Indian National Congress
MKSS	Mazdoor Kisan Shakti Sangathan (Workers' and Farmers' Power Organization) (India)
NAFTA	North American Free Trade Agreement
NCPRI	National Campaign for Peoples' Right to Information (India)
NPM	New Public Management
OAS	Organization of American States
OECD	Organization for Economic Co-operation and Development
OGI Regulations	Open Government Information Regulations (China)
PRI	Institutional Revolutionary Party (Mexico)
UN	United Nations
UNDP	United Nations Development Programme
UNESCO	United Nations Environmental, Scientific and Cultural Organization
USAID	United States Agency for International Development
WB	World Bank
WTO	World Trade Organization

LIST OF TABLES

Table 1: The Periodic Diffusion of FOI Law	19
Table 2: Economic Similarities and Differences of Adopters	65
Table 3: Social Similarities and Differences of Adopters.....	68
Table 4: Political Similarities and Differences of Adopters	71
Table 5: Comparative Levels of Globalization: Average versus Adopter, 2000.....	74
Table 6: Adoption amongst Most Globalized Countries, 2006	74
Table 7: Adoption amongst Least Globalized Countries, 2006.....	76
Table 8: Forms of Study in Current Diffusion Research	80
Table 9: Form and Foundation within Current Diffusion Research.....	86
Table 10: Lockean and Hobbesian State Forms	159
Table 11: State-Society Hobbesian Relations: Post-independence/ Post-Cold War	206
Table 12: Diversity: China, Mexico and India	230
Table 13: Political and Economic Globalization of Cases, 1970-2007.....	244
Table 14: Variable Concepts of Public Sector Transparency.....	289

LIST OF FIGURES

Figure 1: Banisar's 2011 Map of FOI Law	55
Figure 2: The International Diffusion of FOI Law 1766 – 2010	57
Figure 3: The Diffusion of FOI law, 1990	58
Figure 4: The Diffusion of FOI Law, 1995.....	60
Figure 5: The Diffusion of FOI Law, 2000.....	61
Figure 6: The Diffusion of FOI Law, 2005.....	62
Figure 7: The Diffusion of FOI Law, 2010.....	63
Figure 8: Historical Structures.....	123
Figure 9: World Orders	128
Figure 10: Rupert Cartoon (1)	178
Figure 11: Rupert Cartoon (2)	179
Figure 12: Levels of Globalization, 2008.....	219
Figure 13: CHRI Events in India, 1998-2008.....	262

1: INTRODUCTION

History will probably call the 10 years from the collapse of the Soviet Union to the collapse of the World Trade Center towers the Decade of Openness.

Thomas Blanton¹

1.1 Introduction

The recent rise of public sector transparency marks a historical break in the modern state. Secrecy has been replaced by openness as a guiding principle in public information management. Most governments throughout modern history have operated on the premise that information should be restricted unless there are specific reasons for releasing it, but now many governments around the world operate on the premise that information should be free unless there are specific reasons for withholding it. The importance of this change has been understood by some as equal to the emergence of universal suffrage.² Such a comparison is fair given the significance of access to information on electoral choices and democratic accountability; and also the comparison has the added benefit of highlighting the dramatic nature of the rise of public sector transparency, for while the right to vote developed as an international norm over fifty years (from the 1910s to the 1960s), the right to information developed as an international norm over only twenty years (from the 1990s to the 2010s).³

Public sector transparency has risen over the past two decades at an unprecedented rate, and yet its diffusion remains a phenomenon not well understood, despite the fundamental and dramatic nature of change in bureaucratic practices. The

¹ T. S. Blanton, "The Openness Revolution: The Rise of a Global Movement for Freedom of Information," *Development Dialogue* no. 2 (2002): 7.

² J. Hirst, *Australia's Democracy: A Short History* (Crow's Nest: Allen & Unwin, 2002), 339.

³ M. Saward, *The Terms of Democracy* (Malden: Blackwell Publishers, 1998), 90.

current study therefore seeks to provide an understanding of the rise of public sector transparency and it does so by focusing on a chief reform: freedom of information law.⁴ Tim Mclean writes: 'Using these laws as an indicator of overall levels of transparency is commonplace, and for good reason.'⁵ The laws principally guarantee the public a presumptive right of access to government-held information.⁶

The thesis provides an interdisciplinary socio-legal understanding of the diffusion of FOI law.⁷ Theoretical tools from the discipline of global political economy are applied to develop an alternative understanding of the gradual emergence of FOI law and public sector transparency (as discussed at 1.4). These tools provide a multi-level mode of analysis that may be used to examine the broad historical rise of the law and/or its adoption (or non-adoption) within specific cases. Overall the thesis provides an understanding of the rise of FOI law as a case study in public sector transparency that incorporates its initial emergence, its early diffusion, its contemporary proliferation and, more tentatively, its future prospects.

1.2 Rise of Public Sector Transparency

The first section of this introduction briefly surveys the rise of public sector transparency and highlights a lack of understanding regarding this rise. It notes secrecy has been traditionally a key feature of the modern state and bureaucracy (see 1.2.1 below). Yet openness has emerged to challenge this tradition as the guiding principle of public administration: numerous reforms aimed at transparency in government have been championed around the world and their impact has come under scrutiny, as the section explains (see 1.2.2 below). Research suggests recent transparency reforms have increased international coordination, reduced corruption,

⁴ The terms FOI law, access law, transparency law, or simply 'the law' are used interchangeably to refer to the same legal measures, unless otherwise specified.

⁵ T. McClean, "Who Pays the Piper? The Political Economy of Freedom of Information," *Government Information Quarterly* 27, no. 4 (2010): 392.

⁶ P. Birkinshaw, "Freedom of Information and Openness: Fundamental Human Rights?," *Administrative Law Review* 58, no. 1 (2006): 188.

⁷ See R. Banakar and M. Travers, eds., *Theory and Method in Socio-Legal Research* (Portland: Hart, 2005), M. Deflam, *Sociology of Law: Visions of a Scholarly Tradition* (Cambridge: Cambridge University Press, 2008).

improved economic development, and facilitated trust in government.⁸ However, researchers have tended (in the recent rush of change and reform) to focus overwhelmingly on the effects of transparency, while neglecting to address the fundamental causes of reform—an oversight the thesis seeks to address (see 1.2.3 below).

1.2.1 The Modern Tradition of State Secrecy

Tensions between secrecy and openness in public administration have conceivably existed since the earliest days of collective public authority.⁹ However, modern tensions between secrecy and openness linked to secular authority, in particular, date back to the emergence of the modern state in Europe during the seventeenth and eighteenth century. The absolutist state, which was controlled by and for the monarchy, then gave way to the modern state, with government for and by the people, and the privilege of secrecy enjoyed by the monarch was passed to secular executive government—Kirsten Bishop explains:

In times of absolute monarchy the monarch was in effective control of virtually all information relating to the government and its administration. As the executive government developed, becoming responsible to the Parliament, it preserved this element of control such that information could be kept from the public at the government's convenience.¹⁰

Nevertheless, this privilege of secular executive government to withhold information for its own convenience was immediately challenged with Enlightenment ideas of publicity, knowledge and progress, although the challenge remained at the margins, unable to effectively counter strong tendencies towards secrecy in public administration.¹¹

Secrecy and the withholding of information in public sector administration predominated for much of modern history. The privilege of executive government to

⁸ A. Grigorescu, "International Organizations and Government Transparency: Linking the International and Domestic Realms," *International Studies Quarterly* 47 (2003): 644.

⁹ For example, limited transparency and accountability was a key concern within the Tang Dynasty of China (618-907). S. Lamble, "Freedom of Information, a Finnish Clergyman's Gift to Democracy," *Freedom of Information Review*, no. 97 (2002): 3.

¹⁰ K. Bishop, "Openness in Public Administration: Can the Government Keep a Secret?," *Australian Journal of Administrative Law* 5, no. 1 (1997): 36-37.

¹¹ C. Hood, "Transparency in Historical Perspective," in *Transparency: The Key to Better Governance?*, ed. C. Hood and D. Heald (Oxford: Oxford University Press, 2006), 5-10. R. J. Ives, "The Rise and Rise of Open Government," *Contemporary Review* 283, no. 1654 (2003).

withhold information was enshrined in principles and regulations such as the British *Official Secrets Act* (first adopted in 1889), which ensured much official information, especially information of potential concern to national security and public order, remained concealed from the public as a state secret.¹² In addition, the growth of modern bureaucracies added to the secretive nature of the state: the newly established departments and agencies, as well as individual public servants, tended to conceal information from each other and from the public in order to maintain any position of privilege that may be gained from such information.¹³ Max Weber wrote:

Every bureaucracy seeks to increase the superiority of the professionally informed by keeping their knowledge and intentions secret. Bureaucratic administration always tends to be an administration of “secret sessions”: in so far as it can, it hides its knowledge and action from criticism.¹⁴

By the early-to-mid twentieth century the modern administrative state routinely adopted secrecy as a form of information regulation that saw a rigorous classification of documents under systems of restriction.¹⁵

1.2.2 The Contemporary Rise of Transparency

Widespread advocacy and reform directly challenged the tradition of secrecy in the modern state in the second half of the twentieth century. A ‘semantic shift’ in information handling began to emerge in opposition to traditional state secrecy with the establishment of the United Nations in the aftermath of World War II.¹⁶ Article 19 of the Universal Declaration of Human Rights, adopted in 1948, stated:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and *to seek, receive*

¹² A. Rogers, *Secrecy and Power in the British State: A History of the Official Secrets Act* (London: Pluto Press, 1997).

¹³ M. Weber, *From Max Weber: Essays in Sociology*, trans. C. W. Mills and H. H. Gerth (London: Routledge & Kegan Paul, 1948), 233.

¹⁴ Ibid.

¹⁵ See for example D. P. Moynihan, *Secrecy: The American Experience* (New Haven Yale University Press, 1998).

¹⁶ C. Darch and P. G. Underwood, *Freedom of Information and the Developing World: The Citizen, the State and Models of Openness* (Oxford: Chandos Publishing, 2010), 72-85.

*and impart information and ideas through any media and regardless of frontiers.*¹⁷

Although Article 19 was not intended at the time of its establishment to apply to access to government-held information, secretive executives and bureaucracies harboring the potential for arbitrary or unjust behavior, concealed behind closed doors, were gradually challenged, especially by media outlets within Western countries; these advocates of openness demanded the state make more information of procedures and activities more readily available, to make affairs of departments and agencies more transparent.¹⁸ A new paradigm of public sector information sharing grew to privilege the notion that information concerning the function and activity of executive government and bureaucracy should be made readily available to the public.

Transparency challenged secrecy as the underlying principle in public sector information regulation in the second half of the twentieth century. In contrast to secrecy, transparency necessitates openness in information regulation, although the meaning of the term varies depending on context.¹⁹ Transparency is often understood within the unique requirements of particular policy issues, such as, for example, fiscal practices, auditing standards, environmental protection or multilateral development assistance.²⁰ But at its most basic level, Ann Florini writes, 'transparency is the opposite of secrecy. Secrecy means deliberately hiding your actions; transparency means deliberately revealing them... Transparency is a choice, encouraged by changing attitudes about what constitutes appropriate behaviour.'²¹ Christopher Hood, on the other hand, defines transparency more specifically as 'government according to fixed and published rules, on

¹⁷ General Assembly of the United Nations, "Declaration of Human Rights," <http://www.un.org/en/documents/udhr/>, (Date Accessed: 24 July, 2010). Emphasis added. See: C. Binder, "Freedom of Information and the United Nations," *International Organization* 6, no. 2 (1952).

¹⁸ H. C. Relyea, "Freedom of Information, Privacy, and Official Secrecy: The Evolution of Federal Government Information Policy Concepts," *Social Indicators Research* 7, no. 1/4 (1980): 139. On the early development of a right to access government-held information, especially within the United States in the mid-twentieth century, see '6.3.2 Lockean FOI Pioneers: Sweden and the United States'.

¹⁹ There is no single definition of transparency. See for example Hood, "Transparency in Historical Perspective," 3-5. C. Hood, "Transparency," in *Encyclopedia of Democratic Thought*, ed. P. B. Clarke and J. Foweraker (London: Routledge, 2001), 700-04..

²⁰ A. M. Florini, "Does the Invisible Hand Need a Transparency Glove? The Politics of Transparency" (paper presented at the Annual World Bank Conference on Development Economics, Washington D.C., 1999), 1.

²¹ ———, "The End of Secrecy," in *Power and Conflict in the Age of Transparency*, ed. B. Finel and K. Lord (New York: Palgrave Macmillan, 2000), 13.

the basis of information and procedures that are accessible to the public, and (in some usages) within clearly demarcated fields of activity.’²²

Voices for transparency reform especially grew around the world at the dawn of the twenty-first century. Advocates argued from a variety of utilitarian and moral viewpoints on the importance of public sector transparency: collectively they suggested elevating transparency above secrecy would reduce corruption and maladministration, and boost administrative performance, economic activity and democratic participation.²³ This advocacy achieved results, and public sector transparency gradually emerged in many parts of the world through various reforms requiring the disclosure of certain information. For example, the International Monetary Fund’s ‘Code of Good Practices on Fiscal Transparency’ (first published in 1998) requires substantial openness and transparency in the budgeting of central governments within member states.²⁴ Similarly, FOI law, which now exists in 80+ countries, requires government departments and agencies to pro-actively publish certain information, in addition to providing a legal and procedural mechanism through which otherwise unpublished (and potentially unfavorable) information can be requested by the public.²⁵

1.2.3 Causes of Public Sector Transparency?

The rise of transparency has been accompanied by a growing body of literature on the subject. This literature tends to be focused almost solely on the benefits or outcomes of transparency reforms.²⁶ On the topic of outcomes, research indicates transparency reforms have opened up international communication and subsequently contributed to cooperation amongst states on collective problems.²⁷ Here an increase in information

²² Hood, "Transparency," 701.

²³ For a critical review of the arguments presented by some of the key advocates of contemporary transparency see Darch and Underwood, *Freedom of Information and the Developing World: The Citizen, the State and Models of Openness*, 13-47.

²⁴ The International Monetary Fund, "Code of Good Practices on Fiscal Transparency," <http://www.imf.org/external/np/fad/trans/code.htm>, (Date Accessed: 24 July 2010).

²⁵ D. Banisar, "Freedom of Information around the World 2006: A Global Survey of Access to Government Records Laws," (London: Privacy International, 2006). T. Mendel, "Freedom of Information: A Comparative Legal Survey," (Paris: UNESCO, 2008).

²⁶ Grigorescu, "International Organizations and Government Transparency: Linking the International and Domestic Realms."

²⁷ See for example: A. M. Florini, "A New Role for Transparency," *Contemporary Security Studies* 18, no. 2 (1997), B. Finel and K. Lord, "The Surprising Logic of Transparency," *International Studies Quarterly*

flows is understood to improve coordination. The reforms are also credited, although not without debate, with improving public administration: analysis indicates increased information flow from the public sector to society may reduce corruption, increase economic performance, and/or facilitate legitimacy and trust in government.²⁸ However, while the impact of public sector transparency has received widespread attention from researchers, much less attention has been paid to the question of what drives contemporary transparency reforms; Alexandru Grigorescu made the point in 2003: 'The political science literature has tended to focus on the *effects* of government transparency; there have been few studies on the *causes* of transparency.'²⁹

Studies of the causes behind the rise of public sector transparency, in general, remain preliminary and underdeveloped. Only a handful of suggested understandings of the *contemporary* rise of transparency (explored at more length later in Chapter Four) can be found throughout a number of minor studies, and these tend to highlight several key themes, such as norm diffusion, the rise of new transnational social actors and functional adaptation in government, especially within the post-World War II international community.³⁰ Perhaps the only major study to address the rise of public sector transparency in a *comprehensive* manner to date was published by Burkart Holzner and Leslie Holzner in 2006.³¹ The authors presented a broad cultural shift towards transparency as part of a global change in favor of 'open societies' within which freedom

43 (1999), ———, eds., *Power and Conflict in the Age of Transparency* (New York: St. Martin's Press, 2000).

²⁸ See for example: L. Stirton and M. Lodge, "Transparency Mechanisms: Building Publicness into Public Services," *Journal of Law and Society* 28, no. 4 (2001), G. Kopits and J. Craig, "Transparency in Government Operations," (Washington: International Monetary Fund Occasional Paper No. 158, 1998). A number of these claims, particularly the claim that freedom of information increases trust, have been critically reviewed and challenged: B. Worthy, "More Open but Not More Trusted? The Effect of the Freedom of Information Act 2000 on the United Kingdom Central Government," *Governance* 23, no. 4 (2010), R. Hazell, B. Worthy, and M. Glover, *Does FOI Work? The Impact of the Freedom of Information Act 2000 Upon British Central Government* (London: Palgrave Macmillan, 2010), Darch and Underwood, *Freedom of Information and the Developing World: The Citizen, the State and Models of Openness*, 13-46.

²⁹ Grigorescu, "International Organizations and Government Transparency: Linking the International and Domestic Realms," 645. Emphasis in original.

³⁰ See for example: A. M. Florini, "The Evolution of International Norms," *International Studies Quarterly* 40, no. 3 (1996), C. Hood, "Beyond Exchanging First Principles? Some Closing Comments," in *Transparency: The Key to Better Governance*, ed. C. Hood and D. Heald (Oxford: Oxford University Press, 2006), 215-17, Grigorescu, "International Organizations and Government Transparency: Linking the International and Domestic Realms."

³¹ B. Holzner and L. Holzner, *Transparency in Global Change* (Pittsburgh: University of Pittsburgh Press, 2006).

in public information flows is valued as a mechanism for responsiveness and tolerance in government.³² Indeed, this view is generally reflected in the current study, which draws attention to the importance of liberalism (especially twentieth century American neo-liberalism) to the rise of government openness (as shown at 6.3 and 7.2). However, unlike the Holzners, who spend a great deal of time assessing the general rise of transparency on a conceptual level as relative to secrecy, the current study presents a theoretically informed and historically grounded understanding of the rise of transparency that focuses on a specific case study reform.

1.3 Case Study: the Diffusion of FOI Law

The rise of public sector transparency is explored in the thesis via the case study reform of FOI law. The central research question of the thesis is therefore: how can the causes of the rise of FOI law, which has now spread to 80+ countries, be understood? Chapters Two and Three cover in detail the basic elements of this question, which include the definition of FOI law, the constitution of the FOI literature and the history of the diffusion of the law. At this point is perhaps most important to briefly focus on a) the status of FOI law as a case study in public sector transparency (see 1.3.1 below), and b) the socio-legal contribution of the current study specifically to the FOI literature (see 1.3.2 below).

1.3.1 FOI Law as a Case Study

Openness and accountability reforms have been widely implemented in association with administrative reform agendas. FOI law presents itself as an ideal case study reform within this wider context. As mentioned above, the rise of openness in government since the 1990s has been linked to a variety of reforms, which include FOI law and the IMF's 'Code of Good Practices on Fiscal Transparency, as well as others such as, for example, the Canadian *Federal Accountability Act* (2006), which aims to bring a level of oversight to political financing.³³ Ombudsman agencies, another example, have been adopted

³² Ibid., 1-3.

³³ I would like to thank an anonymous examiner for bringing this Act, and those similar, to my attention. For more information see Treasury Board of Canada Secretariat, "Federal Accountability Act," <http://www.tbs-sct.gc.ca/faa-lfi/index-eng.asp>, (Date Accessed: 30th March, 2012).

around the world as a means of oversight and representation in the interests of the public against the state.³⁴ FOI law is well placed as a case study reform within the this openness revolution because the law focuses specifically on challenging the right of the state to secrecy, to withholding information from the public, while other reforms tend to focus either on openness in a particular area of activity, such as fiscal policy or political financing, or on more than just openness, as in the multiple roles of the ombudsman.

FOI law is central to public sector transparency, principally because it provides the presumptive right of access to government-held information. In spite of some variation between laws (discussed in more depth in section 2.2), the laws principally guarantee the public a presumptive right of access to government-held information.³⁵ The laws provide the public with a legal and procedural mechanism through which to request to view personal and/or policy information in the possession of departments and agencies. These requests are subject to exemptions seeking to protect the public interest regarding national security and privacy, amongst other things. Requestors may therefore receive all, part or none of the information requested and they generally have recourse to review mechanisms if they are unhappy with the initial outcome. More broadly than a request mechanism, the laws also generally enshrine a principle of openness that requires governments to proactively publish and make information available to the public, via websites or otherwise, especially information relating to the structure and function of government. FOI law essentially commits government to openness and transparency, not with reference to specific areas, but in general.

The diffusion of FOI law has been at the forefront of the ‘rise and rise’ of open government and public sector transparency.³⁶ Table 1 below shows that the spread of the law began slowly in eighteenth century Sweden, before continuing at an ‘unprecedented’ rate in recent years.³⁷ The law remained an isolated and fragile innovation in Sweden for

³⁴ Hans Peter Olsen, "From Idea to Institutions: The Global Diffusion of the Ombudsman" (paper presented at the Annual Meeting of the American Political Science Association, Philadelphia, 2008).

³⁵ Birkinshaw, "Freedom of Information and Openness: Fundamental Human Rights?," 188.

³⁶ Ives, "The Rise and Rise of Open Government."

³⁷ R. Snell and W. Xiao, "Freedom of Information Returns to China," *Public Administration Today*, no. 10 (2007): 45. The table is adapted from B. Holzner, "The Transparency Syndrome in Global Change" (paper presented at the Conference of Transatlantic Consortium for Public Policy Analysis and Education: Ethics, Accountability, and Social Responsibility: A Transatlantic Perspective, University of Pittsburg, 2001). Country list from R. Vleugels, "Overview of All FOI Laws," (2010).

two centuries, until the adoption of similar law in the United States in 1966. Around the time of adoption in the United States, similar law was adopted by a handful of wealthy democracies. The law began to migrate beyond this select group of rich democratic adopters into a more diverse range of regional and political contexts in the early 1990s. The reform was adopted by countries ranging from Hungary (1992), Belize (1994), Thailand (1997), and Israel (1998) in the 1990s. Towards the end of the 1990s the rate of adopters increased significantly: it is estimated that an ‘explosion’ of forty countries adopted the law between 1999 and 2006.³⁸ In particular, Eastern Europe and Latin America provided fertile ground for the law reform.³⁹

Table 1: The Periodic Diffusion of FOI Law

1990	1995	2000	2005	2010	Sept 2011
Sweden [1766] Colombia Finland United States [1966] Denmark Norway France Netherlands Australia Canada New Zealand Greece Austria Italy	<i>Plus:</i> Hungary Spain Ukraine Kazakhstan Portugal Belgium Belize	<i>Plus:</i> Iceland Latvia South Korea Albania Israel Bulgaria Czech Republic Georgia Liechtenstein Lithuania Moldova	<i>Plus:</i> Estonia Japan Romania Slovak Republic South Africa Trinidad and Tobago Angola Bosnia and Herzgov. Pakistan Panama Poland Tajikistan Zimbabwe Argentina Armenia Croatia Kosovo Mexico Peru Slovenia St Vincent and Gren. Antigua/Barbuda Dominican Republic Ecuador	<i>Plus:</i> Germany Honduras Macedonia Switzerland Uganda Jordan Kyrgyzstan Nepal Nicaragua China Bangladesh Chile Cook Islands Guatemala Uruguay Indonesia Russia Liberia Guinea Conakry Ethiopia	<i>Plus:</i> El Salvador Nigeria Mongolia Niger

³⁸ J. M. Ackerman and I. E. Sandoval-Ballesteros, "The Global Explosion of Freedom of Information Laws," *Administrative Law Review* 58, no. 1 (2006): 98.

³⁹ The diffusion of FOI law has been less notable in the Middle East and Africa; see '7.5.1: Obstacles amongst Non-Adopters'.

			Jamaica Serbia Turkey Azerbaijan India Montenegro Taiwan United Kingdom		
--	--	--	--	--	--

1.3.2 Socio-Legal Understanding of Diffusion of the Law

The thesis makes a general contribution to the study of public sector transparency, and a specific contribution to the study of FOI law. As already explained, the thesis provides a basis for understanding the rise of public sector transparency; it makes a general contribution to understanding the rise of public sector transparency by examining from a socio-legal perspective the diffusion of FOI law as a case study reform. That is the general contribution of the thesis—toward the study of public sector transparency. Yet the key contribution of the thesis must be understood with reference to the case study reform of FOI law. The principle, academic contribution of the thesis is in the field of FOI literature.

The literature on FOI law can be divided into a handful of overlapping themes with strong legal and empirical tendencies. These themes include ‘legal analysis’, ‘media analysis’, ‘government investigation’, ‘administrative analysis’ and ‘socio-legal analysis’ (as elaborated at 2.3). Of these themes ‘socio-legal analysis’—analysis with a theoretical and methodological base in the social sciences—is a potentially fruitful but underdeveloped approach. Therefore, recent studies have begun the process of building and strengthening social-legal understandings of FOI law (as shown at 2.4). For example, Colin Darch and Peter Underwood sought to move forward in their 2010 study from initial steps at a ‘more self-conscious social science perspective’ by employing diffusion analysis, historical analysis and political theory to examine FOI law in the context of developing countries.⁴⁰ The current study contributes to the construction of socio-legal

⁴⁰ These steps were initially taken by John M. Ackerman and Irma E. Sandoval-Ballesteros in 2006. Ackerman and Sandoval-Ballesteros, "The Global Explosion of Freedom of Information Laws," 87. Darch and Underwood, *Freedom of Information and the Developing World: The Citizen, the State and Models of Openness*, 8.

understandings by drawing on social and political theory to explore the diffusion of the law.

The theoretical assumptions informing current explanations of the diffusion of FOI law are largely implicit, due to the lack of socio-legal understanding, and research tends to be partial and fragmented in pointing to a variety of ‘factors’ to explain the recent proliferation of the law; these ‘factors’ include: international human rights trends;⁴¹ anti-corruption efforts;⁴² a growth in civil society advocates;⁴³ and the development of international pressure.⁴⁴ Current studies generally provide an empirical account of one or more such factors with minimal reference to broader historical or theoretical concerns (as shown at 4.2). For instance, existing explanations suggest the contemporary rise of FOI law has been heavily facilitated by the activities of transnational advocacy groups, and yet the same studies fail to place the influence of such groups within any frame of reference that might facilitate an understanding of their emergence, type and/or activity in the diffusion of the law.⁴⁵ Similarly, suggestions ‘globalization’ has facilitated the spread of FOI law are generally not supported with any systematic understanding of the process of globalization or how it drives the law reform.⁴⁶

The thesis aims to address these deficiencies within current studies of the diffusion of the law by explicitly utilizing theoretical foundations from social and

⁴¹ See for example: Darch and Underwood, *Freedom of Information and the Developing World: The Citizen, the State and Models of Openness*, 75-77.

⁴² T. S. Blanton, "The World's Right to Know," *Foreign Policy* no. 131 (2002): 52-53. Transparency International, "Using the Right to Information as an Anti-Corruption Tool," (Berlin: Transparency International, 2006).

⁴³ Blanton, "The Openness Revolution: The Rise of a Global Movement for Freedom of Information." Ackerman and Sandoval-Ballesteros, "The Global Explosion of Freedom of Information Laws," 19-23. A. Puddephatt, "Exploring the Role of Civil Society in the Formulation and Adoption of Access to Information Laws: The Cases of Bulgaria, India, Mexico, South Africa and the United Kingdom," in *Access to Information Working Paper Series*, ed. The World Bank (Washington: 2009).

⁴⁴ Blanton, "The Openness Revolution: The Rise of a Global Movement for Freedom of Information," 16-17. Grigorescu, "International Organizations and Government Transparency: Linking the International and Domestic Realms."

⁴⁵ For example: Puddephatt, "Exploring the Role of Civil Society in the Formulation and Adoption of Access to Information Laws: The Cases of Bulgaria, India, Mexico, South Africa and the United Kingdom." Although see some progress in J. Pinto, "Transparency Policy Initiatives in Latin America: Understanding Policy Outcomes from an Institutional Perspective," *Communication Law and Policy* 14, no. 1 (2009). Darch and Underwood, *Freedom of Information and the Developing World: The Citizen, the State and Models of Openness*, 5-6.

⁴⁶ Blanton, "The World's Right to Know," 53.

political science. This allows the thesis to first appreciate the largely implicit theoretical assumptions that pervade current explanations. Chapter Four critiques two prominent theoretical foundations from the social sciences, explicit in a few studies, that provide the basis for the majority of current explanations: a ‘modernization foundation’ (see 4.3) suggests the spread of FOI law is driven by capitalist development, while an ‘agent foundation’ (see 4.4) suggests the spread of the law is best understood with reference to competing actors.⁴⁷ The thesis then draws on its own theoretical foundation, set out in Chapter Five, to provide a unique understanding of the diffusion of the law. This theoretical foundation positions ‘factors’ in the diffusion of the law, such as transnational advocacy groups, and globalization, within a interlocking theoretical framework.

1.4 Theoretical Perspective: Transnational Historical Materialism

The thesis addresses the rise of FOI law as a case study in public sector transparency by drawing from theoretical and methodological tools provided within the humanities, especially social science, political science and international relations. This standpoint provides a variety of theoretical foundations by which to approach the question. For example, as mentioned already, current explanations tend to draw from either a ‘modernization foundation’ or an ‘agent foundation’. Both options embody relative strengths and weaknesses. Nevertheless, the thesis selects and applies an alternative theoretical foundation: ‘transnational historical materialism.’⁴⁸ This alternate foundation provides a historical interpretative foundation centered on the changing structures of state institutions within the modern (capitalist) world system.

⁴⁷ See C. J. Bennett, "How States Utilize Foreign Evidence," *Journal of Public Policy* 11, no. 1 (1991). ———, "Understanding Ripple Effects: The Cross-National Adoption of Policy Instruments for Bureaucratic Accountability," *Governance* 10 (1997). Grigorescu, "International Organizations and Government Transparency: Linking the International and Domestic Realms." Pinto, "Transparency Policy Initiatives in Latin America: Understanding Policy Outcomes from an Institutional Perspective."

⁴⁸ The foundation is also often referred to as ‘neo-Gramscianism’ because of the way it draws heavily from the work of Antonio Gramsci. For introductions, see: A. D. Morton, "Social Forces in the Struggle over Hegemony: Neo-Gramscian Perspectives in International Political Economy," *Rethinking Marxism* 15, no. 2 (2003), H. Overbeek, "Transnational Historical Materialism: Theories of Transnational Class Formation and World Order," in *Global Political Economy: Contemporary Theories*, ed. Ronen Palan (London: Routledge, 2000).

1.4.1 Why Transnational Historical Materialism?

Theory can be used in a number of ways to address the diffusion of FOI law. The ‘modernization foundation’ and ‘agent foundation’ are examples of this. In the first instance, a number of studies are set within a ‘modernization foundation’ that provides a macro evolutionary perspective of socio-political change (as explored at 4.3.1). These studies draw from a theoretical foundation of structural functionalism that understands social and political change with reference to a form of socio-political evolution inherent within capitalism that leads to political development and modernization; from this perspective FOI law is driven by capitalist development (see 4.3.2). On the other hand, a number of studies are set within an ‘agent foundation’ that provides a social exchange perspective of socio-political change (see 4.4.1). These studies draw from a micro theoretical foundation of rational exchange theory that explains social and political change with reference to bargaining and negotiation between social actors; from this perspective FOI law is driven by competing actors and social preferences (see 4.4.2).

These foundations, identifiable throughout current studies, have the potential to provide insight into the rise of public sector transparency, but they also have important limitations. The strengths of each foundation come from their respective macro and micro focuses. The ‘modernization foundation’ is adept at explaining the diffusion of FOI law with reference to socio-economic development and globalization (as discussed at 4.3.3). It is a foundation that appreciates the structural element. On the other hand, the ‘agent foundation’ is adept at explaining the diffusion of the law with reference to the actual motives and behavior of the social actors involved in the process of law reform, especially civil society organizations (see 4.4.3). It is a foundation that appreciates the agency element. However, both foundations exhibit important limitations. Each has weaknesses that spring from their strengths, from the respective emphasis on structure or agency. The ‘modernization foundation’ tends to emphasize the former at the expense of the latter (see 4.3.4), while the ‘agent foundation’ tends to emphasize the latter at expense of the former (see 4.4.4).

Due to these limitations, and in the interest of building socio-legal understandings of transparency law, the current study seeks to make a ‘critical turn’ towards an alternative theoretical foundation (discussed in more depth at 4.5.2). ‘Transnational

historical materialism', which draws from the critical, neo-Marxist tradition in social and political science, presents a viable alternative foundation to those already discussed. Transnational historical materialism, as a historical and structural approach, provides a platform for understanding the history of FOI law, from its initial emergence to its contemporary explosion, within a totality of social reality. This is unlike the traditional modernization and agent approaches, which tend to focus specifically on variables in the contemporary rise of the law reform. Transnational historical materialism presents a holistic, comprehensive understanding of the diffusion of FOI law (and public sector transparency). The rise of public sector transparency and access law is understood in this way not just with reference to specific variables but with reference to dynamic forces in the history of the law, whether structural or agent. Above all, the critical foundation of transnational historical materialism necessarily calls into question the dynamic forces behind the diffusion of the law in order to assess not just their influence on the law, but also their interest in the law and how the interests of variable forces may inform the emergence and diffusion of the law in various ways.

1.4.2 Critical Approach to the Rise of Transparency

Transnational historical materialism, as a foundation, presents a variety of approaches and perspectives that share a similar historical interpretative root (see 5.2). At its core the foundation embraces the classical method of historical materialism, first developed by Karl Marx in the middle of the nineteenth century, with the view of history as transformation in economic and political spheres.⁴⁹ But transnational historical materialism moves beyond classical historical materialism by incorporating key twentieth century thinkers of Western Marxism, such as Antonio Gramsci (1891-1937) and Nicos Poulantzas (1936-1979).⁵⁰ As a Marxist socio-legal foundation, transnational historical materialism is structural rather than instrumental; it views political and legal phenomena as historical expressions of broader social, material and institutional configurations,

⁴⁹ K. Marx, *A Contribution to the Critique of Political Economy* (Moscow: Progress Publishers, 1977 [1859]).

⁵⁰ A. Gramsci, *Selections from the Prison Notebooks*, trans. Q. Hoare and G. N. Smith (London: Lawrence and Wishart, 1971). N. Poulantzas, *Classes in Contemporary Capitalism* (London: New Left Books, 1975). and ———, *State, Power, Socialism* (London: New Left Books, 1978).

rather than deliberate instrumentas of class rule.⁵¹ FOI law is therefore understood from this perspective as a specific aspect of a much larger and dynamic historical picture that involves the transformation of structures involving a mix of actors with varying access to resources and power. The theoretical foundation is informed by ‘world systems theory’ with its concern for core and peripheral states within world orders, although it tends to be more holistic than ‘world systems theory.’⁵² It is called *transnational* historical materialism because a large proportion of the foundation’s innovative nature comes from the way in which it incorporates the increased relevance of transnational social relations.⁵³

A central feature of transnational historical materialism, also important in understanding the rise of FOI law and public sector transparency, is analysis of the transformation of states in modern history. The state is understood by transnational historical materialists as an ‘extended’ structure that incorporates both the essential institutions of government—the state apparatus—plus the social relations immediately surrounding such institutions (as elaborated at 5.2.2). This perspective harks back to Marx’s proposition that ‘state power is not suspended in mid-air.’⁵⁴ The state apparatus is seen in direct relation to social and economic surroundings. But unlike structural Marxists, such as Louis Althusser, who view the state as an ontologically static phenomenon, transnational historical materialists view the extended state as a fluent and historically informed structure that finds quasi-permanency in ‘historical structures.’⁵⁵ Of particular interest to transnational historical materialists are the formation of state-society

⁵¹ P. Beirne and R. Quinney, "Marxist Theories of Law: An Introduction," in *Marxism and Law*, ed. P. Beirne and R. Quinney (1982: John Wiley & Sons, 1982), 16-19. D. Milovanovic, *An Introduction to the Sociology of Law*, 3rd ed. (New York: Criminal Justice Press, 2003), 79.

⁵² On world systems theory see: I. Wallerstein, *The Modern World-System: Capitalist Agriculture and the Origins of the European World-Economy in the Sixteenth Century*, III vols., vol. I (New York: Academic Press, 1974). ———, "The Rise and Future Demise of the World Capitalist System: Concepts for Comparative Analysis," *Comparative Studies in Society and History* 16, no. 4 (1974). ———, *The Modern World-System: Mercantilism and the Consolidation of the European World-Economy*, III vols., vol. II (New York: Academic Press, 1980).

⁵³ Overbeek, "Transnational Historical Materialism: Theories of Transnational Class Formation and World Order," 181.

⁵⁴ K. Marx, "The Eighteenth Brumaire of Louis Bonaparte," in *Collected Works*, ed. K. Marx and F. Engels (London: Lawrence and Wishart, 1979 [1852]), 186.

⁵⁵ On the differences between ‘transnational historical materialism’ and ‘structural Marxism’, see: R. W. Cox, "Social Forces, States and World Orders: Beyond International Relations Theory," *Millennium* 10 no. 2 (1981): 133. Althusser’s perspective on the state: L. Althusser, "Ideology and Ideological State Apparatuses," in *Essays on Ideology*, ed. L. Althusser (London: Verso, 1984).

relations within quasi-permanent historical structures, and, particularly, the influence of increased social and economic transnational relations in the formation of states and the function of the state apparatus (see 5.3).

From the viewpoint of transnational historical materialism, transparency in the state apparatus is an expression of its relation to society. Initially, prior to the late twentieth century, transparency was an expression of national state-society relations. Some nation-states embodied a relation favorable to transparency, others did not. The countries that championed transparency, such as Sweden and the United States, tended to embody a state-society relation in which the former is seen to be subservient to the latter—information held by government departments and agencies is therefore seen as the property of the polity (as discussed at 6.3). On the other hand, countries traditionally antagonistic towards transparency, such as those of the former Soviet Union and former British colonies, for example, tended to embody a state-society relation in which the former is seen to lead the latter. Information held by government departments and agencies in such countries was therefore the privilege of the state apparatus (see 6.4).

However, with the onset of globalization and the contemporary increase in transnational relations, public sector transparency has become an expression of state-society relations penetrated by transnational influences. Especially following the collapse of the ideological divisions of the Cold War, an intertwining of national and transnational actors advocating for transparency reform has seen a ‘passive revolution’ in information handling within a wide range of states (as discussed at 7.2 and 7.3). These actors and agendas have varied in purpose, power and influence; for example, the thesis suggests that powerful interests connected with the emergent global political economy have provided fundamental support for the recent explosion in FOI law in an attempt to reduce, through increased information sharing, volatility and risk in the global economy from government action (see 7.3).⁵⁶ However, each contemporary national case of ‘passive revolution’ must be understood on its own terms, not simply as a case of imposition, but as a unique national reflection of international developments that intertwines such

⁵⁶ S. Gill, "The Global Panopticon? The Neoliberal State, Economic Life and Democratic Surveillance," *Alternatives* 20, no. 1 (1995).

powerful interests, and international advocacy groups and local campaigners within unique national circumstances (as discussed at 7.4).

1.5 Methods: Macro-Historical Analysis with Comparative Case Studies

Transnational historical materialism provides multiple levels of analysis, ranging from the history of the modern world system to the history of particular state formations. These multiple levels of analysis are utilized in the thesis as methods to investigate the diffusion of FOI law on several levels and there are two key areas of interest: a) the overall historical diffusion of the law, especially prior to the late-twentieth century and b) the contemporary proliferation of the law from the late twentieth century onwards. These areas of interest are addressed within the thesis with the use of two specific levels of analysis. The first method examines the long term history of FOI law as part of a broader evolution in state forms within the modern world system (see 1.5.1 below). The second method of analysis adopted within the thesis brings the focus of analysis more directly into state formation and the unprecedented contemporary diffusion of FOI law (see 1.5.2 below). China, Mexico, and India are adopted, on the basis that they are unique and influential adopters, as contemporary comparative case studies to be examined in depth in order to explore the internal dynamics of the recent explosion of the law.

1.5.1 Macro-Historical Diffusion of FOI Law

Transnational historical materialism is above all concerned with the long-term. It is a foundation concerned fundamentally with what Stephen Gill refers to as ‘socio-historical time.’⁵⁷ This is the terrain of the *longue durée*, a concept used to refer to a realm of social time that rests above everyday ‘events-time’ and involves repeated collective human action over time that forms historical structures of reality.⁵⁸ Analysis of the *longue durée* of global capitalism may be called macro-historical analysis and it is a method used within the thesis to provide an overview of the long term diffusion of FOI law. This

⁵⁷ ———, "Reflections on Global Order and Sociohistorical Time," *Alternatives* 16, no. 3 (1991). ———, *Power and Resistance in the New World Order* (New York: Palgrave Macmillan, 2003), 41-49.

⁵⁸ F. Braudel, *On History*, trans. Sarah Matthews (Chicago: University of Chicago Press, 1980).

method moves beyond historical narrative to examine the emergence and transformation of structures involved in the rise of FOI law and public sector transparency. In examining the macro-historical diffusion of FOI law, the method allows for an appreciation of the political geography and internal structural dynamics in the history of the diffusion of FOI law.

The macro-historical analysis, which covers roughly three centuries of modern history, focuses solely on the key elements and transformations within the development and spread of FOI law. The analysis cannot possibly capture the expansive, dynamic and fluent nature of all the history in question. It only purports to exhibit growth and transformation in *ideal types* of state structures (i.e. extended states, discussed above at 1.4.2) within the history of global capitalism and how they have (or have not) contributed to the diffusion of FOI law.⁵⁹ These ideal types, useful as tools for comparison, provide ‘a simplified representation of a complex reality and an expression of tendencies limited in their applicability to time and space, rather than fully realized developments.’⁶⁰ The macro-historical method charts the course and evolution of ideal types of state structures within the modern world system and their relation to FOI law from the eighteenth century until the late-twentieth century.

The principle ideal types of state structures examined in the thesis are the ‘Lockean’ and the ‘Hobbesian’. The formation of these is discussed below and throughout the thesis, but at this stage it is perhaps important to flag the issue of their names. Each is named after the political philosopher most representative of the essential state-society relation embodied by the ideal type.⁶¹ The Lockean form is named after John Locke (1632-1704), the ‘Father of Liberalism’, because it principally embodies Locke’s philosophy of self rule and limited representative government.⁶² On the other hand, the Hobbesian form is named after Thomas Hobbes (1588-1679), proponent of the

⁵⁹ R. W. Cox, *Production, Power and World Order: Social Forces in the Making of History* (New York: Cambridge University Press, 1987), 129.

⁶⁰ Cox, "Social Forces, States and World Orders: Beyond International Relations Theory," 137. ———, *Production, Power and World Order: Social Forces in the Making of History*, 4.

⁶¹ Kees van der Pijl developed the concept of ‘Lockean’ and ‘Hobbesian’ state forms in the modern world system: K. van der Pijl, *Transnational Classes and International Relations* (London: Routledge, 1998), 65-98., ———, *Global Rivalries: From the Cold War to Iraq* (London: Pluto Press, 2006), 1-12. ———, "Ruling Classes, Hegemony, and the State System," *International Journal of Political Economy* 19, no. 3 (1989): 16-20.

⁶² J. Locke, *Two Treatises of Government* (New York: Mentor, 1965 [1690]).

Leviathan, because it essentially embodies Hobbes' philosophy of absolutism for the sovereign (state apparatus) as guardian of the collective social contract.⁶³ Admittedly these ideal types and their embodiment of respective political philosophies may be criticized as too general. However, there is room for further distinctions within the ideal types and, in any case, what the ideal types lose in particularity they make up for in explanatory power, both in terms of modern world history and the rise of public sector transparency, as the thesis demonstrates.

1.5.2 Comparative Case Studies: China, Mexico and India

The second method of analysis adopted in the thesis complements the first. Macro-historical analysis of 'ideal types' of state structures in the history of FOI law provides a sophisticated overview of the historical diffusion of the law, but it tends to overlook the uniqueness of the contemporary proliferation of the law amongst 'Hobbesian' states. In order to mend this oversight the thesis utilizes an alternative level of analysis provided by transnational historical materialism. This level of analysis is focused more narrowly on the transforming composition of particular state structures. It is concerned with the historical evolution of specific state-society relations. The thesis examines comparative case studies in changing 'Hobbesian' state structures and adoption of FOI law. These include China, Mexico and India, which represent important and interesting 'Hobbesian' case studies in the contemporary explosion of the law.

The comparative cases of China, Mexico and India provide insight into a) the importance of state-society relations in access to information and b) the intertwining of national and transnational factors in the recent adoption of FOI law. In the first instance, the cases show the historically weak notions of access to information within comparative 'Hobbesian' states and the importance of changes to state structures alongside the emergence of the global political economy to the rise of FOI law. The case study analysis highlights the socio-legal context of the rise of FOI law within a much broader transformation in 'Hobbesian' state structures. In the second instance, the comparative case study analysis allows for an appreciation of variable relations between national and transnational factors in contemporary adoption. The cases demonstrate the utility of the

⁶³ T. Hobbes, *Leviathan* (Cambridge: Cambridge University Press, 1996 [1651]).

concept of 'passive revolution' as a theoretical tool (as defined at 5.4) for understanding the recent proliferation of FOI law amongst 'Hobbesian' states as a process of national reflection of international developments.

Case study selection in the thesis is based on the importance of the cases themselves, not on the importance of the cases to affirming or disproving the theoretical foundation of transnational historical materialism.⁶⁴ In other words, the aim of the approach to case study selection is to utilize theoretical propositions to shed light on case studies of interest, rather than to improve theoretical generalization in any meaningful way.⁶⁵ The special interest of China, Mexico and India is explored in more depth later (see 8.2.2). Here it may suffice to mention the special interest of the cases begins with their unique positions within the recent proliferation of FOI law: China is a seemingly strange case wherein an authoritarian regime has adopted transparency regulation, Mexico, on the other hand, adopted one of the most innovative and progressive reforms anywhere, whereas law reform in India has been championed by unique grassroots social forces. The importance of the cases also extends beyond their status as special cases of adoption, to their important positions within the global political economy as geopolitically significant countries likely to influence future trends in state formation and public sector transparency, especially within the developing world (elaborated further at 8.2.2).

The analysis of processes of adoption of national FOI reform within the three case studies is conducted with the use of information available from a variety of sources. John Ackerman and Irma Sandoval-Ballesteros note there is already a large body of existing empirical information on the spread of FOI reform that needs to be systematically studied from a social scientific perspective.⁶⁶ There is a wealth of primary information sources online provided by the actors involved in the diffusion of FOI reform within the case

⁶⁴ This approach to case study selection is referred to as 'interpretative' or 'disciplined-configurative': A. Lijphart, "Comparative Politics and the Comparative Method," *The American Political Science Review* 65, no. 3 (1971): 692. H. Eckstein, "Case Study and Theory in Political Science," in *Handbook of Political Science*, ed. F. I. Greenstein and N. W. Polsby (Reading: Addison-Wesley, 1975), 99-104. J. Kaarbo and R. K. Beasley, "A Practical Guide to the Comparative Case Study Method in Political Psychology," *Political Psychology* 20, no. 2 (1999): 374.

⁶⁵ Lijphart, "Comparative Politics and the Comparative Method," 692.

⁶⁶ Ackerman and Sandoval-Ballesteros, "The Global Explosion of Freedom of Information Laws," 87.

study countries.⁶⁷ This information is collected and analyzed within the thesis. In addition to such primary data, secondary information sources are also used within the case studies.⁶⁸ Together these primary and secondary sources of information enable the in-depth analysis required to properly execute the case studies in the contemporary diffusion of FOI law from the perspective of transnational historical materialism.

1.6 Chapter Outline

The thesis is divided into ten chapters: this introduction, eight major chapters, and a conclusion. The major chapters of the thesis can be thought of as falling to four interrelated groups. The first group (Chapters Two and Three) establishes the basis for the study by reviewing the FOI literature and providing an overview of the diffusion of FOI law. The second group (Chapters Four and Five) builds on this basis by examining the theoretical foundations for existing explanations of the diffusion of the law and presenting an alternative foundation. The third group (Chapters Six and Seven) applies transnational historical materialism on a macro-historical level that considers broad changes in state-society relations within the modern world system. Finally, the fourth group (Chapters Eight and Nine) applies transnational historical materialism to the contemporary comparative cases discussed above, examining the comparative evolution of state-society relations within them and the relationship between national and transnational factors in adoption.

The first group of chapters, which provide the basis for the study, includes Chapter Two and Chapter Three. The first of these chapters argues FOI law essentially provides a presumptive right of access to government-held information but that beyond this essential meaning the law may be thought of as an 'empty signifier' that gets filled by the context of each adopting country (as discussed at 2.2). This is demonstrated later in the thesis by the fact that FOI law in China, Mexico and India is understood in

⁶⁷ For example, freedominfo.org provides a wealth of primary material supplied by advocates from around the world: freedominfo.org, "Freedominfo.org: The Global Network of Freedom of Information Advocates," <http://www.freedominfo.org/>, (Date Accessed: 13 March, 2011).

⁶⁸ For example: G. Michener, "The Surrender of Secrecy: Explaining the Emergence of Strong Access to Information Laws in Latin America" (PhD, University of Texas, 2010), W. Xiao, "Freedom of Information Reform in China: Information Flows Analysis" (PhD, University of Tasmania, 2010).

contrasting ways (see 9.4.2). Chapter Two also provides a representative overview of the FOI literature presented through identifiable themes of analysis (see 2.3). It argues that of these fields ‘socio-legal analysis’ is a potentially fruitful avenue that remains underdeveloped within the literature. The thesis is placed amongst other recent studies attempting to strengthen ‘socio-legal analysis’ (as shown at 2.4).

Chapter Three continues to establish the basis of the study by moving onto the direct research question of the thesis: the diffusion of FOI law. It first maps the historical diffusion of the law (see 3.2), and then examines statistical similarities and differences amongst adopters and between adopters and non-adopters (see 3.3). The chapter suggests there has been a trend amongst adopters over time towards increased variation on economic, social and political factors. However, in spite of this variation, the chapter also highlights a continuity of relatively high levels of globalization (measured empirically through indicators of social, political and economic integration within the world system) amongst adopters. This continuity amongst adopters is shown to represent a point of departure between adopters and non-adopters (as demonstrated at 3.3.5). Of the most globalized countries in the world, most have FOI law, while of the least globalized countries in the world, few have FOI law. The contrast of level of globalization amongst adopters and non-adopters is later supported in the thesis with an understanding of contemporary changes in the structure of states.

The second group of chapters includes Chapter Four and Chapter Five and it provides an exploration and selection of theoretical foundations. The first of these chapters explores the theoretical foundations of current explanations of the diffusion of FOI law. Chapter Four draws out the largely implicit theoretical foundations of current explanations and demonstrates the predominance of two foundations already mentioned: a ‘modernization foundation’ (as explored at 4.3), and an ‘agent foundation’ (see 4.4). While these foundations are shown to have their own strengths and weaknesses, an alternate foundation is chosen and presented in Chapter Five. ‘Transnational historical materialism’, a foundation grounded in global political economy, places the diffusion of the law and the rise of public sector transparency within an understanding of the changing nature of state institutions in modern history (see 5.2). Central to this understanding, presented in Chapter Five, is the way the state apparatus relates to society within a given

historical context, not just within states, but amongst types of states and within historical periods of the modern world system (as elaborated at 5.3 and 5.4).

The third group of chapters begins the process of applying ‘transnational historical materialism’. It consists of Chapter Six and Chapter Seven. These chapters undertake the first method of the thesis, macro-historical analysis, as discussed above. Chapter Six focuses on the initial emergence of FOI law and its early diffusion. The chapter argues the law first emerged within a family of ‘Lockean’ states and diffused amongst ‘Lockean’ states because the relationship between state apparatuses and society within those states developed as a consensual social contract facilitating a ‘right to know’ (see 6.3). Outside these ‘Lockean’ states throughout much of modern history, Chapter Seven shows, so-called ‘Hobbesian’ states prevented the further diffusion of the law (see 6.4). Within ‘Hobbesian’ states the authority of the state apparatus overshadowed weak civil societies and prevented the development of a ‘right to know.’ Chapter Seven moves on from Chapter Six to examine the unexpected proliferation of FOI law outside ‘Lockean’ states. It shows that towards the end of the twentieth century the ‘Lockean’/‘Hobbesian’ dichotomy of modern states began to break down with the onset of globalization and the demise of Cold War divisions. ‘Hobbesian’ structures underwent a process of transformation in the context of an emergent global political economy that facilitated the further diffusion of the law (see generally 7.2, 7.3 and 7.4).

The final group of chapters focuses analysis on processes of change within ‘Hobbesian’ adopters of FOI law by conducting comparative case studies of China, Mexico and India. This group of chapters includes Chapter Eight and Chapter Nine. The first of these chapters looks at the relationship throughout the twentieth century and into the early twenty-first century between the state apparatus and society in determining public information access across the cases (see 8.3, 8.4, 8.5 and 8.6). Chapter Eight allows for a broad understanding of the historical process of change across the cases, their similarities and differences, the importance of post-Cold War globalization and the uniqueness of the contemporary break with traditions of secrecy amongst the cases. Chapter Nine then focuses more specifically on the comparative processes of adoption of FOI law amongst the cases. Each case of adoption embodies a unique combination of nation factors, such as ‘administrative reform’, ‘media advocacy’, and ‘social activism’

(as shown at 9.3), but all also share a similar connection to international developments and increased transnational support through ‘norm emulation’ and ‘foreign support’ (see 9.2). With these differences and similarities in view, the adoption process generally is understood as a ‘passive revolution’ wherein each adoption is a unique national reflection of international developments, especially the development of a transnational support system for openness within the global political economy.

The thesis concludes with Chapter Ten. Conclusions of the thesis are presented in this final chapter. Chapter Ten highlights the most important findings of the thesis. First the chapter demonstrates the significance of the thesis with reference to the FOI literature (see 10.2). It argues the thesis helps build on an underdeveloped body of socio-legal analysis that provides a contextual understanding of FOI law and its place within the world. The chapter then highlights the insights provided by the thesis by the application of a theoretical foundation provided by global political economy to the question of diffusion. Transnational historical materialism provides an avenue for understanding the broad historical diffusion of FOI law within the modern world system that includes its emergence, early diffusion, contemporary proliferation and, more tentatively, its future (as mentioned at 10.3). Transnational historical materialism also provides a platform for examining the historical trends of secrecy and openness in specific states. This platform allows for a more in-depth analysis of the adoption of the law within the context of its contemporary proliferation (10.4).

1.7 Conclusion

The thesis provides an exploration of the rise of public sector transparency by using FOI law as a case study reform. It presents an understanding of the historical diffusion of FOI law that draws from a theoretical and methodological base in the social sciences. This understanding, which especially draws from social and political science, helps build on underdeveloped socio-legal understandings to FOI law and presents a major contribution to the study of the causes behind the spread of the law and public sector transparency. This introduction has sought to introduce the most important elements of the thesis: the lack of understanding of the rise of public sector transparency, the possibility of using FOI law as a case study reform and the utility of drawing from social and political theory

in attempting to examine the diffusion of the law as a case study reform. The following chapter begins to uncover the basis of the thesis by defining FOI law and reviewing the FOI literature and highlighting the underdeveloped potential of socio-legal analysis within it.

2: FOI LAW AND FOI LITERATURE

There is an extensive literature on freedom of information and its spread to countries around the world, but it consists largely either of descriptive case studies or of normative commentaries on the adequacy of particular pieces of national legislation... There is relatively little in the way of comparative or theoretical analysis...

Colin Darch and Peter Underwood¹

2.1 Introduction

The aim of the thesis is to provide an understanding informed by social and political science of the diffusion of FOI law, as a case study in the rise of public sector transparency. The purpose of the current chapter is to begin setting a basis for the thesis. The chapter introduces FOI law and the literature produced in relation to it. It argues FOI law has a legal essence in providing a presumptive right of access but that this essence needs to be reconciled with considerable variation in the way the law is understood across countries. The law is an 'empty signifier' beyond its essence that is filled within the context of each adopter. The chapter identifies major themes within the FOI literature. There is consistent crossover between these themes, although each can be thought of as relatively independent in its contribution. Of these themes the current study is positioned within a nascent but growing approach to analysis that addresses the law from a social sciences-based socio-legal standpoint. The thesis contributes to socio-legal analysis of FOI law in its study of the diffusion of the law.

The chapter is divided into three main sections. The first section introduces the law by examining its essence, architecture and efficacy. This section highlights the relativity of FOI law in spite of common legal architecture across the globe. It also

¹ Darch and Underwood, *Freedom of Information and the Developing World: The Citizen, the State and Models of Openness*, 50. Also see C. Darch and P. G. Underwood, "Freedom of Information Legislation, State Compliance and the Discourse of Knowledge: The South Africa Experience," *The International Information & Library Review* 37 (2005): 78.

highlights widespread concern over the success of the law in providing access to government-held information. The second section of the chapter delves into the burgeoning commentary and literature on the law reform. It argues that various themes are identifiable across the board and that the literature in general suffers from a legal formalism. The third and final section of the chapter examines how the predominance of legal formalism has contributed to the underdevelopment of a sociological form of analysis. The current study is positioned amongst a number of recent studies that are consciously confronting the legal formalism of the literature by incorporating theoretical and methodological tools derived from the social sciences into analysis.

2.2 FOI Law

The first section of this chapter addresses the basic question of ‘what is FOI law?’ There are various reasons for adopting the law, which can therefore be thought of as an ‘empty signifier’ that finds relative meaning in different contexts across space and time (see 2.2.1 below). Nevertheless, there is a degree of similarity in the legal architecture of the laws around the world and this similarity centers on a presumptive right of public access to government-held information (see 2.2.2 below). Whether or not the laws have been successful in providing the right of access is debated, however (see 2.2.3 below). Recent comparative studies, highlighted below, suggest widespread cause for concern.²

2.2.1 Essence

There is no single rationale for FOI law and its provision of access to government-held information. The right has traditionally been provided on the grounds of opening the administration of government departments and agencies to greater public scrutiny in an attempt to ensure transparency and accountability in the public sector.³ However, an increase in supporters, advocates and adopters has seen a corresponding increase in the

² For example: J. Lidberg, "Keeping the Bastards Honest" - the Promise and Practice of Freedom of Information Legislation" (PhD, Murdoch University, 2006). Open Society Justice Initiative, "Transparency & Silence: A Survey of Access to Information Laws and Practices in Fourteen Countries," (New York: Open Society Institute, 2006).

³ This was the case in early adopters of the twentieth century such as the United States, Denmark, France and Australia. See D. C. Rowat, ed., *Administrative Secrecy in Developed Countries* (London: Macmillan Press, 1979).

reasons for providing greater access to official information: FOI law is now promoted on the basis that it helps, amongst other things, ensure human rights, increase economic growth, improve democratic administration and prevent corruption.⁴ The law, and its presumptive right to government-held information is also promoted as a fundamental human right in itself.⁵ The reasons behind supporting FOI law today have become prescriptive and specific to the views of particular supporters. For instance, Article 19, perhaps the most active and best known international non-government advocate for access law reform, promotes the law from the perspective of human rights and freedom of expression; whereas the World Bank, a well known supporter of FOI law, promotes the law from the perspective of good governance and anti-corruption.⁶

The meaning of the term 'FOI law' is to a large degree filled within the context of a particular adopter or advocate. The term can be thought of as a 'floating' or 'empty signifier', because the object the term signifies is relative, to a degree.⁷ The 'empty signifier' of FOI law is filled by particular advocacy bodies in campaigning for the law and/or the political and administrative traditions of an adopting institution. Tom McClean captured this relativity of signification in a recent speech at the 1st Global Conference on Transparency Research when he said:

the political value of official information in any given country depends in part on the institutional structure of its political system. This does not mean that comparative studies should be abandoned, but rather that they should be undertaken with due awareness of possible variations in the kinds of information which drive the uptake in these laws, the interests at stake, and the relative capacities of the various stakeholders to influence the course of events – in short, with the fact that freedom of information means different things in different contexts.⁸

⁴ For a critical overview see Darch and Underwood, *Freedom of Information and the Developing World: The Citizen, the State and Models of Openness*, 13-47.

⁵ For example T. Mendel, "Freedom of Information as an Internationally Protected Human Right," (Article 19). Birkinshaw, "Freedom of Information and Openness: Fundamental Human Rights?."

⁶ Article 19, "Article 19: Global Campaign for Free Expression," <http://www.article19.org/>, (Date Accessed: 14 March, 2011), World Bank, "Access to Information, Transparency and Governance," <http://web.worldbank.org/WBSITE/EXTERNAL/WBI/WBIPROGRAMS/PSGLP/0,,contentMDK:21959214~pagePK:64156158~piPK:64152884~theSitePK:461606,00.html>, (Date Accessed: 13 March, 2011).

⁷ E. Laclau, *Emancipation(s)* (London: Verso, 1996), 36-47. I am grateful to Professor Rod Rhodes for bringing this to my attention at a postgraduate seminar for students of the School of Government at the University of Tasmania.

⁸ T. McClean, "Institutions and Transparency: Where Does Freedom of Information Work Best?" (paper presented at the 1st Global Conference on Transparency Research, Newark, 2011), 1.

Similarly, Megan Carter and Lv Yanbin have written that ‘one must continually remember that FOI practices exist within each state’s governmental culture.’⁹ In some countries FOI law is best understood with reference to administrative law reform, in other countries with reference to democratization, and in still other countries with reference to development and modernization; for example, in the case studies of China, Mexico and India, examined in later chapters, the law reform process has been fundamentally informed by the unique political, social and cultural traditions of the actors and insitutions involved in each case, and this has lead to comparatively different outcomes in the overall understanding of the law and its purpose (see especially Chapter Nine).¹⁰

The way in which the empty signifier is filled informs what Laura Neuman and Richard Calland call the ‘transparency triangle’, a process made-up by ‘passage’, ‘implementation’ and ‘enforcement.’¹¹ While Neuman and Calland seem to suggest there is a universalistic method to enacting access to information law through the process of ‘transparency triangle’ that involves the replication of established processes, the ‘transparency triangle’ may also be used to examine the various stages of development in particular FOI law as an empty signifier, as demonstrated in the cases of China, Mexico and India.¹² In each case the passage, implementation and enforcement of the law is fundamentally informed by the ‘governmental culture’ and national context of each adopter. FOI regulations in China have been exclusively enacted and implemented by the Chinese Communist Party (CCP) and this unique factor has had a flow on effect into the strength of reform and enforcement (as shown at 9.3.1). In Mexico and India media advocacy and social activism have tied the law to democratic accountability and community development and the laws adopted are relatively robust, although enforcement is hampered by issues of ‘governmental culture’ in each case (see 9.3.2 and 9.3.3).

⁹ M. Carter and L. Yanbin, "Access to Government Information in Europe and China: What Lessons to Be Learned?," ed. T. Hart (EU-China Information Society Project, 2007), 6.

¹⁰ Compare M. M. Ansari, "Impact of Right to Information on Development: A Perspective on India's Recent Experiences" (paper presented at the UNESCO Headquarters, Paris, France, 2008). and P. Hubbard, "China's Regulations on Open Government Information: Challenges of Nationwide Policy Implementation," *Open Government: a Journal of Freedom of Information* 4, no. 1 (2008).

¹¹ L. Neuman and R. Calland, "Establishing a Robust Transparency Regime: The Implementation Challenge," (Transparency Task Force: Initiative for Policy Dialogue, 2007).

¹² Ibid.

2.2.2 Architecture

There are some important variations in the way in FOI laws around the world provide access to information. Perhaps most important in terms of the overall nature and function of law is the fact that some laws are constitutionally protected, while others are not; this is an important variation between two key models of FOI law replicated to various degrees around the world: the Swedish and the American.¹³ The former has constitutional importance, whereas the latter does not. Constitutional support is considered significant in order to prevent government tampering with the law, especially amongst more recent, less democratically established adopters.¹⁴ Other variations are important too. For example, the scope of the application of the law to different bodies varies between adopters: variations in applicability across the public sector and private sector are notable here.¹⁵ The extent to which FOI laws apply to quasi-public bodies, private contractors, and even to the public sector is variable.¹⁶ Moreover, there are important variations between oversight mechanisms and exemption categories across FOI regimes.¹⁷

Nevertheless there is substantial uniformity in the structure of the laws adopted by sub-national and national governments alike. This is due largely to processes of ‘policy transfer’ and ‘norm emulation’ (which are both discussed in more depth at 4.4) of models, such as the Swedish and American models, but also models provided by transnational advocacy groups, such as Article 19.¹⁸ The structure of these models generally incorporates a number of key structural elements:

1. Objectives and principles
2. Scope of the law
3. Automatic publication

¹³ S. Lamble, "United States FOI Laws Are a Poor Model for Statutes in Other Nations," *Freedom of Information Review*, no. 106 (2003).

¹⁴ P. Sebina, "Freedom of Information and Records Management: A Learning Curve for Botswana" (PhD, University College London, 2006), 91-106.

¹⁵ M. Taggart, "The Impact of Corporatisation and Privatisation on Administrative Law," *Australian Journal of Administrative Law* 51, no. 3 (1992), A. Roberts, "Less Government, More Secrecy: Reinvention and the Weakening of Freedom of Information Law," *Public Administration Review* 60, no. 4 (2000).

¹⁶ Mendel, "Freedom of Information: A Comparative Legal Survey."

¹⁷ Ibid.

¹⁸ Lamble, "United States FOI Laws Are a Poor Model for Statutes in Other Nations."

4. Process/ procedures
5. Exemptions
6. Appeals procedures¹⁹

In terms of access, the law typically requires government bodies to take a pro-active role in publishing official information, especially basic information about the structure and function of departments and agencies.²⁰ Yet the critical feature of FOI law is that it provides ‘a presumptive right to information held by public authorities.’²¹ FOI law provides a right to request to access information that has not yet been otherwise published by authorities—the presumption is that information should be accessible, unless there are legitimate reasons for withholding it. Requests for information such as personal data, or policy or archive material made under FOI laws are subject to internal interpretation and execution by officials, ideally in a consultative manner with applicants. Public servants may or may not deny all or part of any request based on exemptions written into the law that aim to ‘protect the public welfare or safety or to protect items such as commercial secrecy or individual privacy.’²² Typically, if a requester is unhappy with the response of authorities, they may apply for internal and/or external review of the application process.²³ Increasingly, the entire request process has been integrated with information technologies.²⁴

2.2.3 Success?

Above all, FOI law has emerged to bring increased transparency to the public sector, where previously, in most parts of the world, there had been strong traditions of official secrecy; however, the extent to which FOI law has actually opened up government administration and allowed citizens access to government-held information is debatable.

¹⁹ Banisar, "Freedom of Information around the World 2006: A Global Survey of Access to Government Records Laws," 20-26. Mendel, "Freedom of Information: A Comparative Legal Survey," 31-40.

²⁰ This is in line with a principle of ‘maximum disclosure and ‘obligation to publish’ or ‘affirmative publication’ common within the discourse on FOI law. Banisar, "Freedom of Information around the World 2006: A Global Survey of Access to Government Records Laws," 25. Mendel, "Freedom of Information: A Comparative Legal Survey," 33.

²¹ Birkinshaw, "Freedom of Information and Openness: Fundamental Human Rights?," 188.

²² Ibid.

²³ Banisar, "Freedom of Information around the World 2006: A Global Survey of Access to Government Records Laws," 20-26.

²⁴ Ibid., 25-26.

To begin with, the laws and regulations adopted around the world vary in strength.²⁵ Zimbabwe's *Access to Information and Privacy Act*, adopted in 2002, actually functions to restrict information flows by requiring the registration of journalists and by prohibiting 'abuses of free expression.'²⁶ More generally, there is no consensus on how to measure the reality or success of the law in providing access, although initial attempts to comparatively measure the effectiveness of the laws have provided relatively negative results.²⁷ Some debate and evidence suggests governments remain strategically, culturally and/or institutionally antagonistic towards openness well after the adoption and implementation of transparency law.²⁸ Indeed, the way in which FOI law has been internalized, often alongside remaining secrecy laws and government information management practices, is an important focal point for future research.²⁹

2.3 FOI Literature

FOI law, representing a break with traditions of secrecy in modern government, has attracted considerable commentary over the past thirty years. As the following section

²⁵ Mendel, "Freedom of Information: A Comparative Legal Survey."

²⁶ D. Banisar, "Freedom of Information and Access to Government Record Laws around the World," (London: freedominfo.org, 2004), 96. See also on the importance of strength: Michener, "The Surrender of Secrecy: Explaining the Emergence of Strong Access to Information Laws in Latin America". Lidberg, "Keeping the Bastards Honest' - the Promise and Practice of Freedom of Information Legislation".

²⁷ Lidberg, "Keeping the Bastards Honest' - the Promise and Practice of Freedom of Information Legislation". Open Society Justice Initiative, "Transparency & Silence: A Survey of Access to Information Laws and Practices in Fourteen Countries." See also: S. Trapnell, "Freedom of Information Frameworks: Using Actionable Indicators to Evaluate Design and Performance" (paper presented at the 1st Global Conference on Transparency Research, Newark, 2011).

²⁸ G. Terrill, "Individualism and Freedom of Information Legislation," *Freedom of Information Review*, no. 87 (2000). R. Snell, "Administrative Compliance - Evaluating the Effectiveness of Freedom of Information," *Freedom of Information Review*, no. 93 (2001). J. Stiglitz, "Transparency in Government," in *The Right to Tell: The Role of Mass Media in Economic Development*, ed. World Bank Institute (Washington: The World Bank, 2002), 34-39. P. Hubbard, "Accountability in the Grey Area: Employing Stiglitz to Tackle Compliance in a World of Structural Pluralism, a Comparative Study," *Freedom of Information Review*, no. 111 (2004). A. Roberts, "Spin Control and Freedom of Information: Lessons for the United Kingdom from Canada," *Public Administration* 83, no. 1 (2005).

²⁹ A. Roberts, "Dashed Expectations: Governmental Adaptation to Transparency Rules," in *Transparency: The Key to Better Governance?*, ed. C. Hood and D. Heald (Oxford: Oxford University Press, 2006). ———, "Three Patterns in the Diffusion of Transparency Rules: Money, Guns and Human Rights," (The Maxwell School of Syracuse University, 2003). ———, "Australia's 'Great Surprise' for the US: Negotiating the 2002 Security of Information Agreement," *Freedom of Information Review*, no. 106 (2003). Roberts, "Spin Control and Freedom of Information: Lessons for the United Kingdom from Canada." R. Snell, "Contentious Issues Management: The Dry Rot in FOI Practice?," *Freedom of Information Review*, no. 102 (2002). Australian Law Reform Commission, "Secrecy Laws and Open Government in Australia," (Canberra: 2010).

demonstrates, this literature can be understood on a representative basis in a useful manner by dividing it into a handful of overlapping themes of analysis. Each of these themes examines the law and its ability to provide access to government-held information from a unique perspective (see 2.3.1-2.3.5 below).³⁰ The themes include:

- legal analysis;³¹
- media analysis;³²
- government investigation;³³
- administrative analysis; and,³⁴
- socio-legal analysis.³⁵

These themes are not equal in size and influence, and there is a predominance of legal formalism that tends to restrict analysis within a narrow empirical frame of reference, which means contextual socio-legal analysis generally remains underdeveloped (as discussed at 2.3.5 below).

³⁰ A number of anthologies embody the overlap of themes. For example: A. McDonald and G. Terrill, *Open Government: Freedom of Information and Privacy* (Basingstoke: Macmillan, 1998), A. M. Florini, ed., *The Right to Know: Transparency for an Open World* (New York: Columbia University Press, 2007).

³¹ Some early work of academics includes: S. V. Anderson, "Public Access to Government Files in Sweden," *The American Journal of Comparative Law* 21, no. 3 (1973), N. S. Marsh, ed., *Public Access to Government-Held Information: A Comparative Symposium* (London: Steven and Sons Ltd, 1987), Rowat, ed., *Administrative Secrecy in Developed Countries*. By advocates: Banisar, "Freedom of Information around the World 2006: A Global Survey of Access to Government Records Laws.", Mendel, "Freedom of Information: A Comparative Legal Survey."

³² Media commentary on the public's 'right to know' versus secrecy was crucial in the adoption of FOI law in the United States in the 1960s. H. Brucker, *Freedom of Information* (New York: Macmillan, 1949), K. Cooper, *The Right to Know: An Exposition of the Evils of News Suppression and Propaganda* (New York: Ferrar, Straus & Cudahy, 1956), J. R. Wiggins, *Freedom or Secrecy* (New York: Oxford University Press, 1956), H. L. Cross, *The People's Right to Know: Legal Access to Public Records and Proceedings* (New York: Columbia University Press, 1953).

³³ The best examples would include Australian Law Reform Commission and Administrative Review Council, *Open Government: A Review of the Federal Freedom of Information Act 1982* (Canberra: AGPS, 1995), Access to Information Review Task Force, *Access to Information: Making It Work for Canadians* (Ottawa: Public Works and Government Services, 2002), Committee on Official Information, "Towards Open Government," (Wellington: 1980).

³⁴ The most pioneering work in this theme is an administrative compliance analysis model. For an overview see Darch and Underwood, *Freedom of Information and the Developing World: The Citizen, the State and Models of Openness*, 116-19.

³⁵ Alasdair Roberts has been the most productive (although implicit) writer in this field. See for example: A. Roberts, "Structural Pluralism and the Right to Information," *University of Toronto Law Journal* 51, no. 3 (2001), ———, *Blacked Out: Government Secrecy in the Information Age* (New York: Cambridge University Press, 2006), ———, *The Logic of Discipline: Global Capitalism and the Architecture of Government* (Oxford: Oxford University Press, 2010)..

2.3.1 Legal Analysis

FOI law has traditionally and predominantly been studied from a legal perspective. Legal research that shares a narrow focus on FOI law as a legal mechanism and reform has been concentrated into two types: national studies and international surveys.³⁶ First, a large number of national legal studies conducted predominantly by academics generally focus on all or some components of specific legislation and/or how courts have interpreted such components, predominantly in richer countries such as the United States, Australia, Ireland, New Zealand, Canada and the United Kingdom;³⁷ although developing countries have received more attention in recent years.³⁸ Second, reflecting these national legal

³⁶ Compare R. Snell, "The Torchlight Starts to Glow a Little Brighter: Interpretation of Freedom of Information Legislation Revisited," *Australian Journal of Administrative Law* 2, no. 4 (1995). and Banisar, "Freedom of Information and Access to Government Record Laws around the World."

³⁷ Some examples include: **The United States:** K. C. Davis, "The Information Act: A Preliminary Analysis," *The University of Chicago Law Review* 34, no. 4 (1967). K. A. Winchester and J. W. Zirkel, "Freedom of Information and the CIA Information Act," *University of Richmond Law Review* 21, no. 2 (1987). A. E. Rees, "Recent Developments Regarding the Freedom of Information Act: A Prologue to a Farce or a Tragedy; or Perhaps Both," *Duke Law Journal* 44, no. 6 (1995). H. N. Foerstel, *Freedom of Information and the Right to Know: The Origins and Applications of the Freedom of Information Act* (London: Greenwood Press, 1999). **Australia:** R. Snell, "Freedom of Information: The Experience of the Australian States - an Epiphany?," *Federal Law Review* 29, no. 3 (2001). Snell, "The Torchlight Starts to Glow a Little Brighter: Interpretation of Freedom of Information Legislation Revisited.", M. Paterson, *Freedom of Information and Privacy in Australia: Government Information Access in the Modern State* (Sydney: LexisNexis/Butterworths, 2005). R. Fraser, "Freedom of Information: Commonwealth Developments," *Australian Journal of Administrative Law* 9, no. 1 (2001). **Ireland:** D. Meehan, "The Freedom of Information Act in Context," *Irish Law Times*, no. 15 (1997). M. McDonagh, *Freedom of Information Law in Ireland*, 2nd ed. (Dublin: Thomas Round Hall, 2006). **New Zealand:** I. Eagles, M. Taggart, and G. Liddell, *Freedom of Information in New Zealand* (Auckland: Oxford University Press, 1992). S. Price, "The Official Information Act: A Window on Government or Curtains Drawn?," *Open Government: a Journal of Freedom of Information* 2, no. 1 (2006). **Canada:** J. Wallace, "The Canadian Access to Information Act," in *Public Access to Government-Held Information: A Comparative Symposium*, ed. N. S. Marsh (London: Stevens and Son 1987). **United Kingdom:** P. Birkinshaw, *Freedom of Information: The Law, the Practice and the Ideal*, 3rd ed. (London: Butterworths, 2001). There is also a **limited comparative element** across these national cases: Rowat, ed., *Administrative Secrecy in Developed Countries*, Marsh, ed., *Public Access to Government-Held Information: A Comparative Symposium*. D. C. Rowat, "Freedom of Information: The Appeal Bodies under the Access Laws in Canada, Australia and New Zealand," *Australian Journal of Public Administration* 52, no. 2 (1993). R. Snell, "The Kiwi Paradox: A Comparison of Freedom of Information in Australia and New Zealand," *Federal Law Review* 28, no. 3 (2000). R. Snell, "Using Comparative Studies to Improve Freedom of Information Analysis: Insights from Australia, Canada and New Zealand" (paper presented at the 6th National and 2nd International Congress on the Right to Information, Mexico City, 2005).

³⁸ For example: S. Jagwanth, "A New Vision of Access to Information: The South Africa Legislation," *Freedom of Information Review* 90 (2000). K. Doyle, "Mexico's New Freedom of Information Law," *The National Security Archive*, <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB68/>, (Date Accessed: 5 June, 2010). T. Mendel, "Legal Overview of Mexican Access to Information Law," *Comparative Media Law Journal*, no. 3 (2004). Y. Karniel, "Case Comment: The New Freedom of Information Law in Israel Is Tested by Its Supreme Court " *Open Government: a Journal of Freedom of Information* 1, no. 2 (2005). P.

studies, larger scale international advocacy surveys have examined the letter of the law of various legal regimes around the world, but have also more recently evolved to generally consider contrasts and similarities from the perspective of users and the utility of the law.³⁹ Legal analysis provided by legal scholars and international advocates provides ongoing commentary on the letter of the law and its effectiveness, although such studies also tend to be descriptive and normative (as discussed below).

2.3.2 Media Analysis

A small body of media analysis of the law has examined the practical and theoretical importance of media outlets.⁴⁰ Journalists are generally viewed as critical to the passage and utility of FOI law, as they routinely advocate for transparency law reform before utilizing the law on behalf of the public and its 'right to know.'⁴¹ There are perhaps three types of media analysis within the literature. First, there is a mass of articles published by media outlets around the world that stem from information requests and/or provide updates on reform proposals and/or critique the value of existing access law.⁴² Second, there is a body of work produced by journalists and other practical users of the law that

Slough and C. Rodrigues, "India's Right to Information Movement Makes a Breakthrough," *Open Government: a Journal of Freedom of Information* 1, no. 1 (2005), A. Roberts, "A Great and Revolutionary Law? The First Four Years of India's Right to Information Act," *Public Administration Review* 70, no. 6 (2010).

³⁹ Compare Article 19, "Promoting Practical Access to Democracy: A Survey of Freedom of Information in Central and Eastern Europe," (London: Article19, 2002), Banisar, "Freedom of Information around the World 2006: A Global Survey of Access to Government Records Laws." with Mendel, "Freedom of Information: A Comparative Legal Survey.", Open Society Justice Initiative, "Transparency & Silence: A Survey of Access to Information Laws and Practices in Fourteen Countries."

⁴⁰ For example: S. Lamble, "Media Use of FOI Surveyed: New Zealand Puts Australia and Canada to Shame," *Freedom of Information Review*, no. 109 (2004), R. Snell, "In Search of the Freedom of Information Constituency: Case 1 - the Media," *Freedom of Information Review*, no. 78 (1998), ———, "FOI and the Delivery of Diminishing Returns, or How Spin-Doctors and Journalists Have Mistreated a Volatile Reform," *Drawing Board: an Australian Review of Public Affairs* 2, no. 3 (2002), A. Woods, "Adding Another Glass Block to the Barrier of Transparency: The Media and the Freedom of Information Acts," *Cork Online Law Review* (2004), Article 19, "Under Lock and Key: Freedom of Information and the Media in Armenia, Azerbaijan and Georgia," (London: Article19, 2005).

⁴¹ E. Bertoni, "Freedom of Information: Three Harmless Words? The Role of the Media and Access to Information Laws" (paper presented at the 1st Global Conference on Transparency Research, Newark, 2011).

⁴² See a report by the Freedom of Information Campaign in the UK that reviewed 1000 press stories between 2006 and 2007 which resulted from a request under the UK or Scottish Act: The Campaign for Freedom of Information, "1000 FOI Stories from 2006 and 2007," (2008), <http://www.cfoi.org.uk/pdf/FOIStories2006-07.pdf>. Much of this type of request-and-publish commentary is now being produced by dedicated FOI editors. Examples include Michael McKinnon at the Seven Network and Martin Rosenbaum at the BBC. Heather Brooke is an example of a freelance journalist focused on utilizing FOI law for investigative reporting.

addresses how to use and overcome problems associated with the law.⁴³ Third, and most importantly, there is a growing body of journalistic scholarship that examines the way FOI law is used by the media.⁴⁴ Johan Lidberg, for example, emphasizes the role of the media as the 'fourth estate' (separate from the legislature, executive and judiciary) in utilizing the law to inform the public, but then finds in his study that the gap between the 'promise' and the 'practice' of FOI law for journalists in Sweden, South Africa, Australia and Thailand varies substantially.⁴⁵ Such media analysis provides important commentary on the utility of access law from the perspective of critics that generally breathe everyday life into the law for the public.⁴⁶

2.3.3 Government Investigation

Many of the challenges faced by FOI law have been addressed in detail by commissions and review panels, which have benefited from the input of scholars, advocates and journalists, in various countries.⁴⁷ A number of recent reviews on the status of FOI laws in Australia and Canada, for example, have taken an innovative approach to the law and its position within the framework of modern democratic government.⁴⁸ The reviews have investigated traditional concerns such as the coverage of the access law amongst

⁴³ See for example: A. Cossins and K. Harrison, *Documents, Dossiers, and the inside Dope: A Practical Guide to Freedom of Information Law* (St. Leonards: Allen and Unwin, 1993), H. Brooke, *Your Right to Know: A Citizen's Guide to the Freedom of Information Act*, 2nd ed. (London: Pluto Press, 2006).

⁴⁴ M. Ricketson and R. Snell, "FOI: Threatened by Government, Unused by Journalists - Still a Sharp Tool," in *Journalism: Investigation and Research*, ed. S. Tanner (Frenchs Forest: Pearson Education Australia, 2002), N. Waters, *Print Media Use of Freedom of Information Laws in Australia* (Sydney: Australian Centre for Independent Journalism, 1999), M. Rosenbaum, *Open to Question: Journalism and Freedom of Information* (Oxford: Reuters Foundation Fellowship Programme, 2004), S. Lamble, "Computer-Assisted Reporting and Freedom of Information" (PhD, University of Queensland, 2002), Lidberg, "'Keeping the Bastards Honest' - the Promise and Practice of Freedom of Information Legislation".

⁴⁵ Lidberg, "'Keeping the Bastards Honest' - the Promise and Practice of Freedom of Information Legislation", 33-38.

⁴⁶ In addition to media journalists, members of parliament might also be considered socially important users of FOI law. T. Mendel, "Parliament and Access to Information: Working for Transparent Governance," (Washington: The World Bank, 2005), R. Snell and J. Upcher, "Freedom of Information and Parliament: A Limited Accountability Tool for a Key Constituency," *Freedom of Information Review* 100 (2002).

⁴⁷ Australian Law Reform Commission and Administrative Review Council, *Open Government: A Review of the Federal Freedom of Information Act 1982*, Access to Information Review Task Force, *Access to Information: Making It Work for Canadians*, Independent Review Panel, "The Right to Information: Reviewing Queensland's Freedom of Information Act," (Brisbane: 2008), Tasmanian Department of Justice, "Review of the Freedom of Information Act 1991 Directions Paper," (Hobart: 2009).

⁴⁸ Australian Law Reform Commission and Administrative Review Council, *Open Government: A Review of the Federal Freedom of Information Act 1982*, Access to Information Review Task Force, *Access to Information: Making It Work for Canadians*, Independent Review Panel, "The Right to Information: Reviewing Queensland's Freedom of Information Act."

government institutions, the scope of exemptions to disclosure and the adequacy of certain review mechanisms.⁴⁹ In addition to such concerns the reviews have innovatively investigated how the law should function in relation to new information technologies and data sets.⁵⁰ How the law might fit into an overall government strategy towards information and document management within the 'Information Age' is also addressed in a number of the reports.⁵¹ Each of the investigations deals with issues specific to their relevant jurisdiction, although there seems to be a general sense amongst the reports that more needs to be done by governments to help combat traditions of secrecy within the public sector and improve the utility of FOI law.

2.3.4 Administrative Analysis

Administrative analysis of FOI law focuses on the administration of requirements imposed by transparency law relating to information accessibility within departments and agencies. The most basic question raised by this kind of analysis concerns what impact the law has had on information management in public administration.⁵² Concern has been raised that bodies subject to FOI law may manipulate information management in order to avoid proper disclosure.⁵³ Over time this basic concern has been gradually replaced by questions relating to appropriate administrative capacity and information management styles.⁵⁴ But the most innovative facet within administrative analysis of FOI law that

⁴⁹ In terms of the scope of the law an important issue has been the extent to which government business enterprises and contractors delivering services on behalf of government should be subject to requests for information under the law. Independent Review Panel, "The Right to Information: Reviewing Queensland's Freedom of Information Act," 70-100. and Access to Information Review Task Force, *Access to Information: Making It Work for Canadians*, 33.

⁵⁰ Independent Review Panel, "The Right to Information: Reviewing Queensland's Freedom of Information Act," 209-22. Tasmanian Department of Justice, "Review of the Freedom of Information Act 1991 Directions Paper," 21-24.

⁵¹ Access to Information Review Task Force, *Access to Information: Making It Work for Canadians*, 141-49. Independent Review Panel, "The Right to Information: Reviewing Queensland's Freedom of Information Act," 13-32.

⁵² J. Gilbert, "Access Denied: That Access to Information Act and Its Effect on Public Records Creators," *Archivaria*, no. 49 (2000), K. Badgley, M. J. Dixon, and P. Dozois, "In Search of the Chill: Access to Information and Record Keeping in the Government of Canada," *Archivaria*, no. 55 (2000), I. Forsyth, "Access Law and Lost Records: A Commentary on 'In Search of the Chill'," *Archivaria*, no. 55 (2000).

⁵³ Gilbert, "Access Denied: That Access to Information Act and Its Effect on Public Records Creators."

⁵⁴ R. Snell and P. Sebina, "Information Flows: The Real Art of Information Management and Freedom of Information," *Archives and Manuscripts* 35, no. 1 (2007), L. Screene, "How Prepared Are Public Bodies for the Implementation of the UK Freedom of Information Act, in January 2005?," *Records Management Journal* 15, no. 1 (2005), E. Shepherd, "Freedom of Information and Records Management in the UK:

combines all the concerns just mentioned has been the development of an 'administrative compliance model'.⁵⁵ The model is built on a range of negative to positive typologies of administrative behavior towards information requests. For example, at the most positive end of the spectrum 'administrative activism' involves strong commitment, high capacity and pro-active disclosure, while at the most negative end of the spectrum 'malicious non-compliance' involves weak commitment and illegal behavior.⁵⁶ The 'administrative compliance model' allows for an innovative theoretical understanding within a generally descriptive and empirical field of study of the types of likely responses to information requests that can occur in departments and agencies.

2.3.5 Socio-Legal Analysis

The prominence of legal formalism with a narrow focus on the law as a specific concrete object of study within the legal, media, government and, to a lesser extent, administrative analysis has meant descriptive and empirical analysis has tended to overshadow analysis incorporating theoretical and methodological foundations of the social sciences. There is a limited, emerging body of socio-legal analysis.⁵⁷ Nevertheless, in spite of its gradual development, the theme remains largely unconscious and underappreciated. An early example of a socio-legal approach to FOI law that incorporates terms of analysis provided by the social sciences was a study by Greg Terrill in 2000; he wrote of the inherent individualism of access law that often places a single requester up against well-

What Has Been the Impact?," *Journal of the Society of Archivists* 28, no. 2 (2007), E. Shepherd and E. Ennion, "How Has the Implementation of the UK Freedom of Information Act 2000 Affected Archives and Records Management Services?," *Records Management Journal* 17, no. 1 (2007), S. Mutula and J. M. Wamukoya, "Public Sector Information Management in East and Southern Africa: Implications for FOI, Democracy and Integrity in Government," *International Journal of Information Management* 29, no. 5 (2009), P. Sebina, "Freedom of Information: Erosion of the Archive?," *Journal of the Society of Archivists* 30, no. 2 (2009).

⁵⁵ A. Roberts, "Limited Access: Assessing the Health of Canada's Freedom of Information Laws," (School of Policy Studies Queen's University, Freedom of Information Research Project, 1998), Snell, "Administrative Compliance - Evaluating the Effectiveness of Freedom of Information.", ———, "Contentious Issues Management: The Dry Rot in FOI Practice?," R. Snell, "Freedom of Information Practices," *Agenda* 13, no. 4 (2006): 298-300, Darch and Underwood, *Freedom of Information and the Developing World: The Citizen, the State and Models of Openness*, 116-19.

⁵⁶ These typologies were partially sketched by Roberts and then developed by Snell, and later developed further by Darch and Underwood. See references above.

⁵⁷ Ackerman and Sandoval-Ballesteros, "The Global Explosion of Freedom of Information Laws." and Darch and Underwood, *Freedom of Information and the Developing World: The Citizen, the State and Models of Openness*.

learnt and well-resourced institutions.⁵⁸ From another perspective Stephen Lamble argued that the American model of FOI law provides a poor transplant for foreign adopting countries due to inevitable differences in institutional settings.⁵⁹ Socio-legal analysis of FOI law benefited in 2005 from the establishment of a journal of FOI law that embraces a wide frame of reference: *Open Government: a Journal on Freedom of Information*.⁶⁰ More recently, Alasdair Roberts has examined, amongst other things, the impact on FOI law of the contemporary diffusion of public authority away from traditional departments and agencies to private contractors and supranational institutions and the impact this has on the utility of FOI law in terms of holding power to account.⁶¹ However, as with other socio-legal analysis, the work produced by Roberts remains largely implicit: it draws from theoretical and methodological tools of the social sciences in an implicit manner that undervalues its importance within a body of literature dominated by legal formalism.⁶²

2.4 Lack of Socio-Legal Understanding

The legal formalism of the vast majority of the FOI literature has prevented a fuller understanding of how FOI law relates to its historical, social, political and even technological surroundings. These are relationships that may be brought into focus with the use of theoretical and methodological tools of the social sciences. Socio-legal analysis must therefore be developed in order for such relationships to be examined further. Rick Snell commented in 2000 about the need for 'more multi- and cross-disciplinary studies

⁵⁸ Terrill, "Individualism and Freedom of Information Legislation." See also his work on the history of secrecy and openness in Australia G. Terrill, *Secrecy and Openness: The Federal Government from Menzies to Whitlam and Beyond* (South Carlton: Melbourne University Press, 2000).

⁵⁹ S. Lamble, "FOI as a United States' Foreign Policy Tool: A Carrot and Stick Approach," *Freedom of Information Review*, no. 105 (2003). See also: Lamble, "United States FOI Laws Are a Poor Model for Statutes in Other Nations.", ———, "Freedom of Information, a Finnish Clergyman's Gift to Democracy."

⁶⁰ The journal incorporates debates on open government, comparative analysis and the impact of FOI law on public administration. "Editorial Policies," *Open Government: A Journal of Freedom of Information*, <http://www.opengovjournal.org/about/editorialPolicies#focusAndScope>, (Date Accessed: 21 September, 2011).

⁶¹ Roberts, "Structural Pluralism.", ———, *Blacked Out: Government Secrecy in the Information Age*, ———, *The Logic of Discipline: Global Capitalism and the Architecture of Government*..

⁶² See for example: M. Hunt and R. A. Chapman, eds., *Open Government in a Theoretical and Practical Context* (Aldershot: Ashgate, 2006), ———, eds., *Freedom of Information: Local Government and Accountability* (Cornwall: Ashgate, 2010).

of access legislation in the future.’⁶³ In 2006 John Ackerman and Irma Sandoval-Ballesteros argued: ‘There is a pressing need to systematically study the existing information and collect fresh data using a more self-conscious social science perspective.’⁶⁴ Most recently, Colin Darch and Peter Underwood have explained:

There is an extensive literature on freedom of information and its spread to countries around the world, but it consists largely either of descriptive case studies or of normative commentaries on the adequacy of particular pieces of national legislation... There is relatively little in the way of comparative or theoretical analysis, or even of historical accounts locating new developments in the context of contemporary human rights discourse or political philosophy.⁶⁵

Above all, the tradition of legal formalism and empiricism within the FOI literature has meant ‘the law’ is approached habitually as something that exists in and of itself, without reference to important concerns such as historical context, political philosophy, or social structure.

2.4.1 Building Socio-Legal Approaches

In recognition of the socio-legal shortfall regarding FOI studies there is a growing body of work that extends the theme of socio-legal analysis and deliberately brings FOI law into a larger frame of reference that includes history, technology, economics, and politics.⁶⁶ For example, Darch and Underwood sought, in a 2010 study, to move forward from initial steps at a ‘more self-conscious social science perspective’ taken by Ackerman and Sandoval-Ballesteros in 2006; they wrote ‘we strongly agree with this point of view, and if Ackerman and Sandoval-Ballesteros have taken the first step, then we can perhaps be seen as attempting to hack our way through the undergrowth a little

⁶³ Snell, "The Kiwi Paradox: A Comparison of Freedom of Information in Australia and New Zealand," 616.

⁶⁴ Ackerman and Sandoval-Ballesteros, "The Global Explosion of Freedom of Information Laws," 87.

⁶⁵ Darch and Underwood, *Freedom of Information and the Developing World: The Citizen, the State and Models of Openness*, 50. Also see ———, "Freedom of Information Legislation, State Compliance and the Discourse of Knowledge: The South Africa Experience," 78.

⁶⁶ Ackerman and Sandoval-Ballesteros, "The Global Explosion of Freedom of Information Laws.", R. Stubbs, "Freedom of Information and Democracy in Australia and Beyond," *Australian Journal of Political Science* 43, no. 4 (2008), J. Worrall, "Democracy and FOI: Not Just 'Part of the Wallpaper'? Analysing Stakeholder's Conceptions of Democracy in Their Interpreting, Reforming, Accessing and Administrating of FOI Objects in Australia" (Honours, University of Tasmania, 2009), Darch and Underwood, *Freedom of Information and the Developing World: The Citizen, the State and Models of Openness*, Xiao, "Freedom of Information Reform in China: Information Flows Analysis".

further along the same path.⁶⁷ The pair employed diffusion analysis, historical analysis and political theory in their examination of FOI law within the context of developing countries.⁶⁸ A recent PhD study by Weibing Xiao at the University of Tasmania is another example in the recent trend towards examining FOI law with reference to social and political theory.⁶⁹ In the study Xiao looked at the recent adoption and implementation of FOI regulation within the People's Republic of China as part of a gradual process of transformation in government handling of information flows, which itself resulted from a variety of social, economic and political changes.⁷⁰

These specific, conscious attempts at socio-legal analysis are part of a growing trend, a building of socio-legal analysis. A recent conference, billed as the 1st Global Conference on Transparency Research, held in May of 2011, demonstrates there is a growing multi-disciplinary approach to freedom of information: the conference brought together political scientists, anthropologists and sociologists, alongside law and journalism academics.⁷¹

The current study is an attempt to add something novel to this innovative basket of knowledge that takes FOI law above its position as a law reform and puts it within a much wider frame of reference in order to better understand the nature of the law and its place within the world. It makes this contribution through an examination of a hitherto neglected question: the historical diffusion of FOI law.⁷² The thesis provides a comprehensive and novel approach to understanding the diffusion of FOI law by drawing explicitly from a critical theoretical foundation. This unique approach to examining the diffusion of FOI law moves beyond existing studies of the diffusion of the law that tend

⁶⁷ Darch and Underwood, *Freedom of Information and the Developing World: The Citizen, the State and Models of Openness*, 8, Ackerman and Sandoval-Ballesteros, "The Global Explosion of Freedom of Information Laws," 87.

⁶⁸ Darch and Underwood, *Freedom of Information and the Developing World: The Citizen, the State and Models of Openness*.

⁶⁹ Xiao, "Freedom of Information Reform in China: Information Flows Analysis".

⁷⁰ Other studies have touched upon similar themes in political change: Stubbs, "Freedom of Information and Democracy in Australia and Beyond.", Worrall, "Democracy and FOI: Not Just 'Part of the Wallpaper'? Analysing Stakeholder's Conceptions of Democracy in Their Interpreting, Reforming, Accessing and Administering of FOI Objects in Australia".

⁷¹ Rutgers University (School of Public Affairs and Administration), "1st Global Conference on Transparency Research," <http://spaa.newark.rutgers.edu/home/conferences/1stgctr.html>, (Date Accessed: 12 August 2011).

⁷² Darch and Underwood, *Freedom of Information and the Developing World: The Citizen, the State and Models of Openness*, 8.

to be fragmented and empirical (as explored in Chapter Four). The theoretical foundation adopted in the thesis places the diffusion of the law and the rise of public sector transparency within an understanding of the changing nature of state institutions in modern history (see Chapter Five). Central to this understanding is the way institutions of government relate to society within a given historical context, not just within particular states, but amongst certain types of states and within historical periods of the modern world system.

2.5 Conclusion

The current chapter reviewed FOI law and its literature. FOI law was suggested to be an ‘empty signifier’ that finds meaning and purpose in the context of a specific actor or adopter. This helps explain some of the variation in the passage, implementation and enforcement of the law. Nevertheless, regardless of the relativity of the law reform as an ‘empty signifier’, the fundamental premise that all such laws embody is a presumptive right of access to government-held information, unless there are legitimate reasons in the public interest for restricting such access. The chapter highlighted the findings of current studies that suggest the success of FOI law in providing useful access is debated and relative. The FOI literature was divided into a series of overlapping themes of analysis, including ‘legal analysis’, ‘media analysis’, ‘government investigation’, ‘administrative analysis’ and ‘socio-legal analysis’. These themes, the chapter argued, are heavily restricted by a tradition of legal formalism and empiricism that has left ‘socio-legal analysis’, which incorporates theoretical and methodological concerns of social sciences, underdeveloped until recently. The current study joins several other recent studies to develop a more explicit and sophisticated ‘socio-legal analysis’ of FOI law. The study does this while addressing the diffusion of the law.

3: DIFFUSION OF THE LAW

There are few, if any, examples of a more rapid spread of global law reform.
Rick Snell and Weibing Xiao¹

3.1 Introduction

The central research problem addressed in this thesis is to understand the causes of the diffusion of FOI law, a case study in the rise of public sector transparency. The previous chapter defined FOI law and positioned the current thesis within a nascent body of ‘socio-legal analysis’ within the FOI literature. The current chapter directly examines the central research question of the thesis. It provides a basic but detailed overview of the central research problem by first plotting the gradual spread of FOI law on time-lapse maps and then comparing the social, economic and political similarities and differences between the 80+ countries to have adopted the law to date. It also highlights the most important difference between adopters and non-adopters: both early and late adopters, despite considerable economic, social and political variation, share relatively high levels of economic and social integration associated with globalization; whereas non-adopters of the law reform tend to share relatively low levels of globalization. Overall the chapter reveals some interesting points about the diffusion of the law that are explored later throughout the thesis with reference to variable theoretical foundations for socio-legal understanding. The preliminary large scale quantitative survey presented in this chapter also informs detailed case studies in adoption presented in later chapters.

The chapter is divided into three sections. The first maps the diffusion of the law, initially in a static manner but then in a dynamic time-lapsed manner. These maps demonstrate the contemporary proliferation of FOI law to many countries in almost every

¹ Snell and Xiao, "Freedom of Information Returns to China," 45.

region of the globe, except Africa and the Middle East (as explored in more depth at 7.5.1). However, the maps do not provide insight into the similarities and differences of adopters over time aside from their geography. The second section of the chapter therefore sets out to examine similarities and differences of adopters over time with the use of a range of statistical tools. It finds earlier adopters tend to be richer, less corrupt and more democratic than later adopters but that consistent amongst adopters, both early and later, is a relatively high level of globalization (i.e. integration). The final section of the thesis compares this consistency amongst adopters with non-adopters and finds non-adopters have consistently low levels of globalization.

3.2 Mapping the Diffusion of FOI Law

The diffusion of FOI law can be plotted on a map for visual demonstration. The first map provided here is a snapshot, produced by David Banisar, of the diffusion of FOI law as it stood in June 2011 (see 3.2.1 below). The map is useful in appreciating the (relatively) current status of the diffusion and also its current progress, as it highlights countries in the process of adoption (although this process can sometimes take decades). Yet Banisar's map does not provide a temporal view. Therefore, time-lapse maps have been produced for the thesis and they plot the sequential diffusion of FOI law on a series of maps, each representing a point in time (see 3.2.2 below). These maps provide a fluid understanding of the geo-political spread of the law over time.

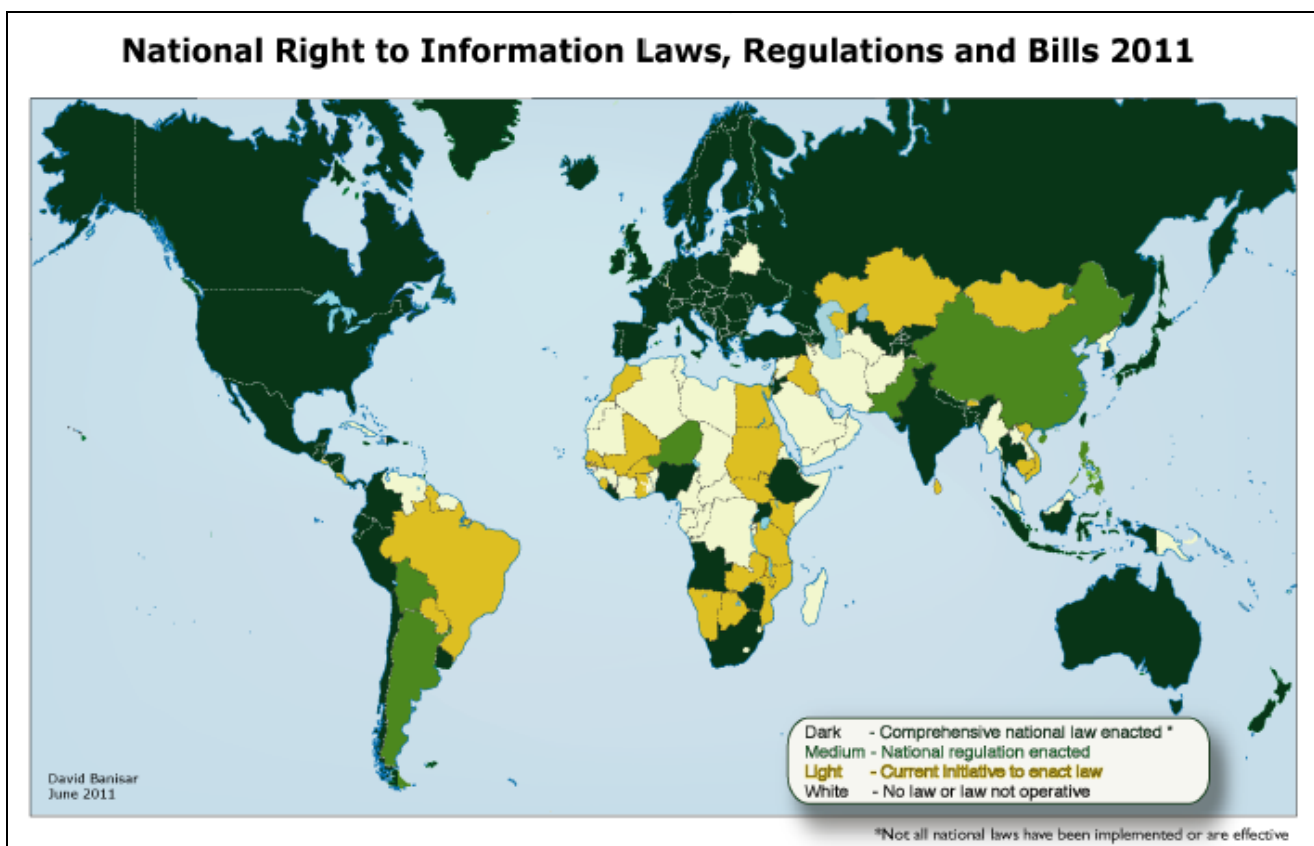
3.2.1 Banisar's Map

Pinpointing the spread of FOI law on a political map is essential to understanding the diffusion of the law. This process highlights what countries have adopted the law in a geographical sense. The most detailed map of the current state of the spread of FOI law has been produced by David Banisar, Senior Legal Council for Article 19, and this map is presented as Figure 1 below.² Banisar's map of 'National Right to Information Laws, Regulations and Bills 2011' highlights countries according to four categories: there are a

² D. Banisar, "National Right to Information Laws, Regulations and Bills 2011 Map," http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1857498, (Date Accessed: 16 June, 2011). See also Banisar, "Freedom of Information around the World 2006: A Global Survey of Access to Government Records Laws."

range of countries that have a) comprehensive national law enacted, as in North America and Europe, b) national regulation enacted, as in China and Pakistan, c) pending efforts to enact law, as in Brazil and Southern Africa, and c) no law or no law operative, as in much of the Middle East and Africa.³

Figure 1: Banisar's 2011 Map of FOI Law



The map produced by Banisar essentially captures three important points about the contemporary spread of FOI law:

³ Banisar does not stipulate the terms of each category he presents. Indeed, there is a common confusion embodied within Banisar's graph when it comes to which countries adopted FOI law and when exactly particular countries have adopted it. For instance, Banisar highlights Russia as having 'comprehensive national law' adopted in 2009 and yet Russia's *Law on Providing Access to Information on the Activities of State Bodies and Bodies of Local Self-Government* did not come into effect until 1 January 2010. Freedominfo.org, "Russia," <http://www.freedominfo.org/regions/europe/russia/russia/>, (Date Accessed: 7 September, 2010).

- First, FOI law has been implemented by a wide range of countries, which is evident by the number of countries that have comprehensive national law enacted (dark green) or national regulation enacted (light green).
- Second, FOI law is a reform in vogue, which is evident by the number of countries in the process of possible adoption (yellow).
- Third, despite its current diffusion, there are still large parts of the world, namely Africa and the Middle East, populated largely by countries with no law or no law operative (white).

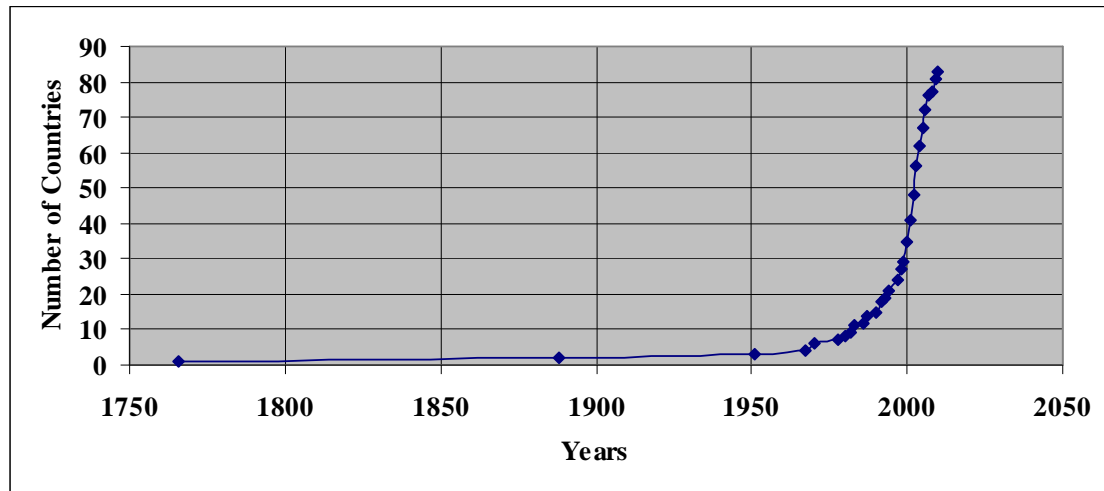
Banisar's map highlights these important current trends, and yet, as a snapshot of the state of the law around the world at a particular time, it fails to convey a sense of the temporal dimension, essential to properly understanding the historical diffusion of the law reform.

3.2.2 Time-Lapse Maps

The diffusion of FOI law since 1766 has been a remarkable event that must be understood in a sequential manner. Figure 2 below shows the overall diffusion of FOI law as a sort of gradual explosion, felt most strongly in the early years of the twenty-first century.⁴ The law was first conceived and adopted in mid-eighteenth century Sweden, only to remain an isolation occurrence for two centuries to follow. Not until the second half of the twentieth century did FOI law find more widespread popularity and a modern place in the world after the United States adopted law in 1966. The diffusion of FOI law remained a very gradual affair in the 1980s, but after 1989, during the 1990s, the diffusion of transparency law began to expand dramatically outside the family of early adopters. The post-Cold War era provided fertile ground for the widespread diffusion of the law. By the opening years of the twenty-first century FOI law had found support and been adopted in every region of the globe, although more so in some than others.

⁴ This graph is based on the entire list of countries provided by Roger Vleugel, which dates until September 2010. Vleugels, "Overview of All FOI Laws."

Figure 2: The International Diffusion of FOI Law 1766 – 2010



Time lapse maps are essential in order to convey the waves or periods of FOI law's diffusion. These maps plot the diffusion of the law at particular points in time. A set of time lapse maps of the diffusion of FOI law have been created for the purposes of the thesis: five maps in total, each highlights new countries where the law has come into force up until a certain year, specifically 1990, 1995, 2000, 2005 and 2010.⁵ These maps are limited because they only highlight actual adopters (whereas Banisar's map highlights also countries in the process of possible adoption) but what they lack in that regard is compensated for by the fact that they provide a time sensitive means to look at where and when FOI law was taken up around the world in the course of time. The end result is like a series of images that show lights gradually turning on, first in particular areas and later more diffusely.

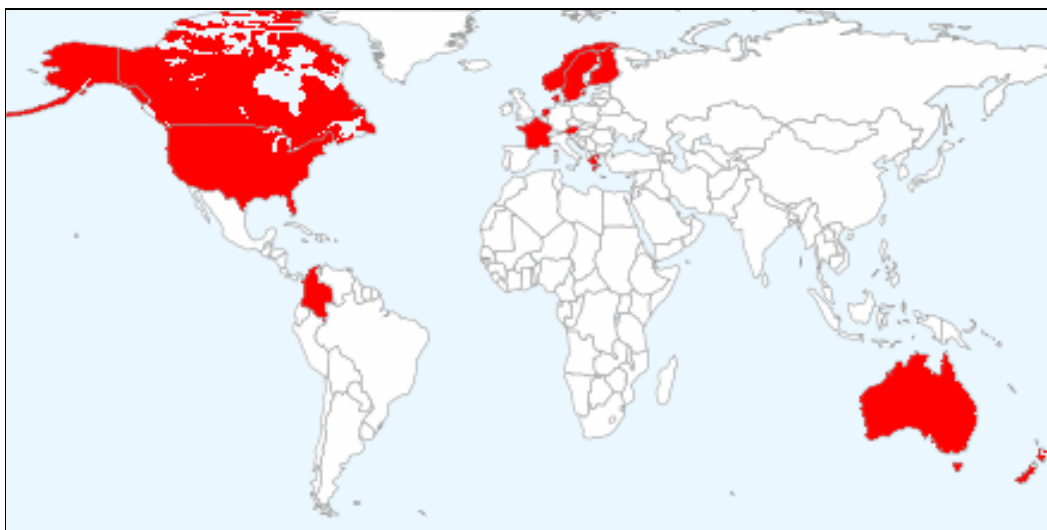
Figure 3 below shows the diffusion of FOI law prior to 1990.⁶ The law had been taken up only by a handful of countries before 1990, mostly in North America, Scandinavia and Australasia. The first ever FOI law was adopted by Sweden in 1766 but

⁵ The chronology of diffusion is taken from Ibid.. It is based on the year in which FOI law came in power. In most cases the law was actually enacted a year or two prior, and indeed, national debate around the law often dates back decades. It is also important to note that several territories and debated countries, such as Taiwan (2005), were not marked within specific periods because they were not locatable on the mapping software. These countries are noted within each period. The maps were created using free online software available at <http://www.aneki.com/map.php>

⁶ Ibid.

then nothing much else happened (aside from an isolated and questionable legal clause in Colombia in 1888 and a re-adoption in Finland, formally part of Sweden, in 1951) until two centuries later when the United States adopted FOI law in 1966.⁷ In the 1970s and 1980s a handful of countries, culturally, politically, and historically tied to America and Sweden adopted FOI law due to domestic pressures for administrative reform and media freedom and international ‘lesson drawing’ (see 6.3.3 for further discussion of this process). Denmark (1970), Norway (1970), France (1978), the Netherlands (1980), Australia (1982), New Zealand (1983), Canada (1983) and Austria (1987) all fit into this picture. FOI law’s early diffusion was therefore within a limited arena of wealthy, liberal democratic countries.⁸ However, times were changing—the Cold War, which had sustained an ideological division across the international arena since the close of hostilities of World War II, ended in 1989—and FOI law soon found fresh ground abroad amongst transitional democracies.

Figure 3: The Diffusion of FOI law, 1990



⁷ Banisar, "Freedom of Information around the World 2006: A Global Survey of Access to Government Records Laws," 57 and 70.

⁸ There were the outsider cases of Colombia (1888) and later the Philippines (1987), but neither country adopted comprehensive law. They simply provided legal provisions in constitutions or laws that gave credence to the idea of access to government-held information. Ibid., 57 and 122.

Figure 4 below shows the spread of FOI law up until 1995, with the most recent adopters marked in red.⁹ The spread of FOI law in the early 1990s was not quantitatively large but qualitatively important. The law was taken up by still more countries in Europe like Italy (1990), Spain (1992) and Portugal (1993) and Belgium (1994); yet more important was the fact that the law was adopted in two Eastern European countries in 1992—Hungary and Ukraine—that were in the process of realigning with the liberal democratic norms and administrative practices of the West after almost half a century of Soviet influence. Another interesting point is that FOI law made its first modern jump to South America with the adoption of law by Belize in 1994.¹⁰ FOI law's foray into these former-Soviet countries and Third World countries in the early 1990s was a sign of things to come. There was a hint that the law was more than just an isolated reform of richer countries. Global momentum was beginning: what would later be called the 'global movement for freedom of information' began to form.¹¹ Key law reform advocates, like Article 19, the Commonwealth Human Rights Initiative, Privacy International and the Open Society Institute, all began work in the early 1990s (as discussed at 7.3.3).

⁹ Vleugels, "Overview of All FOI Laws."

¹⁰ As mentioned above, Colombia recognized access to information as early as 1888. However, this was only in the form of the Code of Political and Municipal Organization, which allowed individuals to request documents held in government agencies and archives, unless release of these documents was specifically forbidden by another law. This provision is not an FOI law. Banisar, "Freedom of Information around the World 2006: A Global Survey of Access to Government Records Laws," 58.

¹¹ Blanton, "The Openness Revolution: The Rise of a Global Movement for Freedom of Information."

Figure 4: The Diffusion of FOI Law, 1995

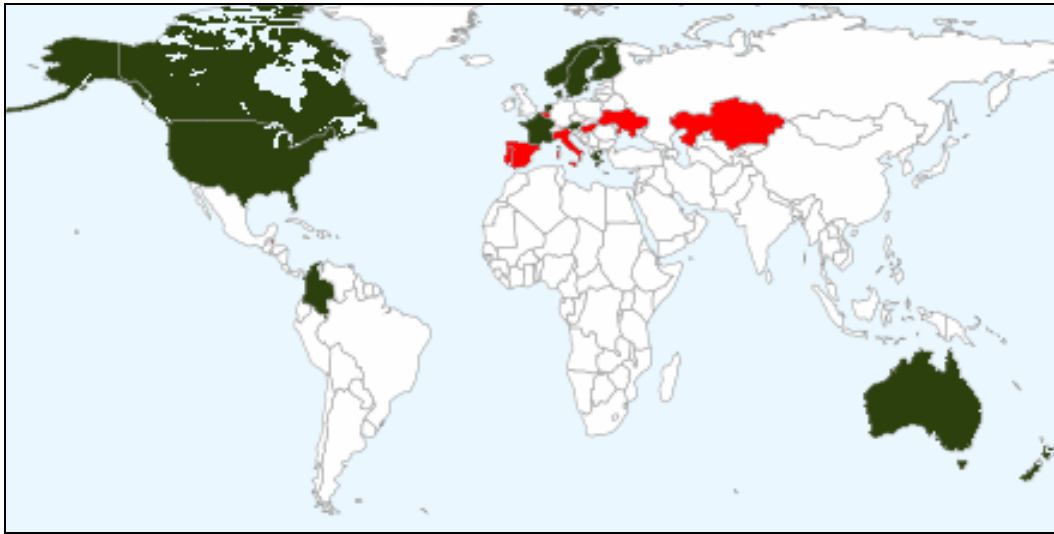


Figure 5 below shows the adoption of FOI law up until 2000.¹² In the second half of the 1990s FOI law was adopted in a more widespread fashion, by countries mostly scattered around peripheral Europe and parts of Asia. Iceland, Lithuania, Ireland, Latvia, the Czech Republic, Albania, Georgia and Greece all adopted FOI law between 1995 and 1999, many as part of a shift in civilization away from Eastern Soviet integration towards Western liberal integration. South Korea, Thailand and Japan in Asia also adopted FOI law, due to anti-corruption, freedom of speech and consumer protection campaigns.¹³ Access law was taken up also by Israel in the Middle East and the former British colony of Trinidad and Tobago in the Caribbean region. If the first half of the 1990s hinted at the possibility of FOI law gaining ground outside a handful of wealthy countries, then the second half of the 1990s demonstrated the possibility of it. The ‘global movement for freedom of information’ continued to develop, building networks and campaigning for reform. At the outset of the twenty-first century FOI law was diffusing quicker than ever before.

¹² Vleugels, "Overview of All FOI Laws."

¹³ K. H. Youm, "Freedom of Expression and the Law: Rights and Responsibilities in South Korea," *Stanford Journal of International Law* 123 (2002)., K. Prokati, "Information Access and Privacy Protection in Thailand" (paper presented at the Conference of Freedom of Information and Civil Society in Asia, Japan, 2001). L. Repeta, "The Birth of Freedom of Information Act in Japan: Kanagawa 1982," (Cambridge: MIT-Japan Program, 2003).

Figure 5: The Diffusion of FOI Law, 2000

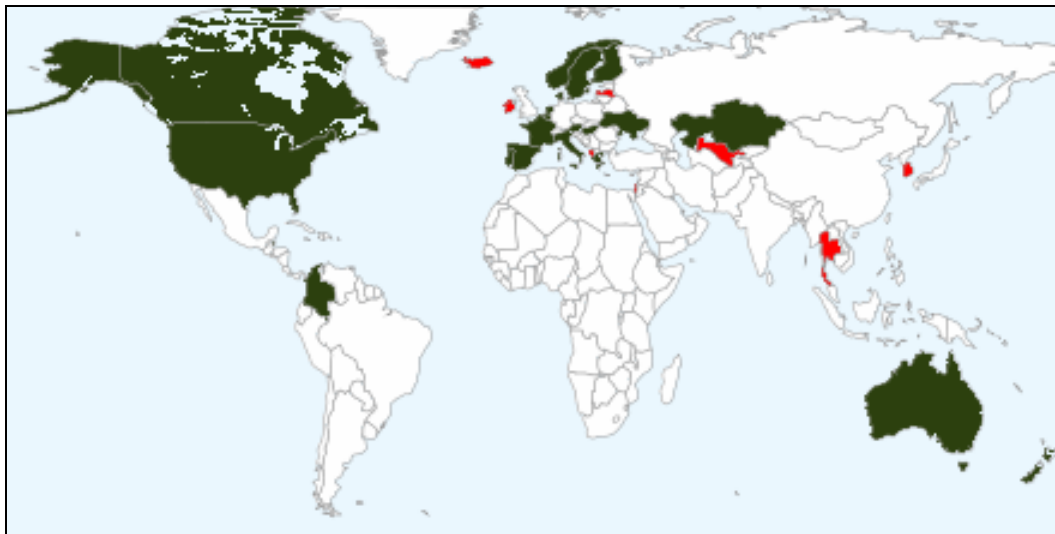


Figure 6 below shows the diffusion of FOI law up until 2005.¹⁴ FOI law was adopted more frequently in the five year period from 2000 to 2005 when compared with any other equivalent period in the past. *The initial twenty five adopters of FOI law took roughly two centuries to take up the law, from 1766 to 1997; whereas the law was adopted at the start of the twenty first century by an estimated twenty five countries over a period of roughly three years, from the start of 2000 to the end of 2003.*¹⁵ Ackerman and Sandoval-Ballesteros explained in 2006 that almost two thirds—around 60%—of all existing (national) FOI law was passed *after* 1999.¹⁶ Backed up by the now well developed ‘global movement for freedom of information’ with new, powerful supporters within the post-Cold War global political economy, like the World Bank, the United Nations Educational, Scientific and Cultural Organization, and the United Nations Development Programme, alongside a growing array of local and regional supporters, FOI law went from strength to strength. In the first five years of the twenty-first century FOI law affirmed its place in almost every region of the globe, from South America, through to Sub-Sahara Africa, up to Eastern Europe and into Asia,

¹⁴ Vleugels, "Overview of All FOI Laws."

¹⁵ Ibid.

¹⁶ Ackerman and Sandoval-Ballesteros, "The Global Explosion of Freedom of Information Laws," 98. They based their figure on a 2004 edition of Banisar, "Freedom of Information around the World 2006: A Global Survey of Access to Government Records Laws."

Figure 6: The Diffusion of FOI Law, 2005

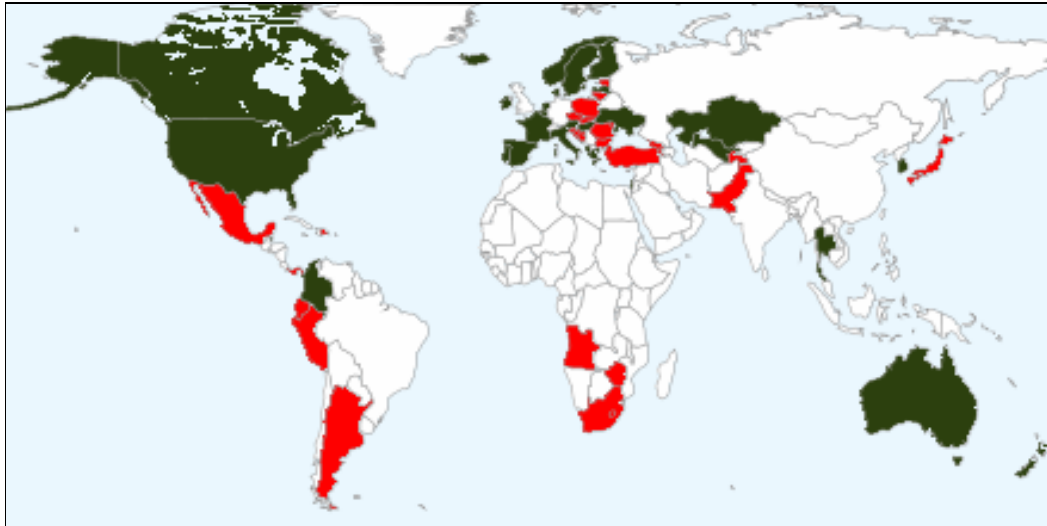


Figure 7 below shows the diffusion of FOI law up until 2010.¹⁷ The spread of FOI law has remained steady and diverse in the years since 2005; local, regional, international and transnational support for the law reform has reached previously unimagined heights across the globe. Back in 2002, Thomas Blanton of the American National Security Archive wrote:

Making good use of both moral and efficiency claims, the international freedom-of-information movement stands on the verge of changing the definition of democratic governance. The movement is creating a new norm, a new expectation, and a new threshold requirement for any government to be considered a democracy. Yet at the same time, the disclosure movement does not even know it is a movement; its members are constantly reinventing the wheel and searching for relevant models.¹⁸

Beyond 2005, it might be safe to say, the ‘global movement for freedom of information’ has identified itself, and has a collective online consciousness that facilitates advocacy and project collaboration.¹⁹ The movement has helped establish a new international norm, recognized by a variety of international and regional bodies, urging governments to adopt and implement a right of citizens to request documents

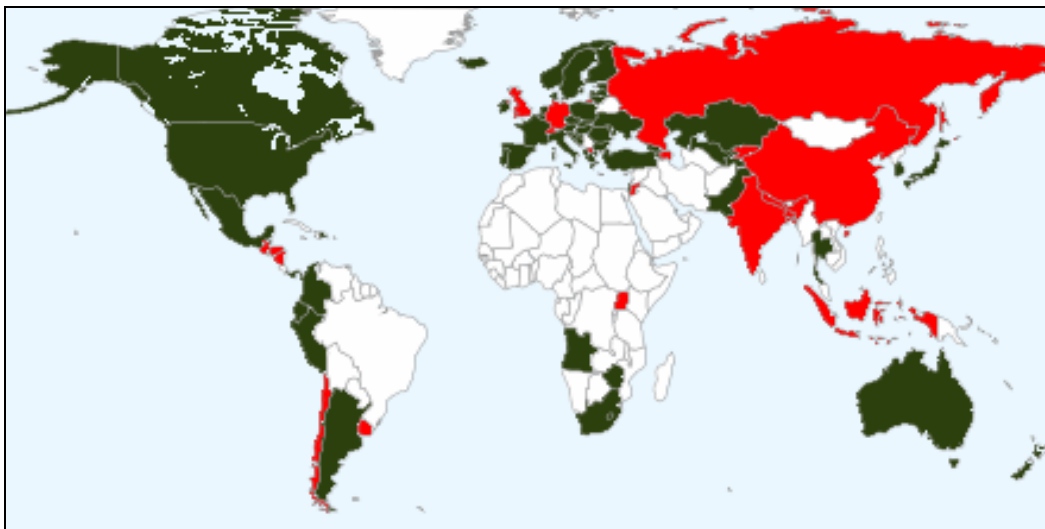
¹⁷ Figure 7 does not include Taiwan (2005) and Cook Islands (2009). Vleugels, "Overview of All FOI Laws."

¹⁸ Blanton, "The Openness Revolution: The Rise of a Global Movement for Freedom of Information," 56.

¹⁹ See for example A. Callamard, "Towards a Third Generation of Activism for the Right to Freedom of Information" (paper presented at the UNESCO World Press Freedom Day, Maputo, Mozambique, 2008).

held by departments and agencies.²⁰ Moreover, both China and India, two populous rising powers, have adopted versions of transparency law (see Chapters Eight and Nine), which suggests this norm has relevance in the current changing geopolitical times.

Figure 7: The Diffusion of FOI Law, 2010



3.3 Similarities and Differences amongst Adopters

The spread of FOI law has been mapped; the gradual diffusion of the law leading into a global explosion has been shown. What remains in this general overview of the diffusion of FOI law is to examine more closely the similarities and differences between adopters (and then non-adopters). The section below examines economic (3.3.1), social (3.3.2) and political (3.3.3) similarities and differences that exist amongst the range of adopter countries. Most strikingly, earlier adopters share a certain profile, as do later adopters, and these profiles contrast: for example, earlier adopters, those who adopted FOI law before the 1990s, are generally regarded (according to the data presented) as more democratic and less corrupt; whereas later adopters, those who adopted in the 1990s and

²⁰ For example in the 2006 case of *Claude v. Chile* the Inter-American Court of Human Rights ‘became the first international tribunal to recognize a basic right of access to government information as an element of the right to freedom of expression.’ Open Society Justice Initiative, “Claude v. Chile,” <http://www.soros.org/initiatives/justice/litigation/chile>, (Date Accessed: 14 March, 2011).

beyond, are generally regarded as less democratic and more corrupt. However, differences aside, data suggests there is a similarity that runs across both early and late adopters: a relatively high level of interconnectedness with the outside world across economic, social and political spheres (see 3.3.4 below).

3.3.1 Economic Similarities and Differences of Adopters

Table 2 below, focused on economic factors, shows the way in which the Gross Domestic Product, Gross National Income Per Capita and economic globalization of adopter countries of FOI law has changed over the years, as the reform has traveled from the rich Western world into poorer parts of the globe. The initial dozen adopters of FOI law took up the reform before the 1990s and these countries all share similarly large economies. The Gross Domestic Product (GDP) of these innovators at the time that they adopted FOI law remains high even by today's standards.²¹ Of the United States and the first eight countries to adopt FOI law after it (those prior to 1990) the average GDP at the time of adoption was certainly above \$100 billion (current US\$).²² Compare that with the fact that following the late 1990s, the GDP of the vast majority of adopting countries barely reaches \$50 billion (current US\$), apart from the occasional large/wealthy adopter, such as Japan (2001), Poland (2002) or Germany (2006). The economic differences between earlier and later adopters of FOI law are not just in terms of scale, but also division.²³ There is a steady decrease in the Per Capita Income level in adopting countries as time progresses, especially after the year 2000; the majority of later adopters appear to barely reach the level of \$5,000 per capita (current US \$) during the year of adoption, aside from those wealthy late adopters such as the United Kingdom, Germany and Switzerland (see Table 2 below). However, in spite of these differences in wealth, all adopters, both earlier and later, appear to share a stable level of relatively strong economic globalization, measured by flows in trade and foreign direct investment and restrictions of import barriers, tariffs and other taxes.²⁴

²¹ This data is provided by the World Bank; see reference at bottom of Table 2.

²² These countries are the United States, Denmark, Norway, France, Australia, New Zealand, Canada, and Austria.

²³ This data is provided by the Work Bank; see reference at bottom of Table 2.

²⁴ Exceptions include Zimbabwe (2002) and India (2003). This data is provided by the KOF Index of Globalization; see reference at bottom of Table 2. All statistical data is necessarily trapped within the

Table 2: Economic Similarities and Differences of Adopters

Year Enforced	Country	GDP (billions)*	GDP Per Capita**	Economic Globalization***
1766	Sweden	...	...	...
1888	Colombia	...	...	...
1951	Finland	...	...	...
1967	United States	3,103 [1981]	13,526 [1981]	...
1970	Denmark	60 [1981]	11,787 [1981]	57
	Norway	62 [1981]	15,333 [1981]	56
1978	France	604 [1981]	10,905 [1981]	53
1980	Netherlands	152 [1981]	10,672 [1981]	79
1982	Australia	195	12,885	49
1983	Canada	333	13,113	68
	New Zealand	23	7,447	52
1986	Greece	54	5,445	60
1987	Austria	123	16,253	62
1990	Italy	1,133	19,983	54
1992	Hungary	37	3,593	54
	Spain	612	15,680	67
	Ukraine	73	1,418	32
1993	Kazakhstan	23	1,433	53
	Portugal	93	9,388	66
1994	Belgium	241	23,882	90
	Belize	0.5	2,752	53
1997	Iceland	7	27,290	68
	Thailand	150	2,473	49
	Uzbekistan	14	623	...
1998	Ireland	8	23,721	95
	Latvia	6	2,746	67
	South Korea	354	7,463	55
1999	Albania	3	1,119	32
	Israel	110	18,088	76
2000	Bulgaria	12	1,601	62
	Czech Republic	56	5,521	78
	Georgia	3	678	50
	Liechtenstein	2	75,583	...
	Lithuania	11	3,267	67
	Moldova	1	354	71
2001	Estonia	6	4,575	87
	Japan	4,095	32,210	54
	Romania	40	1,816	50
	Slovak Republic	30	5,632	71

confines of the subjective criteria defining it. Economic globalization according to the KOF Index of Globalization as well as other measures of globalization discussed within the thesis is measured in a particular way. Usage of the data here does not imply it is the only way of measuring globalization or even the best way.

	South Africa	118	2,638	...
	Trinidad & Tobago	8	6,788	74
2002	Angola	11	754	73
	Bosnia & Herzegov.	6	1,761	51
	Pakistan	72	499	41
	Panama	12	4,006	76
	Poland	198	5,184	57
	Tajikistan	1	194	...
	Zimbabwe	6	503	35
2003	Argentina	129	3,408	55
	Armenia	2	917	62
	Croatia	34	7,690	64
	Kosovo	3	1,919	...
	Mexico	700	6,932	54
	Peru	61	2,261	57
	Slovenia	29	14,560	71
	St Vincent & Gren	0.5	3,572	...
2004	Antigua/Barbuda	1	9,893	...
	Dominican Republic	22	2,346	51
	Ecuador	32	2,527	54
	Jamaica	10	3,842	71
	Serbia	23	3,177	57
	Turkey	392	5,582	60
2005	Azerbaijan	13	1,578	64
	India	830	762	39
	Montenegro	2	3,614	71
	Taiwan	...	...	...
	United Kingdom	2,280	37,859	84
2006	Germany	2,918	35,429	81
	Honduras	10	1,553	69
	Macedonia	6	3,127	61
	Switzerland	391	52,276	81
	Uganda	9	335	44
2007	Jordan	17	3,130	72
	Kyrgyzstan	3	726	57
	Nepal	10	364	30
	Nicaragua	5	1,004	59
2008	China	4,521	3,414	50
2009	Bangladesh	89	551	...
	Chile	163	9,644	...
	Cook Islands	...	...	...
	Guatemala	37	2,661	...
	Uruguay	31	9,420	...
2010	Indonesia	540 [2009]	2,349 [2009]	...
	Russia	1,231 [2009]	8,684 [2009]	...

Notes to Table

* World Bank, Indicators, Economic Policy and External Debt, GDP (current US\$). Accessed 30th April 2011 (<http://data.worldbank.org/indicator/NY.GDP.MKTP.CD>).

** World Bank, Indicators, Economic Policy and External Debt, GDP per capita (current US\$). Accessed 30th April 2011 (<http://data.worldbank.org/indicator/NY.GDP.PCAP.CD>).

*** KOF Index of Globalization, Economic Globalization, variables: Trade (percent of GDP), Foreign Direct Investment flows (percent of GDP, Foreign Direct Investment stock (percent of GDP), Portfolio Investment (percent of GDP), Income Payments to Foreign Nationals (percent of GDP), Hidden Import Barriers, Mean Tariff Rate, Taxes on International Trade (percent of current revenue), Capital Account Restrictions. Accessed 30th April 2011 (<http://globalization.kof.ethz.ch/>).

3.3.2 Social Similarities and Differences amongst Adopters

Table 3 below, focused on social factors, shows the way in which the human development, media freedom and social globalization of adopting countries of FOI law has changed over the years. The Human Development Index, engineered by the United Nations Development Programme, is derived by a composition of statistics for life expectancy, education and GDP.²⁵ The index divides countries into ‘Very High’, ‘High’, ‘Medium’ and ‘Low’ human development. Of the United States and the eight countries that adopted FOI after it (prior to 1990) most enjoyed a ‘Very High’ level of human development at the time of adoption.²⁶ This trend is followed by a more frequent status of ‘High’ and ‘Medium’ human development amongst adopters in later years. The uneven social liberties across earlier and later adopters are also evident in media freedom. The *Freedom of the Press* survey by Freedom House measures and combines the legal, political and economic environment of the press within a country to gauge media freedom on a yearly basis; countries are then ranked according to the categories of ‘Free’, ‘Partly Free’ and ‘Not Free’.²⁷ Early adopters typically exhibit a ‘Free’ status, while later adopters typically exhibit a ‘Partly Free’ or ‘Not Free’ status, especially after the year 2000. But again, these social differences amongst waves of adopters are met with a similarity in interconnectedness: social globalization, as measured by levels of international tourism, internet users, and trade in newspapers and books, is relatively strong amongst all adopters of the law reform.²⁸

²⁵ See reference at bottom of Table 3.

²⁶ These countries are the United States, Denmark, Norway, France, Australia, New Zealand, Canada, and Austria.

²⁷ See reference at bottom of Table 3.

²⁸ Exceptions include Pakistan (2002), Tajikistan (2002), Zimbabwe (2002), India (2003) and Uganda (2005). This data provided by the KOF Index of Globalization; see reference at bottom of Table 3.

Table 3: Social Similarities and Differences of Adopters

Year Enforced	Country	Human Development*	Press Freedom**	Social Globalization***
1766	Sweden	...	...	...
1888	Colombia	...	...	...
1951	Finland	...	...	...
1967	United States	...	...	...
1970	Denmark	...	...	60
	Norway	...	...	55
1978	France	...	...	47
1980	Netherlands	Very High	F	76
1982	Australia	Very High [1980]	F	77
1983	Canada	Very High [1980]	F	82
	New Zealand	Very High [1980]	F	65
1986	Greece	High [1985]	F	32
1987	Austria	Very High [1990]	F	81
1990	Italy	Very High	F	60
1992	Hungary	High [1990]	F	72
	Spain	High [1990]	F	68
	Ukraine	High [1990]	...	28
1993	Kazakhstan	High [1995]	PF	26
	Portugal	High [1995]	F	63
1994	Belgium	Very High [1995]	F	82
	Belize	...	F	42
1997	Iceland	Very High [1995]	F	84
	Thailand	High [1995]	PF	44
	Uzbekistan	...	NF	28
1998	Ireland	Very High [2000]	F	75
	Latvia	High [2000]	F	61
	South Korea	Very High [2000]	F	49
1999	Albania	High [2000]	PF	34
	Israel	Very High [2000]	F	64
2000	Bulgaria	High	F	53
	Czech Republic	Very High	F	79
	Georgia	...	PF	45
	Liechtenstein	...	...	79
	Lithuania	High	F	61
	Moldova	High	PF	52
2001	Estonia	Very High	F	71
	Japan	Very High	F	53
	Romania	High	PF	50
	Slovak Republic	Very High	F	75
	South Africa	...	F	43
	Trinidad & Tobago	High	F	58
2002	Angola	Medium	NF	16
	Bosnia & Herzegov.	...	PF	47

	Pakistan	Medium	PF	36
	Panama	High	F	56
	Poland	Very High	F	73
	Tajikistan	High	NF	23
	Zimbabwe	Low	NF	30
2003	Argentina	Very High	PF	48
	Armenia	High	NF	42
	Croatia	Very High	PF	68
	Kosovo	...	...	...
	Mexico	High	PF	53
	Peru	High	PF	42
	Slovenia	Very High	F	71
	St Vincent & Gren	...	F	53
2004	Antigua/Barbuda	...	PF	65
	Dominican Republic	High	PF	51
	Ecuador	High	PF	49
	Jamaica	High	F	59
	Serbia	...	...	58
	Turkey	High	NF	49
2005	Azerbaijan	High	NF	52
	India	Medium	PF	28
	Montenegro	Very High	...	55
	Taiwan	...	F	...
	United Kingdom	Very High	F	87
2006	Germany	Very High	F	84
	Honduras	High	PF	48
	Macedonia	...	PF	63
	Switzerland	Very High	F	92
	Uganda	Medium	PF	23
2007	Jordan	High	NF	64
	Kyrgyzstan	High	NF	56
	Nepal	Medium	PF	23
	Nicaragua	High	PF	48
2008	China	High	NF	53
2009	Bangladesh	Medium	NF [2008]	...
	Chile	Very High	F [2008]	...
	Cook Islands	...	...	...
	Guatemala	High	PF [2008]	...
	Uruguay	Very High	F [2008]	...
2010	Indonesia	High	PF [2008]	...
	Russia	High	NF [2008]	...

Notes to Table

* United Nations Development Programme, Human Development Index Trends. Accessed 30th April 2011 (<http://hdrstats.undp.org/en/indicators/74.html>).

** Freedom House, Freedom of the Press. Accessed 30th April 2011 (<http://www.freedomhouse.org/template.cfm?page=251&year=2008>).

*** KOF Index of Globalization, Social Globalization, variables: Telephone Traffic, Transfers (percent of GDP), International Tourism, Foreign Population (percent of total population), International letters (per

capita), Internet Users (per 1000 people), Television (per 1000 people), Trade in Newspapers (percent of GDP), Number of McDonald's Restaurants (per capita) Number of Ikea (per capita) and Trade in books (percent of GDP). Accessed 30th April 2011 (<http://globalization.kof.ethz.ch/>).

3.3.3 Political Similarities and Differences amongst Adopters

Table 4 below, focused on political factors, shows the way in which the democratic status, perceived corruption levels and political globalization of adopter countries has changed with time. The story that runs across economic and social factors amongst adopters is evident in an examination of political factors: there are marked contrasts in liberal democratic structures and perceived corruption amongst earlier and later adopters balanced by a shared level of relatively strong political globalization. To begin with, the combined level of political liberties and civil liberties within a country are measured in Freedom House's *Freedom in the World Survey* and given a ranking of 'Free', 'Partly Free' or 'Not Free'.²⁹ Table 4 shows there has been a gradual shift in the character of political and civil liberties within adopter countries. The trend is initially one of 'Free' but gradually shifts to one of 'Partly Free' and 'Not Free'. This perceived change in the political landscape of adopters is also seen in the level of perceived corruption within adopters. The Corruption Perception Index is based on the opinion of business leaders and analysts and constructed by Transparency International.³⁰ The scores of adopters of FOI law indicate significant corruption in adopters since 1996, when the survey began; the only countries that appear to break the trend are developed countries late to adopt FOI law, like the United Kingdom, Switzerland and Germany.³¹ Earlier and later adopters of FOI law generally have contrasting political systems with varying levels of liberal democracy and corruption, and yet there is a consistently stable level of relatively strong political globalization, measured by factors like the number of embassies in a country, membership to international organizations, and participation in international treaties, across most adopters.³²

²⁹ See reference at bottom of Table 4.

³⁰ See reference at bottom of Table 4.

³¹ Earlier adopters in the developed world, like the United States and New Zealand, would have presumably shown similar scores to these later adopting cousins.

³² Exceptions include Belize (1994), Georgia (1999), Moldova (2000) and Macedonia (2006). This data is provided by the KOF Index of Globalization; see reference at bottom of Table 4.

Table 4: Political Similarities and Differences of Adopters

Year Enforced	Country	Freedom*	Corruption**	Political Globalization***
1766	Sweden	...	...	...
1888	Colombia	...	...	...
1951	Finland	...	...	...
1967	United States	...	...	...
1970	Denmark	...	...	89
	Norway	...	...	82
1978	France	F	...	96
1980	Netherlands	F	...	94
1982	Australia	F	...	85
1983	Canada	F	...	90
	New Zealand	F	...	66
1986	Greece	F	...	69
1987	Austria	F	...	90
1990	Italy	F	...	86
1992	Hungary	F	...	76
	Spain	F	...	91
	Ukraine	PF	...	44
1993	Kazakhstan	PF	...	19
	Portugal	F	...	89
1994	Belgium	F	...	98
	Belize	F	...	33
1997	Iceland	F	...	68
	Thailand	PF	3	71
	Uzbekistan	NF	...	32
1998	Ireland	F	8	86
	Latvia	F	2	40
	South Korea	F	4	79
1999	Albania	PF	2	60
	Israel	F	7	59
2000	Bulgaria	F	3	87
	Czech Republic	F	4	84
	Georgia	PF	...	35
	Liechtenstein	F	...	28
	Lithuania	F	4	63
	Moldova	PF	3	28
2001	Estonia	F	6	63
	Japan	F	7	87
	Romania	F	3	88
	Slovak Republic	F	4	78
	South Africa	F	5	80
	Trinidad & Tobago	PF	5	49
2002	Angola	NF	2	45
	Bosnia &	PF	...	66

	Herzegov.			
	Pakistan	NF	3	87
	Panama	F	3	55
	Poland	F	4	92
	Tajikistan	NF	...	35
	Zimbabwe	NF	3	68
2003	Argentina	F	3	93
	Armenia	PF	3	40
	Croatia	F	4	76
	Kosovo	...	...	...
	Mexico	F	4	72
	Peru	F	4	80
	Slovenia	F	6	76
	St Vincent & Gren	F	...	29
2004	Antigua/Barbuda	F	...	31
	Dominican Republic	F	3	71
	Ecuador	PF	2	79
	Jamaica	F	3	70
	Serbia	...	...	67
	Turkey	PF	5	91
2005	Azerbaijan	NF	2	51
	India	F	3	89
	Montenegro	...	...	62
	Taiwan	F	6	...
	United Kingdom	F	9	71
2006	Germany	F	8	92
	Honduras	PF	3	66
	Macedonia	PF	3	30
	Switzerland	F	9	93
	Uganda	PF	3	71
2007	Jordan	PF	5	87
	Kyrgyzstan	PF	2	68
	Nepal	PF	3	70
	Nicaragua	PF	3	58
2008	China	NF	4	86
2009	Bangladesh	PF	...	...
	Chile	F	...	...
	Cook Islands	...	...	...
	Guatemala	PF	...	...
	Uruguay	F	...	...
2010	Indonesia	F	...	...
	Russia	NF	...	...

Notes on Table

* Freedom House, Freedom in the World. Access 30th April 2011 (<http://www.freedomhouse.org/template.cfm?page=363&year=2008>).

** Transparency International, Corruption Perception Index. Accessed 30th April 2011 (http://www.icgg.org/corruption.cpi_2008.html).

*** KOF Index of Globalization, Political Globalization, variables: Embassies in Country, Membership in International Organizations, Participation in U.N. Security Missions, and International Treaties. Accessed 30th April 2011 (<http://globalization.kof.ethz.ch/>).

3.3.4 Overall Similarities and Differences amongst Adopters

Across economic, social and political spheres there is generally a clear contrast between earlier adopters in the West and later adopters around the world. Earlier adopters, those that adopted FOI law before the 1990s, generally have higher levels of GDP and Per Capita income, higher levels of human development and media freedom, as well as higher levels of liberal democracy and lower levels of perceived corruption. While, on the other hand, later adopters, those that took up FOI law in the 1990s and after, generally have lower levels of GDP and Per Capita income, lower levels of human development and media freedom, alongside lower levels of liberal democracy and higher levels of perceived corruption. There are naturally exceptions to these trends. Particularly noticeable exceptions are a handful of late adopters in the West, like the United Kingdom, Switzerland and Germany.

But in spite of the apparent economic, social and political contrasts amongst the range of adopters, all seem to share a similarity of interconnectedness across the same spheres. In fact, FOI adopters, on average, demonstrate above average levels of economic, social and political globalization. Table 5 below compares the average level of economic, social and political globalization per country for all countries included in the survey in the year 2000 with the overall average level of the same factors within adopters of FOI law at the time of adoption.³³ The contrast in average globalization begins at a small margin on economic globalization, but that margin widens with social globalization and certainly with political globalization. Adopters of FOI law appear more interconnected than the average country, which suggests that the probability of the adoption of FOI law is facilitated by increased levels of interconnectedness. Indeed, Table 6 shows adoption (shaded in grey) amongst the most globalized countries of the world in 2006. It shows that of the most economically, socially and politically interconnected countries, the vast majority have adopted FOI law. This is a factor

³³ Swiss Federal Institute of Technology, "KOF Index of Globalization," <http://globalization.kof.ethz.ch/>, (Date Accessed: 21 September, 2011).

considered by the theoretical foundation adopted in the thesis with reference to the changing relationship between the state apparatus and society amid emergent global networks (see Chapter Five, especially 5.3 and 5.4)

Table 5: Comparative Levels of Globalization: Average versus Adopter, 2000

	Economic Globalization	Social Globalization	Political Globalization
2000 Country Average	60.12	56.12	62.7
Overall Average of Adopters	63.5	62.22	70.91

Table 6: Adoption amongst Most Globalized Countries, 2006

Rank	Economic	Social	Political
1	Singapore	Luxembourg	France
2	Luxembourg	Switzerland	Italy
3	Ireland	Ireland	Belgium
4	Malta	Antigua and Barbuda	Austria
5	Belgium	Cyprus	Sweden
6	Netherlands	Singapore	Spain
7	Estonia	Austria	Switzerland
8	Hungary	Grenada	Canada
9	Bahrain	Belgium	United States
10	Sweden	Malta	Poland
11	Cyprus	New Zealand	Netherlands
12	Czech Republic	Canada	Egypt, Arab Rep.
13	Denmark	Slovenia	Denmark
14	Chile	Netherlands	Germany
15	New Zealand	Denmark	Argentina
16	Israel	Sweden	Greece
17	Portugal	Estonia	Brazil
18	Finland	United Kingdom	Portugal
19	Slovak Republic	Bahamas, The	Turkey
20	Austria	Iceland	India

3.4 Difference between Adopters and Non-adopters

The most consistent factor amongst adopters are high levels of economic, social and political globalization, as the overall assessment above reveals, and this may suggest that high levels of globalization are a common causal factor in the adoption of the law within the cases and that, therefore, this common causal factor may be nonexistent or diminished in non-adopters. The final brief section of this chapter tests this possibility and finds some truth to it. Table 7 below highlights the low rate of adoption (shaded in grey) amongst the least economically, socially and politically globalized countries in the world.³⁴ It demonstrates, especially when compared to Table 6 (above) of the most globalized countries in the world, the vast majority of the least globalized countries in the world do not have transparency law. This then supports the conclusion that globalization, increased interconnectedness, whether economic, social or political, is a key causal factor in the adoption of transparency reform.

³⁴ Ibid.

Table 7: Adoption amongst Least Globalized Countries, 2006

Rank	Economic	Social	Political
1	Rwanda	Myanmar	French Polonesia
2	Niger	Niger	New Caledonia
3	Iran, Islamic Rep.	Congo, Rep.	Macao, China
4	Nepal	Central African Republic	Maldives
5	Bangladesh	Bangladesh	Macedonia, FYR
6	Ethiopia	Sierra Leone	Myanmar
7	Burundi	Mali	Antigua and Barbuda
8	Burkina Faso	Ethiopia	Grenada
9	Benin	Chad	Suriname
10	Kenya	Nepal	Cape Verde
11	Yemen, Rep.	Tanzania	Lesotho
12	Central African Republic	Uganda	Swaziland
13	Madagascar	Nigeria	Seychelles
14	Senegal	Rwanda	Botswana
15	Belarus	Burundi	Burundi
16	Sierra Leone	Sudan	Belarus
17	Haiti	Madagascar	Barbados
18	Tanzania	Yemen	Tajikistan
19	Malawi	Cambodia	Congo, Rep.
20	India	Papua New Guinea	Oman

3.5 Conclusion

The general overview of the diffusion of FOI law provided in this chapter first mapped the gradual spread of the law across the world in different periods and then looked at the economic, social and political similarities and differences amongst adopters and between adopters and non-adopters. This information identifies trends associated with the central research question of the thesis but it does not provide any answers, it only flags interesting points of consideration in explaining the diffusion of the law. For example, why did the law initially emerge in eighteenth century Sweden? What instigated the re-emergence of the law two centuries later, in the twentieth century, in the United States? Why did the law proliferate so dramatically at the dawn of the twenty-first century? How can the contemporary proliferation of the law in connection with high levels of globalization amongst adopters be explained? In the next chapter, existing explanations of the diffusion of FOI law that attempt to address these questions and others are

presented and critiqued in a manner that draws out largely implicit theoretical foundations and corresponding assumptions of socio-political change.

4: THEORETICAL FOUNDATIONS OF CURRENT EXPLANATIONS

4.1 Introduction

The two previous chapters set the basis for the thesis by defining FOI law, positioning the current study within the FOI literature, mapping the diffusion of the law and contrasting similarities and differences between adopters and non-adopters. This chapter, in contrast to those that came before, marks the beginning of a new phase. It begins the two stage process of *examining* and *selecting* variable socio-legal understandings of the diffusion of FOI law that draw on theoretical foundations from the social sciences. The current chapter conducts the first step in this process: it *examines* theoretical foundations within existing explanations of the diffusion of FOI law. It identifies a ‘modernization foundation’ and an ‘agent foundation’ throughout current explanations. Each of these foundations have their own strengths and limitations. Generally, the ‘modernization foundation’ provides a platform for understanding the context of adoption, whereas the ‘agent foundation’ provides a platform for understanding the conduct of adoption.

This chapter is divided into four sections. Section one argues the most appropriate way to critique current explanations for the diffusion of the law is to examine the explicit and implicit theoretical assumptions that inform analysis and then suggests current explanations can be generally grouped under two broad theoretical foundations: the ‘modernization foundation’ and the ‘agent foundation’. Section two of the chapter examines and assesses the ‘modernization foundation’ and corresponding approaches to explaining the diffusion of FOI law. Section three does the same for the ‘agent foundation’ and corresponding approaches to explaining the diffusion of FOI law. The

foundations are shown to have a variety of unique strengths and weaknesses. However, the final section of the chapter critiques the two dominant theoretical foundations collectively with reference to their shared ‘traditional’ notion of social and political theory; the end of the chapter highlights the promise for a ‘critical turn’ in foundations for understanding the diffusion of FOI law.

4.2 Drawing Out Assumptions of Current Explanations

A handful of studies address the diffusion of FOI law, and these studies can be collated according to type or form, as there are identifiable types of studies that contribute in different ways to the literature (4.2.1). For example, some studies are more ‘issue specific’ than others that attempt to provide thorough ‘explanation’ (4.2.1). But the socio-legal roots of the thesis provide a means of moving beyond the mere form of studies to examine the routinely implicit basic prepositions and assumptions of socio-political change shared between various forms of studies within existing research (4.2.3). The thesis argues there are two basic theoretical platforms that inform current research: the ‘modernization foundation’ (see 4.3 below) and ‘agent foundation’ (see 4.4 below). These foundations constitute the current body of mutually incompatible alternative theoretical foundations with contrasting assumptions of socio-political change to understanding the diffusion of FOI law.¹

4.2.1 Collating Existing Explanations

The first step to critiquing current studies of the diffusion of FOI law is to collate the forms of study. This involves moving beyond the mere *content* of studies (i.e. the impact of recent efforts to combat corruption in the public sector, or increased interconnectedness) to examine the *form* of studies, especially their type/author and approach. From this perspective, literature on the diffusion of FOI law to date can be broken down into four categories of form, as shown below in Table 8. As the table shows, these forms or categories of study, under which current studies can be categorized,

¹ P. K. Feyerabend, *Against Method: Outline of an Anarchistic Theory of Knowledge* (London: Humanities Press, 1975), 30.

include: 'laundry list', 'reform advocate', 'single issue' and 'explanation', which are all briefly examined in turn below.

Table 8: Forms of Study in Current Diffusion Research

Laundry List	Reform Advocate	Single Issue	Explanation
Banisar (2006) Snell (2006) Hood (2006) Callamard (2008)	Article 19 (2002) OSJI (2003) OECD (2005)	Florini (1999) Blanton (2002) Michener (2006, 2009) Puddephatt (2009)	Bennett (1991, 1997) Grigorescu (2003) Bugdahn (2007) Pinto (2009) Darch and Underwood (2010) Berliner (2011)

The first category of study on the diffusion of FOI law is what Christopher Hood refers to as the 'laundry list.'² This form is in fact less a form of study and more a form of reportage. 'Laundry list' analysis occurs when authors point to a variety of 'factors' in the diffusion of FOI law as they mention the law's spread in their research.³ For example, Agnes Callamard, in a 2008 study of the evolution of activism for the right to information, wrote that post-Cold War democratization, a growth in the number and impact of civil society actors, the development of international human rights, the aftershock of preventable catastrophes and the emergence of international pressure associated with corruption and good governance have all contributed to increased demands for information and the proliferation of FOI law.⁴ Similarly, David Banisar highlights the effect of corruption and scandal, the emergence of international pressure, and the development of modernization and information society as important factors for adoption of FOI law.⁵ 'Laundry list' analysis does not represent a singular attempt to examine the diffusion of FOI law but an attempt to simply, briefly address it, and such analysis therefore tends to borrow heavily from other forms of study.

² Hood, "Beyond Exchanging First Principles? Some Closing Comments," 215..

³ Banisar, "Freedom of Information around the World 2006: A Global Survey of Access to Government Records Laws," 17-18, Callamard, "Towards a Third Generation of Activism for the Right to Freedom of Information", 5-7, Snell, "Freedom of Information Practices," 292. Hood, "Beyond Exchanging First Principles? Some Closing Comments," 215-17.

⁴ Callamard, "Towards a Third Generation of Activism for the Right to Freedom of Information", 5-6.

⁵ Banisar, "Freedom of Information around the World 2006: A Global Survey of Access to Government Records Laws," 17-18.

Another, more direct, form of study on the diffusion of the law has been the 'reform advocate' type.⁶ This category of study consists of periodic updates on the progress of adopters by influential non-government advocacy groups and others campaigning for the widespread adoption of transparency. For instance, the Inter-American Dialogue, an American-based regional think tank, produced a report of conference papers on the situation of access to information in Latin America and the Caribbean.⁷ Academics, activists and officials wrote on the impact of international standards, and the progress and experience of particular countries.⁸ But perhaps the most prominent producer of 'reform advocate' studies is Article 19, the international non-government organization influential in advocacy for the global diffusion of access law.⁹ Article 19 has been involved in collaborative updates on access to information in South Asia and produced updates on Central Asia, and Central and Eastern Europe; these studies tend to be supportive but critical and empirical in nature; they focus on commitments under international law, the history of efforts to implement law, and challenges faced by activists.¹⁰

The third category of study on the diffusion of FOI law is the 'single issue' type.¹¹ Here the focus of study begins to narrow, relative to 'laundry list' and 'reform advocate' studies. Authors, typically activists/academics, approach the law from the perspective of an influential 'factor' such as anti-corruption or interconnectedness; the most frequent being the influence of civil society groups and the development of a global advocacy

⁶ See for example: Inter-American Dialogue, "Access to Information in the Americas," (Washington: 2003), Open Society Justice Initiative, "The Rising Tide: Freedom of Information in Southeast Europe," (2003).

⁷ Inter-American Dialogue, "Access to Information in the Americas."

⁸ Ibid.

⁹ For example: Article 19, "Under Lock and Key: Freedom of Information and the Media in Armenia, Azerbaijan and Georgia.", Article 19 et al., "Global Trends on the Right to Information: A Survey of South Asia," (London: 2001).

¹⁰ Article 19, "Promoting Practical Access to Democracy: A Survey of Freedom of Information in Central and Eastern Europe.", ———, "Under Lock and Key: Freedom of Information and the Media in Armenia, Azerbaijan and Georgia.", Article 19 et al., "Global Trends on the Right to Information: A Survey of South Asia."

¹¹ Blanton, "The Openness Revolution: The Rise of a Global Movement for Freedom of Information.", Puddephatt, "Exploring the Role of Civil Society in the Formulation and Adoption of Access to Information Laws: The Cases of Bulgaria, India, Mexico, South Africa and the United Kingdom.", Florini, "Does the Invisible Hand Need a Transparency Glove? The Politics of Transparency", Organisation for Economic Co-operation and Development, "Public Sector Modernisation: Open Government," in *Policy Brief* (2005).

movement, but corruption and democratization are also common issues.¹² For example, Thomas Blanton examined the diffusion of FOI law in terms of the 'rise of a global movement for freedom of information' in a 2002 study.¹³ He writes that national competition for political power was fundamental to the adoption of FOI law in the past, but, he suggests, since post-Cold War globalization, international advocacy, and the subsequent development of international standards, have overshadowed national factors.¹⁴ 'Single issue' studies of the diffusion of FOI law provide a substantial degree of explanatory power in the manner that they identify and explain the impact of a particular factor in the diffusion of the law, although they generally suffer from the empiricist tendencies of the FOI literature (see 2.4).

The final form of FOI diffusion study approaches the diffusion of FOI law from an explanatory academic perspective.¹⁵ This form of study is the most comprehensive of the four forms. The 'explanation' form is a type produced by isolated academics, each using variable academic traditions to address the diffusion of the law. For example, Colin Bennett has sought to understand the processes of diffusion not only behind FOI law, but administrative reform in general, by presenting alternative explanations linked to modernization and policy transfer.¹⁶ On the other hand, Alexandru Grigorescu has sought to understand the diffusion of FOI law and public sector transparency through a focus on institutional dynamics, especially between the national and international arena.¹⁷ He 'emphasizes the mechanisms through which governments adopt institutions supporting transparency in order to signal to their societies and to external actors that the information

¹² See for example: E. M. Hampton, "Freedom of Information in Post-Communist Countries: Case Studies of the Czech Republic, Croatia and Bosnia and Herzegovina" (Masters, University of North Carolina, 2007).

¹³ Blanton, "The Openness Revolution: The Rise of a Global Movement for Freedom of Information."

¹⁴ Ibid.: 16.

¹⁵ Bennett, "How States Utilize Foreign Evidence.", ———, "Understanding Ripple Effects: The Cross-National Adoption of Policy Instruments for Bureaucratic Accountability.", A. Grigorescu, "European Institutions and Unsuccessful Norm Transmission: The Case of Transparency," *International Politics* 39, no. 4 (2002), Grigorescu, "International Organizations and Government Transparency: Linking the International and Domestic Realms.", Pinto, "Transparency Policy Initiatives in Latin America: Understanding Policy Outcomes from an Institutional Perspective.", S. Bugdahn, "Does the EU Stifle Voluntary Policy Transfer? A Study of the Introduction of Freedom of Information in Portugal and Ireland," *Public Administration* 85, no. 1 (2007).

¹⁶ Bennett, "How States Utilize Foreign Evidence.", ———, "Understanding Ripple Effects: The Cross-National Adoption of Policy Instruments for Bureaucratic Accountability."

¹⁷ Grigorescu, "International Organizations and Government Transparency: Linking the International and Domestic Realms."

they offer is indeed credible.’¹⁸ ‘Explanation’ studies of the diffusion of FOI law are important to the thesis as they present minor attempts to comprehensively understand the (contemporary) rise of FOI law; and they provide the platform for moving beyond examining mere forms of study to critique the often implicit fundamental assumptions informing current studies. The theoretical foundations found to inform ‘explanation’ studies may be extrapolated with reference to the other forms of study, such as ‘single issue’ and ‘reform advocate’, to provide the ground needed for a common theoretical critique.

4.2.2 Critiquing Existing Explanations

The categorization of current studies on the diffusion of FOI law presented above is useful, but only to a degree. The categories allow for the ability to move through the literature on the diffusion of transparency law to pinpoint specific contributions. These contributions range from the relatively shallow repetition of plausible factors (laundry list), to more original and specific research (reform advocate/single issue), through to more ambitious academic attempts to explain the spread of the law (explanation). However, these categories have an important limitation, especially with reference to the socio-legal goal of the thesis. An important aim of the thesis is to bring an element of theoretical concern into study of the diffusion of the law and yet the four categories presented above do not allow for an examination of the shared theoretical assumptions that inform existing research and subsequently the manner in which the law’s diffusion is understood. Therefore there is a need to move deeper to examine the theoretical foundations that inform existing analysis. The otherwise largely implicit assumptions that inform current analysis must be drawn out in order to get to the otherwise unrecognized theoretical foundations that inform how the diffusion of FOI law has been understood to date.

Research is never a value free endeavor. Researchers inevitably bring a degree of subjectivity into the collection and analysis of information. Even within the most objective of social scientific approaches, those that attempt to mirror the natural sciences, individual researchers make decisions continuously about where to start and where to

¹⁸ Ibid.: 643.

finish, what to include and what not to include.¹⁹ All authors influence their research by the prepositions and assumptions they bring, whether they are consciously reflexive about it or not. This is evident within the literature on the diffusion of FOI law, especially in the case of ‘reform advocate’ studies, which typically involve a purely subjective empirical (and normative) assessment of the progress or otherwise of FOI law within certain countries or regions.²⁰ These studies understand and approach the diffusion of FOI law within a particular, although implicit, subjective reformist way informed by the fundamental principles and assumptions of the advocate researchers. However, this implicitness of assumptions is not confined to ‘reform advocate’ studies: a large proportion of research on the diffusion of FOI law is silent on the basic foundations that inform research, although there are several studies conscious of assumptions and theories.

A number of studies on the diffusion of FOI law that fall into the category of academic ‘explanation’ are explicitly theoretical. For example, Bennett places the diffusion of FOI law within the framework of modernization theory, which presents an evolutionary view of society and the state moving from ‘traditional’ to ‘modern.’²¹ He argues: ‘States at the same level of development face similar problems to which there are a limited number of feasible solutions. The sequential adoption of similar responses [like FOI law] is then explained in terms of system-level socio-economic characteristics.’²² However, Bennett concludes that the modernization approach fails to adequately explain the diffusion of the law.²³ He suggests instead that it may be more advantageous to view diffusion within a framework focusing on international communication and learning, and indeed a number of more recent studies have taken up the viewpoint with a degree of theory.²⁴ For instance, Juliet Pinto approaches the adoption of transparency law from a

¹⁹ D. Sanders, "Behaviouralism," in *Theory and Methods in Political Science*, ed. D. Marsh and G. Stoker (London: Palgrave Macmillan, 2002), 54-55.

²⁰ See for example Article 19, "Promoting Practical Access to Democracy: A Survey of Freedom of Information in Central and Eastern Europe."

²¹ Bennett, "How States Utilize Foreign Evidence.", ———, "Understanding Ripple Effects: The Cross-National Adoption of Policy Instruments for Bureaucratic Accountability."

²² Bennett, "How States Utilize Foreign Evidence," 31.

²³ ———, "Understanding Ripple Effects: The Cross-National Adoption of Policy Instruments for Bureaucratic Accountability," 223.

²⁴ Pinto, "Transparency Policy Initiatives in Latin America: Understanding Policy Outcomes from an Institutional Perspective." Bugdahn, "Does the EU Stifle Voluntary Policy Transfer? A Study of the Introduction of Freedom of Information in Portugal and Ireland." Grigorescu, "European Institutions and

‘new institutionalist’ perspective that focuses on ‘how policy outcomes relate to societal preferences, structures of policymaking entities, and predilections of policymakers themselves.’²⁵

The theoretically informed literature by Bennett and others provides a starting point from which to understand the implicit foundations throughout the literature on the diffusion of FOI law. The theory conscious scholars present two basic theoretical perspectives: the first is a ‘modernization foundation’ that focuses on the growth and evolution of state institutions, while the second is an ‘agent foundation’ that focuses on the role of competing actors/institutions. The vast majority of important FOI diffusion studies—‘explanation’, ‘single issue’ and ‘reform advocate’ studies, but not ‘laundry list’ studies because they tend to recycle factors from the other forms—can be understood in this manner, as embodying assumptions and prepositions that place them within the realm of one of these two theoretical foundations, as Table 9 below shows. The studies that fall into each foundation share a common view on social change and legal reform. The two foundations provide contrasting sociologies of law, contrasting ways of looking at the process of social, political and legal change: the theoretical foundations provide contrasting viewpoints on ‘the forms of legal thought and reasoning as they relate to a particular political economic order.’²⁶

Unsuccessful Norm Transmission: The Case of Transparency.", ———, "International Organizations and Government Transparency: Linking the International and Domestic Realms."

²⁵ Pinto, "Transparency Policy Initiatives in Latin America: Understanding Policy Outcomes from an Institutional Perspective," 46. Pinto draws this approach from: H. Galperin, "Beyond Interests, Ideas and Technology: An Institutional Approach to Communication and Information Policy," *Information Society* 20 (2004).

²⁶ Milovanovic, *An Introduction to the Sociology of Law*, 4.

Table 9: Form and Foundation within Current Diffusion Research

Form	Modernization Foundation	Agent Foundation
Explanation	Bennett (1997)	Bennett (1991) Grigorescu (2003) Bugdahn (2007) Pinto (2009) Darch and Underwood (2010) Berliner (2011)
Single Issue	Florini (1999)	Blanton (2002) Michener (2006, 2009) Puddephatt (2009)
Reform Advocate	OECD (2005)	A19 (2002) OSJI (2003)

The two largely implicit theoretical foundations to the diffusion of FOI law identifiable within the literature are principally divided across structure/agent lines. The modernization foundation views legal reform in *context*, while the agent foundation views it in *conduct*.²⁷ In the first instance, a number of studies are set within a macro evolutionary perspective of socio-political change (as discussed below at 4.3).²⁸ These studies draw from an ontology of structural functionalism that understands social and political change with reference to a form of socio-political evolution inherent within capitalism that leads to political development and modernization (see 4.3.1); and from this perspective FOI law is driven by capitalist development (4.3.2). On the other hand, a number of studies are set within an exchange perspective of socio-political change (as elaborated at 4.4 below).²⁹ These studies draw from an ontology of rational exchange theory that explains social and political change with reference to bargaining and negotiation between social actors (see 4.4.1); and from this perspective FOI law is driven by competing actors (4.4.2). These predominant foundations for explaining the diffusion of FOI law (and public sector transparency) are now examined in turn.

²⁷ Stuart McAnnulla writes: 'Over a number of years various prominent social scientists have suggested that the 'structure—agency' question is the most important theoretical issue within the human sciences.' S. McAnnulla, "Structure and Agency," in *Theory and Methods in Political Science*, ed. G. Stoker and D. Marsh (Houndmills: Palgrave Macmillan, 2002), 271.

²⁸ N. Goodman and G. T. Marx, *Society Today* (New York: Random House, 1978), 41-46.

²⁹ *Ibid.*, 36-41.

4.3 Modernization Foundation

A variety of studies on the diffusion of FOI law share Bennett's preposition that the law reform may be driven by structural modernization processes.³⁰ These studies focus on macro systems and the context of adoption. They view the diffusion of the law in relation to capitalism and development; they suggest transparency reform is the outcome of the evolution of social and political relations under capitalism. In the following section the roots of the modernization approach to socio-political change are first presented (see 4.3.1 below). This is followed by a closer look at studies informed, either explicitly or implicitly, by the 'modernization foundation' (4.3.2 below): explanations of the diffusion of FOI law that tend to hold modernisation assumptions focus, amongst other things, on socio-economic development, the importance of liberal democratic practices in the post-Cold War environment and the rise of global capitalism. Finally the section ends with a critical assessment of the value of the foundation (4.3.3).

4.3.1 Modernization Theory: Socio-Economic and Political Development

Modernization theory embodies ontological assumptions about progress and modernity. The theory, which originated in American sociology and economics of the 1960s, adopts an evolutionary structural perspective of social change.³¹ Talcott Parsons, an influential sociologist of the movement, argued the modern type of society has a single evolutionary origin but that its 'inner momentum' destined it to overcome all previously existing social systems.³² Modernization theory supports the proposition that countries naturally progress under capitalist economic growth and industrialization, from 'traditional' to 'modern' in the direction of 'modernity'; defined as an arrangement of social, economic and political traits, including certain open attitudes to the world, an industrial market economy and specific political institutions, such as the nation-state and mass

³⁰ See for example Florini, "Does the Invisible Hand Need a Transparency Glove? The Politics of Transparency". Organisation for Economic Co-operation and Development, "Public Sector Modernisation: Open Government."

³¹ In a manner similar to other theoretical foundations, modernization theory actually provides a variety of perspectives. See: D. Harrison, *The Sociology of Modernization and Development* (London: Routledge, 1988), 1-62. P. W. Preston, *Development Theory: An Introduction* (Oxford: Blackwell Publishers, 1996).

³² N. Gilman, *Mandarins of the Future: Modernization Theory in Cold War America* (Baltimore: The Johns Hopkins University Press, 2003), 88.

democracy.³³ According to the theory, political democracy and FOI law are essentially a functional outcome of the modernization process.³⁴

The key independent variable of modernization theory that explains change and reform in society and the state is 'development.'³⁵ It is only with development that reform and the progression of modernity is made possible. This development is found in two distinct fields of human activity: there is socio-economic development, and there is political development.³⁶ Socio-economic development, measured as increasing capitalist wealth, industrialization and urbanization within a country, is considered the root of social change.³⁷ Without socio-economic development countries are destined to remain in a pre-modern state of affairs. However, in addition to socio-economic development, progress, especially with regards to the state, necessitates political development, a process of transformation within governing institutions that involves the 'state-building', 'nation-building', 'institutional-building' and 'bureaucracy-building' required to construct modern nation-states and political democracy.³⁸

³³ A. Giddens, *Conversations with Anthony Giddens: Making Sense of Modernity* (Stanford: Stanford University Press, 1998). For influential studies in modernization see: A. Inkeles and D. H. Smith, *Becoming Modern: Individual Change in Six Developing Countries* (London: Heinemann Educational, 1975), D. C. McClelland, *The Achieving Society* (New York: Free Press, 1967), W. W. Rostow, *The Stages of Economic Growth: A Non-Communist Manifesto* (Cambridge: University Press, 1971). For a comprehensive analysis see: M. Waters, ed., *Modernity: Critical Concepts*, vol. 1 - 4 (London: Routledge, 1999).

³⁴ D. E. Apter, *The Politics of Modernization* (Chicago: University of Chicago Press, 1965), A. F. K. Organski, *The Stages of Political Development* (New York: Knopf., 1967). On the relationship between modernization and democratization see: J. Grugel, *Democratization: A Critical Introduction* (London: Palgrave Macmillan, 2002), 46-67. D. Potter, "Explaining Democratization," in *Democratization*, ed. D. Potter, et al. (Cambridge: Polity Press, 1997).

³⁵ H. Bernstein, "Modernization Theory and the Sociological Study of Development," *Journal of Development Studies* 7, no. 2 (1971).

³⁶ See for example D. Jaffee, *Socio-Economic Development Theory*, 2nd ed. (Westport: Praeger Publishers, 1998), 83-117.

³⁷ M. P. Todaro and S. C. Smith, *Economic Development*, 10th ed. (Boston: Pearson Addison Wesley, 2008), D. Ray, *Development Economics* (Princeton: Princeton University Press, 1998), D. Perkins, S. Radelet, and D. Lindauer, *Economics of Development*, 6th ed. (New York: W. W. Norton & Company, 2006).

³⁸ W. I. Robinson, *Promoting Polyarchy: Globalization, US Intervention and Hegemony* (Cambridge: Cambridge University Press, 1996), 47. Political development involves secularization, differentiation, equality and capacity. See: C. H. Dodd, *Political Development* (London: Macmillan Press, 1972). A. A. Gabriel and G. B. Powell, *Comparative Politics: A Developmental Approach* (Boston: Little, Brown, 1966). A. Diamant, "Political Development: Approaches to Theory and Strategy," in *Approaches to Development*, ed. J. D. Montgomery and W. J. Siffin (New York: McGraw-Hill, 1966). L. W. Pye, "The Concept of Political Development," *The Annals of the American Academy of Political and Social Science* 358 (1965).

Socio-economic development and political development share an intimate relationship. Modernization theorists initially believed that socio-economic development within countries overwhelmingly influenced change and inevitably lead to the emergence of Western style institutions, especially liberal democracy.³⁹ The view held was that ‘the more well-to-do a nation, the greater the chances that it will sustain democracy.’⁴⁰ From this view reform and the adoption of FOI law is the natural outcome of socio-economic development. However, modernization theorists began to believe that socio-economic development did not necessarily entail a linear progression towards modern Western political institutions.⁴¹ Therefore new states would need to pursue political development alongside socio-economic development in order to ensure the proper construction of liberal democratic institutions, considered the most suitable political system for advanced industrial societies, according to modernization theorists.⁴² From this view countries pursue liberal democratic reform alongside economic growth as part of an overall progression towards modernity. Such reform might involve institutional reform or other policies aimed at structural alteration, such as the introduction of universal suffrage, or FOI law.

4.3.2 Modernization and FOI law

Two basic approaches to the diffusion of FOI law have emerged that are informed by the foundation of modernization theory and its focus on socio-economic and political development. The first approach, provided mainly by ‘explanation’ studies, views the diffusion of the law as part of a process of stage-by-stage development.⁴³ From this perspective countries adopt the law only at a certain stage of development, when unique problems arise. This is a relatively rudimentary perspective that seems restricted by the narrow view that socio-economic development determines political and legal reform. The second approach drawing from modernization assumptions, provided mainly by ‘single

³⁹ P. Cammack, *Capitalism and Democracy in the Third World: The Doctrine of Political Development* (London: Leicester University Press, 1997), 37.

⁴⁰ S. M. Lipset, "Some Social Requisites of Democracy: Economic Development and Political Legitimacy," *The American Journal of Political Science Review* 53, no. 1 (1959): 75.

⁴¹ Cammack, *Capitalism and Democracy in the Third World: The Doctrine of Political Development*, 37.

⁴² J. E. Lane and S. Ersson, "Unpacking the Political Development Concept," *Political Geography Quarterly* 8, no. 2 (1989).

⁴³ See Bennett, "How States Utilize Foreign Evidence."

issue' and 'reform advocate' studies, moves beyond any such rudimentary understanding to explain the adoption of transparency law within the context of both socio-economic and political development within the post-Cold War global economy.⁴⁴ From this perspective the diffusion of the law has been driven in recent years by attempts around the world, especially within developing countries, to pursue socio-economic and political development.

The rudimentary modernization explanation for the diffusion of FOI law suggests the reform might simply form part of a stage of development. From this perspective FOI law is adopted by countries at a certain point of progression—a high point of progression—along the continuum from low to high socio-economic development. Bennett, for example, suggests, in an 'explanation' study, that the diffusion of FOI law could be seen as 'the by-product of socio-economic or technological forces.'⁴⁵ In other words, as already indicated, Bennett argues: 'States at the same level of development face similar problems to which there are a limited number of feasible solutions. The sequential adoption of similar responses [like FOI law] is then explained in terms of system-level socio-economic characteristics.'⁴⁶ But for this statement to hold true, all adopter countries should exhibit the same level of socio-economic development at the time of their adoption.

Bennett tested the theory in a 1997 study that looked at the spread of FOI law (amongst similar administrative reforms) within richer countries of similar socio-economic development—all were members of the Organization for Economic Co-operation and Development (OECD).⁴⁷ Bennett was especially interested in the potential relationship between expanding state apparatuses and increasing democratization within developed countries as representative of a certain level of socio-economic development.⁴⁸

⁴⁴ See Florini, "Does the Invisible Hand Need a Transparency Glove? The Politics of Transparency". Organisation for Economic Co-operation and Development, "Public Sector Modernisation: Open Government."

⁴⁵ Bennett, "How States Utilize Foreign Evidence," 31.

⁴⁶ Ibid. Also see ———, "Understanding Ripple Effects: The Cross-National Adoption of Policy Instruments for Bureaucratic Accountability."

⁴⁷ The list includes Sweden, Finland, Denmark, Norway, New Zealand, the United Kingdom, France, Portugal, Australia, Austria, Ireland, Netherlands, Spain, the United States, Canada, Luxembourg, Germany, Iceland, Japan, Belgium, Switzerland, Greece, Italy and Turkey.

⁴⁸ Bennett, "Understanding Ripple Effects: The Cross-National Adoption of Policy Instruments for Bureaucratic Accountability," 219-33.

He anticipated a correlation between growth in the public sector and political democracy and the adoption of FOI law.⁴⁹ However, Bennett found that neither a growth in government or democracy was sufficient to explain the spread of access law; he explains:

we can only conclude that a basic commitment to liberal democratic governance is probably a necessary condition for the adoption of these instruments. But again, this does not constitute a sufficient condition of adoption, nor does it help us understand the pattern of diffusion observed.⁵⁰

Indeed, the rudimentary modernization approach to the diffusion of FOI law that views adoption of the law reform in the context of a particular stage of development in a certain country is only helpful to an extent. It is a perspective that helps explain the earliest innovators of FOI law: those that adopted the reform prior to 1990, such as the United States, Denmark, Australia and Canada (as shown at 3.2). These innovators were all developed countries with modern liberal democratic institutions at the time of adoption. They all appear to have adopted the reform at a certain stage of high development. However, the explanatory power of the rudimentary modernization approach begins to fail in the 1990s, when, as shown in the previous chapter, a range of lesser developed countries began adopting the reform (see 3.2). These adopters were clearly not of the same level of development as the pre-1990s adopters (see 3.3). Therefore we can say the assumption that adoption must occur at a certain stage of development is not mirrored in the contemporary diffusion of the law within the developing world. The assumption is also not supported by the fact that the law initially emerged in mid-eighteenth century Sweden, which was an agrarian country in the process of becoming a nation-state.⁵¹

Moving beyond the rudimentary perspective of FOI law as part of a particular stage in development, other studies that tend to draw implicitly from the 'modernization foundation' have placed the spread of FOI law within the context of socio-economic and political development in the post-Cold War global economy.⁵² From this perspective the

⁴⁹ Ibid.

⁵⁰ Ibid.: 223.

⁵¹ B. J. Nordstrom, *The History of Sweden* (Westport: Greenwood Press, 2002), 31-63.

⁵² For example: Florini, "Does the Invisible Hand Need a Transparency Glove? The Politics of Transparency". Organisation for Economic Co-operation and Development, "Public Sector Modernisation: Open Government."

diffusion of the law is seen as part of a post-Cold War 'liberal consensus' on the importance of information flows as an aspect of increasing integration between states and markets within the global economy.⁵³ Thomas Blanton in 2002 wrote:

we are entering a new era, in which international standards and expectations of openness play a more important role than particular local political quarrels. In fact, today we are beginning to see an extraordinary interaction between freedom of information and the globalization phenomenon. The new liberal consensus holds that transparency in governments and markets is essential, not merely to prevent corruption... but also to ensure democratic participation, especially by civil society and interest group "stakeholders".⁵⁴

Information flows are seen as a critical aspect of socio-economic and political development within the global political economy. For example, former Vice President and Chief Economist of the World Bank, Joseph Stiglitz suggests that access to information is required across the globe in order to ensure stability and progress in the functioning of free markets and liberal democratic government.⁵⁵ He explains that 'information asymmetries', which are situations in which information is unnecessarily withheld due to the possibility of benefiting from it at the expense other parties, skews markets and governments and leads to negative outcomes such as inappropriate prices and costs, as well as bias public policy.⁵⁶ 'Information asymmetries', Stiglitz suggests, skew development practices in socio-economic and political spheres. Stiglitz generally advocates for freedom of information, like, for instance, in the case of the United States Securities and Exchange Commission, which requires the disclosure of certain types of information in the private sector; but he emphasizes the need for access to government-held information, especially given that government departments and agencies are often 'the major source of relevant and timely information.'⁵⁷

Modernization studies on the diffusion of FOI law have placed emphasis on the importance of information flows in contemporary development. In a paper prepared for

⁵³ Blanton, "The Openness Revolution: The Rise of a Global Movement for Freedom of Information," 16.

⁵⁴ Ibid.

⁵⁵ Stiglitz, "Transparency in Government." J. Stiglitz, "On Liberty, the Right to Know, and Public Discourse: The Role of Transparency in Public Life," in *Globalizing Rights*, ed. Matthew Gibney (Oxford: Oxford University Press, 2003).

⁵⁶ Stiglitz, "Transparency in Government," 28.

⁵⁷ Ibid., 31.

the 1999 Annual World Bank Conference on Development Economics, Ann Florini suggested, in a 'single issue' study, that the law reform has been driven on the global stage by an instrumental necessity placed on states to reduce information asymmetries and increase information sharing in order to ensure the proper functioning of markets and government.⁵⁸ She noted there is increasing pressure from bodies central to the global economy, like the International Monetary Fund (IMF), on both firms and governments to adopt transparency measures like FOI law in an effort to reduce instability, crisis and corruption.⁵⁹ In the private sector international standards on the disclosure of company information have grown and in the public sector governments are routinely required to regularly publish economic data and adopt transparency measures, such as FOI law.⁶⁰ Florini points out that the spread of transparency measures across the private and public sectors is seen as part of an evolving modernized system of 'good governance' by the dominant institutions of the global economy that help direct global law reform processes and the diffusion of transparency law (see 7.3.2 on such support within the global political economy).⁶¹

Other studies focus more directly on political development in the public sector corresponding to a contemporary model of governance supported within the global economy. From this perspective the law forms part of a new paradigm in public sector thinking that began to emerge in the 1980s, but gained more ground in the 1990s.⁶² At that time, 'governance' came to replace 'government' with reference to public authority, which signified 'a change in the meaning of government, referring to a *new* process of governing; or a *changed* condition of ordered rule.'⁶³ The new model, often referred to under the banner of 'good governance', positions government as the first among equals within a range of interdependent organizations, both state and non-state, that function

⁵⁸ Florini, "Does the Invisible Hand Need a Transparency Glove? The Politics of Transparency".

⁵⁹ Ibid., 10-22.

⁶⁰ M. Siraj, "Exclusion of Private Sector from Freedom of Information Laws: Implications from a Human Rights Perspective," *Journal of Alternative Perspectives in the Social Sciences* 2, no. 1 (2010): 218-21.

⁶¹ Florini, "Does the Invisible Hand Need a Transparency Glove? The Politics of Transparency", 5.

⁶² This paradigm includes the rise of New Public Management, marked especially by the influential work of D. Osborne and T. Gaebler, *Reinventing Government: How the Entrepreneurial Spirit Is Transforming the Public Sector* (New York: Penguin, 1993).

⁶³ R. A. W. Rhodes, "The New Governance: Governing without Government," *Political Studies* 44 (1996): 652-53.

within networks to produce and implement public policies and services.⁶⁴ 'Good governance' promotes decreasing state interference in social and economic spheres, alongside increasing government responsiveness, accountability and openness.⁶⁵ The OECD has been especially vocal on the importance of FOI law as an aspect of contemporary political development.⁶⁶ It has reported regularly in 'reform advocate' studies on the importance of transparency in government, which, it reports, is now required in order to suit the needs of changing social and commercial environments that have become well-educated, critical, independent, technologically-oriented, global and aware.⁶⁷ Public sector transparency also helps prevent corruption and mismanagement, according to the OECD, which views FOI law as an imperative of public sector modernization.⁶⁸

The complex modernization approach (as opposed to the rudimentary stage-by-stage approach) to the diffusion of FOI law has significant explanatory power. While the rudimentary modernization approach that confines the adoption of the law reform within a stage-by-stage understanding of development is not supported by the contemporary diffusion of the law into the developing world, the complex modernization approach, which explains increased adoption of transparency law with reference to a growing push to liberalize information flows in the public sector as part of a socio-economic and political development within the post-Cold War global economy, appears to be supported by the evidence. As demonstrated in the previous chapter (3.3.4 and 3.3.5), adopters of FOI law, on average, are more globalized and interconnected than non-adopters. The complex modernization approach explains this particularly with reference to post-Cold War political development corresponding to the needs of changing societies and the

⁶⁴ Ibid. On the emergence of 'governance' and 'good governance' see T. G. Weiss, "Governance, Good Governance and Global Governance: Conceptual and Actual Challenges," *Third World Quarterly* 21, no. 5 (2000). S. Agere, *Promoting Good Governance: Principles, Practices and Perspectives* (London: Commonwealth Secretariat, 2000).

⁶⁵ See for example Agere, *Promoting Good Governance: Principles, Practices and Perspectives*.

⁶⁶ Organisation for Economic Co-operation and Development, "Public Sector Modernisation: The Way Forward," in *Policy Brief* (2005). ———, "Public Sector Modernisation: Open Government." and ———, "Public Sector Transparency and International Investment Policy," (Directorate for Financial, Fiscal and Enterprise Affairs, 2003). ———, ed., *Public Sector Transparency and Accountability: Making It Happen* (Paris: OECD, 2002).

⁶⁷ Organisation for Economic Co-operation and Development, "Public Sector Modernisation: Open Government," 2-3.

⁶⁸ Ibid.

global economy. Conversely, by the same logic, countries that have not adopted FOI law, such as those within Africa and the Middle East (as shown at 3.2.1, Figure 1: Banisar's 2011 Map of FOI Law), can be understood to be less susceptible to pressures associated with contemporary global modernization.

4.3.3 Assessment of the Modernization Foundation

Explanations of the diffusion of FOI law that draw from a modernization foundation have benefits but they also have important limitations. There is clearly a correlation between socio-economic development and the diffusion of FOI law evident by the data presented in the previous chapter. The law was initially adopted amongst a relatively small group of developed countries (see 3.2) and the modernization foundation offers an understanding of this in terms of how socio-economic development may facilitate political development and the adoption of transparency law. Moreover, there is also a correlation between the level of globalization of states and the adoption of FOI law (3.3) and the modernization foundation provides an understanding for this in terms of recent efforts to promote information flows as an aspect of socio-economic and political development within the post-Cold War global economy. However, in spite of these strengths, the modernization foundation to explaining the diffusion of FOI law is restrictive.

Perhaps the strongest, most important, criticism of explanations of the diffusion of FOI law informed by modernization assumptions is that they tend to be uncritical. For instance, Florini argues the necessities of the global economy are an important factor in the spread of FOI law and transparency, but in doing so she does not provide a historical understanding of the politics or power relations of such transparency.⁶⁹ A much more critical and historical perspective is provided by Stephen Gill.⁷⁰ Gill suggests that the diffusion of transparency reforms, such as FOI law, within the context of deepening global capitalism must be seen less in terms of openness and empowerment and more in terms of surveillance and control.⁷¹ He argues the proliferation of transparency measures has occurred alongside the rise of 'disciplinary neo-liberalism' and a 'global panopticon' aimed at ensuring stability across the global economy, within states, within society,

⁶⁹ Florini, "Does the Invisible Hand Need a Transparency Glove? The Politics of Transparency".

⁷⁰ Gill, "The Global Panopticon? The Neoliberal State, Economic Life and Democratic Surveillance." ———, *Power and Resistance in the New World Order*, 181-210.

⁷¹ Gill, "The Global Panopticon? The Neoliberal State, Economic Life and Democratic Surveillance."

within civil organizations, within firms and, perhaps even, within the organizations, like the IMF, that act as guardians of the contemporary global system.⁷²

The uncritical nature of modernization explanations of the diffusion of FOI law stems from an inherent weaknesses of modernization theory. The modernization foundation, which aims at objectivity in analysis, suffers from a blend of reductionism and universalism that has been heavily critiqued by contemporary post-modern theorists.⁷³ The evolutionary structural foundation of modernization theory and corresponding approaches to the diffusion of FOI law tend to view change and reform as merely synchronic transformation driven by development.⁷⁴ The foundation is therefore uncritical and tends also to discount the roles played by social actors and power relations within the spread of access law. For example, modernization theory and explanations of the diffusion of FOI law that draw from it do not provide a basis upon which to properly understand or examine the voluntary human agency evident within the evolution of the 'global freedom of information movement.'⁷⁵

4.4 Agent Foundation

A variety of studies of the diffusion of FOI law begin, whether implicitly or explicitly, with the proposition that social actors are the most important factor in spread of the law.⁷⁶ These studies focus on micro actors and the conduct of adoption. They draw from a foundation focused on agency. The 'agent foundation' differs from the 'modernization foundation' principally on the importance of structures and systems: the agent foundation largely rejects the modernization assumption that structures of modernity are essential for

⁷² Ibid. The term panopticon is borrowed from an eighteenth century proponent of transparency, Jeremy Bentham. Bentham devised the panopticon as a model prison building in which watching guards have a central vantage point to view any prisoner at any time. However, prisoners cannot know for sure if they are being watched or not. A degree of self-control is therefore incorporated into the system as prisoners attempt to behave, unsure of whether or not they are being watched. Michel Foucault offers a critical view of the Bentham's idea and its implications for power and control: M. Foucault, *Discipline and Punishment: The Birth of the Prison*, trans. A. Sheridan (New York: Vintage Books, 1995), 195-231.

⁷³ Gilman, *Mandarins of the Future: Modernization Theory in Cold War America*, 241-77.

⁷⁴ M. Lane, "Introduction," in *Structuralism: A Reader*, ed. M. Lane (London: Jonathan Cape, 1970), 17-18.

⁷⁵ Blanton, "The Openness Revolution: The Rise of a Global Movement for Freedom of Information."

⁷⁶ See for example Pinto, "Transparency Policy Initiatives in Latin America: Understanding Policy Outcomes from an Institutional Perspective." Puddephatt, "Exploring the Role of Civil Society in the Formulation and Adoption of Access to Information Laws: The Cases of Bulgaria, India, Mexico, South Africa and the United Kingdom." Grigorescu, "International Organizations and Government Transparency: Linking the International and Domestic Realms."

FOI law, it argues instead that the role of actors in the spread of the law reform has been paramount. In the following section, the roots and key features of the agent foundation are examined (see 4.4.1 below) before an examination is presented of corresponding studies of the diffusion of the law that tend to focus on the rise of key actors and other organizations associated with the ‘global freedom of information movement’; how they interact with other actors; and how change is produced through a competitive game (see 4.4.2). The section ends with an assessment of the agent foundation (4.4.3).

4.4.1 Agency and Exchange in Change and Reform

The agent foundation is a major perspective within social theory that incorporates a variety of branches.⁷⁷ Of these branches, one in particular appears to fundamentally inform a section of FOI diffusion studies.⁷⁸ Social exchange theory, which emerged in the early 1960s and drew especially from behavioral psychology, understands and explains stability and change within society and the state with reference to negotiated exchanges between various actors and parties.⁷⁹ This ontology of social change rejects the structural progress assumption of modernization theory, provided by modernization scholars such as Parsons, with its undertones of social evolutionism and instead advocates for the importance of ‘subinstitutional’ or ‘elementary’ forms of behavior involved in indeterminate social interaction.⁸⁰ The explanatory domain of the agent foundation is ‘the *actual social behavior* of individuals in direct contact with one another.’⁸¹ The foundation provides the platform upon which the diffusion of FOI law is explained in direct relation to the agency and interaction involved in the promotion and adoption of the law reform.

⁷⁷ Goodman and Marx, *Society Today*, 36-41. M. Waters, *Modern Sociological Theory* (London: Sage Publications, 1994), 15-92.

⁷⁸ The earliest foundational works associated with ‘exchange theory’ were produced by George C. Homans and Peter M. Blau. See G. C. Homans, "Social Behavior as Exchange," *The American Journal of Sociology* 63, no. 6 (1958). P. M. Blau, *Exchange and Power in Social Life* (New York: J. Wiley, 1964).

⁷⁹ Homans, "Social Behavior as Exchange." and Blau, *Exchange and Power in Social Life*.

⁸⁰ In fact George C. Homans, a founding theorist of social exchange theory, who was a colleague of Talcott Parsons at Harvard University, directly attacked Parsonian ‘structural functionalism’ and modernization theory. The stance between Homans and Parsons was representative of a schism in American sociology in the 1960s between structural explanations and agent explanations of society. G. C. Homans, "Bringing Men Back In," *American Sociological Review* 29, no. 6 (1964).

⁸¹ ———, *Social Behavior: Its Elementary Forms* (New York: Harcourt Brace Jovanovich, 1974), 3. Emphasis added.

The key independent variable of the agent foundation is the social actor, who is viewed much like an economic actor.⁸² Social exchange theory holds that no general sociological propositions, such as the modernization proposition that modernity necessitates the evolution of certain structures, are true across all societies and social groups.⁸³ The theory brings the focus on individual motivation and behavior that is inherent to classical economic theory (i.e. the work of Adam Smith and others) into understanding change and stability within societies and from this perspective the essence of human social stability and change is simply exchange in resources of material and symbolic character amongst social actors.⁸⁴ These exchanges are driven by real and potential rewards and costs.⁸⁵ Social activity is therefore comparable to market activity. Social exchange is constituted by purposeful actors who function within the 'configuration of interests and resources' of individuals and groups in a society.⁸⁶ It is through the actions and exchanges of social actors within the 'configuration of interests and resources' over time that change and reform across society and the state occurs.

Social norms and regulations emerge and stabilize over time in response to the collective or aggregate behavior of individuals. Individuals, as well as networks of individuals and groups of individuals, are driven to social exchange of various kinds and directions in part by needs and wants according to interests and resources.⁸⁷ They are also driven by the need to balance power and dependency between actors within a society and from this standpoint change is seen:

as a consequence of various social processes (e.g. coalition formation) in exchange networks and within corporate groups initiated, in part, because of a power imbalance either within the exchange relation (relational power imbalance) or within the exchange network structure (structural power imbalance).⁸⁸

⁸² 'The exchange approach to sociology [is] the economic analysis of noneconomic social situations.' R. M. Emerson, "Social Exchange Theory," *Annual Review of Sociology* 2 (1976): 336.

⁸³ G. C. Homans, "Rational Choice Theory and Behavioral Psychology," in *Structures of Power and Constraint*, ed. M. Meyer and R. Scott (Cambridge: Cambridge University Press, 1990).

⁸⁴ Homans, *Social Behavior: Its Elementary Forms*, 12-13.

⁸⁵ Ibid.

⁸⁶ J. S. Coleman, "Social Theory, Social Research, and a Theory of Action," *The American Journal of Sociology* 91, no. 6 (1986): 1324.

⁸⁷ K. Cook, "Linking Actors and Structures: An Exchange Network Perspective," in *Structures of Power and Constraint*, ed. M. Meyer and R. Scott (Cambridge: Cambridge University Press, 1990), 115-16.

⁸⁸ K. Cook and J. M. Whitmeyer, "Two Approaches to Social Structure: Exchange Theory and Network Analysis," *Annual Review of Sociology* 18: 113.

Change begins when various actors begin to modify and negotiate new exchange relations (for whatever reason); such change then finds a degree of stability within society or the state once the new exchange relation becomes a widely accepted norm or rule.⁸⁹ Studies of the adoption and diffusion of FOI law, from this perspective of socio-political change, therefore necessarily focuses on the motives and actions of social actors who challenge the authority of the state to withhold information and how the actions of these reform-minded actors have produced new access to information norms.

4.4.2 Policy Diffusion, Policy Transfer, Advocates and FOI Law

A body of literature on the diffusion of FOI law has drawn, sometimes implicitly or explicitly, from an agent foundation centered on actors and exchange. First, a range of 'explanation' studies that draw explicitly from an agent foundation focus on the diffusion and transfer of ideas and policies across adopter countries.⁹⁰ These studies systematically examine interaction between various actors and how such interaction contributes to the adoption and diffusion of transparency law. In addition to this 'explanation' research, a number of 'single issue' studies examine the role of specific types of actors in the adoption the law.⁹¹ These studies especially focus on the role of civil society organizations. Finally, there is also a relatively large body of 'reform advocate' studies that record and update the activities of advocacy bodies in the adoption and promotion of FOI law across regions of the globe.⁹²

Several academic studies informed by the agent foundation examine the diffusion of FOI law with reference to 'policy diffusion' and 'policy transfer' (as discussed

⁸⁹ Ibid.

⁹⁰ Darch and Underwood, *Freedom of Information and the Developing World: The Citizen, the State and Models of Openness*. Bennett, "How States Utilize Foreign Evidence." and Bugdahn, "Does the EU Stifle Voluntary Policy Transfer? A Study of the Introduction of Freedom of Information in Portugal and Ireland." Grigorescu, "European Institutions and Unsuccessful Norm Transmission: The Case of Transparency." Pinto, "Transparency Policy Initiatives in Latin America: Understanding Policy Outcomes from an Institutional Perspective."

⁹¹ G. Michener, "Lessons from Media Coverage for the Right-to-Know in Latin America," Freedominfo.org, (Date Accessed: 28th November 2009, 2009). Puddephatt, "Exploring the Role of Civil Society in the Formulation and Adoption of Access to Information Laws: The Cases of Bulgaria, India, Mexico, South Africa and the United Kingdom."

⁹² Article 19 et al., "Global Trends on the Right to Information: A Survey of South Asia." Article 19, "Promoting Practical Access to Democracy: A Survey of Freedom of Information in Central and Eastern Europe."

below).⁹³ The work of Colin Darch and Peter Underwood can be placed into this category, especially with regard to 'policy diffusion.'⁹⁴ Darch and Underwood suggest the diffusion of FOI law can be seen in a similar fashion to how a virus spreads: a few critical cases help to spread the 'sticky' idea within a facilitating environment.⁹⁵ They provide a historical overview dating from the isolated emergence of FOI law in eighteenth century Sweden to the early growth of a global norm in the second half of the twentieth century.⁹⁶ Darch and Underwood emphasize the role played by key social actors within the history of FOI law, especially an early advocate of the reform in eighteenth century Sweden, Anders Chydenius, and contemporary international non-government organizations active across the globe, such as Article 19.⁹⁷ Indeed, Darch and Underwood identify Article 19 and 'a group of specialist international non-government organizations, often working closely with local or national partners who share their ideological disposition' as the 'prime engine of growth' in the diffusion of transparency law.⁹⁸

Similar agent-centered academic studies narrow in more closely from the broad process of diffusion into the actual process of 'policy transfer', which is a process whereby a policy, or idea or experience of a policy, is transferred by actors from one or more jurisdictions to another.⁹⁹ For example, after rejecting the rudimentary stage-by-stage modernization approach to the diffusion of FOI law, Bennett began examining the process of voluntary communication and learning amongst the early, pre-1990 adopters of FOI law with particular interest in the way policy actors learn, borrow, emulate, copy,

⁹³ See for example Adam J. Newmark, "An Integrated Approach to Policy Transfer and Diffusion," *The Review of Policy Research* 19, no. 2 (2002).

⁹⁴ Darch and Underwood, *Freedom of Information and the Developing World: The Citizen, the State and Models of Openness*, 47-91.

⁹⁵ *Ibid.*, 63.

⁹⁶ A similar historical overview is provided by Roberts. Roberts, *Blacked Out: Government Secrecy in the Information Age*, 9-18.

⁹⁷ Darch and Underwood, *Freedom of Information and the Developing World: The Citizen, the State and Models of Openness*, 72-85. See also Lample, "Freedom of Information, a Finnish Clergyman's Gift to Democracy."

⁹⁸ Darch and Underwood, *Freedom of Information and the Developing World: The Citizen, the State and Models of Openness*, 51.

⁹⁹ Bennett, "How States Utilize Foreign Evidence." ———, "Understanding Ripple Effects: The Cross-National Adoption of Policy Instruments for Bureaucratic Accountability." Bugdahn, "Does the EU Stifle Voluntary Policy Transfer? A Study of the Introduction of Freedom of Information in Portugal and Ireland." Grigorescu, "European Institutions and Unsuccessful Norm Transmission: The Case of Transparency."

or 'pinch' foreign policies for local implementation.¹⁰⁰ Bennett suggests the early diffusion of FOI law was propelled in a process whereby policy-makers or advocates in one country could point to another country of similar status with FOI law in order to legitimate their claims for reform; he asserts that the pioneering states, such as Sweden and the United States, were considered 'with great admiration' amongst subsequent adopters and that they functioned as a reference point for those wishing to adopt the reform.¹⁰¹ Bennett provides examples that suggest foreign evidence was often used in policy formation amongst rich countries like the United States, Canada, the United Kingdom, New Zealand, and Australia.¹⁰² However, this process of learning was not always positive. Bennett explains that in both Canada and the United Kingdom evidence of legislation in the United States was utilized; but while policy actors in Canada looked upon American experience as exemplary, policy actors in the United Kingdom generally took the opposite view.¹⁰³

Other studies of policy transfer and FOI law have focused less on the use of evidence by actors involved in transfer and more on the nature of the process. Sonji Bugdahn and Alexandru Grigorescu each examine the spread of FOI law as part of a policy transfer process within countries of the European Union (EU).¹⁰⁴ Bugdahn, who is particularly interested in the 'modes of influence' on policy makers, examines the adoption and implementation of FOI law within Portugal and Ireland in the context of combining 'voluntary transfer' with a coercive directive of the EU (specifically, the 1990 Access to Environmental Information Directive).¹⁰⁵ Bugdahn essentially explores variety in the nature of policy transfer amongst states, which can range from 'coercive', 'negotiated' and 'voluntary.'¹⁰⁶ The study focuses on the overlap between this range and how policy makers are confronted with various costs and benefits in the process of

¹⁰⁰ Bennett, "How States Utilize Foreign Evidence."

¹⁰¹ ———, "Understanding Ripple Effects: The Cross-National Adoption of Policy Instruments for Bureaucratic Accountability," 226-27.

¹⁰² *Ibid.*: 226.

¹⁰³ ———, "How States Utilize Foreign Evidence," 31.

¹⁰⁴ Bugdahn, "Does the EU Stifle Voluntary Policy Transfer? A Study of the Introduction of Freedom of Information in Portugal and Ireland." Grigorescu, "European Institutions and Unsuccessful Norm Transmission: The Case of Transparency."

¹⁰⁵ Bugdahn, "Does the EU Stifle Voluntary Policy Transfer? A Study of the Introduction of Freedom of Information in Portugal and Ireland."

¹⁰⁶ *Ibid.*: 123.

balancing various commitments and transfers. Similarly, Grigorescu examines the spread of FOI law as ‘norm transmission’ facilitated by the EU and other international organizations such as the Council of Europe.¹⁰⁷ He argues such international organizations have been unsuccessful in influencing the adoption of FOI law because the law lacks ‘resonance’ with the foundational norms of the promoting institutions.¹⁰⁸

Academic studies that place the diffusion of FOI within an agent theoretical context of *diffusion* or *transfer* are not the only explicit approaches to examining the diffusion of FOI law from within the agent foundation and its focus on social actors and exchange. The explicitly theoretical diffusion and transfer studies place the diffusion of the law within a framework of understanding with specific meaning on the way innovations like FOI law spread, and on the actions of the individuals and groups that facilitate such diffusion. The diffusion/transfer approach is especially astute in understanding the way in which learning and emulation has been a key aspect of diffusion. It also highlights the push/pull nature of policy transfer within the contemporary era of multi-level governance. However, the agent foundation does not necessitate a diffusion and transfer framework—the motives and/or interaction of actors in the spread of FOI law have been examined from other agent-centered theoretical perspectives.¹⁰⁹

For example, Daniel Berliner adopts a behavioral political science approach to examine the constitution of a ‘transnational advocacy network’ (i.e. the ‘global movement for freedom of information’) that has developed in recent years to support the diffusion of FOI law.¹¹⁰ Amongst other things, Berliner uses sophisticated software to identify central organizations within the network based on weblinks between websites; he also highlights, using quantitative methods, the importance of linkages between local and transnational networks on the apparent strength of law adopted.¹¹¹ From another perspective, Pinto, mentioned in the first section of this chapter, explicitly adopts a ‘new

¹⁰⁷ Grigorescu, "European Institutions and Unsuccessful Norm Transmission: The Case of Transparency."

¹⁰⁸ Ibid.: 479.

¹⁰⁹ In addition see ———, "International Organizations and Government Transparency: Linking the International and Domestic Realms."

¹¹⁰ D. Berliner, "The Strength of Freedom of Information Laws after Passage: The Role of Transnational Advocacy Networks" (paper presented at the 1st Global Conference on Transparency Research, Newark, 2011).

¹¹¹ Ibid.

institutionalist' approach to the way a variety of actors have influenced the initiative of FOI law reform in Mexico and Argentina.¹¹² She examines actors ranging from media professionals, public officers, and non-government organizations, their preferences and how they influence the process of adoption and implementation according to formal and informal 'rules of the game.'¹¹³ She concludes it is difficult to generalize, but that the case studies demonstrate 'the importance of norms, incentive structures, perceived costs and existing arrangements in determining communication policy.'¹¹⁴ In words that echo Bennett on the adoption of FOI law within country A as a source of legitimacy for reformists in country B, Pinto anticipates:

as more civil society groups and access advocates seek to realize and implement workable access laws to provide mechanisms of transparency in regions historically plagued by corruption, secrecy and particularistic control of information, understanding shared and disparate influences affecting passage can illuminate strategic pathways for future endeavors.¹¹⁵

The academic studies examined until now present various explicit approaches drawn from the agent foundation; however there are also a range of research studies that draw implicitly from the same foundation. Unlike academic 'explanation' studies, this research does not attempt to understand the motives and actions of multiple actors within the process of change and reform on a theoretical level; it focuses instead more closely on the empirical and normative activity and importance of specific actors. On the one hand, several 'single issue' studies examine the role played by specific types of actors, such as media outlets or civil society organizations, in the adoption and diffusion of FOI law.¹¹⁶ On the other hand, an array of 'reform advocate' research produced by the actual social actors involved in campaigning for reform catalogues and updates the activities

¹¹² Pinto, "Transparency Policy Initiatives in Latin America: Understanding Policy Outcomes from an Institutional Perspective."

¹¹³ Ibid.: 46.

¹¹⁴ Ibid.: 70.

¹¹⁵ Ibid.: 71.

¹¹⁶ Michener, "Lessons from Media Coverage for the Right-to-Know in Latin America." Puddephatt, "Exploring the Role of Civil Society in the Formulation and Adoption of Access to Information Laws: The Cases of Bulgaria, India, Mexico, South Africa and the United Kingdom.". See also Ackerman and Sandoval-Ballesteros, "The Global Explosion of Freedom of Information Laws," 119-23.

and successes of activists.¹¹⁷ Both of these implicitly agent-oriented approaches are now briefly examined in turn.

Certain types of social actors have received attention in ‘single issue’ studies on the diffusion of FOI law due to their apparent influence in reform. These actors include media outlets, civil society organizations and international organizations, although non-government organizations of civil society are the most frequently highlighted within the literature.¹¹⁸ By placing pressure on governments to adopt transparency law, amongst other things, these organizations have been critical in the contemporary diffusion of access law.¹¹⁹ Andrew Puddephatt conducted a study on the impact civil society organizations have had on the process of adoption and implementation of FOI within Bulgaria, India, Mexico, South Africa and the United Kingdom.¹²⁰ Puddephatt, who refers to FOI laws as access to information laws (or ATI), explains that the organizations have contributed in a number of ways by:

advocating for ATI legal reform; building popular support for ATI and helping create and focus the demand for information; participating in the process of drafting and shaping legislation and lobbying members of the legislative process; helping citizens understand ATI and how to use legal rights of access; training public officials in the handling of information requests; promoting awareness of best practices, both nationally and internationally; monitoring the implementation of ATI laws; and helping citizens use ATI legal rights to achieve wider social goals.¹²¹

¹¹⁷ Article 19 et al., "Global Trends on the Right to Information: A Survey of South Asia.", Article 19, "Under Lock and Key: Freedom of Information and the Media in Armenia, Azerbaijan and Georgia.", ———, "Promoting Practical Access to Democracy: A Survey of Freedom of Information in Central and Eastern Europe."

¹¹⁸ Michener, "Lessons from Media Coverage for the Right-to-Know in Latin America." Puddephatt, "Exploring the Role of Civil Society in the Formulation and Adoption of Access to Information Laws: The Cases of Bulgaria, India, Mexico, South Africa and the United Kingdom." Grigorescu, "International Organizations and Government Transparency: Linking the International and Domestic Realms."

¹¹⁹ Ackerman and Sandoval-Ballesteros write: 'There are numerous individual freedom of information pioneers within government throughout the world. But government leaders "as a group" do not favour FOI laws because it is not in their interest to do so. The picture is totally inverted for civil society. Here, there is a clear net gain and strong incentives to vigorously back FOI legislation. Empirical data seem to bear out this hypothesis. Civil society has played a significant role in the passage of FOI legislation in Central and Eastern Europe as well as in Latin America.' Ackerman and Sandoval-Ballesteros, "The Global Explosion of Freedom of Information Laws," 121.

¹²⁰ Puddephatt, "Exploring the Role of Civil Society in the Formulation and Adoption of Access to Information Laws: The Cases of Bulgaria, India, Mexico, South Africa and the United Kingdom."

¹²¹ *Ibid.*, 1.

Much of these activities are recorded and published by the most resourced of the civil society organizations (as now discussed).

There is a wealth of ‘reform advocate’ research produced by civil society organizations on the diffusion of FOI law.¹²² This research is predominantly produced by the most resourced and influential of the organizations, such as Article 19 and other international non-government organizations that promote and support the law reform for various reasons, including motives associated with development, anti-corruption and human rights.¹²³ These organizations frequently collaborate on initiatives and publications.¹²⁴ The descriptive work produced tends to emphasize the importance and progress of reform from a normative basis. For example in July of 2003 the Open Society Justice Initiative, published a report titled *The Rising Tide: Freedom of Information in Southeast Europe*.¹²⁵ The report stemmed from a meeting held in Zagreb, Croatia, by activists, including Article 19 and the Croatian Helsinki Committee, two months earlier, aimed at garnering support for the adoption of law in Croatia.¹²⁶ The report opens with an emphasis on the apparent benefits of FOI law and the obligation of states to share information under agreements such as the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights, before critically reviewing the progress of FOI law across Southeast Europe.¹²⁷

The ‘single issue’ and ‘reform advocate’ studies that implicitly draw from an agent foundation are valuable, but only on an empirical level. The ‘single issue’ research highlights the important role played by different types of social actors, especially civil society actors. The quote from Puddephatt above gives a sense of just how active civil society organizations have been in the diffusion of FOI law across various parts of the world. These organizations have been central to the ‘global freedom of information movement’, which, as explained in the previous chapter (see 3.2), began to emerge in the

¹²² A lot of information is available on websites such as freedominfo.org and the websites of the key promoters of the law reform, such as Article 19. Article 19, "Article 19: Global Campaign for Free Expression."

¹²³ Other organizations include Transparency International, the Carter Center, the Open Society Justice Initiative and the Commonwealth Human Rights Initiative.

¹²⁴ See for example: Article 19 et al., "Global Trends on the Right to Information: A Survey of South Asia."

¹²⁵ Open Society Justice Initiative, "The Rising Tide: Freedom of Information in Southeast Europe."

¹²⁶ *Ibid.*, 2.

¹²⁷ These benefits include deepening democracy and fighting corruption. Article 19 of both agreements stipulates the right to ‘seek, receive and impart information’. *Ibid.*

1990s before asserting itself in the early years of the twenty-first century.¹²⁸ Moreover, the 'reform advocate' studies in particular provide a wide range of mostly primary information produced by advocates on the process of diffusion. This primary information, in addition to the 'single issue' research, is helpful at face value to understanding the diffusion of FOI law; however, as John Ackerman and Irma Sandoval-Ballesteros note, there is a need to 'systematically' utilize these descriptive agent-centered studies from a 'self-conscious social science perspective' in order to develop more comprehensive understandings of the diffusion of the law reform.¹²⁹

4.4.3 Assessment of the Agent Foundation

The strengths and weaknesses of the agent foundation found within a variety of studies into the diffusion of FOI law stem from a focus on short-term micro processes. Theoretically informed agent studies provide a way of conceptualizing the various actors directly involved in the diffusion of FOI law. The diffusion and transfer perspectives adopted by Darch and Underwood, as well as Bennett, in addition to the 'new institutionalist' perspective presented by Pinto are all valuable in this way. The agent foundation helps shed light on the actual motives and behavior of the social actors involved in the process of law reform, especially civil society organizations. By providing an avenue to understanding these actors, who make up the 'global freedom of information movement', the foundation also offers a unique viewpoint on the relatively high level of globalization amongst adopters of the reform. The foundation has only just begun to examine the role played by 'transnational advocacy networks' in the diffusion of the law reform within the emergent global political economy.¹³⁰

However, the focus on micro processes of change and reform also has limitations. Above all, it often comes at the expense of a broader understanding of the historically produced structures and relations that not only support the rise of important new social actors, such as Article 19, but also place enormous pressures themselves on governments to adopt the law reform. Darch and Underwood make the point well:

¹²⁸ Blanton, "The Openness Revolution: The Rise of a Global Movement for Freedom of Information."

¹²⁹ Ackerman and Sandoval-Ballesteros, "The Global Explosion of Freedom of Information Laws," 87.

¹³⁰ M. Keck and K. Sikkink, *Activists Beyond Borders: Advocacy Networks in International Relations* (Ithaca: Cornell University Press, 1998). But see initial examination by Berliner, "The Strength of Freedom of Information Laws after Passage: The Role of Transnational Advocacy Networks".

The wide diffusion of the freedom of information idea – and more importantly, its legislative acceptance by wielders of power – cannot be fully understood only... in terms of a struggle-based or “actor-oriented” conceptualisation of rights. It is necessary to look even deeper, to the level of political economy to understand not only why the idea has spread so widely and caught on so fast, but why it has passed into law.¹³¹

Studies drawing from the agent foundation that conceptualize the diffusion of FOI law as an agent-driven affair tend to be voluntaristic.¹³² The diffusion and adoption of FOI law is viewed as the direct outcome of the behavior of certain social actors. The approach does not provide a platform upon which to understand the historically unique emergence of many of these domestic and transnational actors or the possibility that powerful structural imperatives, which may support these actors, have also been placed on government leaders to implement transparency law. This is the major downfall of the agent foundation. The failure of the agent approaches to take seriously questions of history and power is critical. The spread of FOI law must be understood as a single event that has occurred within a specific period of historical and political structures, which exist alongside many of the social actors identified by the agent-centered approaches.

4.5 A ‘Critical Turn’ in Foundations

This chapter has so far reviewed and critiqued current explanations of the diffusion of FOI law in juxtaposition with two theoretical foundations that either implicitly or explicitly feed into such explanations. The final section of the chapter argues in support of a ‘critical turn’ in foundations, away from those assessed above, towards an alternative. The following section explains that the modernization and agent foundations have their own strengths and weaknesses, but they also share together the limitations of ‘traditional’ social and political theory (see 4.5.1 below). An alternative foundation, one that draws from a stream of ‘critical theory’ within social and political science, is argued to hold promise, both in escaping the limitations of current foundations and in developing further socio-legal understandings of the law (see 4.5.2).

¹³¹ Darch and Underwood, *Freedom of Information and the Developing World: The Citizen, the State and Models of Openness*, 54.

¹³² Grugel, *Democratization: A Critical Introduction*, 60-62.

4.5.1 The Strengths and Limitations of Current Foundations

The two prominent theoretical foundations within existing studies of the diffusion of transparency law have their own unique strengths and weaknesses, as the assessment of each above indicated (4.3 and 4.4). Explanations of the diffusion of FOI law informed by modernization assumptions reveal that the spread of FOI law may be part of a broader socio-economic structural shift, related to transformations in technologies, states, and markets (as elaborated at 4.3.2). However, modernization assumptions place this shift within a Eurocentric and synchronic transformation process that leaves little room for relativist and agent-centered commentary (see 4.3.3). On the other hand, an explanation of the spread of FOI law informed by assumptions of the agent foundation brings the focus down to the level of everyday actors that strategically pursue reform and therefore highlights the role of voluntary action in the spread of access to information laws (as shown at 4.4.2). However, this approach confines explanations of the diffusion of FOI law within the realm of contemporary actors, often without room for a broader understanding of such actors in relation to structures and the place of FOI law amongst other structural changes that have taken place (4.4.3). Those are the individual strengths and weaknesses of each approach.

The thesis might now decide to utilize one or both of these foundations to examine in more depth the diffusion of FOI law from a socio-legal perspective. However, it does not. It accepts the relative strengths and weaknesses of the modernization and agent foundations, but seeks to present a more useful alternative foundation. This alternative foundation represents a unique break within the current tradition, and indeed it draws from an alternative stream of theory within social and political science (as discussed below). Whereas the current theoretical foundations to the diffusion of FOI law draw from a 'traditional' stream of social and political science, the alternative foundation adopted in the thesis draws from a 'critical' stream.¹³³ The difference between these two streams is fundamental (as discussed below) and it establishes an important break between current foundations and the alternative foundation presented in the thesis.

¹³³ M. Horkheimer, "Traditional and Critical Theory," in *Critical Sociology: Selected Readings*, ed. P. Connerton (Harmondsworth: Penguin Books, 1976 [1937]).

The modernization and agent foundations spring from a traditional stream of theory in social and political science. Traditional theory, which contrasts with 'critical theory', attempts, to a certain degree, to mirror natural science.¹³⁴ Traditional theoretical foundations therefore attempt to objectify and explain social reality in much the same way that scientific theories objectify the natural world. Traditional theory 'takes the world as it finds it, with prevailing social and power relationships and the institutions into which they are organized, as a given framework of action.'¹³⁵ It then seeks to provide scientific explanations of social reality by isolating specific phenomenon of interest, such as the diffusion of FOI law, in order to examine those phenomena in relation to specific variables, such as socio-economic development (modernization), or media influence (agent), in an attempt to discover strict causal relations.¹³⁶ The ultimate aim of 'traditional theory' is a line of prepositions that can be constructed into a theory with predictability, similar to that which exists in the natural sciences.¹³⁷ For example, Greg Michener finds a causal relationship between independent variables such as the degree of media independence and support for reform and the degree of presidential strength that helps explain the dependent variable of the strength of transparency law reform.¹³⁸

To varying degrees, dependent on the nature of specific studies, both the modernization and agent foundations exhibit this traditional scientific orientation. On the one hand, the modernization foundation assumes the existence of a universal evolutionary process towards liberal democratic political democracy that includes FOI law. It then isolates the spread of FOI law as part of a broader trajectory towards modernity and attempts to identify the most relevant variables, a mix of socio-economic and political development, to explaining the diffusion of the law (as shown at 4.3.2 above). On the other hand, the agent approach generally disregards historical and political structures outside of an immediate scene of actors whose actual behavior has contributed to the diffusion of the law; it then seeks to examine this behavior in order to discover the dynamics most important to explaining the spread of transparency law (see

¹³⁴ Ibid.

¹³⁵ Cox, "Social Forces, States and World Orders: Beyond International Relations Theory," 128.

¹³⁶ For example: Michener, "The Surrender of Secrecy: Explaining the Emergence of Strong Access to Information Laws in Latin America", 8.

¹³⁷ Horkheimer, "Traditional and Critical Theory."

¹³⁸ Michener, "The Surrender of Secrecy: Explaining the Emergence of Strong Access to Information Laws in Latin America", 8.

4.4.2). Both the modernization and agent foundations to examining the diffusion of FOI law may be regarded as exemplary on their own terms, as unique scientific approaches to explaining the diffusion of FOI law, and yet it is from these terms that the strongest criticism of the foundations can be drawn.

The essential strengths and weaknesses of the modernization and the agent foundations stem from their common origin as traditional theories. Both provide a problem solving approach to explaining the diffusion of FOI law. The fundamental strength of these approaches is their 'ability to fix limits or parameters to a problem area and to reduce the statement of a particular problem to a limited number of variables which are amenable to relatively close and precise examination.'¹³⁹ This is evident in the modernization foundation with regard to socio-economic and political development as independent variables in the diffusion of FOI law and it is also evident in the agent foundation with regard to the actual behavior of social agents as an independent variable. Both the modernization and agent foundations provide objective explanations of the diffusion of transparency law that examine precise independent variables. However, this strength is also a weakness; Robert W. Cox writes:

The *ceteris paribus* assumption, upon which such theorizing is based, makes it possible to arrive at statements of laws or regularities which appear to have general validity but which imply, of course, the institutional and relational parameters assumed in the problem-solving approach.¹⁴⁰

Neither the modernization nor agent foundation provides the basis upon which to understand the complex fluent interaction of variables within the *historical* and *contemporary* diffusion of FOI law, and public sector transparency.

4.5.2 The Promise of a Critical Turn

A fundamental 'critical turn' in theory is a potentially fruitful avenue to provide an alternative foundation for understanding FOI law and its diffusion. To achieve this task the entire notion of social and political science needs to be reset. An epistemological break is needed; a shift must be made from a 'traditional' to a 'critical' understanding of what social and political science represents and how it is conducted. Critical theory,

¹³⁹ Cox, "Social Forces, States and World Orders: Beyond International Relations Theory," 129.

¹⁴⁰ Ibid.

unlike 'traditional theory', rejects the model provided by natural science for understanding the social world. It rejects the prevailing order as a necessary framework of action, although it starts there. Critical theory, unlike traditional problem-solving theory:

does not take institutions and social and power relations for granted but calls them into question by concerning itself with their origins and how and whether they might be in the process of changing. It is directed towards an appraisal of the very framework for action, or problematic, which problem-solving [traditional] theory accepts as its parameters.¹⁴¹

In attempting to provide an avenue for self-conscious social critique, which grounds itself predominantly in historicism and materialism, critical theory rejects the apparent scientific necessity of fragmenting reality for examination: the orientation of critical theory is towards totality: for critical theorists, the 'world we encounter in everyday life is approached as if knowledge, psyche, social structure, and even nature itself were part of a complex, dialectically mediated, and historically grounded whole.'¹⁴² Critical theory is oriented towards understanding and changing society as a whole, whereas traditional theory is oriented towards explaining and adjusting specific elements of society.

The diffusion of FOI law can be approached from the basis of critical theory with clear benefits. A critical approach to explaining the diffusion of FOI law would necessarily provide a platform for understanding the entire history of the law, from its initial emergence to its contemporary explosion, within a totality of social reality. This is unlike the traditional approaches, which tend to focus specifically on variables in the contemporary rise of the law reform in isolation. A critical approach would necessarily provide a comprehensive understanding of the diffusion of FOI law (and public sector transparency). Access law would be explained in this way not just with reference to specific variables but with reference to dynamic forces in the history of the law, whether structural or agent. Above all a critical socio-legal approach to understanding the diffusion of FOI law would necessarily call into question the dynamic forces behind the diffusion of the law in order to assess not just their influence on the law, but also their

¹⁴¹ Ibid.

¹⁴² D. Harvey, "Introduction," *Sociological Perspectives* 33, no. 1 (Critical Theory) (1990): 3.

interest in the law and how the interests of variable forces may inform the emergence and diffusion of the law in various ways.

A critical theoretical foundation to the diffusion of FOI law that provides these sorts of benefits is presented in the next chapter, and applied throughout the rest of the thesis. Authors such as Robert W. Cox, mentioned above, have built on a foundation of historical materialism and particularly the work of Antonio Gramsci in order to construct a holistic and non-deterministic manner of critiquing transformation throughout modern history (as elaborated at 5.2). From this foundation a unique critical perspective on the diffusion of FOI law, as a case study in public sector transparency, can be built. Of particular interest within the approach is how the diffusion of the transparency reform can be understood with reference to the changing nature of state structures in modern history (see 5.3). The law can be understood as initially emerging within a type of state central to the world system that requires consent of the public by government through openness (5.3 and 6.3). However, these types of states provided a restricted terrain for the law to diffuse within and it was not until after the 1980s, and a fundamental transformation of state structures, that the law exploded across the globe (5.4 and 6.4). The transformation of states from national to transnational structures and the agent forces involved within that transformation have fed into the contemporary rise of FOI law and transparency in the public sector (7.2 and 7.3).

4.6 Conclusion

Current studies on the diffusion of FOI law can be broken into various categories. Of these categories an academic explanatory type provides insight into fundamental theoretical foundations that inform all categories. These theoretical foundations are the basis within existing studies for understanding the diffusion of the law—they provide the basic assumptions of socio-political change that direct what is examined and how it is examined. The chapter undertook its first step in socio-legal analysis by examining these theoretical foundations for understanding the diffusion of transparency law. It showed how a modernization foundation focuses on structures and development in the context of adoption, whereas an agent foundation focuses on actors and institutions in the conduct of adoption. Both generally attempt to address the diffusion of the law from a scientific

standpoint of traditional theory. This provides them with their fundamental strengths and weaknesses. They can explain the diffusion of the law within a limited parameter of variables, but struggle to understand the complex fluent interaction of variables within the historical and contemporary diffusion of the law. In the next chapter an alternative theoretical foundation for understanding the diffusion of FOI law that presents a substantial break with such strengths and weaknesses is *selected* and the second step in the socio-legal contribution of the thesis is therefore undertaken.

5: TRANSNATIONAL HISTORICAL MATERIALISM

5.1 Introduction

This thesis provides an understanding, informed by theoretical and methodological tools of social science, of the diffusion of FOI law, as a case study in the rise of public sector transparency. As demonstrated in the previous chapter, current explanations and their theoretical foundations to the diffusion of FOI law have strengths, but they also have limitations. The modernization and agent foundations are legitimate and useful, yet there is room for further exploration. In order to further explore options, a ‘critical turn’ is made in the current chapter, towards a foundation of ‘critical theory.’ Transnational historical materialism is presented as an alternative critical foundation for understanding the diffusion of the transparency law that may compete with and complement the modernization foundation and agent foundation. This foundation provides a holistic picture of the diffusion of FOI law and the rise of public sector transparency within the context of the development of a modern world system of state institutions and the way in which these state institutions have related to their societies in various ways throughout the history of the system.

The chapter consists of three major sections. The first section of the chapter aims to provide an overview of transnational historical materialism as a theoretical foundation: presented are the origin, ontology and architecture of the foundation. The second section of the chapter narrows the theoretical frame of reference to examine the key theoretical concerns of the foundation as they relate to the diffusion of FOI law. The centrality of the changing dynamics of the modern state to understanding the historical diffusion of FOI law is discussed in detail. This section looks at the changing nature of the relationship between state institutions and society. The final section of the chapter focuses specifically

on the nature of a contemporary transformation in state institutions and its relevance to the recent proliferation of FOI law. It argues globalization—understood as increased social, political and economic interconnectedness—in the post-Cold War world order has facilitated a ‘passive revolution’ in access to public information.

5.2 *Transnational Historical Materialism*

An alternative theoretical foundation for approaching the diffusion of FOI law can be drawn from Marxist critical theory, specifically a foundation called ‘transnational historical materialism.’¹ An introduction to the foundation is provided in the following section via the work of Robert W. Cox, a pioneer in the field (see 5.2.1 below).² Cox helped develop the ontology of the foundation that perceives reality and transformation as occurring within structures historically formed and changed; the foundation is therefore centered on examining social change as a historical interplay of ideas, resources and class within structures. The section then examines how historical structures are understood to function in modern history on various levels of human activity, especially with reference to the state and world order (5.2.2 below). The structures of state and world order have undergone various transformations in modern history and these transformations provide a backdrop for understanding the diffusion of FOI law and the rise of public sector transparency (5.2.3).

5.2.1 An Introduction via Robert W. Cox

Transnational historical materialism has its roots in the discipline of international relations, which experienced a ‘critical turn’ in the late 1960s and early 1970s, as the stable and productive international order of the post-World War II period collapsed into

¹ The foundation is also often referred to as ‘neo-Gamscianism’, although transnational historical materialism is arguably more preferable because it captures more appropriately the roots of the foundation within historical materialism and its focus on the growing importance of transnational relations. Overbeek, "Transnational Historical Materialism: Theories of Transnational Class Formation and World Order."

² He published several articles and a book in the 1980s that became central to the foundation. See Cox, "Social Forces, States and World Orders: Beyond International Relations Theory.", R. W. Cox, "Gramsci, Hegemony and International Relations: An Essay in Method," *Millennium* 12, no. 2 (1983), Cox, *Production, Power and World Order: Social Forces in the Making of History*.

disorder.³ The changing environment facilitated moves within international relations to incorporate considerations of economic and ideological (as opposed to simply realist military) power into critical and reflexive analyses of American hegemony and world order.⁴ A sub-discipline of global political economy grew with a variety of branches.⁵ Transnational historical materialism is one of these branches; its aim is to take the historical materialism developed by Karl Marx and Fredrick Engels and remedy some of its weaknesses and give it relevance in the current global epoch by incorporating the work of key twentieth century critical thinkers, particularly (but not only) Antonio Gramsci and Nicos Poulantzas.⁶ The foundation concerns itself chiefly with world orders and types of states in the history of capitalism, and especially the history of inter-state hegemony 'understood as an expression of broadly-based consent, manifest in the acceptance of ideas and supported by material resources and institutions.'⁷

Reviewing the foundation of transnational historical materialism is a task fraught with difficulty because its advocates have produced a sizable body of work that contains considerable variety.⁸ The foundation does not present a single consistent school or even

³ For an overview see A. Leysens, *The Critical Theory of Robert W. Cox: Fugitive or Guru?* (Houndhills: Palgrave Macmillan, 2008), 89-111.

⁴ R. K. Ashley, "The Poverty of Neorealism," in *Neorealism and Its Critics*, ed. Robert O. Keohane (New York: Columbia University Press, 1986), ———, "The Geopolitics of Geopolitical Space: Towards a Critical Social Theory of International Politics," *Alternatives* 12 (1987), M. Hoffman, "Critical Theory and the Inter-Paradigm Debate," *Millennium* 16, no. 2 (1987), ———, "Restructuring, Reconstructing, Reinscription, Rearticulation: Four Voices in Critical International Theory," *Millennium* 20, no. 2 (1991), A. Linklater, "Realism, Marxism, and Critical International Theory," *Review of International Studies* 12, no. 4 (1986), ———, "International Relations Theory: A Critical-Theoretical Point of View," *Millennium* 21, no. 1 (1992), M. A. Neufeld, "The Pedagogical Is Political: The 'Why', the 'What' and the 'How' in the Teaching of World Politics," in *Teaching World Politics: Pedagogies of a New World Order*, ed. L. S. Gonick and E. Weisband (Boulder: Westview Press, 1992), M. A. Neufeld, "Reflexivity and International Relations Theory," *Millennium* 22, no. 1 (1993).

⁵ R. O'Brien and M. Williams, *Global Political Economy: Evolution and Dynamics* (London: Palgrave Macmillan, 2004), C. Murphy and R. Rooze, eds., *The New International Political Economy* (Boulder: Lynne Rienner, 1991).

⁶ Gramsci, *Selections from the Prison Notebooks*. Poulantzas, *Classes in Contemporary Capitalism*, ———, *State, Power, Socialism*.

⁷ A. Bieler and A. D. Morton, "Theoretical and Methodological Challenges of Neo-Gramscian Perspectives to International Political Economy," International Gramsci Society, http://www.internationalgramscisociety.org/resources/online_articles/articles/bieler_morton.shtml, (Date Accessed: 11th March, 2009).

⁸ A number of edited volumes bring together the diverse range of authors working in the tradition of transnational historical materialism. See S. Gill, ed., *Gramsci, Historical Materialism and International Relations* (Cambridge: Cambridge University Press, 1993), ———, ed., *Globalization, Democratization and Multilateralism* (London: Macmillan, 1997), S. Gill and J. H. Mittelman, eds., *Innovation and Transformation in International Studies* (Cambridge: Cambridge University Press, 1997), B. Hettne, ed., *International Political Economy: Understanding Global Disorder* (London: Zed Books, 1995), J. H.

a number of schools of thought.⁹ Practitioners suggest there are no schools within the foundation, only perspectives—a situation fitting for critical theorists, who apply a method of analysis rather than implement strict science-oriented theory.¹⁰ Adam Morton and Andreas Bieler, in addition to Henk Overbeek, provide two major overviews of transnational historical materialism by aggregating authors into themes and controversies.¹¹ This is helpful to some degree. However, such aggregation tends to support a tendency on the part of some authors to uncritically adopt transnational historical materialism, which essentially amounts to a kind of un-reflexive scientism.¹²

Mittelman, ed., *Globalization: Critical Reflections*, *International Political Economy Yearbook* 9 (Boulder: Lynne Rienner, 1997), H. Overbeek, ed., *Restructuring Hegemony in the Global Political Economy: The Rise of Transnational Neo-Liberalism in the 1980s* (London: Routledge, 1993), K. van der Pijl (ed.), "Transnational Relations and Class Strategy," *International Journal of Political Economy* 19, no. 3 (1998), M. Rupert and H. Smith, eds., *Historical Materialism and Globalization* (London: Routledge, 2002), Y. Sakamoto, ed., *Global Transformation: Challenges to the State System* (Tokyo: United Nations University Press, 1994). The main monographs in the tradition are Enrico Augelli and Craig N. Murphy, *America's Quest for Hegemony and the Third World: A Gramscian Analysis* (London: Pinter, 1988), Cox, *Production, Power and World Order: Social Forces in the Making of History*, S. Gill, "The Rise and Decline of Great Powers: The American Case," *Politics* 8, no. 3-9 (1988), ———, *American Hegemony and the Trilateral Commission* (Cambridge: Cambridge University Press, 1990), Gill, *Power and Resistance in the New World Order*, O. Holman, *Integrating Southern Europe: EC Expansion and the Transnationalization of Spain* (London: Routledge, 1996), C. Murphy, *International Organizations and Industrial Change. Global Governance since 1850* (Oxford: Polity Press, 1994), H. W. Overbeek, *Global Capitalism and National Decline: The Thatcher Decade in Perspective* (London: Unwin Hyman, 1990), K. van der Pijl, *The Making of an Atlantic Ruling Class* (London: Verso, 1984), van der Pijl, *Transnational Classes and International Relations*, Mark Rupert, *Producing Hegemony: The Politics of Mass Production and American Global Power* (Cambridge: Cambridge University Press, 1995), M. Rupert, *Ideologies of Globalization: Contending Visions of a New World Order* (London: Routledge, 2000), ———, *Globalization and International Political Economy: The Politics of Alternative Futures* (Lanham: Rowman & Littlefield Publishers, 2006).

⁹ This is contrary to Owen Worth; who recently divided the foundation into Amsterdam and Italian schools. O. Worth, "The Poverty and Potential of Gramscian Thought in International Relations," *International Politics* 45, no. 6 (2008).

¹⁰ Robert W. Cox, a pioneer of the foundation embraces eclecticism and denies belonging to any school. Leysens, *The Critical Theory of Robert W. Cox: Fugitive or Guru?*, 124. See also A. D. Morton, "The Sociology of Theorising and Neo-Gramscian Perspectives: The Problems of 'School' Formation in IPE," in *Social Forces in the Making of the New Europe: The Restructuring of European Social Relations in the Global Political Economy*, ed. A. Bieler and A. D. Morton (Houndmills: Palgrave, 2001), 41.

¹¹ Morton, "Social Forces in the Struggle over Hegemony: Neo-Gramscian Perspectives in International Political Economy.", Overbeek, "Transnational Historical Materialism: Theories of Transnational Class Formation and World Order.", B. Teschke, "Marxism," in *The Oxford Handbook of International Relations*, ed. C. Reus-Smit and D. Snidal (Oxford: Oxford University Press, 2008), 173-77.

Bieler and Morton, "Theoretical and Methodological Challenges of Neo-Gramscian Perspectives to International Political Economy."

¹² This criticism has been made on a number of occasions: C. Farrands and O. Worth, "Critical Theory in Global Politics Economy: Critique? Knowledge? Emancipation?," *Capital and Class* 85 (2005), R. D. Germain and M. Kenny, "Engaging Gramsci: International Relations Theory and the New Gramscians," *Review of International Studies* 24, no. 1 (1998), Worth, "The Poverty and Potential of Gramscian Thought in International Relations."

The thesis therefore moves away from excessive aggregation and simply explores the type of transnational historical materialism developed by an early and influential pioneer.

Cox, a former bureaucrat at the International Labour Organisation (ILO), set out to develop a critical theory of global politics in the early 1980s.¹³ Cox's motivation for this endeavor was stimulated, to a large degree, by frustration at an apparent ideological restrictiveness within the ILO.¹⁴ He felt the intellectual environment of the organization restrictive and eventually came to believe the labor policies of the international organization 'reflected the dominant social forces in the rich countries of the world.'¹⁵ After flirtations with positivistic and functionalist theories of international organizations, Cox turned to developing a critical theory of world order.¹⁶ The theory would, according to Cox, reject what he saw as the (strategic) problem solving tendencies of realist theories of International Relations and instead stand apart from prevailing orders of the world, calling them into question by concerning itself with their origins and whether or not, and how, they might be in the process of change.¹⁷ Cox was particularly interested in the role of ideological hegemony in power and, more specifically, aimed to understand 'current historical change from the standpoint of a reciprocal relationship between power and

¹³ The foundations of this approach were laid out in two articles: Cox, "Social Forces, States and World Orders: Beyond International Relations Theory.", ———, "Gramsci, Hegemony and International Relations: An Essay in Method." These earlier essays were taken further in Cox's major work: ———, *Production, Power and World Order: Social Forces in the Making of History*. For an accessible overview of Coxian theory see: Leysens, *The Critical Theory of Robert W. Cox: Fugitive or Guru?*

¹⁴ R. W. Cox, "Influences and Commitments," in *Approaches to World Order*, ed. Robert W. with Sinclair Cox, Timothy J. (Cambridge: Cambridge University Press, 1996).

¹⁵ *Ibid.*, 24-26.

¹⁶ Leysens, *The Critical Theory of Robert W. Cox: Fugitive or Guru?*, 16-18. These earlier tendencies can be seen in Cox's earlier works. See for example: R. W. Cox, "The Executive Head: An Essay on Leadership in International Organization," *International Organization* 23, no. 2 (1969), R. W. Cox and H. K. Jacobson, *The Anatomy of Influence. Decision Making in International Organizations* (New Haven: Yale University Press, 1972).

¹⁷ Cox, "Social Forces, States and World Orders: Beyond International Relations Theory," 128-30. That is not to suggest that Cox is completely against problem solving theory. He argues elsewhere: 'The important consideration for me is that problem-solving theory is useful within its limits, but that one needs to be aware that, in a period of rather important and significant structural change, these limits are a constraint that prevents you from seeing where you can go and what sorts of problems you are facing.' A. Hoogvelt, M. Kenny, and R. D. Germain, "The Millennium Symposium. Conversations with Manuel Castells, Robert Cox and Immanuel Wallerstein," *New Political Economy* 4, no. 3 (1999): 392-93.

production.¹⁸ Cox essentially applied a historical materialist method to examining global politics.¹⁹

Cox's method can be broken down into two key components, which are examined in the first half of this chapter. The first component is the ontology of the foundation that conceptualizes the way in which social reality exists and changes. As shown below (5.2.2), Cox argues (in line with Marx) that social reality is produced within the context of historical structures set in place by collective human action involving ideas, institutions and material resources. Principally, Cox developed an ontology based on *historical structures*. The second component to Cox's method shown below (5.2.2) attempts to examine how such historical structures inter-relate on various levels of global politics, from every-day production processes, through to the state and into the world order, and back again. Overall Cox maintains that social reality is historically created and that the interplay between the various levels within world orders is understandable from an interpretive structural historical perspective.

The fact that Cox only provides a useful theoretical map should be emphasized here. He has not stumbled across a final product and, in fact, there is a misleading tendency on the part of many authors to uncritically adopt Cox's method and analysis.²⁰ Cox—considered by some as a 'loner, a fugitive from intellectual camps of victory'²¹—once mused that loners 'tend to define their own issues and their own conceptual

¹⁸ Cox, *Production, Power and World Order: Social Forces in the Making of History*, 1.

¹⁹ Historicism and historical materialism have come under some attack by prominent authors in recent years. See for instance, A. Giddens, *A Contemporary Critique of Historical Materialism* (London: Macmillan, 1981), K. Popper, *The Poverty of Historicism* (London: Routledge and Kegan Paul, 1957). Cox notes with regard to Popper at least, that 'The historicism criticized by Popper is a perversion of positivism, an attempt to discover "laws of history" comparable to the laws of physics that would make it possible to predict the future. It is history viewed externally as an object of enquiry rather than history known from within, from its making, as Vico taught.' Cox, "Influences and Commitments," 37, n.23. A historical materialism perhaps more akin to that criticized by Popper and rejected by Cox would be the 'scientific' Marxism of Althusser. L. Althusser, *For Marx*, trans. B. Brewster (London: Allen Lane, 1959), ———, "Marxism Is Not Historicism," in *Reading Capital*, ed. L. Althusser and E. Balibar (London: Verso, 1970).

²⁰ Farrands and Worth, "Critical Theory in Global Politics Economy: Critique? Knowledge? Emancipation?," Germain and Kenny, "Engaging Gramsci: International Relations Theory and the New Gramscians," Worth, "The Poverty and Potential of Gramscian Thought in International Relations."

²¹ S. Strange, "Review: Production, Power and World Order: Social Forces in the Making of History. By Robert W. Cox," *International Affairs (Royal Institute of International Affairs 1944-)* 64, no. 2 (1988): 269-70.

frameworks... One risk for a loner is inadvertently to become a guru.'²² The thesis recognizes the uniqueness, and even the eclecticism, of the method developed by Cox, but it does not intend to employ him as a guru or his method as a final product. His method of interlocking historical structures in critiquing world order simply provides an analytical map for understanding the basic elements of transnational historical materialism.

5.2.2 Historical Structures in World Orders

The first stage of the critical method developed by Cox that would pioneer transnational historical materialism is the basic ontology of the method. Cox developed his idea of 'historical structures' as constituting the basis of reality from the work of Antonio Gramsci and others (as discussed below). The concept of 'historical structures' presents reality as a historically informed constellation of ideas, institutions and material capabilities that only ever exist in a quasi-permanent historical condition. Cox's ontology therefore contrasts with those of the modernization foundation and the agent foundation, which emphasizes capitalist socio-political evolution and rational exchange, respectively (4.3 and 4.4). The second stage of Cox's method spreads 'historical structures' out across the world order of production relations, nation-states and global power. Cox argues world orders are made up of 'a succession of dominant and emergent rival structures' found on various levels within the modern world system.²³ The most important of these structures, in terms of the thesis, is the nation-state, which finds historical forms within the context of corresponding structures in world order.

Historical structures are at the heart of Cox's method and Cox drew from a variety of authors in developing the ontology central to his approach. Historically oriented authors such as Giambattista Vico, Robin G. Collingwood, Georges Sorel and Fernand Braudel were amongst the most prominent.²⁴ Cox argues that such predecessors saw

²² R. W. Cox, "'Take Six Eggs': Theory, Finance, and the Real Economy in the World of Susan Strange," in *Approaches to World Order*, ed. R. W. Cox with T. J. Sinclair (Cambridge: Cambridge University Press, 1996 [1992]), 178-79.

²³ Cox, "Social Forces, States and World Orders: Beyond International Relations Theory," 137-38.

²⁴ See: G. Vico, *The New Science of Giambattista Vico*, trans. Thomas Goddard Bergin and Max Harold Fisch, 3rd ed. (Ithaca: Cornell University Press, 1970), R. G. Collingwood, *The Idea of History* (Oxford: Clarendon Press, 1946), G. Sorel, *Systeme Historique De Renan* (Geneva: Slatkine Reprints, 1971 [1905]), Braudel, *On History*.

value in a science of history and a historical, transient truth.²⁵ Vico, who Cox greatly admires as a 'counter modernist', gave support to the idea of a 'alternative historicist tradition to positivist social science' and argued that 'this historical mode of understanding is the proper route towards the study of historical structures and structural change', especially under the assumption that human minds are more adapt to understanding historical change rather than universal truth.²⁶ Reality and change are thus always transitory and historical for Cox.²⁷ From other authors, like Collinwood, Sorel and Braudel, Cox says he gained the ideas and tools to view history and reality as the product of interaction between material and ideational factors, which ultimately led him to historical materialism and, most importantly, Antonio Gramsci.²⁸

Gramsci's unique revision of historical materialism is a major influence on Cox's method.²⁹ Gramsci, writing between the great wars of the twentieth century, essentially agreed with classical Marxists that social reality is made up of a mix of subjective and objective forces, specifically a (object) economic 'base' and an (subject) social/political 'superstructure' and that there is a relationship between the two.³⁰ However, in contrast to earlier Marxists, Gramsci (and subsequently Cox) asserted that the economic base did not simply determine the superstructure, as implied by Marx and economic determinism.³¹ Social reality is not constructed from the economic base upwards into the sphere of ideas, consciousness and politics. Rather, Gramsci argued, the base and superstructure have a dialectic yet indeterminate relationship that can only be examined in historical not in static structural terms. Gramsci thought in terms of 'historic blocs', which represent a certain configuration of material and ideational forces during particular historical periods;

²⁵ Cox, "Influences and Commitments."

²⁶ Ibid., 28-29. R. W. Cox, "The Way Ahead: Toward a New Ontology of World Order," in *Critical Theory and World Politics*, ed. Richard Wyn Jones (London: Lynne Rienner, 2001), 59, n.1.

²⁷ Cox, "The Way Ahead: Toward a New Ontology of World Order."

²⁸ ———, "Influences and Commitments."

²⁹ ———, "Gramsci, Hegemony and International Relations: An Essay in Method."

³⁰ Marx, *A Contribution to the Critique of Political Economy*.

³¹ Gramsci, *Selections from the Prison Notebooks*. G. Lukacs, a founder of Western Marxism, also challenged the material determinism of classical Marxists. G. Lukacs, *History and Class Consciousness: Studies in Marxist Dialectics* (Cambridge: MIT Press, [1923] 1971), 1.

the interplay that occurs between the base and superstructure within a historical bloc constitutes reality.³²

The idea of 'historical structures' developed by Cox extends from Gramscian historicism.³³ 'Historical structures' (instead of historic blocs) are conceived as constructs of collective human thinking and activity that result from historically specific configuration of different objective and subjective forces. Cox identifies such forces as threefold: historical structures are, according to Cox, a particular configuration of *material*, *ideational* and *institutional* forces established through collective human meaning and action over time.³⁴ Such structures are also changed in this way, through collective human action.³⁵ The relationship between the different forces within a historical structure is variable; Cox argues that 'no one-way determinism need be assumed among these three [forces]; the relationships can be assumed to be reciprocal. The question of which way the lines of force run is always an historical question to be answered by a study of the particular case.'³⁶ Thus Figure 8 below represents the possible relationships between material power, and ideas and institutions within a historical structure.³⁷

³² A. Bieler and A. D. Morton, "The Gordian Knot of Agency-Structure in International Relations: A Neo-Gramscian Perspective," *European Journal of International Relations* 7, no. 1 (2001): 19-20.

³³ There is important debate about the application of Gramsci's notion of hegemony on the international level. The issue mainly revolves around the fact that Gramsci was theorising a domestic arena in which a Weberian state with a monopoly on violence exists, whereas there is no equivalent on the international level. Germain and Kenny, "Engaging Gramsci: International Relations Theory and the New Gramscians.", C. N. Murphy, "Understanding IR: Understanding Gramsci," *Review of International Studies* 24 (1998).

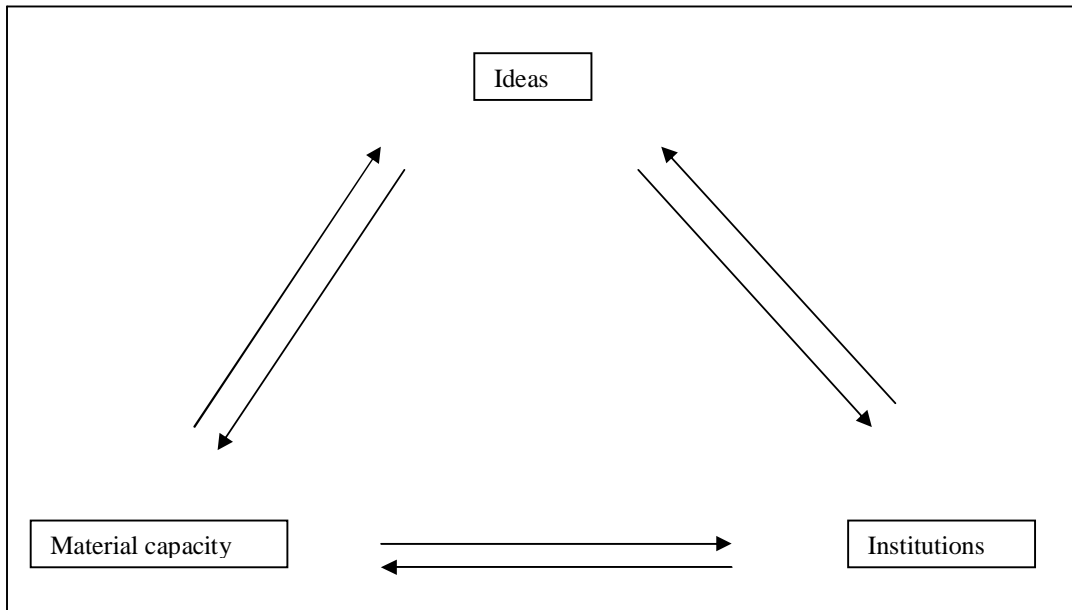
³⁴ Material capabilities are dynamic technological and organizational capabilities and the accumulation of natural resources, technology, wealth and stocks of equipment and so on. Ideas, on the other hand, are of two kinds. The first concerns broad 'intersubjective meanings' about the nature of social relations which tend to perpetuate general habits and expectations of behaviour. The second type of ideas are more narrow, agent-specific 'collective images' of social order held by different groups of people relating to what in society is good, just, legitimate, and natural. Institutions, as the third force in historical structures, stabilize and perpetuate a particular order. For Cox, institutions are particular amalgamations of ideas and material power which in turn influence the development of ideas and material power; they are, according to Cox, the key to ideological hegemony. Cox, "Social Forces, States and World Orders: Beyond International Relations Theory," 136-37.

³⁵ Ibid.

³⁶ Ibid.: 136.

³⁷ Ibid.

Figure 8: Historical Structures



It is important to note at this stage the difference between the ontological reality and the analytical function of historical structures. In reality historical structures are a mix of dynamic relationships; as an analytical method, however, they merely present a snapshot of reality that must be understood with reference to that fluidity: historical structures only represent Weberian ‘ideal types’ for analysis.³⁸ Max Weber wrote:

An ideal type is formed by the one-sided *accentuation* of one or more points of view and by the synthesis of a great many diffuse, discrete, more or less present and occasionally absent *concrete individual phenomenon*, which are arranged according to those one-sidedly emphasized viewpoints into a unified *analytical construct (Gedankenbild)*. In its conceptual purity, this mental construct (*Gedankenbild*) cannot be found empirically anywhere in reality. It is a *utopia*.³⁹

Cox argues historical structures, as ideal types, are pictures of frozen time for the researcher, useful for the sake of analysis.⁴⁰

³⁸ Ibid.: 137. ———, *Production, Power and World Order: Social Forces in the Making of History*, 4.

³⁹ M. Weber, "Objectivity' in Social Science," in *Classical Sociological Theory*, ed. C. Calhoun, et al. (Malden: Blackwell Publishing, 2007 [1904]), 211. Emphasis in original

⁴⁰ Cox, *Production, Power and World Order: Social Forces in the Making of History*, 4.

Historical structures are, for Cox, frameworks for reality, analysis and action. They are snapshots of reality as a historical structure of interactions between material capacities, institutions and ideas that find stability and change in collective human action and inter-subjective meaning. The object of examining historical structures, as a method, is, Cox suggests, to 'discern the structures that give a framework for action and that form the actors.'⁴¹ Cox believed that by understanding historical structures, and especially the dominance of certain ideologies within them, spaces for alternative historical realities, geared towards emancipation, can grow. But, it must be remembered, Cox was concerned with world politics. He therefore sought to understand world politics from the foundation of historical structures. In order to achieve that goal, Cox perceived world politics, more accurately, the modern capitalist world system, as constituted by a series of interlocking historical structures that function on various levels of human activity.⁴²

The overarching goal of the critical method developed by Cox is to critique the modern capitalist world system. In order to achieve this end, Cox took the Gramsci-inspired method of historical structures and placed it across three spheres of human activity. The modern world system, Cox maintains, is based on three interrelated levels of activity that each sustain historical structures: *social relations of production*, *forms of state* and *world order*.⁴³ These levels are seen as 'a succession of dominant and emergent rival structures.'⁴⁴ It is helpful to think of the Coxian leveling of historical structures as a progression intertwining micro, through meso, to macro levels in connecting production to power. At the micro level of world order are *social relations of production*. At this basic level the interaction between production and social forces exists (as discussed below). At the opposite, macro end of the spectrum is *world order*, which involves human interaction between and across states in different positions of power. Between these micro and macro levels is the meso level of *forms of state*. The historically contingent *form* a certain state takes is likely to be influenced by social forces of

⁴¹ Ibid., 395.

⁴² Wallerstein, *The Modern World-System: Capitalist Agriculture and the Origins of the European World-Economy in the Sixteenth Century*, ———, "The Rise and Future Demise of the World Capitalist System: Concepts for Comparative Analysis.", ———, *The Modern World-System: Mercantilism and the Consolidation of the European World-Economy*.

⁴³ Cox, "Social Forces, States and World Orders: Beyond International Relations Theory," 137-38.

⁴⁴ Ibid.

production and a given world order, although it is just as likely to influence these factors in turn, says Cox. Each level of human activity is unique.

Cox suggests *social relations of production* are the starting point for analyzing the operations and mechanisms of historical world order.⁴⁵ As a result, he has been criticized for an apparent class reductionism.⁴⁶ E. Faut Keyman argued, for instance, that reductionism 'occurs as Cox takes the concept of mode of production, defined in terms of existing relations of production, as the "essence" of international relations.'⁴⁷ Cox denies such accusations, however; he suggests production relations, broadly speaking, are merely a point of departure for explaining the wider world.⁴⁸ He defines production relations as more than purely economic relations:

Production...is to be understood in the broadest sense. It is not confined to the production of physical goods used or consumed. It covers the production and reproduction of knowledge and of the social relations, morals and institutions that are prerequisites to the production of physical goods.⁴⁹

A particular mode of production will thus involve unique social forces and class relations.

⁵⁰ These social-class forces, which connect production and power, are pivotal in the Coxian analysis of forms of state and world order. As Morton explains:

By discerning different modes of social relation in production, it is possible to consider how changing production relations give rise to particular social-class forces that become the bases of power within and across states and within a specific world order.⁵¹

⁴⁵ ———, *Production, Power and World Order: Social Forces in the Making of History*, 105-08 and 396. ———, "Social Forces, States and World Orders: Beyond International Relations Theory," 137-38.

⁴⁶ R. D. Spegele, "Is Robust Globalism a Mistake?," *Review of International Studies* 23 (1997): 221, J. M. Hobson, "For A "Second-Wave" Weberian Historical Sociology in International Relations: A Reply to Halperin and Shaw " *Review of International Studies* 5, no. 2 (1998): 357, R. J. Diebert, "Harold Innis and the Empire of Speed," *Review of International Studies* 25, no. 2 (1999): 289.

⁴⁷ E. F. Keyman, *Globalization, State, Identity/Difference: Toward a Critical Social Theory of International Relations* (Atlantic Highlands: Humanities Press, 1997), 119.

⁴⁸ R. W. Cox, *Political Economy of a Plural World: Critical Reflections on Power, Morals and Civilisations* (London: Routledge, 2002). In his major work, Cox seems to suggest that while production relations might be logical prior to other levels, they are not historically prior: 'Indeed, the principle structures of production have been, if not actually created by the state, at least encouraged and sustained by the state.' Cox, *Production, Power and World Order: Social Forces in the Making of History*, 5.

⁴⁹ R. W. Cox, "Production, the State and Change in World Order," in *Global Changes and Theoretical Challenges: Approaches to World Politics of the 1990s*, ed. Ernst-Otto Czempiel and James N. Rosenau (Toronto: Lexington Books, 1989), 39.

⁵⁰ Cox, *Production, Power and World Order: Social Forces in the Making of History*, 12.

⁵¹ A. D. Morton, *Unravelling Gramsci: Hegemony and Passive Revolution in the Global Economy* (London: Pluto, 2007), 117.

Social relations of production in world order, according to Cox, are only found in historical modes, as the state, the meso level of human activity, is only found in historical *forms*. The state for Cox and other Marxists is not defined narrowly as the institutions of government: the state is not ‘a thing in itself’, Gramsci wrote, echoing Marx, who claimed the state is ‘not suspended in mid air.’⁵² It is helpful here to think of the state in two senses. In the first sense there is the ‘extended state’ (mentioned in the introduction of the thesis), which is a historical structure of social relations that includes society and the state apparatus.⁵³ In the second sense there is the state apparatus or the ‘concrete state’, which is made up of those institutions of government that rest upon the social relations of the ‘extended state.’⁵⁴ The ‘extended state’ is the meso level of world order. These ‘extended states’, according to Cox, come in *forms* that embody a particular state-society complex that feeds into the ‘programming’ of a particular state apparatus.⁵⁵ The ‘concrete state’ is viewed as an expression of the ‘extended state.’

Forms of state are an important component in Cox’s method, and they are also central to this thesis. Cox sees state-society relations in state forms as a pivotal point in understanding world order.⁵⁶ In this thesis, beginning in the second half of this chapter, state forms are taken up as a key focal point in understanding the spread of transparency law. The historical ebb and flow of state forms and their international complexities and their relations with the outside world have been a determining factor in the diffusion of FOI law since the seventeenth century, as will be demonstrated briefly below (5.2.3). FOI law has historically relied upon an extended state that allows for a degree of civil autonomy. The current world order of globalization has helped open up such space across the globe, especially to powerful interests within the global political economy supportive of public sector transparency, and therefore helped facilitate the diffusion of FOI law (see especially 7.3).

State forms are thus social containers that exist collectively within the macro level of historical *world orders*. These world orders can be hegemonic or non-hegemonic—

⁵² Gramsci, *Selections from the Prison Notebooks*, 158-67. K. Marx, *The Eighteenth Brumaire of Louis Bonaparte* (New York: Mondial, [1852] 2005).

⁵³ Gramsci, *Selections from the Prison Notebooks*, 12.

⁵⁴ *Ibid.*

⁵⁵ Cox, *Production, Power and World Order: Social Forces in the Making of History*, 105.

⁵⁶ ———, “Social Forces, States and World Orders: Beyond International Relations Theory,” 127. See also Morton, *Unravelling Gramsci: Hegemony and Passive Revolution in the Global Economy*, 119.

they can be led by one or more powers that work to guarantee the stability of the system, especially through the proliferation of consent via institutions, or they can be leaderless and chaotic.⁵⁷ Hegemonic powers typically establish themselves first domestically, within a state form, before expanding outward, throughout the world order. Cox writes:

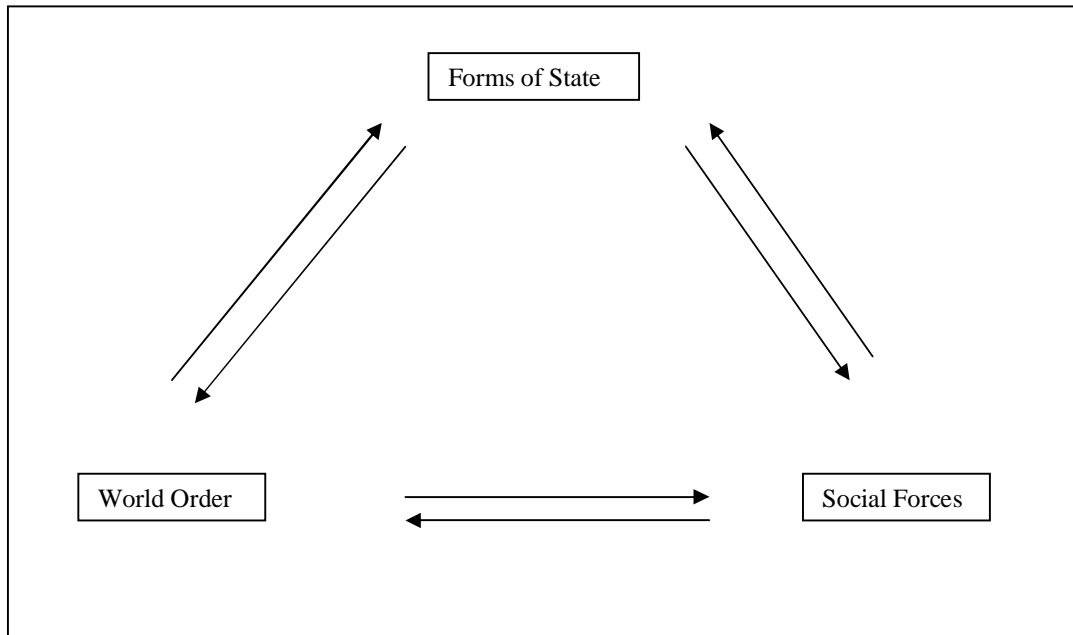
a world hegemony is in its beginnings an outward expansion of the internal (national) hegemony established by a dominant social class. The economic and social institutions, the culture, the technology associated with this national hegemony become patterns for emulation abroad.⁵⁸

Those are the micro, meso and macro levels of human activity identified in Cox's method. So far it has been implied, if only implicitly, that the three levels of Coxian world orders function from the bottom-up, that the production relations at the base, to a large degree, determine forms of state and world orders. But this assumption is not accurate: influence runs between the spheres in an indeterminate, historical manner. For instance, states, once established as historical structures, can influence the mode of production and subsequent social relations through strategic policies. Moreover, a hegemonic world order can function in a top-down manner to influence forms of state and modes of production across the world. Indeed the relationship between the global levels of human activity is not uni-linear; interaction amongst levels can occur in a multitude of configurations, depending on the historical case, as shown in Figure 9 below.⁵⁹

⁵⁷ Cox, "Social Forces, States and World Orders: Beyond International Relations Theory," 138-41.

⁵⁸ ———, "Gramsci, Hegemony and International Relations: An Essay in Method," 61. See also ———, *Production, Power and World Order: Social Forces in the Making of History*, 149-50.

⁵⁹ Cox, "Social Forces, States and World Orders: Beyond International Relations Theory," 138.

Figure 9: World Orders

5.2.3 Modern World Orders and FOI Law

The concept of ‘historical structure’ is at the core of the method developed by Cox. He uses it in order to help conceptualize consistency and transformation within the modern world system. Later in the chapter the application of certain aspects of Cox’s method and transnational historical materialism to the diffusion of FOI is examined in detail, however, at this stage, it may be beneficial to provide an overview of the general application of Cox’s framework of historical structures in world order with specific reference to the overall historical rise of access law and public sector transparency. The significance of the overall picture to explaining the diffusion of FOI law will be discussed, although two distinct periods of world order and their unique constellation of social relations and state forms will be highlighted in particular. In the second half of this chapter, the focus will subsequently narrow down to examine forms of state as the most helpful component of the Coxian method in understanding the diffusion of FOI law and the rise of public sector transparency.

Cox argues there have been four distinct periods of world order in the modern world system, as it developed from the eighteenth century onwards. These periods are as follows:

- the coming of the international economy (1789 – 1873),
- the era of rival imperialisms (1873 – 1945),
- the liberal world order (post-World War II – 1970), and
- the neo-liberal world order (1970 -).⁶⁰

Each of these world orders are ‘characterized by the emergence of new forms of state, new historical blocs, and new configurations of production relations.’⁶¹ The most important orders in the history of transparency law are the first and the final two. A unique state form (an ideal type), which can be called ‘Lockean’, named after the political philosopher John Locke, emerged in Europe during ‘the coming of the international economy.’⁶² This state form is at the heart of FOI law because it embodies the idea of society as autonomous to and authoritative over the state apparatus. The world’s first FOI law was adopted in 1766 during early experiments in Sweden with the Lockean model of state form (as discussed at 6.3). But the first modern FOI law was not adopted until 1966 by the United States, the most advanced Lockean state, during the post-World War II ‘liberal world order’ (see 6.3.2). The law then spread amongst a handful of Lockean states, although it did not find further ground abroad until the emergence in the 1970s of the ‘neo-liberal world order’, which involved an increase in transnational relations and a breakdown in Cold War rivalries and divisions.

The first period of modern world order, which Cox refers to as ‘the coming of the international economy’, was characterized by British hegemony. The British were

⁶⁰ ———, *Production, Power and World Order: Social Forces in the Making of History*, 109. The periods presented here vary slightly from those presented by Cox. He refers to ‘the liberal world order’ as ‘the neoliberal world order’ and does not explicitly name the post-1970s ‘neoliberal world order’ I present here, although he firmly suggests it in the later chapters of the book.

⁶¹ Ibid.

⁶² The Lockean state is a concept developed by Kees van der Pijl: van der Pijl, *Transnational Classes and International Relations*, 65-98, K. van der Pijl, "A Lockean Europe?," *New Left Review*, no. 37 (2006), van der Pijl, *Global Rivalries: From the Cold War to Iraq*, 1-12, ———, "Ruling Classes, Hegemony, and the State System," 16-20.

fundamental in establishing the Lockean state in the early days of the capitalist world-economy, which culminated in what Cox regards as the first major transformation in social relations and forms of state.⁶³ The Lockean state gradually emerged to replace royal absolutism and feudalism as emergent capital classes, along with parts of the aristocracy, shifting to commercial sources of income, and challenged the monarchy for authority, dramatically in the case of the Glorious Revolution of 1688, and demanded society be governed on a degree of consent.⁶⁴ The newly founded bourgeois hegemony spilled over into British hegemony within the world order and international economy. The ideology on which this cross-national hegemony was based centered on free trade, the gold standard, comparative advantage and the wealth of nations.⁶⁵ Cox argues that through its management of the balance of power, supported by superior sea power, Britain was able to push for the expansion of the early international economy and seek open markets and a transformation of states.⁶⁶ Thus, for much of the nineteenth century, Britain was the principal trading nation, principal source of capital for the rest of the world, and principal enforcer of the market(s) of the emergent international economy.⁶⁷

This initial period of world order in the modern world system is important in the history of FOI law. Experiments with formation of the Lockean state, especially parliamentarianism and the promotion of civil and political rights, in Sweden in the second half of the eighteenth century led directly to enactment of the world's first FOI law (as discussed at 6.3.1 and 6.3.2). Sweden entered an 'Age of Liberty' following the end of the Great Northern War, in which it was severely defeated by a Russian-led alliance.⁶⁸ The monarchy, weakened from the events, seeded power in 1718 to the Estates of the Rikstag Parliament (the first of its kind outside Britain).⁶⁹ After forty years, the Swedish experiment in Lockean state formation gave rise to the world's first FOI law,

⁶³ Cox, *Production, Power and World Order: Social Forces in the Making of History*, 112.

⁶⁴ van der Pijl, *Transnational Classes and International Relations*, 67.

⁶⁵ Cox, "Social Forces, States and World Orders: Beyond International Relations Theory," 140. See also: G. Arrighi, "The Three Hegemonies of Historical Capitalism," in *Gramsci, Historical Materialism and International Relations*, ed. S. Gill (Cambridge: Cambridge University Press, 1993), 173-74.

⁶⁶ Cox, *Production, Power and World Order: Social Forces in the Making of History*, 144.

⁶⁷ Ibid.

⁶⁸ R. Svanstrom and C. F. Palmstierna, *A Short History of Sweden*, trans. J. Bulman (Oxford: Clarendon Press, 1934).

⁶⁹ Ibid., 189-90. The Estates consisted of the Nobility, Clergy, Burghers and Peasants. The Swedish Parliament, "The History of the Riksdag," http://www.riksdagen.se/templates/R_Page____798.aspx, (Date Accessed: 22 May, 2010).

which provided members of a polity a presumptive right to access government-held documents for the first time in history. The law arose in a struggle between the two main political parties within parliament, the Hats and the Caps: 'When the Hats were defeated in 1765 after a long term of office, the Caps inserted the principle of public access... because of their frustration over administrative secrecy as well as press censorship under the previous regime.'⁷⁰ However, FOI law experienced a hiatus after the initial Swedish initiative, which turned out to be a relatively short lived event due to the resumption of absolutist monarchy in 1772.⁷¹

Hegemonic British liberalism was replaced by a non-hegemonic world order in the later years of the nineteenth century.⁷² This new period, which Cox calls the 'era of rival imperialisms', principally resulted from a breakdown in the balance of power in Europe and widespread working class efforts towards reform in their interests.⁷³ These factors led to a breakdown of Lockean state formation and the establishment of competing welfare-nationalist states. The gold standard was abandoned and the international capitalist economy became fragmented by national protectionism.⁷⁴ In the years of rival imperialism FOI law gained absolutely no new ground, although the Swedish right to information was renewed after the reign of Gustav III with the enactment of the 1809 Instrument of Government, which is still in force today after proclamations in 1810, 1812 and 1949.⁷⁵ FOI law did not find a secure place in the modern world until after World War II, when the United States emerged as a superpower and adopted transparency law in response to popular concerns about a growing bureaucracy to the Lockean autonomy and authority of society.

A new hegemonic order led by the United States emerged after World War II. The social forces and Lockean state form that had begun to develop in Britain and elsewhere, evident within the Glorious Revolution, found their fullest development in the United States, which embraced the liberal philosophy of self-government with its tenant of the autonomy of society *vis-à-vis* the state apparatus. The post-World War II world order was

⁷⁰ D. C. Rowat, "Comparative Survey," in *Administrative Secrecy in Developed Countries*, ed. D. C. Rowat (London: Macmillan Press, 1979), 2.

⁷¹ Svanstrom and Palmstierna, *A Short History of Sweden*, 254.

⁷² Cox, *Production, Power and World Order: Social Forces in the Making of History*, 151-211.

⁷³ ———, "Social Forces, States and World Orders: Beyond International Relations Theory," 142.

⁷⁴ *Ibid.*: 151-211.

⁷⁵ Anderson, "Public Access to Government Files in Sweden," 422.

divided by the superpower rivalry between the United States on one hand and the Soviet Union on the other, however, in spite of this impediment, the United States 'took the initiative to construct an open world political economy, exclusive of the Soviet sphere, in which Western Europe and Japan and what came to be known as the Third World were all to be incorporated.'⁷⁶ This world order, which included the development of multi-lateral institutions such as the United Nations (UN) and the Bretton Woods system, witnessed a long boom in international trade and development of the international economy: the period has been referred to as the 'Golden Age of Capitalism'.⁷⁷

The post-World War II period and the rise of the Lockean state of the United States within it are significant in the history and diffusion of FOI law. The United States adopted the first contemporary FOI law in 1966 as part of its evolving structure (as elaborated at 6.3.2). The law was championed by media outlets who challenged the sovereignty of the growing number of bureaucratic government departments and agencies to withhold information from the media and society (6.3.2). FOI law was adopted in the United States, but the law found little support abroad. The law was adopted in the 1980s by a handful of established Lockean states, such as Australia, allied close to the United States (see 6.3.3). However, state formation within the Soviet sphere and the Third World tended to privilege the state apparatus *vis-à-vis* society and was therefore uncondusive to a public 'right to know', which prevented the diffusion of transparency outside a handful of Lockean states (as discussed at 6.4). Adoption of FOI law within Soviet and Third World 'Hobbesian' state forms (as ideal types), named after the political philosopher of supreme state sovereignty, Thomas Hobbes, during the post-World War II period was practically impossible given the mandate enjoyed by the state apparatus as a leading force in society.⁷⁸ It was not until a fundamental reshaping of the world order that FOI law found ground within these countries.

Cox recognizes that the post-World War II era began to transform into something new in the 1970s (see 7.2). Indeed, the landscape of the world system had changed

⁷⁶ Cox, *Production, Power and World Order: Social Forces in the Making of History*, 211.

⁷⁷ S. Marglin and J. B. Schor, eds., *The Golden Age of Capitalism: Reinterpreting the Postwar Experience* (Oxford: Oxford University Press, 1990).

⁷⁸ van der Pijl, *Transnational Classes and International Relations*, 65-98, ———, "A Lockean Europe?.", ———, *Global Rivalries: From the Cold War to Iraq*, 1-12, ———, "Ruling Classes, Hegemony, and the State System," 16-20.

completely by the 1990s. The international economy developed into a truly global economy. In this new environment national economies are not simply connected to the international economy through export trade, as they were in the past; instead, national economies are intimately linked to one another through ‘globalized circuits of production and accumulation.’⁷⁹ Multi-national corporations grew in size and stature to rival the size of many countries. Social relations expanded significantly beyond national boundaries so that social class no longer remained a question of national production (as shown at 7.2.1). In addition, the collapse of the Soviet Union meant the United States was left the world’s only superpower, free to support or impose its agenda across the world without the threat of Soviet retaliation (see 7.2.2). The Hobbesian states of the former-Soviet Union and Third World underwent a dramatic transformation towards the Lockean model within the American-led global political economy.

The foundational changes within the world order that began in the 1970s have made possible the recent explosion of transparency law. In the past the nation-state functioned as a container of social relations and the programming of the state apparatus in general and in terms of information sharing was influenced by the domestic state-society relation. However, the widespread increase of transnational relations means many states no longer function as sovereign containers of social relations as they did in the past and the programming of the state apparatus in general and in terms of information sharing has become influenced by transnational forces heavily supportive of openness. The Lockean state and its conception of public information sharing developed in the United States became the model promoted across the globe following the collapse of the Soviet Union (as discussed at 7.3). Within this context, a group of specialist international non-government organizations, which Darch and Underwood refer to as the ‘prime engine of growth’, that ‘often works closely with local or national partners who share their ideological disposition’ emerged to champion the proliferation of transparency law around the world, which began in the 1990s but reached its peak in the first decade of the twenty-first century.⁸⁰

⁷⁹ W. I. Robinson, *A Theory of Global Capitalism: Production, Class and State in a Transnational World* (Baltimore: Johns Hopkins University Press, 2004), 11.

⁸⁰ Darch and Underwood, *Freedom of Information and the Developing World: The Citizen, the State and Models of Openness*, 51.

The recent explosion of FOI law has occurred alongside a fundamental transformation of the state and indeed it is clear even from the brief introduction provided above that forms of state, such as the Lockean and Hobbesian forms, are central to transnational historical materialism and the approach it provides to the diffusion of FOI law and the rise of public sector transparency. Put bluntly, some forms of state are conducive to FOI law, such as the Lockean state of the United States, while others are not conducive to the law, such as the Hobbesian state of the Soviet Union. In the past, state formation and information access has been an overwhelmingly domestic issue, but since the 1970s, and especially the collapse of Cold War rivalries, the formation of states has become a transnational event. These developments, namely the emergence of unique domestic state forms and the transnationalisation of state forms and how they relate to the diffusion of FOI law, are the major focal point of the remainder of the thesis. ‘Forms of state’ is the key aspect of transnational historical materialism utilized throughout the thesis.

5.3 State Formation and FOI Law

The second half of this chapter, by examining more closely the concept of state formation, continues the current introduction to transnational historical materialism and its utility as a theoretical foundation for understanding the spread of FOI law and the rise of public sector transparency. To begin with, FOI law is placed within the context of a classical historical materialist conception of the state form as a domestic ‘extended’ structure that combines the state apparatus and society (see 5.3.1 below). From this perspective FOI law, or even the lack of FOI law, prior to the 1990s, is seen in the context of the state apparatus programmed, but not determined by, national circumstances (see 5.3.2). However, this view of the ‘extended state’ was directly challenged following the 1980s by the emergence of the American-led global political economy (5.3.3). The programming of the state apparatus and the adoption of FOI law is now understood to occur within transformed and transnationalised domestic structures that function alongside transnational social forces heavily supportive of transparency (5.3.4).

5.3.1 Historical Materialist State Theory

Classical historical materialism provides the roots of the transnational historical materialist conception of the state, especially as seen prior to the rise of contemporary transnational relations. As mentioned earlier (5.2.1 and 5.2.2 above), all historical materialists view the state in relation to society. The state apparatus is essentially considered a reflection of its socio-economic surroundings in some way or another.⁸¹ Therefore to discuss the state from a historical materialist perspective is to identify a 'socio-economic base' and a 'legal and political superstructure' that exist in relation to one another within the domestic arena.⁸² However, the nature of the relationship between these two spheres of the 'extended state' has been debated throughout the years.⁸³ Karl Marx, although not having formally addressed the state on a theoretical level, suggested a form of instrumentalism and determinism that saw the base heavily influence the superstructure; whereas Antonio Gramsci would later suggest that the two spheres influence each other in a process of historical interplay.⁸⁴ The position adopted by transnational historical materialism is that of Gramsci, which is an important point feeding into the way FOI law is seen to function and spread in a historical, rather than deterministic, manner.

Many classical historical materialists of the nineteenth and twentieth century did not perceive the state apparatus as autonomous to any substantial degree from the mode of production and society in which it functions.⁸⁵ More specifically, the state apparatus was understood by influential classical historical materialists as part of a structural realm of human activity of law and politics that was determined instrumentally by an economic base that encompasses relations of production.⁸⁶ Marx famously wrote:

In the social production of their existence, men inevitably enter into definite relations, which are independent of their will, namely relations of production appropriate to a given stage in the development of their material

⁸¹ C. W. Barrow, *Critical Theories of the State: Marxist, Neo-Marxist, Post-Marxist* (Madison: The University of Wisconsin Press, 1993).

⁸² Marx, *A Contribution to the Critique of Political Economy*.

⁸³ Barrow, *Critical Theories of the State: Marxist, Neo-Marxist, Post-Marxist*.

⁸⁴ Ibid.

⁸⁵ This kind of determinism was part of a broader scientific approach to Marxism evident in classical Marxists such as Nikolai Bukharin, Karl Kautsky and Georgi Plekhanov. See for example: P. Thomas, *Alien Politics: Marxist State Theory Retrieved* (New York: Routledge, 1994), 165-91.

⁸⁶ 'The executive of the modern State is but a committee for managing the common affairs of the whole bourgeoisie.' K. Marx and F. Engels, *The Communist Manifesto* (Harmondsworth: Penguin, 1967 [1848]).

forces of production. The totality of these relations of production constitutes the *economic structure* of society, the real foundation, on which arises a *legal and political superstructure* and to which correspond definite forms of social consciousness. The mode of production of material life conditions the general process of social, political and intellectual life.⁸⁷

Such statements lead many classical historical materialist thinkers to agree the socio-economic base of society determines the legal and political superstructure.⁸⁸

The basic economic base/superstructure idea of the state provide by Marx fundamentally informs how the state and FOI law are understood by transnational historical materialism and the thesis; albeit without the economic determinism. FOI law is necessarily understood from a historical materialist perspective as part of 'a legal and political superstructure' or state apparatus that exists in relation to society. The state is 'not suspended in mid-air', nor is FOI law: it is a component of the governing institutions that form in relation to the social and economic structure of society.⁸⁹ However, FOI law and the state apparatus within which it exists are not, as Marx suggests, and as the basic modernization approach to the diffusion of FOI law also suggests (see 4.3), determined by socio-economic development. FOI law is not the outcome of a particular stage of socio-economic development. FOI law and the state apparatus exist in relation to society and the economy but the relationship is better conceptualized as a historical event, as suggested by later historical materialists.⁹⁰

⁸⁷ Marx, *A Contribution to the Critique of Political Economy*. Emphasis added. Marx actually had an involved, if underdeveloped, perspective of the state. See R. Miliband, "Marx and the State," in *The Socialist Register*, ed. R. Miliband and J. Saville (London: Merlin Press, 1965).

⁸⁸ Thomas, *Alien Politics: Marxist State Theory Retrieved*, 165-91.

⁸⁹ Marx, "The Eighteenth Brumaire of Louis Bonaparte," 186. Similarly Gramsci wrote that 'the state is not agnostic.' A. Gramsci, *Selections from Cultural Writings*, ed. D. Forgacs and G. Nowell-Smith, trans. W. Boelhower (London: Lawrence and Wishart, 1985), 191.

⁹⁰ Especially influential in this endeavor were Ralph Miliband and Nicolas Poulantzas. R. Miliband, *The State in Capitalist Society* (London: Quartet Books, 1973), N. Poulantzas, *Political Power and Social Class* (London: New Left Books, 1968), Poulantzas, *State, Power, Socialism*. Miliband and Poulantzas entered a well known debate about the nature of the capitalist state, predominantly in the quarters of the *New Left Review*, that aroused renewed interest in Marxist interpretations of the state: N. Poulantzas, "The Problem of the Capitalist State," *New Left Review*, no. 58 (1969), R. Miliband, "The Capitalist State: A Reply to Nicos Poulantzas," *New Left Review*, no. 59 (1970), ———, "Poulantzas and the Capitalist State," *New Left Review*, no. 82 (1973), N. Poulantzas, "The Capitalist State: A Reply to Miliband and Laclau," *New Left Review*, no. 95 (1976).

Gramsci is a thinker at the heart of transnational historical materialism; so much so the foundation is often referred to as neo-Gramscianism.⁹¹ Gramsci directly challenged the tradition of economic determinism within historical materialism and attempted to develop a more comprehensive theory of the state; all from his prison cell in fascist Italy during the 1930s.⁹² He argued that political and cultural matters were as important as economic concerns in the transformation or otherwise of society and the state apparatus.⁹³ Gramsci agreed 'the legal and political superstructure' existed in relation to society, but, he argued, the nature of the relationship is dynamic and historical, not deterministic and economic; he essentially reconfigured the relationship between the socio-economic base and the state apparatus from one of linear determinism to one of dialectical and historical interdependence by incorporating historicism.⁹⁴ As already mentioned, Gramsci introduced the notion of a 'historic bloc', which Cox would later refer to as a 'historical structure.'⁹⁵ Historic blocs are a way of understanding the relationship between society and the state apparatus within historically contingent configurations of social forces, ideas and institutions.

Historic blocs primarily focus attention on the historical emergence and constitution of social forces and ideas upon which state power ultimately rests. From this perspective the state apparatus is not determined by a specific stage of socio-economic development, but programmed in accordance with historically contingent constellations and dynamics of social forces and ideas within the national arena. Cox explains the importance of understanding the historical emergence and conflict of social forces and ideas in relation to the state apparatus thus: 'A particular configuration of social forces defines in practice the limits or parameters of state purposes, and the *modus operandi* of state action, defines, in other words, the *raison d'état* for a particular state.'⁹⁶ In order to

⁹¹ Morton, "Social Forces in the Struggle over Hegemony: Neo-Gramscian Perspectives in International Political Economy.", Overbeek, "Transnational Historical Materialism: Theories of Transnational Class Formation and World Order."

⁹² It is important to note that due to the conditions in which Gramsci wrote under a prison sentence term of over twenty years his writings are fragmented and partial. See: P. Anderson, "The Antinomies of Antonio Gramsci," *New Left Review*, no. 100 (1977).

⁹³ J. A. Femia, *Gramsci's Political Thought: Hegemony, Consciousness, and the Revolutionary Process* (Oxford: Clarendon Press, 1981), 61-130.

⁹⁴ Cox, "Gramsci, Hegemony and International Relations: An Essay in Method," 167-68.

⁹⁵ Ibid.

⁹⁶ ———, *Production, Power and World Order: Social Forces in the Making of History*, 105.

understand the nature of a given state apparatus, therefore, from the standpoint of Gramsci's idea of a historic bloc, there is a need to examine the constellation of social forces and ideas that accompany it within a given national unit. Cox and others, such as Kees van der Pijl, took this further, however, by arguing that such constellations can be found in particular forms, such as the Lockean and Hobbesian forms (discussed previously).⁹⁷

Transnational historical materialism utilizes the state theory of historic blocs developed by Gramsci to examine ideal types of forms of state as they have historically developed throughout the modern world system, as the meso level between production relations and world orders. Cox stresses forms of state must be understood within the broader context of the evolution of the modern world system.⁹⁸ He writes: 'Complexes of production relations, classes and historic blocs do not exist in isolated national compartments. They are linked to a world order that bears directly on them as well as influences them through their national states.'⁹⁹ As mentioned above, two overarching forms of state have developed within the world system prior to the 1980s—the Lockean and the Hobbesian. The Lockean form developed in the heartland of the global economy in Europe, America and elsewhere, upon the emergence of an organic self-regulating civil society that assumed a position of productive force and demanded the state apparatus govern with consent (as discussed at 6.3). On the other hand, the Hobbesian form developed as a counterpoint outside the Lockean heartland in parts of the world with weak civil societies, where the state apparatus assumed the role of a productive force within society (see 6.4).

These theoretical developments that stem from the work of Gramsci build upon the perspective of Marx and others. The relationship between the state apparatus and society is transformed into a dialectical and historical process understood within national units that exist within the modern world system. In terms of what this means for the diffusion of FOI law, the state apparatus exists alongside society within historically contingent blocs that may or may not facilitate FOI law. Put simply, the law is adopted in

⁹⁷ See van der Pijl, *Transnational Classes and International Relations*, 86.

⁹⁸ Cox, *Production, Power and World Order: Social Forces in the Making of History*, 6-7.

⁹⁹ Ibid. See also H. Overbeek, "Transnational Class Formation and Concepts of Control: Towards a Genealogy of the Amsterdam Project in International Political Economy," *Journal of International Relations and Development* 7 (2004): 114.

some states, but not in others, depending on the corresponding form of state. The Lockean form is identifiable as having been conducive to FOI law, whereas the Hobbesian form of historic bloc is identifiable as being adverse to FOI law (see the following chapter on the emergence and early diffusion of FOI law). It is important to emphasize at this stage that these respective forms of state, as they existed in changing and various ways throughout the modern world system, were fundamentally domestic in character.

5.3.2 FOI Law as a National Event

The historical materialist perception of the state as a component of a historical state form in the world system provides a platform for understanding the emergence and diffusion of FOI law prior to the 1990s, especially as it emerged during the British-led world order of the eighteenth century, and later again during the American-led world order of the mid-twentieth century. The Lockean form that emerged and developed during those periods in Europe, America and elsewhere allowed for the innovation of FOI law due to the presence of a national state forms in which society was legitimated as the guiding force *vis-à-vis* the state. The platform of national historic blocs within world order also proves useful for understanding the difficulties faced by FOI law outside a handful of favorable Lockean states prior to the 1990s. The Hobbesian form that emerged within the Soviet Union and the Third World, in contrast to the Lockean form, embodied a historic bloc in which the state apparatus was sanctioned as a guiding force *vis-à-vis* society.

FOI law originally emerged in and diffused throughout a handful of unique, modern Lockean states, beginning with the isolated glimpse in Sweden in the eighteenth century, continuing onto the modern inspiration of the United States in the 1960s and then amongst a handful of early adopters within Europe and the New World (as elaborated at 6.2). In the next chapter the type of state formation that took root within these countries is described in more detail and the chapter examines certain dynamics in more detail, such as how the Lockean form originally emerged in the modern world system, how FOI law first emerged within the Lockean form in Sweden, why the law was relatively dormant for two centuries amongst the Lockean states, and how the law diffused amongst a handful of Lockean states, such as Australia, New Zealand and

Canada, during the 1980s (see 6.2). But, for now, it is perhaps most beneficial to briefly examine other states within the world system that have not been as favorable to the law.

Hobbesian forms of state, less favorable to FOI law, also emerged alongside the Lockean states at different times and places throughout the modern world system, especially during the twentieth century, which hindered the diffusion of the transparency law (as discussed at 6.4). Again the particulars of these states, such as the way in which they predominantly emerged in the wake of the Lockean states, as a contender or counterpoint, is examined in more detail in the next chapter (see 6.4). For now it is solely beneficial to stress that within the independent national state forms that developed outside the Lockean states within the world system during the nineteenth and twentieth centuries the state apparatus was given a privileged position *vis-à-vis* society. Such Hobbesian states get their name from the political philosopher Thomas Hobbes (1588-1679), who argued the state apparatus is to be appointed absolute power and supreme authority in a social contract with society in order to govern against the state of nature and for a collective future.¹⁰⁰ This supreme authority extended generally to information.

5.3.3 Transnational Historical Materialist State Theory

Classical historical materialism and the related idea of national forms of state provide the platform for understanding the diffusion of FOI law up until the 1980s. However, from the 1980s onwards, at the time of the contemporary proliferation of the law, a new understanding is needed. Nation-states underwent a fundamental transformation in the midst of globalization towards the end of the twentieth century.¹⁰¹ Transnational historical materialists understand this. They maintain there is still a historical relationship between a 'socio-economic base' and a 'legal and political superstructure' but that the circumstances and dimensions of the relationship have changed within the global political economy to include transnational relations. In terms of national state forms, this means the socio-economic programming of the state apparatus, the 'legal and political

¹⁰⁰ Hobbes, *Leviathan*.

¹⁰¹ For example, both Bob Jessop and Philip G. Cerny have explored a contemporary trend away from national welfare nation-states towards post-national competition states as a political form of globalization. B. Jessop, "Post-Fordism and the State," in *Post-Fordism: A Reader*, ed. A. Amin (Oxford: Blackwell, 1994). P. C. Cerny, "Paradoxes of the Competition State: The Dynamics of Political Globalization," *Government and Opposition* 32, no. 2 (1997).

superstructure' is no longer confined to national circumstances: transnational relations mean the state apparatus (and society in general) is influenced by forces within and beyond national borders. In other words, 'the *raison d'état* for a particular state' is no longer influenced by national social forces alone, but transnational forces too.

Transnational historical materialists argue a key influence on the programming of national state apparatuses within the global economy has been the emergence of a 'transnational historic bloc.'¹⁰² They argue national historic blocs have been surpassed in the late-twentieth century by an emergent 'transnational historic bloc' that combines a powerful transnational socio-economic base with a global legal and political superstructure.¹⁰³ The development of the global economy in the second half of the twentieth century accompanied the emergence of a transnational capitalist class that has functioned as a social force in the construction of a transnational legal and political superstructure, lacking in centralized institutional form, that integrates 'transformed and externally integrated national states' together with supranational economic and political forums such as the IMF and the World Bank and the UN, the OECD, the European Union and the Conference on Security and Cooperation in Europe, amongst others.¹⁰⁴ The social forces invested in the construction of a transnational historic bloc are a fragmented and competitive group that principally developed from within the national blocs of the Lockean heartland, although transnational forces can now be identified within sections of many national blocs.¹⁰⁵ The glue holding these various elements together is a shared interest beyond national borders that converges on the maintenance of global capitalism due to their integration within global networks of production and accumulation.¹⁰⁶

¹⁰² See Robinson, *A Theory of Global Capitalism: Production, Class and State in a Transnational World*, 85-144. Gill, *Power and Resistance in the New World Order*, 93-115.

¹⁰³ J. Harris and W. I. Robinson, "Fissures in the Globalist Ruling Bloc: The Politics of Globalization from above and Below " *cyRev*, no. 7 (2001), Robinson, *A Theory of Global Capitalism: Production, Class and State in a Transnational World*, 85-144, A. Tsolakis, "Globalisation and the Reform of the Bolivian State, 1985-2005" (PhD, University of Warwick, 2009), 125-72.

¹⁰⁴ Robinson, *A Theory of Global Capitalism: Production, Class and State in a Transnational World*, 88.

¹⁰⁵ For a good empirical example see: Tsolakis, "Globalisation and the Reform of the Bolivian State, 1985-2005", 165-68.

¹⁰⁶ See for example: A. R. Embong, "Globalisation and Transnational Class Relations: Some Problems of Conceptualisation," *Third World Quarterly* 21, no. 6 (2000), C. L. Sklair, *The Transnational Capitalist Class* (Oxford: Blackwell Publishers, 2006), W. I. Robinson and J. Harris, "Towards a Global Ruling Class? Globalization and the Transnational Capitalist Class," *Science and Society* 64, no. 1 (2000).

As discussed below, the 'transnational historic bloc' is suggested to exert a powerful influence on national state forms. Cox has even suggested national state apparatuses function as 'transmission belts' for the wishes of the transnational capitalist class.¹⁰⁷ Therefore transnational historical materialists have been criticized for overemphasizing the hegemonic power of the transnational historic bloc on national state forms.¹⁰⁸ This may be true. Nevertheless, the emergence of transnational relations and their impact on the nation state is undeniable. National 'extended states' traditionally held the title as containers of social, economic and political relations.¹⁰⁹ The state apparatus claimed supreme authority to intervene within its well regulated national borders, while civil relations were relatively contained within those borders. However the expansion of the global political economy and transnational relations broke down the national 'extended state' as a container; public authority seeped from the state apparatus out into a range of local, regional, international and transnational bodies.¹¹⁰

The reason transnational historical materialists stress the importance of the transnational historic bloc is because recent national transformations within the global political economy are necessarily linked to power structures. A form of American-led political globalization has developed following the demise of Cold War rivalries and the expansion of transnational relations (as discussed at 7.2).¹¹¹ Overall, this political globalization has broken down the Lockean and Hobbesian dichotomy of modern history. Hobbesian legal and political superstructures have internationalized and liberalized, and in some cases democratized (see 7.2.3 in particular). Hobbesian state forms have undergone a process of socialization directed but not determined by strong Lockean traditions within the global political economy and transnational historic bloc.¹¹² The result of this socialization is still unknown; although Stephen Gill suggests Hobbesian

¹⁰⁷ R. W. Cox, "Global Perestroika," in *Approaches to World Order*, ed. R. W. Cox with T. J. Sinclair (Cambridge: Cambridge University Press, 1996 [1992]), 302.

¹⁰⁸ Germain and Kenny, "Engaging Gramsci: International Relations Theory and the New Gramscians," 18.

¹⁰⁹ Robinson, *A Theory of Global Capitalism: Production, Class and State in a Transnational World*, 11.

¹¹⁰ Ibid.

¹¹¹ See ———, *Promoting Polyarchy: Globalization, US Intervention and Hegemony*, 13-73.

¹¹² van der Pijl, "Ruling Classes, Hegemony, and the State System."

state forms have been eclipsed by hybrid forms of neoliberal state informed by transnational support for openness and transparency.¹¹³

5.3.4 FOI Law as a Transnational Event

The changing nature of state formation within the global political economy and the contemporary transformation of Hobbesian states have facilitated the diffusion of FOI law beyond the Lockean heartland. FOI law and public sector transparency has now become a transnational event, not solely determined by domestic circumstances. Blanton noted the link between the contemporary proliferation of FOI law and globalization; he writes that within the post-Cold War global economy 'international standards and expectations of openness play a more important role than particular local political quarrels.'¹¹⁴ The transnational historic bloc has been a key driver of the recent revolution in 'international standards and expectations of openness' in providing a fundamental platform of support for the exceptional expansion of public sector transparency and FOI law. However, the transnational historic bloc is not a ubiquitous entity: support provided by the bloc, especially financial support, has fed into the development of a transnational advocacy network, mentioned earlier in the thesis, incorporating local, national, regional and international advocates in support of FOI law and transparency (see 7.3).

The transnational historic bloc has actively promoted transparency and FOI law within the legal and political superstructures of national historic blocs as a necessary component of multi-level governance ensuring compliance and stability. Gill argues the transnational historic bloc supports transparency, and initiatives such as FOI law, in the context of the construction of a surveillance culture that draws inspiration from the ideas of the British utilitarian philosopher Jeremy Bentham, and indeed much of the contemporary literature on the foundation of transparency makes reference to Bentham.¹¹⁵ Gill suggests that Bentham's idea of a 'panopticon' informs the transnational historic bloc.¹¹⁶ The blueprint of a 'panopticon' presented a model prison/work yard in

¹¹³ Gill, "The Global Panopticon? The Neoliberal State, Economic Life and Democratic Surveillance," 4-11.

¹¹⁴ Blanton, "The Openness Revolution: The Rise of a Global Movement for Freedom of Information," 16.

¹¹⁵ Gill, "The Global Panopticon? The Neoliberal State, Economic Life and Democratic Surveillance." See for example: Hood, "Transparency."

¹¹⁶ Gill, "The Global Panopticon? The Neoliberal State, Economic Life and Democratic Surveillance."

which guards have a central vantage point to view any resident at any time.¹¹⁷ However, residents, in turn, cannot know for sure if they are being watched or not. Therefore a degree of self-control is incorporated into the system as residents attempt to behave, unsure of whether or not they are being watched. To extend the idea of the panopticon to the transparent national state apparatus today would suggest that the state apparatus within the contemporary world order is essentially a resident in the new ‘global panopticon.’

The foundational support for public sector transparency to emerge within the global political economy with the transnational historic bloc has fed into the development of a transnational advocacy network (as shown at 7.3). This network has had a reciprocal relationship with the transnational historic bloc, boosting support within the bloc and, in turn, gaining support from the bloc. International advocacy groups such as Article 19, the Commonwealth Human Rights Initiative, Transparency International and the Carter Center have been important global campaigners within the network and they have received substantial financial support from organizations linked within the transnational historic bloc, such as the IMF and World Bank, as well as wealthy foundations such as the Ford, Carnegie and Soros Foundations, and the international development agencies of richer nations, such as United States Agency for International Development (USAID) (see 7.3.2). In addition to these international advocacy groups, the transnational advocacy network for openness and FOI law is comprised of a multitude of local advocates that receive support from the international groups, in addition to bodies of the transnational historic bloc (7.3.3).

Highlighting the importance of the transnational historic bloc and the transnational advocacy network does not however provide an understanding of how the various elements of this picture have functioned to facilitate the dramatic rise of FOI law and public sector transparency over the past three decades. The process of interaction between national and transnational actors and the nature of change within the contemporary diffusion of the law remains unaddressed. This process necessarily relates to recent broader processes of interaction and change within national state forms, especially Hobbesian state forms, involving national and transnational forces. The final

¹¹⁷ J. Bentham, *The Panopticon Writings* (London: Verso, 1995).

section of the chapter assesses analytical tools provided by transnational historical materialism for understanding change in contemporary state formation that might shed light on the processes behind the contemporary proliferation of transparency law.

5.4 Contemporary State Formation and the Proliferation of FOI Law

Two theoretical tools for conceptualizing the contemporary relationship between national state forms and the global political economy are presented in the final section of this chapter. The concept of the ‘internationalization of the state’ is first presented (see 5.4.1 below). This option properly considers the influence of hegemonic transnational forces in contemporary state formation and the diffusion of FOI law. However, it tends towards a deterministic, top-down view that ignores the variable roles played by local actors (5.4.2 below). While the basic premise of the internationalization of the state—that national state apparatuses have become heavily influenced by social forces and institutions outside the national arena—remains valid, an argument is made that contemporary state formation and the recent explosion of transparency law is better conceptualized as a type of ‘passive revolution’ (5.4.3 and 5.4.4). These revolutions are a kind of reformism, a unique national reflection of international developments, intertwining both national and transnational elements that must be understood within the ‘originality and uniqueness’ of each case.¹¹⁸

5.4.1 Top-Down View: Internationalization of the State and FOI Law

Transnational historical materialists such as Robert W. Cox and William I. Robinson have argued that the contemporary restructuring of national historic blocs in the midst of the emergent transnational historic bloc can be described as an ‘internationalization of the state’, which essentially entails a fundamental reorientation toward support of global rather than national forces.¹¹⁹ Cox suggests the internationalization of the state involves the conversion of the state apparatus:

¹¹⁸ Gramsci, *Selections from the Prison Notebooks*, 240.

¹¹⁹ Cox, "Global Perestroika," 302. and Robinson, *Promoting Polyarchy: Globalization, US Intervention and Hegemony*, 373.

into an agency for adjusting national economic practices and policies to the perceived exigencies of the global economy. The state becomes a transmission belt from the global to the national economy, where heretofore it had acted as the bulwark defending domestic welfare from external disturbances.¹²⁰

Similarly, Robinson writes, 'The function of the nation-state is shifting from the formulation of national policies to the administration of policies formulated by the transnational elite acting through supranational institutions.'¹²¹ Both Cox and Robinson argue the state apparatus of the national historic bloc has become heavily influenced by social forces and institutions outside the national arena.

The internationalization of the state is conceptualized as a largely top-down process driven by transnational social forces. Policy consensus and transformation is developed amongst 'caretakers of the global economy' comprising elites from informal institutions such as the Trilateral Commission and the Bilderberg Conferences, as well as official institutions such as the IMF, World Bank and OECD, and central state agencies, particularly treasuries and central banks.¹²² This consensus is variable depending on the position of the particular state within the world economy, although the general trend within the transnational historic bloc has been, as mentioned above, to support the transformation of national legal and political structures along certain lines correlating to the needs of the global economy.¹²³ The general framework incorporates support for new constitutionalism, disciplinary neoliberalism and the cultivation of market civilization.¹²⁴ Consensus is transmitted down into the state apparatus through the agencies closely linked to the global political economy, such as executive, fiscal and monetary agencies.¹²⁵

As an attempt to conceptualize global restructuring of national historic blocs in the wake of the transnational historic bloc, the concept of the internationalization of the state is not without utility. The concept captures the manner in which regional,

¹²⁰ Cox, "Global Perestroika," 302.

¹²¹ Robinson, *Promoting Polyarchy: Globalization, US Intervention and Hegemony*, 373. See also W. I. Robinson, "Globalisation: Nine Theses of Our Epoch," *Race & Class* 38, no. 2 (1996): 19.

¹²² Cox, "Global Perestroika," 301.

¹²³ ———, *Production, Power and World Order: Social Forces in the Making of History*, 253-61.

¹²⁴ S. Gill, "Globalisation, Market Civilisation and Disciplinary Neoliberalism," *Millennium* 24, no. 3 (1995), ———, "New Constitutionalism, Democratisation and Global Political Economy," *Global Change, Peace and Security* 10, no. 1 (1998).

¹²⁵ Cox, "Social Forces, States and World Orders: Beyond International Relations Theory," 146.

international and global institutions have placed a new pressure on the structure and function on national state apparatuses, visible in structural adjustment programs, amongst other things. Indeed, the concept of the internationalization of the state provides a unique lens through which to view the contemporary explosion of transparency law that focuses attention on how dominant transnational forces have pursued the state apparatus to reduce its sovereignty over information. The notion of the internationalization of the state accounts for the influence of supranational and international bodies such as the IMF and the UNDP, and international non-government institutions, such as Article 19, in pressuring states to adopt FOI law. Such bodies have played a strong role in pressuring state apparatuses to adopt FOI law: they provide financial support, run workshops and conferences, and lobby government directly with tactics such as loan conditionality (as mentioned at 7.3.2). In Pakistan, for instance, FOI regulation was adopted in September of 2002 in response to loan conditions set by the IMF for a US\$1.4 billion loan.¹²⁶

5.4.2 Criticism of the Internationalization of the State

However, conceptualizing the restructuring of national historic blocs in the midst of the transnational historic bloc and the contemporary diffusion of FOI law from the perspective of the internationalization of the state tends to provide a skewed understanding focused overwhelmingly on the actions and motives of powerful global and international actors. The perspective provided by the concept of the internationalization of the state ignores the role played by forces within domestic historic blocs in the contemporary restructuring of legal and political structures and the diffusion of transparency law. For example, next door to Pakistan, in India, grassroots organizations played an important role in the adoption of FOI law (see 9.3.3). An organization for the empowerment of workers and peasants lead a struggle for access to information within subnational jurisdictions into the national arena, as part of efforts to curb corruption in development and ensure justice in wages.¹²⁷ The internationalization of

¹²⁶ Roberts, *Blacked Out: Government Secrecy in the Information Age*, 111. Pakistan and International Monetary Fund, "Memorandum of Economic and Financial Policies for the Remainder of Fy 2002/03," The International Monetary Fund, <http://www.imf.org/external/np/loi/2002/pak/03/>, (Date Accessed: 4 September, 2010). See point 16.

¹²⁷ E. McCall and A. Wilde, "Rights to Information and the Poor: Experiences from India," in *Making Democracy Deliver: Innovative Governance for Human Development*, ed. United Nations Development Programme (New York: United Nations Development Programme, 2007). R. Jenkins and A. M. Goetz,

the state, as a conceptual tool, overlooks much national detail by emphasizing the influence of the transnational historic bloc in change.

The concept of the internationalization of the state has been debated and criticized by supporters and critics alike. A range of otherwise sympathetic authors stress that the national state cannot be reduced to the position of a transmission belt. Leo Panitch has voiced concern that the concept is 'too "top down" in its expression of contemporary power relations.'¹²⁸ Other authors agree.¹²⁹ They recommend a more reciprocal interaction between international and national classes, institutions and ideologies is more realistic. In a graver manner, Randell Germain and Michael Kenny are critical of a tendency of top-down analysis within transnational historical materialism in general that they say is perpetrated by the concept of the internationalization of the state.¹³⁰

Transnational historical materialists have responded in a constructive manner to criticisms of determinism directed at the idea of the internationalization of the state. To begin with, supporters and critics alike agree on the need to further clarify and test the hypothesis.¹³¹ More critically, some seem to agree that an excessively top-down conception of state transformation is not in line with the broader dialectical approach of

"Accounts and Accountability: Theoretical Implications of the Right-to-Information Movement in India," *Third World Quarterly* 20, no. 3 (1999). Slough and Rodrigues, "India's Right to Information Movement Makes a Breakthrough."

¹²⁸ L. Panitch, "Globalization and the State," in *The Socialist Register: Between Globalism and Nationalism*, ed. L. Panitch and R. Miliband (London: Merlin Press, 1994).

¹²⁹ A Baker, "Nebuleuse and the 'Internationalization of the State' in the UK? The Case of HM Treasury and the Bank of England," *Review of International Political Economy* 6, no. 1 (1999), L. H. M. Ling, "Hegemony and the Internationalizing State: A Post-Colonial Analysis of China's Integration into Asian Corporatism," *Review of International Political Economy* 3, no. 1 (1996), J. Moran, "The Dynamics of Class Politics and National Economies in Globalization: The Marginalization of the Unacceptable," *Capital and Class* 66 (1998).

¹³⁰ Germain and Kenny, "Engaging Gramsci: International Relations Theory and the New Gramscians," 18.

¹³¹ D. Egan, "The Limits of Internationalization: A Neo-Gramscian Analysis of the Multilateral Agreement on Investment," *Critical Sociology* 27, no. 3 (2001), Ling, "Hegemony and the Internationalizing State: A Post-Colonial Analysis of China's Integration into Asian Corporatism.", F. Soderbaum and I. Taylor, "Transmission Belt for Transnational Capital or Facilitator of Development? Problematising the Role of the State in the Maputo Development Corridor," *Journal of Modern African Studies* 39, no. 4 (2001), S. Shields, "Global Restructuring and the Polish State: Transition, Transformation, or Transnationalization?," *Review of International Political Economy* 11, no. 1 (2004), U. Brand and C. Gorg, "Post-Fordist Governance of Nature: The Internationalization of the State and the Case of Genetic Resources - a Neo-Poulantzian Perspective," *Review of International Political Economy* 15, no. 4 (2008).

transnational historical materialism.¹³² Morton takes the matter back to the writings of Gramsci and suggests:

The overall position adopted on the relationship between the global and the national... may differ from one... perspective to the next, but it is usually driven by the purpose and empirical context of the research. Yet... the peculiarities of history within specific national historical and cultural contexts should not be overlooked. It is therefore perhaps important to admit the significance of taking a “national” point of departure—following Gramsci—that involves focusing on the intertwined relationship between “international” forces and “national” relations within state/civil society relations that react both passively and actively to the mediation of global and regional forces.¹³³

The basic premise of the internationalization of the state as a concept, which is that the state apparatus of national historic blocs has become heavily influenced by social forces and institutions outside the national arena, remains clear and valid, although the argued process by which it occurs remains a point of criticism and confusion. Transnational social forces and institutions within the global political economy have been influential in the contemporary proliferation of FOI law and yet the concept of the internationalization of the state applies too much emphasis on the role played by such forces and bodies at the expense of allocating for the relative input of grassroots, local and national actors that have actively campaigned for FOI law within their corresponding jurisdictions. The critics of the internationalization of the state hypothesis are right to suggest that more understanding should be allocated for how national and transnational forces have played variable roles in contemporary state formation and, by consequence, the contemporary diffusion of transparency law.

5.4.3 Balanced View: Passive Revolution

The concept of ‘passive revolution’ provides a more balanced view of the contemporary explosion of FOI law and the relationship between national historic blocs and the transnational historic bloc.¹³⁴ The term denotes a particular type of transformation of the

¹³² See Egan, "The Limits of Internationalization: A Neo-Gramscian Analysis of the Multilateral Agreement on Investment," 80.

¹³³ Morton, *Unravelling Gramsci: Hegemony and Passive Revolution in the Global Economy*, 132.

¹³⁴ Gramsci originally borrowed the term from Vincenzo Cuoco (1770-1823), an Italian historian noted for his history of the 1799 Neapolitan Revolution. Cuoco used the term passive revolution to describe how in

state apparatus as an institution of power that contrasts with traditional notions of revolution; whereas 'orthodox' revolutions entail sudden and fundamental change driven by the masses, passive revolutions entail substantial reformism directed by elites.¹³⁵ Passive revolutions, according to Gramsci, are a process of gradual change within the modern state overseen by elites aimed at consolidating the power of pre-existing or emergent social forces.¹³⁶ Passive revolutions therefore generally lack popular support and are characterized by a mixture of change and consolidation, and, although each case must be understood in its own historical frame of reference, reform programs of a passive revolution are often a response by elites to a lack of positive ideological hegemony and possibly a perceived threat of mass mobilization.¹³⁷ Such instances necessarily occur within the context of the national within the international, as social forces and ideas develop and transmit around the world.¹³⁸

The meaning of the concept of passive revolution differs from its application, although like its meaning, the applicability of the concept of passive revolution is generally broad.¹³⁹ Indeed, Gramsci suggests the thesis of the passive revolution might be used as a lens of interpretation for 'every epoch characterized by complex historical upheavals.'¹⁴⁰ In other words, passive revolution is a potential tendency to every transformation process. From this perspective, Christine Buci-Glucksmann explains, passive revolution becomes a 'criterion of interpretation' for viewing 'conservatism or moderate reformism' that seeks to progressively modify the pre-existing composition of

the eighteenth century younger members of the southern Italian *aristocracy* adopted French *revolutionary* ideas in their own favor. D. J. Riley and M. Desai, "The Passive Revolutionary Route to the Modern World: Italy and India in Comparative Perspective," *Comparative Studies in Society and History* 49, no. 4 (2007): 816.

¹³⁵ No comprehensive general theory of revolution exists, but generally revolutions are conceptualized in terms of the evolution of the state as an institution of power and coercion and they involve sudden fundamental change within social, economic or political spheres. See: C. B. Kroeber, "Theory and History of Revolution," *Journal of World History* 7, no. 1 (1996): 21. K. Kumar, "Introduction," in *Revolution: The Theory and Practice of a European Idea*, ed. K. Kumar (London: Weidenfeld and Nicolson, 1971), 10.

¹³⁶ Riley and Desai, "The Passive Revolutionary Route to the Modern World: Italy and India in Comparative Perspective," 816.

¹³⁷ A. S. Sassoon, "Passive Revolution and the Politics of Reform," in *Approaches to Gramsci*, ed. A. S. Sassoon (London: Writers and Readers, 1982), 131. and A. D. Morton, "Structural Change and Neoliberalism in Mexico: 'Passive Revolution' in the Global Political Economy," *Third World Quarterly* 24, no. 4 (2003): 635.

¹³⁸ Gramsci, *Selections from the Prison Notebooks*, 240.

¹³⁹ C. Buci-Glucksmann, "State, Transition and Passive Revolution," in *Gramsci and Marxist Theory*, ed. C. Mouffe (London: Routledge & Kegan Paul, 1979), 208.

¹⁴⁰ Gramsci, *Selections from the Prison Notebooks*, 114.

forces through the state in the interest of the existing social establishment or an emerging one.¹⁴¹ When applying the concept of passive revolution the aim is therefore to examine the intertwining relationships between various social forces and how these forces compete and coordinate to pursue their political strategies.

Gramsci applied the thesis of passive revolution to an interpretation of a variety of national/international transformations; but perhaps the most relevant example is the eighteenth century response of European states to the French revolution.¹⁴² Gramsci argued that whereas the old feudal aristocracy was destroyed in an explosive revolution in France in 1789, subsequent and similar socio-political changes swept across Europe in the manner of compromise between the rising capital classes and the traditional aristocracy.¹⁴³ A concern for restoration throughout European states amid successive waves of reform following the French Revolution gave local social struggles 'sufficiently elastic frameworks to allow the bourgeoisie to gain power without dramatic upheavals, without the French machinery of terror. The old feudal classes were demoted from their dominant position to a "governing" one, but were not eliminated....'¹⁴⁴ The underlying theme within this example of passive revolution, and indeed within other examples examined by Gramsci, is the manner in which the existing and emergent social forces went about change and consolidation through reform linked to international developments.

5.4.4 Passive Revolutions in a Global Epoch

The contemporary relationship between national historic blocs and the transnational historic bloc within the current global epoch and especially the support by the latter of a growth in neo-liberal structures has been interpreted by a number of authors as a form of passive revolution.¹⁴⁵ These authors argue national historic blocs have undergone and are undergoing a fundamental transformation in the style of a reform agenda that is supported from above, but that intertwines various and often competing national and transnational

¹⁴¹ Buci-Glucksmann, "State, Transition and Passive Revolution," 208.

¹⁴² A. D. Morton, "The Continuum of Passive Revolution," *Capital and Class* 34, no. 3 (2010).

¹⁴³ Gramsci, *Selections from the Prison Notebooks*, 115.

¹⁴⁴ Ibid.

¹⁴⁵ Morton, "Structural Change and Neoliberalism in Mexico: 'Passive Revolution' in the Global Political Economy.", S. Shields, "Historicizing Transition: The Polish Political Economy in a Period of Global Structural Change - Eastern Central Europe's Passive Revolution," *International Politics*, no. 43 (2006).

elements, within the process. These authors tend to embrace two key points highlighted by Gramsci. The first is that national transformations should be seen to occur within international settings, that the focus should be on the national as a response, reaction or relation to the international: 'To be sure the line of development is toward internationalism, but the point of departure is "national" – and it is from this point of departure that one must begin. Yet the perspective is international and cannot be otherwise.'¹⁴⁶ The second point is that passive revolutions within national historic blocs can often develop on their own unique terms because they essentially represent 'a reflection of international developments which transmit their ideological currents to the periphery.'¹⁴⁷ Transmissions within the national/international context are not simply directed from above, they involve an intertwining of the national and the international that must be understood within the 'originality and uniqueness' of national historic blocs.¹⁴⁸

A handful of transnational historical materialists have applied the concept of passive revolution to recent national transitions towards the neo-liberal model supported by the transnational historic bloc. For example, Morton examines post-1970s structural change in Mexico, which involved the end of seventy years of rule by the Institutional Revolutionary Party and the introduction of neo-liberal politics.¹⁴⁹ He focuses on 'how social relations within the form of state in Mexico were actively and passively implicated' in the transformation towards the Washington Consensus.¹⁵⁰ Morton examines the relationship between state technocrats and their connections to the structures of the global political economy.¹⁵¹ Similarly, Stuart Shields examines the transition in Poland in the 1980s from communism to neo-liberalism for its tendencies of passive revolution.¹⁵² Shields emphasizes the influence of social forces 'intimately associated with transnational capital' in Poland's transition, but explains that reforms

¹⁴⁶ Gramsci, *Selections from the Prison Notebooks*, 240.

¹⁴⁷ *Ibid.*, 116.

¹⁴⁸ *Ibid.*, 240.

¹⁴⁹ Morton, "Structural Change and Neoliberalism in Mexico: 'Passive Revolution' in the Global Political Economy."

¹⁵⁰ *Ibid.*: 648-49.

¹⁵¹ *Ibid.*

¹⁵² Shields, "Historicizing Transition: The Polish Political Economy in a Period of Global Structural Change - Eastern Central Europe's Passive Revolution."

were carried out through a process that involved established social forces, opposition intellectuals and elites, all buttressed by the external influence of the IMF and World Bank.¹⁵³

The concept of ‘passive revolution’ is a much more flexible and dynamic platform than ‘the internationalization of the state’ in viewing the process of contemporary changes in state formation. The concept moves beyond a rudimentary and deterministic top-down view of contemporary transformations in state formation and allows for an appreciation of the intertwining of various actors within the context of the ‘originality and uniqueness’ of national historic blocs, now open to transnational penetration.¹⁵⁴ Certainly a much fuller understanding of the contemporary diffusion of FOI law is made possible by conceptualizing recent shifts in state formation, not simply as further internationalizations of the state, but as unique national reactions to historical transformations in the world economy the encompass local, national, international, and transnational actors and structures of varying ideologies and resources.

5.4.5 The Proliferation of FOI Law as a Passive Revolution

The recent proliferation of FOI law may be viewed as a series of passive revolutions. The key point is the nature of adoption as a national reflection of international developments. This distinguishes adoption amongst Lockean states compared to adoption amongst Hobbesian states. Whereas domestic developments were most important to adoption within Lockean states, the emergence of FOI law and public sector transparency within Hobbesian states was more ‘a reflection of international developments which transmit their ideological currents to the periphery.’¹⁵⁵ International developments supported unique national reflections amongst Hobbesian states. The support provided by the transnational historic bloc and the transnational advocacy network were paramount to the growth of international norms and expectations, but these factors did not impose reform upon states. Rather unique national reflections set within the originality and uniqueness of each state formation enabled the adoption of the law. These national reflections generally involved an intertwining of national and transnational actors.

¹⁵³ Ibid.: 475.

¹⁵⁴ Gramsci, *Selections from the Prison Notebooks*, 240.

¹⁵⁵ Ibid., 116.

The global driver for the recent explosion of FOI law has been the emergence of transnational support, especially the transnational historic bloc and its interests in public sector transparency. However, as a general rule, prominent institutions of the bloc, such as the IMF, World Bank and USAID, have not, as the concept of the internationalization of the state suggests, directly imposed upon national historic blocs in support of the law. That has happened only on rare occasions, as in the case of Pakistan. More often the transnational historic bloc has supported the law indirectly by providing financial and ideological support to the transnational advocacy network. The transnational historic bloc is therefore the face behind the mask of pluralism in the reform process that characterizes the contemporary diffusion of FOI law.¹⁵⁶ The transnational historic bloc and transnational advocacy network have developed the 'international standards and expectations of openness' that Blanton identifies as now more important than 'local political quarrels.'¹⁵⁷ A supportive international environment within the global political economy has enabled adoption amongst Hobbesian states under transformation.

National reflections, as passive revolutions, have coincided with international developments. These passive revolutions involve a reflection of international development that happens in the context of the originality and uniqueness of each state. The law reform process, supported by the international development, is filled in the local context by national history and circumstance. The 'empty signifier' of FOI law (as discussed earlier at 2.2.1) is filled within each state and the process of national adoption is separate and unique from the international development, although fundamentally tied to it. Local and transnational actors are intertwined in the reform process; the former generally plays a primary role, while the latter generally plays a supportive role. This is seen in the case studies of China, Mexico and India (examined later in the thesis), wherein 'administrative reform', 'media advocacy' and 'social activism' were national factors (9.3), fillers of the empty signifier in each case, buttressed by international factors of 'norm emulation' and 'foreign support' (9.2).

¹⁵⁶ J. Roelofs, *Foundations and Public Policy: The Mask of Pluralism* (Albany: State of University New York Press, 2003).

¹⁵⁷ Blanton, "The Openness Revolution: The Rise of a Global Movement for Freedom of Information," 16.

5.5 Conclusion

Transnational historical materialism was presented in this chapter as a socio-legal theoretical foundation for understanding the diffusion of FOI law and public sector transparency; an alternative to the modernization foundation and agent foundation discussed in the previous chapter. Above all the chapter has shown transnational historical materialism to be a critical foundation concerned with identifying stability and change in historical structures, especially within the ‘extended state’ as a historical structure of relative relations between the state apparatus and society. The chapter provided an overview of transnational historical materialism via the work of Cox, and explored the key concept of state formation. It considered the process of state formation and how it informs an understanding of the diffusion of FOI law, both before and after the transformation in world order following the onset of American-led globalization and increased transnational relations. The remaining chapters of the thesis apply the theoretical foundation presented in this chapter; first in a two part macro-historical investigation that focuses on broad transformation in world order and Lockean and Hobbesian state formation; and then second in a two part investigation into comparative Hobbesian cases (China, Mexico and India) of contemporary transformation in state form and adoption of FOI law.

6: MACRO-HISTORICAL VIEW I: EMERGENCE AND EARLY DIFFUSION

6.1 Introduction

This chapter begins the process of applying transnational historical materialism to analyze the diffusion of FOI law. The chapter is the first part of a two part examination, comprised of the current chapter and the next chapter, that uses macro-historical analysis to examine the nomothetic nature of the transformations involved in the diffusion of access law and public sector transparency (whereas later comparative case studies will emphasize the idiographic, case specific nature of the process). As part of this two-step process, the current chapter first focuses on the initial emergence of the law and its restricted early diffusion; whereas the following chapter subsequently focuses on the contemporary proliferation of the law and the future of its diffusion. Bringing together theoretical and empirical elements, the chapter demonstrates the value of transnational historical materialism in examining the early emergence of FOI law and its initially gradual diffusion, prior to the 1990s. Central to this viewpoint is an understanding of the history of state formation within the modern world system. The chapter explores in more detail the Lockean and Hobbesian state forms discussed in the previous chapter. It examines how the history of these state forms within the modern world system provides a platform for understanding the initial emergence and early diffusion of FOI law and public sector transparency.

The chapter is divided into three sections. The first returns to the modern dichotomy between Lockean and Hobbesian state forms of modern history discussed in the previous chapter. This section stresses the need for a nomothetic view of the diffusion of FOI law and provides an introductory overview of the importance and development of

Lockean and Hobbesian states in relation to each other. The second section of the chapter delves into the Lockean state form and its importance to the advent and early diffusion of FOI law. This section considers the emergence of FOI law alongside the rise of self-rule and representative democracy within Lockean states and the early diffusion of the law facilitated by ‘lesson drawing’ amongst policymakers throughout a handful of Lockean states. The third and final section of the thesis shifts the focus towards Hobbesian states. It investigates the way in which Hobbesian states have presented a buffer to the early diffusion of the law due to their characteristic elevation of the state apparatus as a productive force within society. This elevation provided the state apparatus with grounds to withhold government-held information without effective civil backlash.

6.2 Advent and Diffusion within the Modern Dichotomy of States

Above all the current chapter (and the following chapter) supports a nomothetic understanding of the diffusion of FOI law. In their examination of the rise of FOI law, Colin Darch and Peter Underwood note that in order to ‘write an effective social history of the diffusion process, some degree of recognition of the idiographic character of access rights is necessary.’¹ And they emphasize the words of Thomas Blanton:

almost every freedom of information law in the world today, came about not because of any sudden conversion to enlightenment philosophy or rationality, but because of *specific conditions of competition for political power*. Competition between parliaments and administrations, competition between ruling and opposition parties, competition between present and prior regimes, competition between bribe-takers and muck-rakers... the history of freedom of information in practice in the world is extremely varied and complex.²

While this is true, and demonstrated in the comparative case studies of China, Mexico and India examined in the thesis, it is also important to emphasize continuity in the diffusion of access rights. FOI law rose and initially spread amongst a historically unique set of modern states, and although each state adopted the law under ‘specific conditions

¹ Darch and Underwood, *Freedom of Information and the Developing World: The Citizen, the State and Models of Openness*, 144.

² Emphasis by authors. Ibid., 64, T. S. Blanton, in *Japan-United States Symposium: The Internationalization of Japan and Open Government* (Tokyo: 1996).

of competition for political power', there is a fundamental continuity across the earliest (and the latest) adopters of FOI law.

This chapter argues the early diffusion of FOI law, prior to its contemporary proliferation, can be understood by collapsing state forms of modern history into Lockean and Hobbesian groups.³ The major difference between the two state types is the nature of the relationship between the state apparatus and society within the historical structure of the 'extended state' (as discussed at 5.3).⁴ The chapter demonstrates how the law gradually emerged in the Lockean heartland where society, empowered with a degree of autonomy and power, was able to demand a 'right to know' (6.3 below); and how transparency law was stunted amongst Hobbesian states where the state apparatus held a substantial sovereignty over society that extended to information (6.4). However, the chapter also moves beyond the dichotomy to examine historical variation amongst both Lockean and Hobbesian state forms and how such variation is important in relation to openness and FOI law. For example, twentieth century Hobbesian states are divided between totalitarian and authoritarian regimes and this further categorization is helpful in understanding variations in access to information (see 6.4).

As discussed in the previous chapter, the modern state developed in the seventeenth and eighteenth century across Europe when capital classes emerged and events like the Glorious Revolution and the French Revolution signaled the demise of feudalism and the absolutist monarchical state.⁵ The variety of modern states that have come into existence since that time can be understood as falling into either Lockean or Hobbesian forms.⁶ These formations differ on the grounds that the first is an organic model at the centre of the international political economy, while the second is a successive model to appear on the horizon as a contender: the Lockean state form emerged across a heartland spanning Europe and the New World as feudal and absolutist structures gave way to an organic rise in civil society from the sixteenth century onwards; whereas the Hobbesian

³ van der Pijl, *Transnational Classes and International Relations*, 65-98, ———, "A Lockean Europe?," ———, *Global Rivalries: From the Cold War to Iraq*, 1-12, ———, "Ruling Classes, Hegemony, and the State System," 16-20.

⁴ van der Pijl, *Transnational Classes and International Relations*, 65-98.

⁵ See Chapter Five: '5.2.3 Modern World Orders and FOI Law.' Also: J. Anderson and S. Hall, "Absolutism and Other Ancestors," in *The Rise of the Modern State*, ed. J. Anderson (Brighton: Wheatsheaf Books, 1986).

⁶ van der Pijl, *Transnational Classes and International Relations*, 86.

state form, on the other hand, largely emerged as a response by the periphery to the expansion of the heartland, as a contender model, aimed at competing with the heartland in modernization through state-led catch-up industrialization.⁷ The Lockean and Hobbesian forms have varied over the centuries in the rise and fall of world orders (as shown in Table 10), although each embodies a historically distinctive relationship between society and the state apparatus.⁸

Table 10: Lockean and Hobbesian State Forms

Era	Lockean heartland	Hobbesian contenders
Eighteenth and nineteenth centuries	Liberal state (Britain) Instrumental liberal state (US)	Bonapartist state (France)
Late nineteenth to early twentieth century	Welfare nationalist state (Britain)	Welfare nationalist state (Prussia/Germany) Fascist-corporative state (Axis Powers)
Mid-Twentieth century	Corporate liberal state* (US/North Atlantic Bloc)	Redistributive party-commanded state (Soviet Bloc) Cartel state (South European/ American dictatorships)
Late Twentieth Century	Hyperliberal state (Thatcher/Reagan model)	Neo-Mercantilist developmentalist state (late industrializing Third World States)
*Cox (1987) uses 'neoliberal state' which more often is employed to denote what he terms the 'hyperliberal' state.		

The Lockean state provided the basis for the emergence of FOI law and its early diffusion, while the periphery of Hobbesian contender states presented a barrier to the diffusion of the law outside the Lockean heartland. Jurgen Habermas has examined the growth of a 'bourgeois public sphere' that developed in eighteenth and early nineteenth century Europe and America to engage in debate over the general rules governing society and the state; this public sphere asserted a claim to self rule and popular sovereignty that elevated society above the state apparatus as a governing entity and, subsequently, the public gained, gradually and unevenly, a 'right to know.'⁹ On the other hand, the state

⁷ Ibid., 80.

⁸ Reproduced from Ibid., 85.

⁹ J. Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*, trans. Thomas Burger and Frederick Lawrence (Cambridge: Polity Press, 1989), 27.

apparatus within Hobbesian states has been mandated as a driving force within society and this generally prevented the cultivation of self-regulating civil society and the development of a public 'right to know'; under the Hobbesian mode of state-society relations, the state apparatus is viewed as 'being an entity unto itself and, therefore, under no obligation to furnish information requested by the citizenry.'¹⁰ The Lockean/Hobbesian dichotomy provides an understanding for the early emergence and diffusion of transparency law, but the dichotomy and the understanding it provides breaks down in the final decades of the twentieth century, when FOI law proliferated to every region of the globe. The breakdown of the Lockean/Hobbesian dichotomy and the proliferation of public sector transparency are examined in the second part of this nomothetic investigation, provided in the next chapter.

6.3 Lockean Heartland of States

The following section analyses the emergence and early diffusion of FOI law within the Lockean heartland. It first examines the important materialization of social and political relationships and political philosophies that made the emergence of FOI law possible within Lockean states (see 6.3.1 below). Adoption within pioneers such as Sweden and the United States is then the focus of discussion that highlights the Lockean nature of adoption but also the unavoidable and persistent tension between openness and secrecy visible in the pioneer states (6.2.3). Successive Lockean adopters have also exhibited such characteristics as they have tended to borrow ideas from the pioneers in a process of 'policy transfer' or 'lesson drawing' (6.2.4). Finally, the section ends with a discussion of what might be considered late Lockean adopters, such as the United Kingdom, Switzerland and Germany (6.2.5). This discussion highlights the persistent tensions between secrecy and openness within Lockean states but also the possibility of quasi-FOI regimes that may have reduced pressure to enact specific access law.

6.3.1 The Lockean State: the Challenge of Openness

¹⁰ Relyea, "Freedom of Information, Privacy, and Official Secrecy: The Evolution of Federal Government Information Policy Concepts," 144.

FOI law emerged with the Lockean state. Patrick Birkinshaw writes: 'The position that a ruling body adopts towards the provision of information about its activities to a representative chamber or the civil society at large will inevitably be coloured by *considerations about the proper role of government*, as well as sheer political expedience.'¹¹ The most basic 'considerations about the proper role of government' needed for the emergence of FOI law first developed within the Lockean heartland. An organic growth in new social classes that claimed a share of political power from absolutist rulers transformed information relations. The absolutist right of kings to rule and withhold information was challenged; just as later the right of governing representatives to withhold information was challenged. The consensual nature of Lockean politics provided society with a consequential 'right to know' when it came to government. However, it is important to stress, as it is below, the gradual nature in which the 'right to know' developed in the heartland and the persistent tensions between the public's 'right to know' and the right of representatives to withhold information in the public interest.

The Lockean form emerged in seventeenth century Europe, especially England, to replace royal absolutism and feudalism.¹² Emergent capital classes, along with parts of the aristocracy shifting to commercial sources of income, challenged the monarchy for authority, demanding society be governed by a degree of consent.¹³ The challenge, which came to a climax with the Glorious Revolution of 1688, was not successful quickly or decisively; but most importantly a legal structure was gradually constructed that separated public and private spheres, which facilitated a novel balance between centralized state power and local civil self-regulation.¹⁴ Capital and civil society flourished. The 'bourgeois public sphere', identified by Habermas, grew to engage in 'debate over the general rules governing relations in the basically privatized but publicly relevant sphere

¹¹ P. Birkinshaw, *Freedom of Information: The Law, the Practice and the Ideal*, 2nd ed. (London: Butterworths, 1996), 18.

¹² There is a variation within the Lockean complex across the heartland not properly addressed by van der Pijl. See Gill, "The Global Panopticon? The Neoliberal State, Economic Life and Democratic Surveillance," 7.

¹³ van der Pijl, *Transnational Classes and International Relations*, 67.

¹⁴ *Ibid.*, 66.

of commodity exchange and social labor.’¹⁵ John Locke (1632-1704), the political philosopher most representative of the transformation, wrote that government must be based on consent and conducted in a representative fashion.¹⁶ The Lockean form was from the beginning an expanding transnational phenomenon, connecting England, parts of continental Europe, and settlements of the New World.¹⁷

Social and political change within the heartland paved the way for FOI law. A self-regulating public sphere emerged to demand government be based on consent and limited by law. The separation of private and public spheres and the idea of consent central to the Lockean state established the state apparatus as a convener of public authority, but only to the extent permitted by law. Civil society was to maintain a degree of autonomy from the state apparatus and work as a check on government. The model that emerged within the Lockean heartland produced milestones such as the French Declaration on the Rights of Man and of the Citizen (1789) and the American Bill of Rights (1791), and it became the basis for liberal democratic theory and practice, including constitutionalism, parliamentarianism, the rule of law, civil and political liberties, and the separation of powers, as well as FOI law.¹⁸

Alongside political relations, information relations were transformed in the heartland. Prior to the bourgeoisie revolutions, monarchical rulers were in ‘effective control of virtually all information relating to the government and its administration.’¹⁹ The God-given right, claimed by kings and queens, to a monopoly on power, extended to a monopoly on information, which meant a heavy information asymmetry in favor of the monarch. But the political rise of the bourgeoisie challenged that asymmetry. As parliamentarianism grew in the eighteenth and nineteenth century, so too did new networks of relations surrounding public information. But, relatively speaking, information relations remained confined within political elite circles, and executive government reserved a right to restrict internal information throughout the early modern period. Only gradually in the twentieth century, alongside an expansion in bureaucracies,

¹⁵ Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*, 27.

¹⁶ Locke, *Two Treatises of Government*.

¹⁷ van der Pijl, *Transnational Classes and International Relations*, 68.

¹⁸ ———, "A Lockean Europe?," 21-22.

¹⁹ Bishop, "Openness in Public Administration: Can the Government Keep a Secret?," 36-37.

growth in media and technological development, did information relations expand beyond political circles in a further dilution of information asymmetries, and did citizens, journalists and parliamentarians demand a direct legal avenue to access government-held information on the grounds that it was essential to *proper* representative government.

The philosophy of access to public information that gradually developed throughout the Lockean heartland links access to information with self-rule and popular sovereignty. The philosophy is expressed well within the Texas Public Information Act, which states:

Under the fundamental philosophy of the... constitutional form of representative government that adheres to the principle that government is the servant and not the master of the people, it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees.²⁰

And:

The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.²¹

The historically unique transformations of the heartland set the groundwork for FOI law, but within the Lockean state openness in government has always been a challenge, met with claims for legitimate government secrecy. For example, the *Official Secrets Act* of Britain, a pioneering state of liberal traditions within the heartland, was enacted to broadly restrict access to government-held information in order to ensure the safety and interests of the state apparatus.²² Contrary to Lockean claims of society to self-rule and access to information held by government departments and agencies, the *Official Secrets Act*, first enacted in 1889, provides the state apparatus with a right to restrict government-held information in its own interest, which is presumed to be in the public

²⁰ As quoted in B. Wyatt, "America's Experience of FOI: An Account," in *FOIA and Civil Society*, ed. L. Arogundade (Lagos: International Press Centre, 2003), 102.

²¹ Attorney General of Texas, *Public Information: 2010 Handbook* (Austin: State of Texas, 2010), 2.

²² See for example: J. B. Christoph, "A Comparative View: Administrative Secrecy in Britain," *Public Administration Review* 35, no. 1 (1975). D. C. Rowat, "How Much Administrative Secrecy?," *The Canadian Journal of Economics and Political Science* 31, no. 4 (1965).

interest. The Act effectively worked to prevent any government official from communicating any information that has not been authorized for release.²³ Offenders faced criminal trial. Similar laws existed throughout the British Commonwealth, in countries such as India, New Zealand and Ireland.²⁴

6.3.2 Lockean FOI Pioneers: Sweden and the United States

The idea that society has a right to access government-held information was pioneered, as part of a broader liberal democratic ethos, originally in Sweden in the eighteenth century and later in the United States in the twentieth century. The circumstances of the adoption of the law in each pioneering state are unique, especially given their historical distance of two centuries. However, in both instances the law was pioneered in an effort to cede power from executive government and the state apparatus to the benefit of popular sovereignty. In Sweden the focus was to check the authority of government in a newly established parliamentary system that tended to carry over absolutist tendencies of the previous monarchical system; whereas in the United States the focus was to check the authority of modern presidential government, especially an expanded array of executive departments and agencies.

Sweden

The *Freedom of the Pen and Press Act* was adopted in 1766 by the Rikstag parliament of Sweden and the law is commonly considered to be the world's first FOI law. It was produced at a time of historically exceptional experimentation in Lockean state formation, in parliamentarianism and civil rights (as discussed below). The specifics of the adoption of the law boil down to parliamentary party politics between rival political groups. However, more generally, the law was championed as part of a broader political movement to ensure the new parliamentary system—only the second of its kind alongside the English parliament at the time—did not function with the absolutism characteristic of previous monarchies.²⁵ Advocates, such as Anders Chydenius, well noted within the FOI literature, worked hard in an effort to free up information flows, including flows of

²³ Rowat, "How Much Administrative Secrecy?," 482.

²⁴ Respectively: *Official Secrets Act 1923*, *Official Secrets Act 1951*, and *Official Secrets Act 1963*.

²⁵ Svanstrom and Palmstierna, *A Short History of Sweden*, 192.

government-held information, in an attempt to safeguard liberal democratic principles of reason, self-rule and the rule of law.²⁶

The case of Sweden is an important starting point in the history of FOI law, because experiments that occurred there between 1718 and 1772 would set the stage for later Lockean states. Sweden entered an 'Age of Liberty' following the end of the Great Northern War that saw it severely defeated by a Russian-led coalition.²⁷ The Swedish monarchy, weakened from the events, ceded power in 1718 to the Estates of the Rikstag parliament, which had existed in its earliest form since the beginning of the 1600s.²⁸ This shift in power was a completely novel occurrence. The only equivalent to the parliamentary system developed in Sweden during the 'Age of Liberty' was in England, where the Glorious Revolution of 1688 had also brought to power a parliamentary system.²⁹ The Swedish experiment flourished thanks to a distinctive collective national unity, especially a balance between the peasantry, aristocracy and monarchy.³⁰ Enlightenment and early liberal democratic ideas were drawn from England and France into Sweden.³¹ The newly empowered Rikstag even ordered a translation of Locke's *Treatise on Government* at its own expense.³² The experiment prevailed for just over half a century, from 1718 until 1772, before monarchical absolutism was reinstated.

The experiment was in its final decade when it gave rise to the world's first FOI law in 1766, which, for the first time in history, gave the public a presumptive right to access government-held documents. In terms of the specifics of the 'competition for political power between parliaments and administrations, ruling and opposition parties, and present and prior regimes' that Blanton asserts is the basis for most of the FOI laws

²⁶ For example Lamble, "Freedom of Information, a Finnish Clergyman's Gift to Democracy.", J. Manninen, "Anders Chydenius and the Origins of World's First Freedom of Information Act," in *The World's First Freedom of Information Act: Anders Chydenius' Legacy Today*, ed. J. Mustonen (Kokkola: Anders Chydenius Foundation, 2006).

²⁷ Svanstrom and Palmstierna, *A Short History of Sweden*.

²⁸ Ibid., 189-90. The Estates consisted of the Nobility, Clergy, Burghers and Peasants. The Swedish Parliament, "The History of the Riksdag."

²⁹ Svanstrom and Palmstierna, *A Short History of Sweden*, 192.

³⁰ T. A. Tilton, "The Social Origins of Liberal Democracy: The Swedish Case," *The American Political Science Review* 68, no. 2 (1974): 565, T. Knudsen and B. Rothstein, "State Building in Scandinavia," *Comparative Politics* 26, no. 2 (1994).

³¹ C. Wolff, "The Swedish Aristocracy and the French Enlightenment," *Scandinavian Journal of History* 30, no. 3 (2005), Manninen, "Anders Chydenius and the Origins of World's First Freedom of Information Act," 27-31.

³² Svanstrom and Palmstierna, *A Short History of Sweden*, 192.

in the world today, the world's first FOI law was the product of struggle between the two main political parties within the Rikstag parliament, the Hats and the Caps.³³ Donald C. Rowat writes: 'When the Hats were defeated in 1765 after a long term of office, the Caps inserted the principle of public access... because of their frustration over administrative secrecy as well as press censorship under the previous regime.'³⁴ Such oppositional politics associated the adoption of FOI law is something repeated throughout the history of the law; indeed oppositional politics and congressional activism would help in the adoption of FOI law in the United States two centuries later (see section below on the United States).

Without diminishing the importance of party politics behind the adoption of transparency law in Sweden, it is important also to note the efforts of reformers in the development of the law. Adoption of the *Freedom of the Pen and Press Act* formed part of a broader campaign challenging the parliamentary sovereignty of the Estates at a time when the idea that the Estates could err was seen as contrary to the fundamental law of the land.³⁵ In other words, access law was championed in a struggle between popular sovereignty and parliamentary sovereignty. Liberal minded thinkers campaigned to ensure basic civil liberties, such as freedom of the press, were protected by law, because, at the time, writing about public affairs was banned.³⁶ Advocates argued freedom of information and press freedom were a precondition for proper parliamentary democracy within which change was effected through choice and reason.³⁷

Within this struggle a champion for FOI law emerged within the Rikstag: Anders Chydenius was a (clergy) member of parliament, a member of the Caps party; he was a man of ideas often compared to Adam Smith.³⁸ Chydenius believed freedom of

³³ Blanton, "The World's Right to Know," 52.

³⁴ Rowat, "Comparative Survey," 2.

³⁵ Manninen, "Anders Chydenius and the Origins of World's First Freedom of Information Act," 21-24, M. F. Metcalf, "Challenges to Economic Orthodoxy and Parliamentary Sovereignty in 18th Century Sweden," *Legislative Studies Quarterly* 7, no. 2 (1982): 252, Darch and Underwood, *Freedom of Information and the Developing World: The Citizen, the State and Models of Openness*, 67.

³⁶ Manninen, "Anders Chydenius and the Origins of World's First Freedom of Information Act," 22.

³⁷ *Ibid.*, 24.

³⁸ Smith is, of course, a key theorist of the early liberal state in the United Kingdom. Lamble, "Freedom of Information, a Finnish Clergyman's Gift to Democracy.", C. G. Uhr, "Anders Chydenius, 1729-1803, a Finnish Predecessor to Adam Smith," *Western Economic Journal*, no. 2 (1964). Chydenius' most widely read work, often compared to Adam Smith's *Wealth of Nations*, is his book on free trade and industry. A. Chydenius, *The National Gain*, Translated from the Swedish Original (London: Ernest Benn, [1765] 1931).

information was essential within a free and enlightened nation, in which reason is possible and the Estates are prevented from wielding absolute power.³⁹ He argued in pamphlets he released that freedom of information and freedom of the press were essential to individual freedom and proper parliamentary government. For example, he proclaimed:

No proof should be necessary that a modicum of freedom for writing and printing is one of the strongest pillars of support for free government, for in absence of such, the Estates would not dispose of sufficient knowledge to make good laws, nor practitioners of law have control in their vocation, nor subjects knowledge of the requirements laid down in law, the limits of authority and their own duties. Learning and good manners would be suppressed, coarseness in thought, speech and customs would flourish, and a sinister gloom would within a few years darken our entire sky of freedom.⁴⁰

Chydenius' key contribution was his role in the adoption of 'unprecedentedly radical' access to information law.⁴¹ The clergyman worked passionately in parliament and achieved results.⁴² In 1766 the *Freedom of the Pen and Press Act* was adopted. It 'abolished censorship, legalized writing about public affairs and mandated public access to government.'⁴³

The law eventually fell into limbo after six years due the resumption of monarchical absolutism, when King Gustav III took power in a *coup d'etat* in 1772.⁴⁴ However, the right to access information was renewed by the 1809 'Instrument of Government' following the resignation of Gustav III, and is still in force today after proclamations in 1810, 1812 and 1949.⁴⁵

The Swedish experiment is an illuminating case study in the diffusion of FOI law for the current study. It provides insight into the nature of the emergence of the law

³⁹ Manninen, "Anders Chydenius and the Origins of World's First Freedom of Information Act," 38, Darch and Underwood, *Freedom of Information and the Developing World: The Citizen, the State and Models of Openness*, 71.

⁴⁰ As quoted in Lamble, "Freedom of Information, a Finnish Clergyman's Gift to Democracy," 3.

⁴¹ Manninen, "Anders Chydenius and the Origins of World's First Freedom of Information Act," 21, Darch and Underwood, *Freedom of Information and the Developing World: The Citizen, the State and Models of Openness*, 71-72.

⁴² Lamble, "Freedom of Information, a Finnish Clergyman's Gift to Democracy," 4. Darch and Underwood, *Freedom of Information and the Developing World: The Citizen, the State and Models of Openness*, 71-72.

⁴³ Darch and Underwood, *Freedom of Information and the Developing World: The Citizen, the State and Models of Openness*, 71.

⁴⁴ Anderson, "Public Access to Government Files in Sweden," 422.

⁴⁵ Ibid.

across the Lockean heartland in terms state-society dynamics and policy transfer. First, within the early Swedish experiment there is a glimmer of the way in which absolute power of the state apparatus is challenged under the Lockean state form and how such a challenge makes possible access to information law reform. When the United States, the modern beacon of FOI law, adopted law in 1966 the forces at play in Sweden, such as parliamentary politics, policy advocacy and freedom of the press, were far more developed, but the Lockean principle was the same: the state apparatus is to be a responsive and accountable institution to (civil) society and this is best achieved with a free flow of information and especially a presumptive right of access to government-held information. Second, the way in which FOI law emerged throughout the 'Age of Liberty' was also telling of the way FOI law would later emerge amongst the early (modern) Lockean adopters of the law. Idea pinching and lesson drawing, as happened in Sweden with reference to Enlightenment and liberal democratic thinking from England and France, was common amongst adopters of the mid-to-late twentieth century. Countries, like Australia, New Zealand and Canada, borrowed heavily from the American precedent.

The United States

The United States was the second major pioneer of FOI law, although it was not the first state to adopt the law following Sweden; Colombia provided a legal clause in 1888 and Finland, formally under Swedish administration, re-adopted FOI law in 1951.⁴⁶ The United States adopted access law in 1966, two centuries after Sweden. The law reform arose in America as a Lockean response to an expansion in government and departmental secrecy. Supporters worked to have FOI law adopted through the early Cold War years of the 1950s and 1960s in response to a widespread culture of administrative secrecy across the state apparatus, which had expanded with the establishment of the New Deal. Advocates, journalists, and electoral representatives believed the secretive administrative state posed a substantial threat to the liberties of individuals enshrined in the American constitution. They demanded access to government-held information as a result, in order

⁴⁶ Banisar, "Freedom of Information around the World 2006: A Global Survey of Access to Government Records Laws," 57 and 70.

to ensure their liberties are maintained. Congressional and media activism were especially important in ensuring transparency law was adopted (as discussed below).

Perhaps the starting point when considering the United States as a modern beacon of transparency law must be the gap of two centuries that separates it with Sweden. As indicated above, FOI law was not completely on hiatus during that time, but diffusion remained extremely isolated. A number of authors have argued the re-emergence of FOI law in twentieth century America is connected with an expansion of the state apparatus, and such an understanding fits into an understanding of the development of the Lockean state presented here.⁴⁷ Over the course of the nineteenth century and especially the twentieth century the state apparatus became a more organized, centralized and coherent force within Europe and the New World.⁴⁸ Bureaucracies grew substantially in the first half of the twentieth century due to an expansion of social and economic responsibilities.⁴⁹ It was in direct response to this rise in the administrative state and an increasingly secretive bureaucracy involved in the lives of everyday citizens that FOI law re-emerged within the United States two centuries after Sweden. Ideological decedents of Chydenius challenged the sovereignty of government departments and agencies to withhold information from the public in an attempt to ensure principles of self-rule and liberty under the Lockean tradition.

Accessibility of information was a concern of the American system of republican government from the start.⁵⁰ Thomas Jefferson, third president of the United States and principle author of the Declaration of Independence (1776) and supporter of the Bill of Rights (1791), is said to have declared: 'Information is the currency of democracy.'⁵¹ Information flows have always been a part of the American 'tradition of sovereignty and

⁴⁷ T. S. Blanton, "The Global Openness Movement in 2006: 240 Years after the First Freedom of Information Law, Access to Government Information Now Seen as Human Right " in *The World's First Freedom of Information Act: Anders Chydenius' Legacy Today*, ed. J. Mustonen (Kokkola: Anders Chydenius Foundation, 2006), 84-85, ———, "U.S. Experience with Freedom of Information Law: Congressional Activism, New Media Leadership and Bureaucratic Politics," *Comparative Media Law Journal*, no. 2 (2003): 6-9, Roberts, *Blacked Out: Government Secrecy in the Information Age*, 12.

⁴⁸ A. Cochrane, "Industrialisation and Nineteenth-Century States," in *The Rise of the Modern State*, ed. J. Anderson (Brighton: Wheatsheaf Books, 1986), 71, E. Etzioni-Halevy, *Bureaucracy and Democracy: A Political Dilemma* (London: Routledge and K. Paul, 1983), 99-128.

⁴⁹ Etzioni-Halevy, *Bureaucracy and Democracy: A Political Dilemma*, 113-14.

⁵⁰ G. McCrann, "An Examination of the Conditions Surrounding the Passage of the 1966 U.S. Freedom of Information Act," *Open Government: a Journal of Freedom of Information* 3, no. 1 (2007): 2.

⁵¹ University of Virginia, "Thomas Jefferson on Politics and Government," <http://etext.virginia.edu/jefferson/quotations/jeff0950.htm>, (Date Accessed: 24th May, 2010).

self-rule.⁵² Harold Relyea reveals some of the early examples and milestones in governmental information sharing within the United States: he includes the printing and distribution of laws and treaties, the maintenance of agency and departmental files, the establishment of the Congressional Record in 1873, the establishment of the Government Printing Office in 1860, the establishment of the Federal Register in 1935 to announce regulatory and agency policy initiatives, and the passage of the *Administrative Procedures Act* in 1946, which requires agencies to keep the public informed of their organization, procedures and rules.⁵³ However, access to government-held information only became a major political issue in the first half of the twentieth century due to an expansion of executive government agencies within the state apparatus, accompanied by a culture of Cold War secrecy.⁵⁴ There was a fear at the time expressed in key presidential committees charged with re-examining the executive branch of government within the United States that individual agencies were 'in reality miniature independent governments' and that the growing bureaucracy was functioning as a 'headless "fourth branch" of government, a haphazard deposit of irresponsible agencies and uncoordinated powers.'⁵⁵

A culture of secrecy developed throughout American government in the first half of the twentieth century, alongside the expansion in administrative bodies. Under threat from nuclear war, and Soviet espionage and aggression, national security became a central concern for administrators. Information regulation became a priority. A vast range

⁵² H. C. Relyea, "Public Access through the Freedom of Information and Privacy Acts," in *Federal Information Policies in the 1980's: Conflicts and Issues*, ed. P. Hernon and C. R. McClure (Norwood: Ablex, 1987), 64.

⁵³ ———, "Historical Development of Federal Information Policy," in *United States Government Information Policies: Views and Perspectives*, ed. C. R. McClure, P. Hernon, and H. C. Relyea (Norwood: Ablex, 1989), 142-44.

⁵⁴ McCrann, "An Examination of the Conditions Surrounding the Passage of the 1966 U.S. Freedom of Information Act," 2-5. In particular agencies used a house keeping statute passed in 1789 that gave federal departmental heads authority of the 'custody, use and preservation' of records and a provision of the *Administrative Procedure Act* of 1946 that stated official information should be available to the public but not when there is a cause for withholding information, especially in the public interest. Relyea, "Freedom of Information, Privacy, and Official Secrecy: The Evolution of Federal Government Information Policy Concepts," 138-39, S. Archibald, "Early Years of the Freedom of Information Act, 1955 - 1974," *Political Science and Politics* 26, no. 4 (1993): 727.

⁵⁵ This was the view expressed in the historical Brownlow Committee (President's Committee on Administrative Management), as quoted in Lamble, "United States FOI Laws Are a Poor Model for Statutes in Other Nations." See J. W. Fesler, "The Brownlow Committee Fifty Years Later," *Public Administration Review* 47, no. 4 (1987).

of official information was classified as secret and access heavily restricted. Such secrecy was legitimized on the same basis provided by the *Official Secrets Act* in Britain, namely that heavy access restrictions were necessary in order to safeguard the interest and safety of the state apparatus and therefore the public interest. Secrecy was (and is), in this sense, conducted in the public interest. However, the 'security mentality' waned as it was revealed that such high levels of secrecy often only served to hide obsolete technological information, to facilitate maladministration between agencies and to cover-up administrative mistakes.⁵⁶

Within this context, FOI law rose as an initiative, championed by journalists and parliamentarians. The adoption of FOI law in the United States received critical drive and support from a media concerned with keeping the public informed of the activities of the executive branch of the state apparatus.⁵⁷ In the late 1940s a number of journalistic societies established freedom of information committees and in the coming years several journalists published influential critiques of public sector secrecy and argued strongly for a public 'right to know.'⁵⁸ The most important of these was written by Harold L. Cross, a nationally respected press lawyer, who, at the time, worked with the American Society of Newspaper Editors.⁵⁹ One commentator says of Cross' book, *The People's Right to Know*: 'Since its appearance, the book has remained one of the most thorough treatments of public information policy and practice and a devastating indictment of efforts by democratic government to deny its citizenry the right of access to official documents.'⁶⁰ The efforts of Cross and other journalists were clearly concerned with maintaining a Lockean balance between the state apparatus and society. Echoing Chydenius' concern with denying the Estates absolute power, Cross wrote:

⁵⁶ Rowat, "How Much Administrative Secrecy?," 485.

⁵⁷ The modern usage of the term 'freedom of information' is indeed attributed to Herbert Brucker, who published a book in 1949 of the same name. Brucker, *Freedom of Information*.

⁵⁸ These societies included the American Society of Newspaper Editors and the Society of Professional Journalists. Relyea, "Freedom of Information, Privacy, and Official Secrecy: The Evolution of Federal Government Information Policy Concepts," 139. Published critiques include: Brucker, *Freedom of Information*, Cooper, *The Right to Know: An Exposition of the Evils of News Suppression and Propaganda*, Wiggins, *Freedom or Secrecy*, Cross, *The People's Right to Know: Legal Access to Public Records and Proceedings*.

⁵⁹ Cross, *The People's Right to Know: Legal Access to Public Records and Proceedings*, Relyea, "Freedom of Information, Privacy, and Official Secrecy: The Evolution of Federal Government Information Policy Concepts," 139-40, Archibald, "Early Years of the Freedom of Information Act, 1955 - 1974," 727.

⁶⁰ Relyea, "Freedom of Information, Privacy, and Official Secrecy: The Evolution of Federal Government Information Policy Concepts," 139-40.

my concern is with the people's right to know—the right of the congressional committee, the individual congressman, the citizen, the taxpayer, the inhabitant, the elector, the student, and all others in a self-governing society; to put it bluntly, last but far from least, the right of Harold L. Cross to know. Without freedom of information citizens of a democracy have but changed their kings.⁶¹

With the backing of the efforts of journalistic advocates like Cross, FOI law was driven into place between 1955 and 1966 by congressional activism directed at subduing excessive state secrecy. Blanton points out that the elections of 1954 brought (oppositional) Democratic control to the House of Representatives, while the executive position was occupied by a Republican president, Dwight D. Eisenhower.⁶² Amongst the Democratic congressional representatives was John E. Moss, a fresh face frustrated by past efforts to obtain information from the Eisenhower administration, who identified with the journalistic authors advocating a 'right to know.'⁶³ Moss was put in charge of a Special Committee on Government Information in 1955 that was in part a response to prevailing information restrictions of the executive branch and in part a response to the efforts of Cross.⁶⁴ The subcommittee had an effective pro-active method that involved collecting tips about secrecy problems, confronting agencies, documenting activities and holding public hearings accompanied with lots of press coverage.⁶⁵ After years of investigation and exposure, the process came to a point of climax in 1966 when FOI law was finally enacted.⁶⁶ The 1966 law, however, had major flaws and was to be amended considerably in the following decade.⁶⁷

⁶¹ As quoted in J. S. Pope, "The Roots of Freedom of Information," in *A Freedom of Information Retrospective*, ed. Freedom of Information Center (Columbia: Freedom of Information Center, 1978), 12. See also: Lample, "Computer-Assisted Reporting and Freedom of Information", 95-96.

⁶² Blanton, "U.S. Experience with Freedom of Information Law: Congressional Activism, New Media Leadership and Bureaucratic Politics," 11.

⁶³ H. A. Hammitt, "The Legislative Foundation of Information Access Policy," in *Handbook of Public Information Systems*, ed. G. D. Garson (New York: Marcel Dekker, 2000), 28.

⁶⁴ Relyea, "Freedom of Information, Privacy, and Official Secrecy: The Evolution of Federal Government Information Policy Concepts," 140.

⁶⁵ Blanton, "U.S. Experience with Freedom of Information Law: Congressional Activism, New Media Leadership and Bureaucratic Politics," 9.

⁶⁶ The law embodied fundamental tenants that had been developed from the work of Cross. Relyea, "Freedom of Information, Privacy, and Official Secrecy: The Evolution of Federal Government Information Policy Concepts," 140-43.

⁶⁷ Major amendments in 1974 and 1976 helped overcome neglect and misinterpretation by the executive. Hammitt, "The Legislative Foundation of Information Access Policy," 30-33.

The United States adopted the first modern FOI law. The law established a contemporary precedent within the leading Lockean state concerning the public's 'right to know.' It affirmed the importance of popular sovereignty within the context of the modern bureaucratic state. It affirmed the Lockean nature of the state by empowering members of society with the ability to go beyond the favorable information published by government to practice 'a highly selective retrieval of government records which can be directly scrutinized, thereby avoiding any possibility of special interest contamination in interpretation.'⁶⁸ However, the law did not do away with secrecy; in reality, it attempted and still attempts to make the historical tension between secrecy and openness within the heartland an explicit process that requires the state apparatus to clearly define the circumstances and situations wherein it is in the public interest to withhold information, especially when requested. This is a point returned to shortly with reference to continued secrecy within Lockean states (see below).

6.3.3 Lesson Drawing Amongst Lockean States

The adoption of FOI law in the United States provided a modern day beacon for the previously isolated historical reform. As the twentieth century crept onwards, so too did FOI law. In the Cold War period FOI law went on to spread within the Lockean heartland of the international economy. Denmark (1970), Norway (1970), France (1978), Australia (1982), New Zealand (1983) and Canada (1983) all adopted transparency law. Diffusion amongst these early adopters of the 1970s and 1980s was characterized by national 'lesson drawing' within the Cold War system of sovereign nation-states, as discussed below. Domestic concerns similar to those within the United States about the power of the administrative state apparatus forced reformers to look abroad for ideas and experience. The adoption of the law within various countries was faced by challenges. A key challenge was the way transparency law would function within the variety of new environments, which, although they shared the Lockean fundamentals, differed substantially in terms of the machinery of government and patterns of politics.

The early diffusion of FOI law amongst a variety of Lockean states flagged, for the first time, the importance to the law of variation in political cultures and structures.

⁶⁸ Relyea, "Freedom of Information, Privacy, and Official Secrecy: The Evolution of Federal Government Information Policy Concepts," 145.

Early Lockean adopters can be distinguished from Hobbesian states, but they can also be distinguished internally, amongst themselves. Recent literature provides signposts on how this may be done. Stephen Lamble distinguishes between FOI law within the Scandinavian context, and FOI law within the Anglo-American context.⁶⁹ Tom McClean, on the other hand, examines variable influences on FOI law between pluralist and corporatist Western democracies.⁷⁰ He argues highly coordinated corporatist representative systems, such as the Germany system, are not as conducive to public transparency as less coordinated pluralist systems, such as the American system, because access to information outside the peak representative bodies that make-up the corporatist structure threatens privileged authority; and this provides a degree of explanation, McClean argues, as to why Germany was not among the early Lockean adopters of the law.⁷¹ Further analyzing early (and even later) adopters in such ways—ways that focus on comparative political cultures and structures—breaks with a tendency within the literature to isolate FOI law as a universal article that is easily compared across countries (see 2.3), and provides an avenue for a more sophisticated understanding of the history and operation of the law, although space does not permit such further analysis here, because the focus remains on diffusion.

The adoption of FOI law amongst the Scandinavian and Western pioneers was a domestic affair enthused by local concerns but legitimized by events abroad.⁷² The early pioneer countries that followed close behind the United States introduced FOI law within the context of the international economy of sovereign nation-states that emerged after WWII. The post-WWII international Bretton Woods order was led by the United States (outside the Soviet sphere). The IMF and the World Bank, alongside the Group of Seven industrialized countries and other institutions, had established machinery for the surveillance and harmonization of national policies within the international economy.⁷³ However, despite such multilateralism, state structures within the system were characteristically national; they were national historic blocs that embodied principles of

⁶⁹ Lamble, "United States FOI Laws Are a Poor Model for Statutes in Other Nations."

⁷⁰ McClean, "Who Pays the Piper? The Political Economy of Freedom of Information."

⁷¹ Ibid.

⁷² Bennett, "Understanding Ripple Effects: The Cross-National Adoption of Policy Instruments for Bureaucratic Accountability," 226.

⁷³ Cox, "Social Forces, States and World Orders: Beyond International Relations Theory," 143.

‘embedded liberalism’, a compromise between liberal multilateralism and domestic concerns.⁷⁴ Economic, political and social relations remained predominantly national. State apparatuses held a relatively strong national sovereignty while civil society remained relatively contained within those borders.

The diffusion of FOI law amongst the early Scandinavian and Western adopters of the heartland was driven by domestic concerns combined with international ‘lesson drawing.’⁷⁵ Colin Bennett explains that as concerns for reducing administrative secrecy, like those expressed in the United States prior to adoption, arose within established democratic states of the heartland, lessons were drawn on the procedural law reform of FOI law in Sweden and the United States.⁷⁶ In a study on the use of American evidence in Britain (which did not adopt FOI law until 2005) and Canada, Bennett identified a variety of evident arguments on the borrowing of ideas and experience in each case, such as:

- ‘They’ve got one, we ought to have one too.’
- ‘We’ve got to respond to pressure; this provides a ready-made solution.’
- ‘This provides the best starting point.’
- ‘We’ve looked everywhere and this seems best.’⁷⁷

Elsewhere Bennett argues the early diffusion of FOI law was propelled *less* by learning and *more* by legitimating; policy-makers or advocates in one country pointed to another

⁷⁴ John G. Ruggie, "International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order," *International Organization* 36, no. 2 (1982).

⁷⁵ ‘Lesson drawing’ as one of a number of terms found within the lexicon of a body of literature on ‘policy transfer’ that seeks to examine processes ‘in which knowledge about policies, administrative arrangements, and institutions in one time and/or place is used in the development of policies, administrative arrangements, and institutions in another time and/or place.’ D. Dolowitz and D. Marsh, "Who Learns What from Whom: A Review of the Policy Transfer Literature," *Political Studies* 44 (1996). See for example H. Wolman, "Understanding Cross National Policy Transfers: The Case of Britain and the US," *Governance*, no. 5 (1992), G. B. Peters, "Policy Transfers between Governments: The Case of Administrative Reforms," *West European Politics* 20, no. 4 (1997), M. Evans and J. Davies, "Understanding Policy Transfer: A Multi-Level, Multi-Disciplinary Perspective," *Public Administration* 77, no. 2 (1999), D. Dolowitz and D. Marsh, "Learning from Abroad: The Role of Policy Transfer in Contemporary Policy Making," *Governance* 13, no. 1 (2000).

⁷⁶ Bennett, "How States Utilize Foreign Evidence," 34. See also ———, "Understanding Ripple Effects: The Cross-National Adoption of Policy Instruments for Bureaucratic Accountability."

⁷⁷ Bennett, "How States Utilize Foreign Evidence," 43-49.

country of similar status with FOI law in order to legitimate their claims for reform.⁷⁸ Above all, actors in the early Lockean adopters of FOI law drew from Swedish and/or American experience in addressing domestic concerns of keeping the expanded administrative state in line with liberal democratic traditions.

Lesson drawing within the early Lockean adopters of FOI law occurred both within a) the state apparatus and b) civil society. In the first instance, the introduction of FOI law in both the Scandinavian and Western adopters benefited from pressure within parliaments to improve the accountability of government to assemblies and citizens and formed part of extensive internal investigations into public administration and information disclosure within the administrative state.⁷⁹ In Denmark, for example, the issue of public access to government-held information was considered by two commissions, both of which were divided.⁸⁰ Draft access law produced by the second commission was eventually adopted in parliament due to oppositional support.⁸¹

Alongside official investigations, significant lesson drawing and reform campaigning within civil society were influential, especially amongst adopters like Australia, Canada, New Zealand and France, countries that lacked the strong traditions of openness associated with the Swedish experiment in Scandinavia.⁸² These relatively weak, although well organized efforts in the 1970s by non-government organizations and citizens to have FOI law enacted, were largely confined to a select group of participants.⁸³ For instance, in New Zealand the Public Issues Committee of the Auckland

⁷⁸ ———, "Understanding Ripple Effects: The Cross-National Adoption of Policy Instruments for Bureaucratic Accountability," 226.

⁷⁹ On the Scandinavian processes see: Anderson, "Public Access to Government Files in Sweden," 428-41, T. Modeen, "Finland," in *Administrative Secrecy in Developed Countries*, ed. D. C. Rowat (London: Macmillan Press, 1979), 51-56, N. E. Holm, "Denmark," in *Administrative Secrecy in Developed Countries*, ed. Donald C. Rowat (London: Macmillan Press, 1979), 76-83, A. Frihagen, "Norway," in *Administrative Secrecy in Developed Countries*, ed. Donald C. Rowat (London: Macmillan Press, 1979), 108-09. On the other Western processes see: Eagles, Taggart, and Liddell, *Freedom of Information in New Zealand*, 1-2, Wallace, "The Canadian Access to Information Act," 122-28, Terrill, *Secrecy and Openness: The Federal Government from Menzies to Whitlam and Beyond*, 87-116, R. Errera, "Access to Administrative Documents in France: Reflexions on a Reform," in *Public Access to Government-Held Information: A Comparative Symposium*, ed. N. S. Marsh (London: Stevens and Son, 1987), 87-94.

⁸⁰ Holm, "Denmark," 436-40.

⁸¹ Ibid.

⁸² Anderson, "Public Access to Government Files in Sweden."

⁸³ Wallace, "The Canadian Access to Information Act," 122-23, G. Terrill, "The Rise and Decline of Freedom of Information in Australia," in *Open Government: Freedom of Information and Privacy*, ed. A. McDonald and G. Terrill (Basingstoke: Macmillan, 1998), Errera, "Access to Administrative Documents in France: Reflexions on a Reform," 87, J. Aitken, "Open Government in New Zealand," in *Open*

District Law Society prepared a report on freedom of information in 1978, a FOI bill was introduced into parliament a year later, only to lapse after the first reading.⁸⁴

The Lockean nature of the reform process and the mix of civil and political actors amongst early adopters are evident in a case study of Australia. FOI law first came into operation in the Australian commonwealth jurisdiction in December of 1982, after a decade long process that involved two governments, a public sector royal commission, two interdepartmental committees and a senate standing committee.⁸⁵ Outside of official circles an important factor was a nongovernmental organization largely organized by mid-level public servants called the Rupert Public Interest Movement (Rupert); Rupert modeled itself after American public interest movements like Common Cause, which represent the public interest against big government and big business.⁸⁶ The organization provided a platform for the establishment of a Freedom of Information Legislation Campaign Committee in 1976 and played an important role in attacking conservative attitudes within the federal bureaucracy towards the philosophy behind FOI law.⁸⁷ Rupert, and its supporters, championed the idea that FOI law and other transparency and accountability measures were essential to safeguard citizens against powerful secretive institutions and to provide more public participation within politics. Cartoons of citizens struggling to access information from a Leviathan-like state apparatus were published amongst critical articles on reform efforts in the Rupert journal/newsletter throughout the 1970s and 1980s (see Figures 10 and 11 below).⁸⁸ The cartoons are indicative of the Lockean stance of society before the state apparatus, especially in terms of information.

Government: Freedom of Information and Privacy, ed. A. McDonald and G. Terrill (Basingstoke: Macmillan, 1998), 121.

⁸⁴ Report of Auckland District Law Society's Public Issues Committee, "Freedom of Information," (8 March 1978), Eagles, Taggart, and Liddell, *Freedom of Information in New Zealand*, 1.

⁸⁵ On the history of commonwealth FOI law in Australia see: Senate Standing Committee on Legal and Constitutional Affairs, *Freedom of Information, Report by the Senate Standing Committee on Constitutional Affairs on the Freedom of Information Bill 1978, and Aspects of the Archives Bill 1978* (Canberra: AGPS, 1979), Chapter 2, Australian Law Reform Commission and Administrative Review Council, *Open Government: A Review of the Federal Freedom of Information Act 1982*, Chapter 3, Commonwealth Attorney General's Department, *Freedom of Information Act 1982--Annual Report by the Attorney-General on the Operation of the Act, for the Period 1 Dec 1982 to 30 June 1983* (Canberra: AGPS, 1983), Terrill, *Secrecy and Openness: The Federal Government from Menzies to Whitlam and Beyond*, 87-127, P. Bayne, *Freedom of Information* (North Ryde: The Law Book Company, 1984), 1-6.

⁸⁶ I was able to gain privileged access the newsletters produced by Rupert thanks to Rick Snell.

⁸⁷ McMillan says leaving the adoption of FOI law in the hands of the bureaucracy is like asking the Festival of Light to prepare an illustrated documentary on 'Pornography through the Ages.' P.9 August 1979.

⁸⁸ Rupert, "Newsletter," (December 1986).

Figure 10: Rupert Cartoon (1)

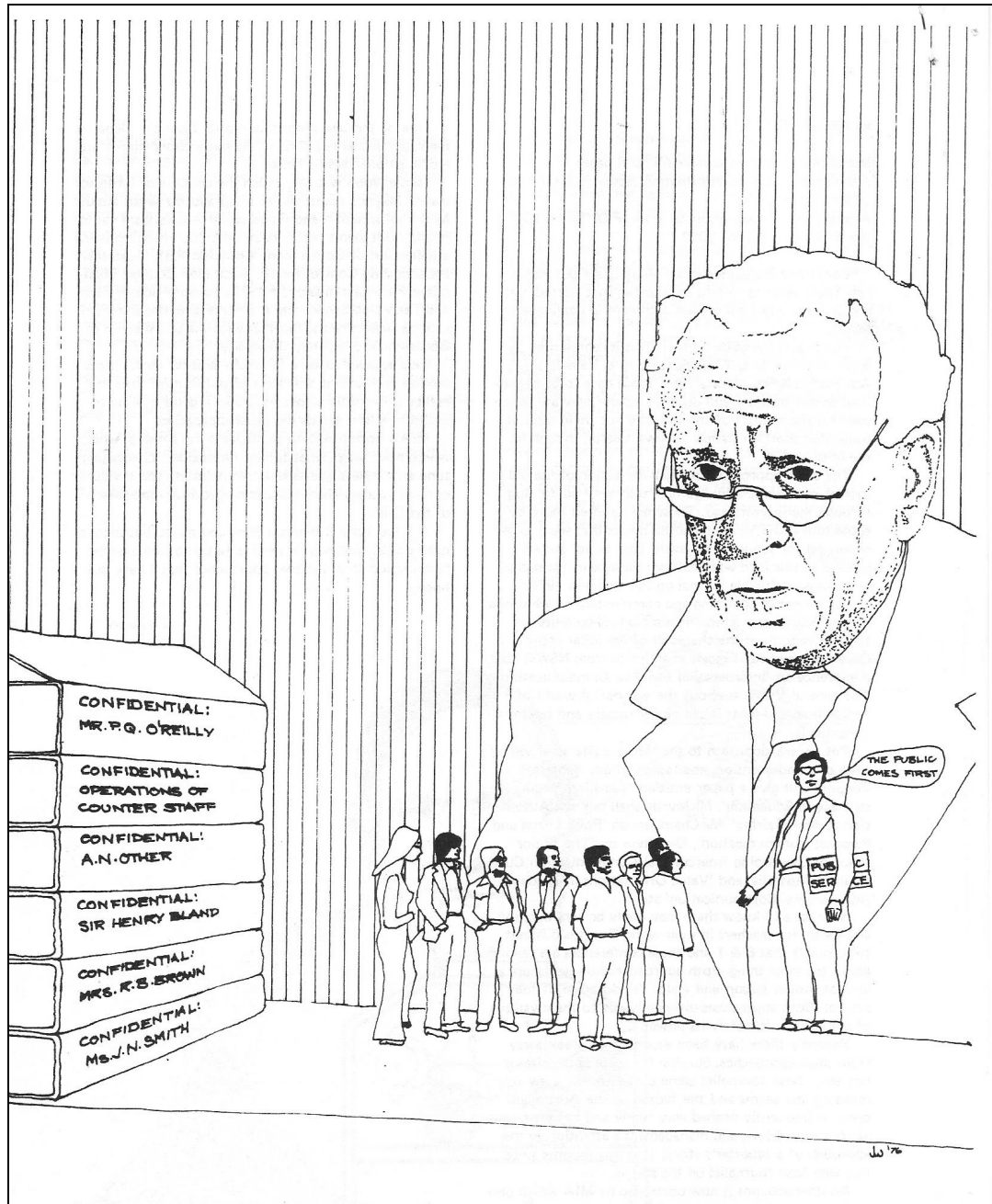
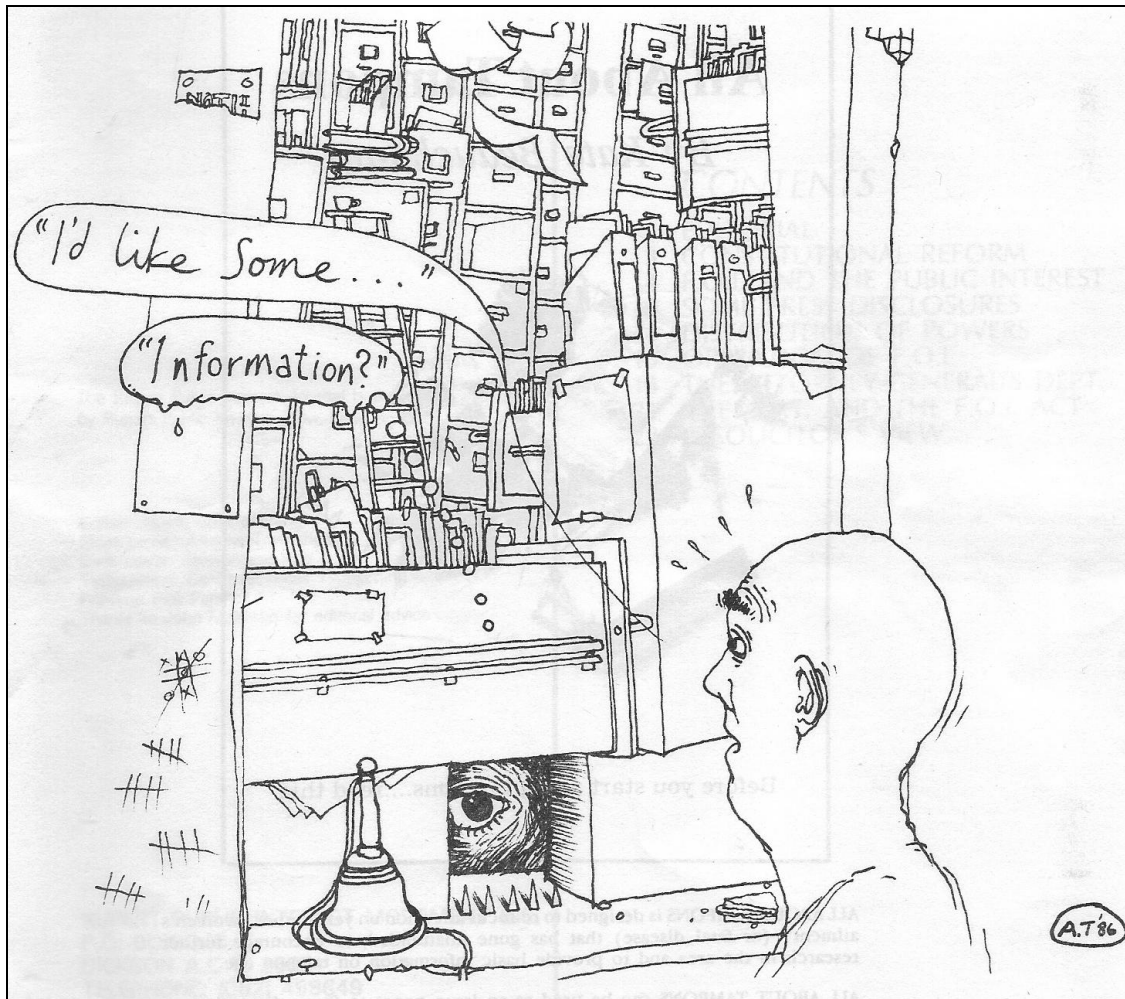


Figure 11: Rupert Cartoon (2)



In spite of the best efforts of Rupert (and others), the transparency law adopted by the Commonwealth, which was largely modeled after the American act adopted in 1966, suffered considerably from negative attitudes held within the bureaucracy.⁸⁹ Senior public servants argued that the introduction of FOI law would negatively impact upon the local machinery of government, especially the need for 'frank and impartial' advice between officials and ministers under the Westminster system.⁹⁰ The exposure of communications, especially preliminary communications, they argued, may unnecessarily expose public

⁸⁹ Terrill, *Secrecy and Openness: The Federal Government from Menzies to Whitlam and Beyond*.

⁹⁰ *Ibid.*, 102-03.

servants and prevent them from giving frank advice to ministers in the future and yet counter to such arguments presented by conservatives a Senate Standing Committee setup to review the draft statute that would later become law argued: 'Very often people have alleged that the Westminster system is under attack from freedom of information legislation when that is actually under attack is their own traditional and convenient way of doing things, immune from public gaze and scrutiny.'⁹¹ Nevertheless, such advocacy was largely ignored—Rick Snell writes:

It is clear that the Australian reform proposals met a stiff resistance and were perceived as an unnecessary obstacle in the art of traditional administration... Australian officialdom looked to the paradigm of the past and grudgingly accepted a muted US model adapted for local conditions.⁹²

Access under the Commonwealth FOI law in Australia suffered for two decades due to the early uninspiring attempts to adopt an American model within the Australian political system, and only recently have reforms been introduced to improve the situation in the context of a change of government and building pressure from civil and media groups.⁹³

An important issue raised amongst the early Lockean adopters of FOI law reflected in the Australian example is that of the effectiveness of transferring the policy of FOI law from one country to another and how models of law may function differently under various indigenous machineries of government. Effectiveness in policy transfer, the best model for emulation and the importance of nation context are all issues that increased with importance as transparency law continued to diffuse in the second half of the twentieth century, but they are issues that have remained relatively uninvestigated within the FOI literature.⁹⁴ Each of the early Lockean adopters, though they shared the fundamental Lockean principle of the privilege of society over the state apparatus, differed in terms of national context. For example, the Westminster political systems of Canada and Australia differ substantially to the American presidential system, and yet

⁹¹ Senate Standing Committee on Legal and Constitutional Affairs, *Freedom of Information, Report by the Senate Standing Committee on Constitutional Affairs on the Freedom of Information Bill 1978, and Aspects of the Archives Bill 1978*, 55.

⁹² Snell, "The Kiwi Paradox: A Comparison of Freedom of Information in Australia and New Zealand," 584.

⁹³ See for example: Independent Review Panel, "The Right to Information: Reviewing Queensland's Freedom of Information Act."

⁹⁴ But see Bennett, "How States Utilize Foreign Evidence." And also Lamble, "United States FOI Laws Are a Poor Model for Statutes in Other Nations."

reformers in both countries drew heavily from the United States in adopting FOI law.⁹⁵ Lamble argues the use of American FOI law as a model in adoption processes within countries like Canada and Australia did not allow for a proper consideration of the systemic differences between the adopters and the United States and resulted in the creation of less-than-ideal FOI regimes.⁹⁶ He and others point to New Zealand as an example of a county that benefited substantially from preferring to develop indigenous access law within its national context.⁹⁷ In more recent years, since the proliferation of FOI law, this concern for adequate policy transfer remains of the utmost importance, although the literature still provides little insight into such processes.⁹⁸

6.3.4 Late Lockean Adopters

The pre-1990 adopters of FOI law were all Lockean. But not all Lockean states adopted FOI law prior to the explosion of FOI law that began in the 1990s. There is a significant group of countries that might be referred to as 'late Lockean adopters.' This category of countries might include what John Ackerman and Irma Sandoval-Ballesteros refer to as the 'trendies': Austria (1987), Italy (1990), Netherlands (1991), Belgium (1994), Iceland (1996), Ireland (1997), Israel (1998), Greece (1999), Liechtenstein (1999), the United Kingdom (2000), Switzerland (2004) and Germany (2005).⁹⁹ This group presents a problem for the idea of the Lockean state form as champion of FOI law, considering that some of the group, especially the latter three, adopted FOI law well after many other less obvious candidates, such as Hungary (1992) and Ukraine (1992). The key question facing this group of adopters is therefore why the apparently late adoption? Why the delay? There are several explanations.

The first reason for delay in adoption of national legislation amongst some Lockean adopters may be that transparency law was simply not needed. Freedom of information was a general principle and practices were already safeguarded by a)

⁹⁵ Lamble, "United States FOI Laws Are a Poor Model for Statutes in Other Nations."

⁹⁶ Ibid.

⁹⁷ ———, "Media Use of FOI Surveyed: New Zealand Puts Australia and Canada to Shame." Snell, "The Kiwi Paradox: A Comparison of Freedom of Information in Australia and New Zealand."

⁹⁸ Although see Grigorescu, "European Institutions and Unsuccessful Norm Transmission: The Case of Transparency.", Bugdahn, "Does the EU Stifle Voluntary Policy Transfer? A Study of the Introduction of Freedom of Information in Portugal and Ireland."

⁹⁹ Ackerman and Sandoval-Ballesteros, "The Global Explosion of Freedom of Information Laws," 113.

subnational FOI regimes or b) quasi-FOI regulation regimes. In the first instance, we can note that within Switzerland transparency law was first adopted in the country's important subnational sphere of Cantons in 1993, although national legislation was not adopted until 2002.¹⁰⁰ Similarly, transparency law was first adopted at a subnational level in Germany in 1998, before national law in 2005.¹⁰¹ But perhaps more interesting, as an explanation for late adoption, is the question of quasi-FOI regulation regimes. All the late Lockean adopters can be noted for their status as established representative democracies that safeguard (to various degrees) freedom of speech, freedom of the press, and, in a general sense, freedom of information. In some cases policy directives or judicial decisions upheld a right to information: for example, consecutive conservative British governments in the 1980s and 1990s under Margaret Thatcher adopted a 'managerial' rather than a 'legal' approach to information access that set standards of access rather than establish a legal right of access.¹⁰² A mixture of access to information rights within different areas of government activity, such as health, the environment and local governance, might also have been seen as a quasi-FOI regime in Britain.¹⁰³

An interesting point to note about many of the late Lockean adopters is the generally prolonged process of national adoption: in many cases debates and proposals were conducted over decades. Ackerman and Sandoval-Ballesteros note that the 'trendies' have been 'characterized by a somewhat schizophrenic stop-and-go process of FOI reform.'¹⁰⁴ For example, discussions on the adoption of FOI law in the UK date back to the 1970s, and in Germany the first draft national legislation was presented in 1997, although law was not enacted until 2005.¹⁰⁵ The debates surrounding access to information reform within later Lockean adopters were particular to each political culture and structure. For example, in the UK, it may be argued that law might have been adopted

¹⁰⁰ M. Pasquier and J. Villeneuve, "Access to Information in Switzerland: From Secrecy to Transparency," *Open Government: a Journal of Freedom of Information* 2, no. 2 (2006).

¹⁰¹ T. Hart and C. Welzel, "Freedom of Information and the Transparent State," (Bertelsmann Foundation, 2003), 4.

¹⁰² D. Clark, "Open Government in Britain: Discourse and Practice," *Public Money & Management* 16, no. 1 (1996).

¹⁰³ The UK Freedom of Information Campaign has been pivotal in developing this quasi-FOI regime. See: UK FOI Campaign, "Four Legislative Successes," (Date Accessed: 8 February, 2011).

¹⁰⁴ Ackerman and Sandoval-Ballesteros, "The Global Explosion of Freedom of Information Laws," 113.

¹⁰⁵ Hart and Welzel, "Freedom of Information and the Transparent State," 5.

sooner had not the conservative government of Thatcher been elected in 1979.¹⁰⁶ However, debate within the later adopters (much like the earlier Lockean adopters) generally focused on balancing any proposed access law with apparent needs for secrecy. In other words, delay resulted because of efforts to balance openness with secrecy, not because national legislation was perceived as unnecessary due to subnational law or quasi-FOI regimes.

‘Schizophrenic’ concerns over balancing openness and secrecy, and a measure of internal resistance, have contributed to delays amongst later Lockean adopters.¹⁰⁷ The delays can be seen as resulting from attempts by politicians and officials to provide a measure of access to information with a legitimate claim to secrecy within the Lockean state apparatus. This inherent claim to secrecy, exhibited in the *Official Secrets Act* and America’s Cold War culture of secrecy (see 6.3.1 and 6.3.2 above), rests on the grounds that in certain circumstances it may be in the interest of society, the basis for public authority, for government to withhold information; at its most fundamental level the claim asserts that representative executive government will not be able to effectively function if certain information is released, and, because the government functions on behalf of society, it is therefore in the interest of the public to restrict access to certain information in order to allow effective government.

A major question for liberal democratic governments today is how to balance openness with secrecy and this question provides fertile ground for future research. It is a question that extends into socio-legal analysis and the discipline of political science, especially the sub-disciplines of comparative politics, public administration and political philosophy. Researchers are only beginning to investigate the relationship between comparative bureaucracy and access to information. Areas of interest may be the impact of the nature and type of bureaucracy on access to government-held information, the issues surrounding modern public relations and openness, or the impact of the recent wave of reforms in ‘new public management’ on access to information.¹⁰⁸ Political

¹⁰⁶ K. Gundersen, Interview 2009.

¹⁰⁷ Ackerman and Sandoval-Ballesteros, "The Global Explosion of Freedom of Information Laws," 113.

¹⁰⁸ Darch and Underwood, *Freedom of Information and the Developing World: The Citizen, the State and Models of Openness*, 91-126. Roberts, "Spin Control and Freedom of Information: Lessons for the United Kingdom from Canada.", Snell, "Contentious Issues Management: The Dry Rot in FOI Practice?." Roberts,

philosophy is less appreciated than public administration by contemporary FOI studies, which is unfortunate because it may provide new insights into continued tensions between secrecy and openness.¹⁰⁹ For example, there are philosophical tensions concerning the nature of FOI law and its function within the overall liberal democratic system. Liberal democracy is largely built around negative rights provided by the state, which are those rights that protect citizens from potential interference.¹¹⁰ However, the right of access to information potentially places a positive right on the state to provide information to enable citizen participation.¹¹¹ Certainly, the extent to which the state apparatus should wait for citizens to apply for and *pull* information or proactively *push* information on the citizenry is a current concern within the FOI literature.¹¹² This concern is an instrumental/technological question but it is also a question for political philosophy concerning the *proper* role of government.

6.4 Hobbesian Contender States

The previous section examined why and how FOI law emerged and diffused within the Lockean heartland throughout the eighteenth, nineteenth and twentieth century. The following section examines why FOI law did not diffuse beyond the heartland in that time, especially the twentieth century, when the United States set a new benchmark for access rights. FOI law did not diffuse in any significant way outside the Lockean

"Structural Pluralism.", ———, "Less Government, More Secrecy: Reinvention and the Weakening of Freedom of Information Law."

¹⁰⁹ For usage see: Worrall, "Democracy and FOI: Not Just 'Part of the Wallpaper'? Analysing Stakeholder's Conceptions of Democracy in Their Interpreting, Reforming, Accessing and Administering of FOI Objects in Australia", Stubbs, "Freedom of Information and Democracy in Australia and Beyond.", C. Hughes, "Commentaries," *Federal Law Review* 14 (1984). Relyea, "Freedom of Information, Privacy, and Official Secrecy: The Evolution of Federal Government Information Policy Concepts."

¹¹⁰ I. Berlin, *Four Essays on Liberty* (London: Oxford University Press, 1969).

¹¹¹ In 1976 the British section of the International Commission of Jurists rejected the idea of a right to information on the basis that 'a "right" of access would require a correlative duty on the part of government to provide information.' J. Michael, "Freedom of Information: Where We Were, Where We Are (and Why), Where We Are Going (and How)," in *Open Government in a Theoretical and Practical Context*, ed. M. Hunt and R. A. Chapman (Aldershot: Ashgate, 2006), 99.

¹¹² D. W. Scharum, "Information Access Legislation for the Future? Possibilities According to a Norwegian Experience," in *Public Sector Information in the Digital Age: Between Markets, Public Management and Citizens' Rights*, ed. G. Aichholzer and H. Burkert (Cheltenham: Edward Elgar, 2004), 75-79, M. Craglia and M. Blakemore, "Access Models for Public Sector Information: The Spatial Data Context," in *Public Sector Information in the Digital Age: Between Markets, Public Management and Citizens' Rights*, ed. G. Aichholzer and H. Burkert (Cheltenham: Edward Elgar, 2004), W. Xiao, "China's Limited Push Model of FOI Legislation," *Government Information Quarterly* 27, no. 4 (2010).

heartland until the 1990s because outside the heartland were contender state forms in the Soviet bloc and across much of the Third World that were relatively unreceptive or even hostile towards the Lockean principles behind FOI law. These contender state forms were essentially Hobbesian: they sanctioned the state apparatus with Leviathan powers that extended to information control.¹¹³ In examining the information environment of the twentieth century Hobbesian states there is little room for detail; the section below first moves through a broad consideration of information relations within the Hobbesian state form in general (6.4.1); before examining more closely information relations within two specific categories of Hobbesian state, the totalitarian (6.4.2) and the authoritarian (6.4.3).

6.4.1 The Hobbesian State: Degrees of Secrecy

FOI law is an expression of a liberal democratic relationship between society and the state apparatus that was confined to the Lockean heartland for much of modern history. The geopolitical space outside the expanding Lockean heartland was taken up by Hobbesian states that embody a competing state-society complex. Information flows and political processes within these Hobbesian states reflected a fundamental premise that the state apparatus is a privileged institution over society with a mandate to modernize (as discussed below). Unlike its self-regulating Lockean counterpart, the Hobbesian state is administered from above where a strong state apparatus attempts to oversee state-led late-industrialization 'catch-up strategies.'¹¹⁴ Kees van der Pijl explains:

The main external factor congealing the Hobbesian configuration is of course the existence of a more advanced state/society complex, which by its transnational expansion has already occupied the international terrain commercially and culturally, whereas the contender state still is struggling to forge national/state unity and demarcate its territory. Therefore the bureaucratized vanguard cannot and will not relinquish state power; the Glorious Revolution by which the ascendant class confirms its primacy and the relative autonomy of society vis-à-vis the state, is postponed.¹¹⁵

In its evolution the Lockean heartland has come to face a succession of Hobbesian contender states, as already indicated (6.2 above), that may include French Bonapartism

¹¹³ Hobbes, *Leviathan*.

¹¹⁴ van der Pijl, *Transnational Classes and International Relations*, 80.

¹¹⁵ *Ibid.*

in seventeenth century, as well as Italian and German fascism, Russian communism and Third World developmentalism in the twentieth century.¹¹⁶

The fundamental characteristic of the various Hobbesian contender states of history, especially those of the twentieth century, is the elevation of the state apparatus as a productive force within society.¹¹⁷ Unlike Lockean states, Hobbesian states generally rest upon underdeveloped and weak civil societies.¹¹⁸ They are therefore characteristically commanded by an evolving 'state class' that tends to command society and act as a vanguard in attempting to catch up to the leading social system of production within the world economy.¹¹⁹ As van der Pijl further explains:

the specificity of the Hobbesian configuration resides (to varying degrees of course) in the paramountcy of the state as the institution driving forward the social formation and pre-emptively shaping, by action, sometimes *revolution* from above, the social institutions which have evolved 'organically', if not necessarily autonomously, in the heartland.¹²⁰

van der Pijl also notes that Hobbesian states are not necessarily communist or socialist in their execution of state control; capitalist structures can form part of a Hobbesian state, but due to the nature of late industrialization the state apparatus continues to play a primary role in order to accelerate development.¹²¹ This is not to suggest, however, that state intervention is unique to Hobbesian states. Karl Polanyi has written on the role played by the state apparatus in the development of Britain's market economy.¹²² The difference between Hobbesian and Lockean states is understood in the principle relations between society and the state apparatus.

The extent to which the state dominates society amongst the Hobbesian states has differed historically. In the twentieth century it is possible to distinguish two predominant and distinct types of Hobbesian state based on the relationship between the state

¹¹⁶ ———, "A Lockean Europe?," 13.

¹¹⁷ ———, *Transnational Classes and International Relations*, 85.

¹¹⁸ *Ibid.*, 80-81.

¹¹⁹ *Ibid.*

¹²⁰ Emphasis in original *Ibid.*, 80. van der Pijl presumably places organically within quotation marks because of the well known role placed by the state apparatus in the original formation of freely regulating markets in Britain. K. Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time* (Boston: Beacon Press, [1985] 1944).

¹²¹ van der Pijl, *Transnational Classes and International Relations*, 84.

¹²² Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time*.

apparatus and society.¹²³ *Totalitarian* states, such as those that emerged in fascist Germany and communist Russia, position the state apparatus as the embodiment of society charged with the absolute privilege of guiding society.¹²⁴ *Authoritarian* states, on the other hand, such as those prominent within the post-colonial Third World, represent historical structures in which the distinction between the state apparatus and society is not fully obliterated, in theory or practice.¹²⁵ Unlike totalitarian states, which are governed by rulers with absolute power, a separation exists between the state apparatus and society within authoritarian states, where a small group of people govern according to 'formally ill-defined limits but actually quite predictable ones.'¹²⁶ Each form of twentieth century Hobbesian state embodies political and informational relations representative of the relationship between the state apparatus and society and, although they differ substantial, neither totalitarian nor authoritarian states have historically provided a 'right to know.'

Information relations and flows are unique in both totalitarian and authoritarian Hobbesian state forms. Totalitarian and authoritarian states are nondemocratic, because in both cases a relatively limited state class rules, which means that the liberal democratic argument for the sharing of government-held information so prevalent amongst Lockean states is immaterial.¹²⁷ There is no citizen based 'right to know' within the Hobbesian contenders. Under the Hobbesian mode of state-society relations, the state apparatus is viewed as 'being an entity unto itself and, therefore, under no obligation to furnish information requested by the citizenry.'¹²⁸ The theoretical and practical right of the state apparatus to withhold information on the grounds that it is in the best interest of society,

¹²³ J. J. Linz, "Totalitarian and Authoritarian Regimes," in *Handbook of Political Science*, ed. F. I. Greenstein and N. W. Polsby (Reading: Addison-Wesley Publishing Company, 1975). In addition to totalitarian and authoritarian regimes, Linz also identifies the less prominent category sultanistic regimes, which are based on traditional authority and personal dictatorship, found in Maghreb, Southeast Asia and Sub-Saharan Africa. Linz, "Totalitarian and Authoritarian Regimes," 252-64. Linz's 1975 article was republished with a new introduction in 2000. J. J. Linz, *Totalitarian and Authoritarian Regimes* (Boulder: Lynne Rienner Publishers Inc., 2000).

¹²⁴ Some of the early pioneering work on the nature of totalitarianism includes: C. J. Friedrich and Z. K. Brezezinski, *Totalitarian Dictatorship and Autocracy*, 2nd ed. (New York: Frederick A. Praeger, 1966), H. Arendt, *The Origins of Totalitarianism* (London: Allen and Unwin, 1967).

¹²⁵ Linz, "Totalitarian and Authoritarian Regimes," 256.

¹²⁶ J. J. Linz, "An Authoritarian Regime: The Case of Spain," in *Mass Politics: Studies in Political Sociology*, ed. E. Allard and S. Rokkan (New York: Free Press, 1964), 255.

¹²⁷ Linz, "Totalitarian and Authoritarian Regimes," 175-82. Totalitarian single party/ authoritarian may be shared power base

¹²⁸ Relyea, "Freedom of Information, Privacy, and Official Secrecy: The Evolution of Federal Government Information Policy Concepts," 144.

visible in continued tensions between secrecy and openness within the Lockean state, is taken to varying levels of extremity within the Hobbesian state. To put it simply, the operating principle of information access is turned reversed: society has a right to access government-held information in the Lockean state; the state apparatus has a privilege to withhold government-held information in the Hobbesian state.

But information relationships across Hobbesian contenders should not be over simplified. The totalitarian and authoritarian forms of contender state differ in important ways that have implications for information management. For example, totalitarianism carries with it a necessity for state ideology and state mobilization of social forces (as discussed at 6.4.2 below). This brings with it a necessity of total control. Under totalitarianism, information relations are completely one sided, information flows move from the state apparatus to society, there is an information asymmetry completely in favor of those in power, as exemplified by twentieth century communism in China, examined in Chapter Eight. The situation is more complicated amongst authoritarian states (see 6.4.3). Such states, almost by definition, compared to totalitarian states, are generally not wholly committed to ideology and mobilization; they provide for a degree of rule of law and pluralism in the relationship between the state apparatus and society, although they remain largely nondemocratic.¹²⁹ They do not have the same drives toward total information control and information asymmetry as totalitarian states. Authoritarian states, such as twentieth century Mexico, examined in Chapter Eight, therefore generally allow for a limited level of pluralism in information relations within the context of prevailing power relations.

6.4.2 Fascist and Communist Totalitarian Absolute Control

The major form of contender state to emerge in the twentieth century was the totalitarian state, which initially emerged in Germany and Italy with fascism in the first half of the twentieth century, and then developed further in Russia, Eastern Europe and parts of Asia with Stalinism in the second half of the twentieth century. These two types of

¹²⁹ Linz, "Totalitarian and Authoritarian Regimes," 265.

totalitarianism, fascism and Stalinism, are generally regarded as fundamentally similar.¹³⁰ Both, indeed, were hostile towards liberal democratic freedoms and transparency in state affairs.¹³¹ In the brief analysis of such hostility below the focus will be on communist totalitarianism, particularly the Soviet totalitarian state, as its lifespan is much longer and perhaps more relevant, as a Hobbesian model for competition, than its fascist counterpart, although the trends of domination and secrecy can be said to generally apply to state-society relations across the range of totalitarian states. Analysis here focuses on two key features of totalitarian rule that impact the possibility of access to information: a) party rule, and b) the envelopment and mass mobilization of society.

Twentieth century totalitarian states, both fascist and communist, were a direct challenge led by vanguard parties (on behalf of the masses) to the Lockean heartland and the freedoms that guaranteed a 'right to know.'¹³² Lenin declared in *The State and Revolution* that the liberal democratic state, as well as any other state, was a tool for class oppression.¹³³ He argued a revolution needed to occur in order to overthrow the capital classes and abolish the state apparatus permanently, and this revolution would be followed by a dictatorship of the working class and then a 'withering away' of the state; as Juan Linz notes, totalitarian regimes of various kinds have a fundamental antagonism to the state apparatus—their efforts are aimed at utilizing the state apparatus to subsume the state and society.¹³⁴ The party and its leader are central to achieving this transformation and they are to function as a vanguard, above the law, aimed at safeguarding the revolution and the new society. The party's decisions and actions are not

¹³⁰ Trotsky in 1936 wrote: 'Stalinism and fascism, in spite of a deep fundamental different in social foundations, are symmetrical phenomena. In many of their features they show deadly similarity.' L. Trotsky, *The Revolution Betrayed* (New York: Doubleday, 1961), 278. Similarly, Friedrich and Brzezinski write: 'They are, in terms of organization and procedures—that is to say, in terms of structure, institutions, and processes of rule—*basically alike*.' Emphasis in original. Friedrich and Brezezinski, *Totalitarian Dictatorship and Autocracy*, 19. See also Linz, "Totalitarian and Authoritarian Regimes," 177-78. Although Linz stresses there are important differences between fascist and communist totalitarian parties. ———, "Totalitarian and Authoritarian Regimes," 215-16. See also C. W. Cassinelli, "The Totalitarian Party," *The Journal of Politics* 24, no. 1 (1962).

¹³¹ Holzner, "The Transparency Syndrome in Global Change", Xiao, "Freedom of Information Reform in China: Information Flows Analysis", 84.

¹³² M. Parmelee, "Liberal Democracy, Fascism, and Bolshevism," *Annals of the American Academy of Political and Social Science* 180 (1935).

¹³³ V. I. Lenin, *The State and Revolution* (Sydney: Resistance Books, 1999 [1918]).

¹³⁴ Linz, "Totalitarian and Authoritarian Regimes," 212.

bound by liberal democratic ideas of the rule of law; they are dictated by official ideology.

The power of the vanguard party in the totalitarian state makes transparency law impossible. It is impossible for FOI law to function as a legal mechanism to provide objective access to information within totalitarian legal structures that lack sovereignty due to party rule.¹³⁵ Under totalitarianism there is a rejection of legal positivism and therefore no effective rule of law; rather, a sociological conception of law functions whereby legal questions are addressed according to substantive legal criteria.¹³⁶ Law, including hypothetical FOI law, is interpreted according to ideology, and the vanguard party, as the administrator and guardian of that ideology, is always right. Thus, the 1936 Soviet constitution could 'guarantee by law' freedom of speech, freedom of the press, freedom of assembly, and freedom of street processions and demonstrations, while, at the same time, the state apparatus terrorized society.¹³⁷ In order to safeguard official ideology, the totalitarian party heavily regulates information. The state apparatus, led by the vanguard party, is geared towards heavy regulation of information as a function of its role as guardian of the official ideology and protectorate of the people's revolution.¹³⁸ Ideologies set the agenda and the boundaries of thinking and action.¹³⁹ Internal information of every kind needs to be protected in order to keep it from falling into the possession of 'enemies of the revolution' and information/propaganda released to the public needs to be ideologically consistent to create favorable conditions for the continuation of the revolution¹⁴⁰

A destruction of distinctions between the state apparatus and society, and the subsequent politicization and mobilization of society, is a distinguishing feature of

¹³⁵ See for example H. J. Berman, "The Law of the Soviet State," *Soviet Studies* 6, no. 3 (1955).

¹³⁶ Linz, "Totalitarian and Authoritarian Regimes," 222.

¹³⁷ Bucknell University, "1936 Constitution of the USSR - Chapter X, Fundamental Rights and Duties of Citizens," <http://www.departments.bucknell.edu/russian/const/36cons04.html#chap10>, (Date Accessed: 31 May 2010).

¹³⁸ This is in addition to the generally secretive nature of bureaucracy identified by Weber and others. Moreover, it is relative to time and place. For example, in Soviet Russia state secrecy increased during the period of Stalinisation. A study showed that the published detail of successive five year plans dropped from four volumes (1929-1932, to two volumes (1933-1937), to one volume (1938-1942), to six pages (1946-1950), right down to three pages (1951-1955). A. Bergson, "Reliability and Usability of Soviet Statistics: A Summary Appraisal," *The American Statistician* 7, no. 3 (1953): 13-14.

¹³⁹ Linz, "Totalitarian and Authoritarian Regimes," 197.

¹⁴⁰ Bergson, "Reliability and Usability of Soviet Statistics: A Summary Appraisal," 14.

totalitarianism and one that further contributes to the impossibility of FOI law.¹⁴¹ If the absolute rule of the party within totalitarian states makes the *supply* of objective information impossible, then the envelopment and mobilization of society makes any oppositional *demand* for information in society impossible. The envelopment of society, the blurring of a line between the state apparatus and society, destroys any basis upon which a 'right to know' may be built. The party becomes society through ideology and society becomes the party through mass organizations.¹⁴² There is no social demand for access to information because society is not oppositional to the state apparatus; there is no 'information marketplace' where society and the state apparatus meet.¹⁴³ On top of that, the mobilization of society as a productive force destroys any constituency that may actually utilize information. Individuals become 'atomized', 'isolated and mistrustful of one another and hence unable to concert their efforts in organized political activity.'¹⁴⁴ Autonomous civil society ceases to exist. Media is run by the vanguard party. In this situation the key constituencies, such as the media and interest groups, that applied pressure on the state apparatus to provide a legal mechanism for accessing government-held information within Lockean states (see 6.3.2 above) are nonexistent, obliterated.

The characteristics of totalitarian state formation that contribute to systems of total information control are exemplified in the case study of communist China, examined in more depth in Chapters Eight and Nine. Party rule and an envelopment and mobilization of society by the state apparatus led by the Chinese Communist Party following WWII until the 1970s brought with it a heavy information asymmetry in favour of vanguard rulers (as elaborated at 8.4.1). The Maoist state ensured 'firm party control of the media and constant oversight of permissible discussion in particularly politicized periods.'¹⁴⁵ Information flows were dominated by official propaganda that

¹⁴¹ Linz, "Totalitarian and Authoritarian Regimes," 187-92.

¹⁴² Ibid., 193.

¹⁴³ I. Glanor, "Government Secrecy: Exchanges, Intermediaries, and Middlemen," *Public Administration Review* 35, no. 1 (1975): 34.

¹⁴⁴ D. Bahry and B. D. Silver, "Intimidation and the Symbolic Uses of Terror in the USSR," *American Political Science Review*, no. 81 (1987): 1065, J. L. Gibson, "Social Networks, Civil Society, and the Prospects for Consolidating Russia's Democratic Transition," *American Journal of Political Science* 45, no. 1 (2001).

¹⁴⁵ F. C. Teiwes, "The Chinese State During the Maoist Era," in *The Modern Chinese State*, ed. D. L. Shambaugh (Cambridge: Cambridge University Press, 2000), 116.

worked as a 'transmission belt' for indoctrination and mobilization of the masses.¹⁴⁶ Indeed, it was not till the Chinese state underwent a transformation from totalitarianism to authoritarianism that public sector transparency became tolerable (see 8.6.1).

6.4.3 Third World Authoritarian Restrictions

Outside the Lockean heartland and the totalitarian states of the twentieth century was the large and complex sphere of Third World authoritarian states.¹⁴⁷ These states did not represent a direct challenge to the Lockean heartland like the fascist and totalitarian Hobbesian contenders. Third world authoritarianism of the twentieth century was essentially a product of European colonialism. De-colonization left the state apparatus constructed by European powers within former colonies lacking the social and civil development that initially grew to support the Lockean model in Europe; consequently the state apparatus generally became an authoritative institution led by a relatively small group that used it to further their own interests and the interests of their supporters, with minimal opposition. In the analysis provided below, different types of authoritarian regimes are flagged, before the focus moves into characteristics that make authoritarian regimes unique from totalitarian regimes and how these characteristics have enabled at least the contemplation of freedom of information within such states.

Third World authoritarian states in the twentieth century have shown great diversity.¹⁴⁸ Although there is no space here for an attempt to explore the history and variation of such states, it is perhaps worth noting general differences, particularly across regions. A great deal of this difference rests on economic and industrial development.¹⁴⁹ The region of Latin America is unique because of its relatively early industrialization and development: the state apparatus modernized early in Latin America when compared to other Third World regions and was used by oligarchies to channel state spending into areas such as infrastructure and the military favorable to their interests through a form of

¹⁴⁶ D. L. Shambaugh, "China's Propaganda System: Institutions, Processes and Efficacy," *The China Journal*, no. 57 (2007): 56. On the system of control within the Maoist state more generally see F. Schurmann, *Ideology and Organization in Communist China* (Berkeley: University of California Press, 1966).

¹⁴⁷ There have of course been exceptions to the general trend of authoritarianism within the Third World. India, a case study examined in depth in the following chapters, is an example.

¹⁴⁸ See generally Linz, "Totalitarian and Authoritarian Regimes," 277-351.

¹⁴⁹ P. Cammack, D. Pool, and W. Tordoff, *Third World Politics: A Comparative Introduction* (London: Macmillan Press, 1993), 89.

‘bureaucratic authoritarianism.’¹⁵⁰ The state apparatus in Asia, particularly East and South East Asia, has also proven itself as a robust institution, with a ruling political elite directing development from within the state apparatus while fostering a stable relationship with society through patronage.¹⁵¹ On the other hand, across Africa and the Middle East civil society has been historically weak, divided by deep ethnic and religious divisions, while political elites have amassed wealth from raw resources for personal gain, and the gain of their family or community, with the use of a fragile state apparatus.¹⁵² Such variations in Third World authoritarianism necessarily lead into differences in information relations and flows. For example, bureaucratic capacity for the administration of transparency law remains a critical issue in Africa, but this is true to a lesser extent in Latin America, where state capacity is generally more developed.

Perhaps more important than examining types of authoritarian regimes within this brief macro-historical overview is to look closer at the key difference between the two twentieth century forms of Hobbesian state, as it relates to access to information. As in the case of totalitarian states, a relatively small group actually exercises power in authoritarian states. Nevertheless, the nature and organization of this exercise of power differs. Totalitarian parties tend to emerge with ideological force from the bottom up to achieve monopolistic power.¹⁵³ In contrast, the ruling parties of authoritarian regimes are most often created by a group in power and usually represent ‘a fusion of different elements rather than a single disciplined body.’¹⁵⁴ These regimes are typically the outcome of post-independence struggles for power, as indicated above. For example, independence in the early 1800s throughout Latin America brought with it subsequent periods of political instability within which competing *caudillos* (strong-men or chieftain)

¹⁵⁰ Ibid., 73-80. On ‘bureaucratic authoritarianism’ see: G. O'Donnell, *Modernization and Bureaucratic-Authoritarianism: Studies in South American Politics* (Berkeley: University of California Press, 1973).

¹⁵¹ Cammack, Pool, and Tordoff, *Third World Politics: A Comparative Introduction*, 66-73. J. Haynes, *Third World Politics: A Concise Introduction* (Oxford: Blackwell, 1996), 33-34.

¹⁵² Cammack, Pool, and Tordoff, *Third World Politics: A Comparative Introduction*, 59-65 and 80-88. Haynes, *Third World Politics: A Concise Introduction*, 32-33.

¹⁵³ Linz, "Totalitarian and Authoritarian Regimes," 266.

¹⁵⁴ Ibid. Thomas notes that national liberation struggles are typically popular movements but that but transfer of state power by the colonial authority is usually given to a select and favourable section of society. C. Y. Thomas, *The Rise of the Authoritarian State in Peripheral Societies* (New York: Monthly Review Press, 1984), 49-50.

struggled for power.¹⁵⁵ These figures only loosely adopted ideological positions, which they routinely sacrificed in struggles for power.¹⁵⁶ Third World authoritarian regimes have tended to be relatively personal and pluralistic, less bound by ideology, when compared to totalitarian regimes.

Indeed, the question of ideology is an important point of variation between totalitarian and authoritarian states and one that feeds directly into differences in actual and potential access to information. Juan Linz argues ruling parties or coalitions of parties within authoritarian states are typically based on a mentality, rather than an intellectually elaborate ideology.¹⁵⁷ He explains the difference between the mentality in authoritarian states and ideology in totalitarian states thus:

Mentality is intellectual attitude; ideology is intellectual content. Mentality is previous, ideology is later; mentality is formless, fluctuating—ideology, however, is firmly formed... Ideologies have a strong utopian element, mentalities are closer to the present or the past.¹⁵⁸

The importance of this variation in mentality versus ideology should not be underestimated, because it essentially means that while the ruling party of an authoritarian state rules, often with force, it does not claim a monopoly on truth. This means authoritarian rule is not absolute: authoritarian states, almost by definition, when compared to totalitarian states, exhibit degrees of rule of law and pluralism.

Authoritarian states have the legal capacity for transparency law due to the general acceptance of legal positivism and judicial procedure made possible by the lack of absolute ideology and this is demonstrated by the adoption of Open Government Information Regulations in China in 2008 (as explored in Chapters Eight and Nine). Political structures have a degree of objectivity. As Linz suggests, authoritarian regimes function ‘within formally ill-defined limits but actually quite predictable ones.’¹⁵⁹ Access to information rights can theoretically function within these independent legal structures. However, issues remain. Judicial independence and ‘rational-legal’ bureaucratic practice

¹⁵⁵ E. R. Wolf and E. C. Hansen, "Caudillo Politics: A Structural Analysis," *Comparative Studies in Society and History* 9, no. 2 (1967).

¹⁵⁶ R. L. Scheina, *Latin America's Wars: The Age of the Caudillo, 1791-1899* (Dulles: Brassey's Inc., 2003), xxvi-xxvii.

¹⁵⁷ Linz, "Totalitarian and Authoritarian Regimes," 267.

¹⁵⁸ *Ibid.*

¹⁵⁹ ———, "An Authoritarian Regime: The Case of Spain," 255.

are two variables that range across and within authoritarian states and these variables necessarily dictate whether or not access law could possibly function without political interference.¹⁶⁰ The party might not be able to simply override the law, but the functioning of the law may still be hindered by the weakness of certain structures.

The lack of absolute ideology within authoritarian regimes also means there is no attempt to envelop the state apparatus and society while politicizing and mobilizing the latter, which makes information constituencies possible. Authoritarian regimes, less ideologically drive than totalitarian parties, often mobilize society, but not extensively or intensively.¹⁶¹ Authoritarian regimes accept a distinction between the state apparatus and society.¹⁶² Civil society is not the focus of politicization and obliteration. There exists a degree of limited pluralism within authoritarian states.¹⁶³ There is a limited degree of pluralism and civil society that allows for the possibility of a constituency to support FOI law, depending on the severity of the regime in question.¹⁶⁴ However, the prevalence of patron-client relationships between the state apparatus and society within Third World authoritarian regimes often brings civil society under the influence of authorities.¹⁶⁵ Such cooptation, in addition to the potential threat of violence, may prevent media and civil organizations from challenging authorities for information. For instance, media organizations in Mexico have been criticized for 'bad faith' during the 1970s for not doing more to promote freedom of information due to their involvement in the discrepancies of the ruling elite.¹⁶⁶

These factors, a) the possibility of meaningful legal reform and b) a degree of civil activism, provided some movement towards FOI law within the Third World

¹⁶⁰ G. Helmke and F. Rosenbluth, "Regimes and the Rule of Law: Judicial Independence in Comparative Perspective," *Annual Review of Political Science* 12 (2009): 346-48.

¹⁶¹ Linz, "An Authoritarian Regime: The Case of Spain," 255.

¹⁶² ———, "Totalitarian and Authoritarian Regimes," 265.

¹⁶³ Linz contrasted the 'limited pluralism' of authoritarian states with the 'almost unlimited pluralism' of democratic states. *Ibid.*, 165. But he fails to appreciate the potential for pluralism to hide continuity in interests. See for example: Roelofs, *Foundations and Public Policy: The Mask of Pluralism*.

¹⁶⁴ Haynes, *Third World Politics: A Concise Introduction*, 32-37.

¹⁶⁵ *Ibid.*, 29-32.

¹⁶⁶ J. Carpizo, "The Constitution and Information," *The Mexican Law Review*, no. 7 (2007): 11. Similarly, Michener suggests that the intimate relationship between major media outlets and government and the traditionally high levels of government subsidization of the media discouraged the majority of the media from pushing for reform. G. Michener, "Engendering Political Commitment: The Grupo Oaxaca--Expertise, Media Projection--and the Elaboration of Mexico's Access to Information Law" (paper presented at the Southern Political Science Association, New Orleans, 2006).

authoritarian states. As indicated in the previous paragraph, and explored in more depth in the case study chapters (see, for example, 8.4.2), freedom of information has been an issue within Mexico since the 1970s. However, the enactment of law did not eventuate due to 'debate, disagreement, division, disorientation and ultimately, debilitating inaction.'¹⁶⁷ Similarly, in 1980 the law ministers of the Commonwealth group of nation-states, which included a number of authoritarian regimes (e.g. Singapore and Pakistan) alongside a number of established democratic regimes (e.g. Australia and the United Kingdom), jointly declared in a public statement after meeting that freedom of information was important—the communiqué read: 'Ministers expressed the view that public participation was at its most meaningful when citizens had adequate access to official information.'¹⁶⁸ However, in a statement that may be interpreted as reflective of persistence administrative secrecy in both established Lockean states and Third World authoritarian states, the communiqué then clarified the continuing necessity for secrecy by stating there is a need:

to strike a balance between the individual's right to know against the government's need, in the wider public interest, to withhold certain information from disclosure. This issue [has] to be addressed in developing any "Freedom of Information" legislation...¹⁶⁹

While totalitarian states obliterated the possibility of FOI law, authoritarian states provided a nominal possibility hampered by regime power and weak civil activism.

In the same way that communist China provides a good example of totalitarian information control. Twentieth century Mexico, as case study also examined in later chapters alongside China and India, provides a good example of information flows under authoritarianism. The Institutional Revolutionary Party (PRI) ruled on the basis of an inclusive corporatist structure following the aftermath of the 1910 Mexican Revolution until the 1980s, and it did so through a system characterized by patron-client relations based around formally ill-defined but quite predictable rules (as discussed at 8.4.2).

¹⁶⁷ Michener, "The Surrender of Secrecy: Explaining the Emergence of Strong Access to Information Laws in Latin America", 85.

¹⁶⁸ Paragraph 24 and 25. Commonwealth Law Ministers, "Commonwealth Law Ministers' Barbados Communiqué," Commonwealth Human Rights Initiative, http://www.humanrightsinitiative.org/programs/ai/rti/international/cw_standards/communique/default.htm, (Date Accessed: 13 April 2011).

¹⁶⁹ Ibid.

While public information flows were nominally free, the patron-client relations that characterized the system tended to place a price on information sharing and therefore flows were restricted. For example, the Mexican media lacked the autonomy and oppositional nature to place pressure on government to provide a public ‘right to know’ (8.4.2). Such oppositional activity by the media was generally met with a decrease in patronage from government.

6.5 Conclusion

This chapter presented the first part of a nomothetic understanding of the diffusion of FOI law by utilizing the concepts of state formation developed within transnational historical materialism. It argued the emergence and early diffusion of the law occurred within a Lockean heartland of states wherein a liberal democratic relationship between the state apparatus and society developed to provide a ‘right to know’ albeit with continued tensions between secrecy and openness. FOI law first emerged amongst Lockean pioneers, Sweden and the United States, before spreading amongst a handful of other Lockean states within the post-WWII international economy through a combination of domestic developments and ‘lesson drawing.’ However, not all Lockean states adopted the law reform in this manner. Some may be considered late Lockean adopters for various reasons linked to the continued persistence of secrecy and the presence of quasi-FOI regimes. Throughout much of modern history FOI law remained a unique law reform of the Lockean heartland due to the function of contender Hobbesian states—both totalitarian and authoritarian—which were fundamentally unreceptive to the idea of a ‘right to know’ due to the predominance of the state apparatus over society. Only with a substantial transformation in world order and state formation did a ‘right to know’ gain ground amongst Hobbesian states and this is the subject of the next chapter, the second part of the nomothetic understanding of the diffusion of FOI law provided by the current macro-historical analysis.

7: MACRO-HISTORICAL VIEW II: PROLIFERATION AND FUTURE

7.1 Introduction

As part two of a two step macro-historical analysis, the current chapter continues the nomothetic understanding presented in the previous chapter and examines the breakdown of that dichotomy and the contemporary proliferation of the law. It highlights the historical and political context of the unprecedented proliferation of access law and public sector transparency as a process enabled by both a transformation in world order and state forms that accompanied the emergence of an American-led global political economy following the collapse of Cold War divisions. The chapter explains how Hobbesian state forms were opened to new internal and external pressures in conjunction with increased interconnectedness that facilitated a rise in demands for information access. It also highlights the nature of adoption amongst Hobbesian states. Unlike Lockean state forms, where the emergence and diffusion of public sector transparency and FOI law was a ‘cumulative’ revolution spanning centuries, adoption amongst Hobbesian states has been a relatively ‘passive revolution’ wherein adoption in each case may be understood as a unique national reflection of international developments. The chapter also moves beyond proliferation amongst Hobbesian states to briefly consider the future of transparency reform amongst non-adopters and institutions outside traditional bureaucratic departments and agencies of the nation-state.

The chapter is divided into four major sections. The first of these sections examines the historical emergence of the global political economy and the transformation of Hobbesian states. It highlights an increase in transnational relations within the world system beginning in the 1970s, the hegemonic rise of American liberalism following the

collapse of the Cold War geopolitical divide, and the subsequent impact on state formation within Hobbesian contenders that enabled the proliferation of FOI law. Important within the historical transition was the development of substantial transnational support. Section two of the chapter examines the structure of this support system in terms of power amid a variety of organizations and actors. Section three describes the nature of adoption amongst Hobbesian states within the emergent global political economy, which is understood as a process of passive revolution, wherein adoption is essentially a unique national reflection of international developments that intertwines national and transnational factors. The final section of the chapter looks to the future of diffusion. It argues the future diffusion of the law amongst states is fraught with difficulty because of 'harsh environments' amongst non-adopters that are relatively sheltered from external pressures, but the final section also briefly suggests the future of diffusion may necessarily be outside the state apparatus given contemporary 'structural pluralism.'¹

7.2 Transformation in World Order and State Forms

The recent proliferation of FOI law has seen its diffusion beyond the Lockean heartland into Hobbesian states. Countries as geographically and culturally diverse as Ukraine (1992), Hungary (1992), Belize (1994), Uzbekistan (1997), Thailand (1997), Latvia (1998), Albania (1999), Bulgaria (2000), South Africa (2001), Pakistan (2002), Mexico (2003), Jordan (2007) and China (2008), to name a few, have adopted transparency law in recent years (see 3.2.2 and 3.3).² This explosion was made possible by a dramatic and substantial transformation in world order and Hobbesian state forms that represents an epoch changing shift involving three major factors, each examined in turn below: including, a) an unprecedented expansion in production relations beyond the nation-state (7.2.1 below); b) a hegemonic consolidation of American-led neo-liberal theory and practice within an emergent global economy (7.2.2); and, c) a breakdown of the asymmetrical information relations within Hobbesian states (7.2.3). Each of these factors

¹ R. Snell, "FOI - One Element of a Supportive Network of Laws, Institutions and Practices," Carter Center, <http://www.cartercenter.org/resources/pdfs/peace/americas/conference2010/RickSnell.ppt#256,1,FOI>, (Date Accessed: 18 February, 2011). Roberts, "Structural Pluralism."

² R. Vleugels, "Overview of All 90 FOIA Countries and Territories," (2009).

is now examined in turn in an effort to understand the recent proliferation of FOI law after two and a half centuries of gradual and predictable diffusion.

7.2.1 Expanded Transnational Relations

The expansion of transnational relations within the emergent global economy sets the stage by opening up national historic blocs for the proliferation of public sector transparency beyond the Lockean heartland. Capitalist production relations have been gradually expanding (in ebbs and flows) since the emergence of capitalism from roughly the seventeenth century onwards; but that expansion took a dramatic turn in the 1970s when the previously stable and wealthy post-WWII international economy began to falter for various reasons.³ Gradually the post-WWII international settlement was replaced by a young and dynamic global economy around the 1980s.⁴ A new epoch of world capitalism was born, a post-Fordist form of global production emerged.⁵ National levels of economic globalization, measured by flows of foreign direct investment and trade, almost doubled on average across the globe from 1970 to 2008, according to the globalization index produced by the Swiss Federal Institute of Technology.⁶ Similarly, levels of social globalization, measured (in part) by international tourism, internet users, and media, increased by roughly two thirds over the same period.⁷ In this new environment national economies are not simply connected to the international economy through import/export trade, as they had been in the past; instead national economies are intimately linked to one another through 'globalized circuits of production and accumulation.'⁸ These new

³ Contributing factors include increased capital flows and financial instability. See J. A. Frieden, *Global Capitalism: Its Fall and Rise in the Twentieth Century* (New York: W. W. Norton & Company, 2007), 339-60.

⁴ F. Froebel, J. Heinrichs, and O. Krey, *The New International Division of Labour* (Cambridge: Cambridge University Press, 1979).

⁵ Jessop, "Post-Fordism and the State.", Frieden, *Global Capitalism: Its Fall and Rise in the Twentieth Century*.

⁶ Swiss Federal Institute of Technology, "Index: Economic Globalization," <http://globalization.kof.ethz.ch/query>, (Date Accessed: 1 April, 2011).

⁷ ———, "Index: Social Globalization," <http://globalization.kof.ethz.ch/query>, (Date Accessed: 1 April, 2011).

⁸ Robinson, *A Theory of Global Capitalism: Production, Class and State in a Transnational World*, 11.

globalized circuits of production fundamentally impacted the nation-state, which, some argue, lost its status and function as a sovereign container.⁹

The transnationalization of national historic blocs within the global economy has fundamentally transformed their constitution. As discussed in Chapter Five (5.3), classical historical materialists and transnational historical materialists believe the 'socio-economic base' informs the 'legal and political superstructure' of a state. In the past this meant each state apparatus functioned historically in connection within a national socio-economic base. But the picture is fundamentally different with the transnationalization of socio-economic relations. Legal and political superstructures are now open to mobile social forces. The process of programming the state apparatus is no longer confined to the national sphere. Transnational social forces, such as wealthy multi-national corporations, impact the legal and political superstructure of states. Moreover, the state apparatus itself has undergone a process of globalization. Levels of political globalization, measured by membership in international organizations and international treaties, doubled from 1970 to 2008.¹⁰ The 'legal and political superstructure' of national historic blocs is therefore no longer a wholly national event.

This process of transnationalisation has been an important factor in the contemporary proliferation of transparency law. The gradual diffusion of the law amongst Lockean states in the post-WWII international economy of nation-states occurred predominantly within contexts of national development (as discussed at 6.3.3). This has not been the case amongst Hobbesian adopters within the emergent global political economy. Pressure on the state apparatus to increase openness within transnationalized Hobbesian states has come from within national settings, but it has also come from beyond them in significant ways. Leaving aside the ideological context of the global political economy (explored below) for a moment, increased transnational capital flows themselves can be said to have demanded greater transparency and rule of law: recent studies have shown that the degree of transparency within a given country is an important

⁹ Robinson and Harris, "Towards a Global Ruling Class? Globalization and the Transnational Capitalist Class," 15, W. I. Robinson, "Social Theory and Globalization: The Rise of a Transnational State," *Theory and Society* 30, no. 2 (2001). ———, "Beyond the Theory of Imperialism: Global Capitalism and the Transnational State," *Societies Without Borders* 2 (2006).

¹⁰ Swiss Federal Institute of Technology, "Index: Political Globalization," <http://globalization.kof.ethz.ch/query>, (Date Accessed: 1 April, 2011).

determining factor of attractiveness to foreign investors.¹¹ Transparency is understood to reduce the potential risks involved in investment by potentially shedding light on uncertainty derived from corruption, unstable economic policies, weak and poorly enforced property rights, and inefficient government institutions, amongst other things.¹²

7.2.2 Post-Cold War American Hegemony

The transnational system of production and accumulation that began to emerge in the 1970s and 1980s gained the ideological content favorable to the recent explosion of FOI law after the collapse of Cold War rivalries. The victory of American capitalism over Soviet communism left the Hobbesian contenders, not just in the Soviet bloc, but the periphery in general, without a leading force to act as counter-balance to the United States and the heartland: American liberal democracy, the leading Lockean form, was signaled as the future: Francis Fukuyama captured the victorious tone when he wrote of 'the end of history.'¹³ He said:

while earlier forms of government were characterized by grave defects and irrationalities that led to their eventual collapse, liberal democracy was arguably free from such fundamental internal contradictions... While some present-day countries might fail to achieve stable liberal democracy, and others might lapse back into other, more primitive forms of rule like theocracy or military dictatorship, the ideal of liberal democracy [can] not be improve on.¹⁴

The 'ideal' of liberal democracy became the benchmark political system of the expanding global political economy, which now stretched into Hobbesian states.¹⁵ The major institutions of the global political economy were brought together to support and promote

¹¹ Z. Drabek and W. Payne, "The Impact of Transparency on Foreign Direct Investment," (Washington D.C.: World Trade Organization, 1999), J. Hongxin, S. H. Kim, and J. Du, "The Impact of Corruption and Transparency on Foreign Direct Investment: An Empirical Analysis," *Management International Review* 43, no. 1 (2003).

¹² Drabek and Payne, "The Impact of Transparency on Foreign Direct Investment," 3.

¹³ F. Fukuyama, *The End of History and the Last Man* (London: Penguin, 1992).

¹⁴ *Ibid.*, 1.

¹⁵ Robinson, *Promoting Polyarchy: Globalization, US Intervention and Hegemony*, W. I. Robinson, "Promoting Polyarchy in Latin America: The Oxymoron Of "Market Democracy"," in *Latin America after Neo-Liberalism*, ed. E. Hershberg and F. Rosen (New York: The New Press, 2006).

the same ideal, a 'Washington consensus', which gradually incorporated public sector transparency and the adoption of FOI law.¹⁶

Democracy promotion, especially prominent in the 1990s, has become an important element of the global political economy.¹⁷ The practice of supporting democracy abroad through foreign aid and intervention has even been described as a contemporary cornerstone of American foreign policy.¹⁸ Robinson argues major powers within the global political economy have actively promoted a 'polyarchy' model of democracy, which he defines as a 'system in which a small group actually rule and mass participation in decision-making is contained to leadership choice in elections carefully managed by competing elites.'¹⁹ It is a model first established by Joseph Schumpeter in his influential 1942 study, *Capitalism, Socialism and Democracy*, where he defines democracy as 'that institutional arrangement for arriving at political decisions in which individuals acquire power to decide by means of a competitive struggle for the people's vote.'²⁰ This definition gradually developed into a policy option by 'organic intellectuals' of dominant American classes through cohesion between policy circles and academics in the United States.²¹ Robinson considers polyarchy 'the emergent political superstructure of the emergent global economy.'²² Government sponsored organizations, such as the National Endowment for Democracy, promote polyarchy as a political corollary to national economic liberalization within the global economy.²³ Polyarchy, a strict form of

¹⁶ J. Williamson, "What Washinton Means by Policy Reform," in *Latin American Adjustment: How Much Has Happened?*, ed. J. Williamson (Peterson Institute for International Economics, 1990), ———, "Democracy and the 'Washington Consensus'," *World Development* 21, no. 8 (1993).

¹⁷ For a comprehensive bibliography of this literature see T. Carothers, *Critical Mission: Essays on Democracy Promotion* (Washington: Carnegie Endowment for International Peace, 2004), 265-81.

¹⁸ S. B. Epstein, N. M. Serafino, and F. T. Miko, "Democracy Promotion: Cornerstone of U.S. Foreign Policy?," (Congressional Research Service, 2007).

¹⁹ Robinson, *Promoting Polyarchy: Globalization, US Intervention and Hegemony*, 49. The main theorist and supporter of 'polyarchy' is Robert A. Dahl: R. A. Dahl, *Democracy and Its Critics* (New Haven: Yale University Press, 1989).

²⁰ J. A. Schumpeter, *Capitalism, Socialism and Democracy* (New York: Harper Torchbooks, 1975 [1942]), 269. The work of Schumpeter on democratic theory was later taken further with the concept of 'polyarchy' by Robert A. Dahl: Dahl, *Democracy and Its Critics*.

²¹ Robinson, *Promoting Polyarchy: Globalization, US Intervention and Hegemony*, 41-44. See Schumpeter, *Capitalism, Socialism and Democracy*.

²² Robinson, *Promoting Polyarchy: Globalization, US Intervention and Hegemony*, 40.

²³ Ibid., 52-56.. See also: Barry Gills and Joel Rocamora, "Low Intensity Democracy," *Third World Quarterly* 13, no. 3 (1992), B. Gills, J. Rocamora, and R. Wilson, "Low Intensity Democracy," in *Low Intensity Democracy: Political Power in the New World*, ed. B. Gills, J. Rocamora, and R. Wilson (London: Pluto Press, 1993).

political/procedural democracy, is preferable because it both relieves social pressures by providing for a level of consent while safeguarding the economic interests of an elite minority by removing economic concerns from the democratic arena.²⁴

The emergence of an American power in the 1990s provided the ideological content for the expansion of transparency law beyond the Lockean heartland and into Hobbesian state forms. The collapse of the Cold War signaled the demise of the major contender model, and its heavy legitimization of state secrecy, leaving the Lockean model as the victor. Power within the emergent global economy, now stretching into the former Soviet Union and the Third World, sought to promote the Lockean model and the place of transparency within it. Alongside democracy promotion, FOI law and public sector transparency were promoted as a means of transforming Hobbesian states in line with the dominant ideological currents of the global political economy. A 'liberal consensus' on the importance of information flows to the proper function of markets and governments developed and facilitated a proliferation of transparency law amongst transnationalized Hobbesian states.²⁵

Before examining the post-Cold War transformation of Hobbesian states in more detail, it is perhaps important to briefly consider current changes in world order and the impact they may have on transformations amongst Hobbesian states. These states have generally undergone a transformation in recent years alongside the emergence of hegemonic American capitalism; however, this hegemony and the future of the liberal democratic model is an open question given the contemporary rise of China and subsequent recasting of world order. Might we see a decline in the centrality of the Lockean liberal democratic model within the global political economy in years to come? What impact would such a decline have on the status of FOI law? These are complicated questions. It may be the case that the Lockean model is challenged in the near future by authoritarian Chinese dominance, although this does not necessarily signal a reverse in the trend towards public sector transparency. The importance of liberal information flows within and across countries within the global economy, epitomized by the 'liberal

²⁴ Robinson, *Promoting Polyarchy: Globalization, US Intervention and Hegemony*, 6. See also X. Li and J. Hersh, "Understanding Capitalism: Crises and Passive Revolutions," *Competition and Change* 6, no. 2 (2002).

²⁵ Blanton, "The Openness Revolution: The Rise of a Global Movement for Freedom of Information," 16.

consensus' mentioned above, has been affirmed in the aftermath of the recent global financial crisis.²⁶ Moreover, China has adopted public sector transparency regulation (discussed in more depth in Chapters Eight and Nine). These facts support the continued rise of public sector transparency. But what such transparency means in actual terms of access is also open to question given a degree of variation across recent adopters, especially in the case of China (as elaborated at 9.5.3).

7.2.3 Transformation of Hobbesian State Forms

The transnationalization of production and the rise of American neo-liberalism produced dramatic transformations across the globe within Hobbesian states that set the foundation for the adoption of FOI law. An unprecedented wave of democratic transitions and democratization swept through Latin America, Eastern Europe and parts of Africa and Asia.²⁷ The collapse of totalitarian communism brought with it dramatic shifts across Eastern Europe towards the liberal democratic model; and economic, social and political structures were gradually transformed along the lines the liberal democratic model across the Third World.²⁸ Robert Pinkney provides a useful overview of the types of changes experienced in the relationship between the state apparatus and society throughout the Third World, changes that might also broadly apply to the former Soviet bloc.²⁹ As shown in Table 11, Pinkney highlights a shift from 'centralized government' to the more multi-faceted 'governance', increases in pluralism and the rise of 'new public management'.³⁰ The role played by hegemonic transnational forces in facilitating these changes is noted by Pinkney, and this is a topic addressed below with reference to the rise of public sector transparency (see 7.3.1 and 7.3.2); but before that the impact of such changes upon information relations in general must be highlighted.³¹

²⁶ United Nations, "Report of the Commission of Experts of the President of the United Nations General Assembly on Reforms of the International Monetary and Financial System," (New York: 2009).

²⁷ Grugel, *Democratization: A Critical Introduction*, D. Potter et al., eds., *Democratization* (Cambridge: Polity Press, 1997).

²⁸ See for example: T. Carothers, "The End of the Transition Paradigm," *Journal of Democracy* 13, no. 1 (2002). F. Zakaria, *The Future of Freedom: Illiberal Democracy at Home and Abroad* (New York: W. W. Norton & Co., 2003).

²⁹ R. Pinkney, *Democracy in the Third World* (Boulder: Lynne Rienner Publishers, 2003), 92.

³⁰ Ibid.

³¹ Ibid.

Table 11: State-Society Hobbesian Relations: Post-independence/ Post-Cold War

Post-independence Model	Post-Cold War Model
Centralized government	Governance
Authoritarianism	Greater pluralism
Bureaucratic dominations	Elements of new public management
Clientelism	External tutelage
Military influence or military domination	Increased armed insurgency
Materialist values in collectivist environment	Entrepreneurship, self-help, and imported post-material values

A new model of state formation spread amongst Hobbesian contenders within the emerging global economy that provided the basis for the adoption of transparency law.³² Within the new model the *theoretical* essentials of the traditional Lockean model that originally made FOI law possible are generally retained: there is a separation of the state apparatus and civil society; limited, consent-based government that governs by law; and a relatively autonomous civil sphere (as discussed at 6.3.1). This transformation, as one of national state-society relations, in itself has provided the foundation for the further expansion of FOI law by redrawing the relationship between government and the public. But there are major differences between the old and the new liberal forms that have also contributed to the proliferation of transparency law amongst Hobbesian states. These major differences spring from the fact that the ‘extended state’ is no longer a largely self-contained unit. Expanded transnational relations and the hegemony of American liberalism (both discussed above) have essentially broadened the scope of legitimate political and social actors and subsequently diminished government sovereignty over information.

Information relations and flows have gradually been remade within the Hobbesian periphery. The heavy restrictions placed on access to government-held information within totalitarian and authoritarian regimes have been lifted as the relationship between society and the state apparatus has become more consensual and democratic in accordance with the liberal democratic model. Put simply, Hobbesian states have moved to replicate Lockean information relations, which provide society with a ‘right to know.’ However, the Lockean information relations cultivated amongst the Hobbesian states, and even the heartland, in recent years have fanned out in the sense that they are no longer purely a

³² The nature of contemporary Hobbesian states is still an open question, see: Gill, "The Global Panopticon? The Neoliberal State, Economic Life and Democratic Surveillance," 47.

national event. Access to information and FOI law now involve an array of international political actors and transnational civil actors. Information relations and flows are no longer a national event; they are a transnational event, which helps explain why FOI law has proliferated so dramatically. Ann Florini writes: 'The demands of transparency are increasing in part because of globalization. As the world becomes more tightly integrated, many people are affected by, and thus want to have a say in, what used to be other people's business.'³³

7.3 Emergence of Transnational Support for Transparency

The gradual growth of transnational support for public sector transparency has been critical to the contemporary proliferation of FOI law. The emergence of this support system over time was a complicated process involving the incorporation of a variety of institutions and actors, ranging from international financial institutions, international organizations and international non-government activist groups, each with their own motivations for supporting the 'empty signifier' of transparency law (as shown at 2.2.1). It is therefore not possible to provide a detailed historical narrative of the emergence and development of the support system here, and in any case such a detailed narrative would tend to overlook perhaps the most important point: power. Power within the global political economy has fed into transnational support for FOI law, making such support exceptionally robust and well resourced. This sustaining power feeds from the apex of the global economy (see 7.3.1 below), through key global and international organizations (see 7.3.2), down into an auxiliary of transnational advocacy groups (7.3.3), and finally onto national and local supporters (7.3.4). Each of these levels of power within the transnational system of support is now examined in turn.

7.3.1 Support of Emergent Transnational Historic Bloc

Power relations within the emergent global political economy have worked in favor of public sector transparency. At the apex of the global economy is a transnational historic bloc, which is similar in nature to national historic blocs in the sense that it incorporates a

³³ Florini, "Does the Invisible Hand Need a Transparency Glove? The Politics of Transparency", 2.

structure/superstructure design, as discussed previously in Chapter Five (as discussed in 5.3.3). The development of the global economy in the second half of the twentieth century was accompanied by the emergence of a transnational capitalist class that has functioned as a social force in the construction of a transnational legal and political superstructure, lacking in centralized institutional form, that integrates 'transformed and externally integrated national states' together with supranational economic and political forums such as the IMF, World Bank, United Nations, OECD, EU and Conference on Security and Cooperation in Europe, amongst others.³⁴ The social forces invested in the construction of a transnational historic bloc are a fragmented and competitive group that principally developed from within the national historic blocs of the Lockean heartland, although transnational forces can now be identified within sections of many national historic blocs; and the glue holding these various elements together is a shared interest beyond national borders that converges on the maintenance of global capitalism due to a shared integration within global networks of production and accumulation.³⁵

The transnational historic bloc is essentially the social force behind the *global* diffusion of FOI law. Public sector transparency was always imbedded within the political philosophy of the transnational historic bloc, which geopolitically sprang from, and ideologically draws from, the Lockean heartland: the bloc generally supports the liberal democratic model (i.e. polyarchy), and the public 'right to know' that has developed within it. *However, transparency and access to government-held information only became a key feature of the political globalization promoted by the transnational bloc during the 1990s.* Explicit support of access to government-held information rose alongside a series of crises within the global economy, such as the European monetary crisis of 1992-1993, the Mexican peso crisis of 1994-1995 and especially the Asian financial crisis of 1997, which were blamed, in part, on a lack of information.³⁶ These crises brought concerns about the importance of information flows to investment

³⁴ Robinson, *A Theory of Global Capitalism: Production, Class and State in a Transnational World*, 88.

³⁵ See for example: Embong, "Globalisation and Transnational Class Relations: Some Problems of Conceptualisation.", Sklair, *The Transnational Capitalist Class*, Robinson and Harris, "Towards a Global Ruling Class? Globalization and the Transnational Capitalist Class."

³⁶ See for example: C. E. Bannier, "The Role of Information Disclosure and Uncertainty in the 1994/95 Mexican Peso Crisis: Empirical Evidence," *Review of International Economics* 14, no. 5 (2006). P. Tillmann, "Disparate Information and the Probability of Currency Crises: Empirical Evidence," *Economics Letters* 84, no. 1 (2004).

decisions and stability to the forefront of the global political economy.³⁷ As part of a 'Post-Washington Consensus' with renewed focus on state capacity building, transparency became 'the golden rule for a globalized economy.'³⁸ Michel Camdessus, then Managing Director of the IMF speaking at Transparency International, explained: 'the Asian crisis has demonstrated in a very dramatic way how the lack of transparency about underlying economic and financial conditions can feed market uncertainty and trigger large capital outflows that can, in turn, threaten macroeconomic stability.'³⁹

7.3.2 Support of International Donor Community

The power of the transnational historic bloc has fed into foundational support for government transparency from key international and global institutions and their donation and reform programs, especially the broad political reform agenda of 'good governance.'⁴⁰ The World Bank first identified the need for reform that it packaged as 'good governance' in 1989.⁴¹ The Bank argued that 'governance' was the manner in which power is exercised in the management of a country's economic and social resources for development, and that 'good governance' included effectiveness and efficiency in public sector management, accountability and responsiveness of public officials to the citizenry, rule of law and public access to information and transparency.⁴² Since 1989 'good governance' has grown as a broad reform agenda, defined in different ways by donor and multilateral agencies, although transparency has remained a core element linked to anti-corruption and effective and accountable public service delivery.⁴³

³⁷ G. Rodan, *Transparency and Authoritarian Rule in Southeast Asia: Singapore and Malaysia* (London: Routledge, 2004), 10.

³⁸ Ibid., 11.

³⁹ M. Camdessus, "The IMF and Good Governance," International Monetary Fund, <http://www.imf.org/external/np/speeches/1998/012198.htm>, (Date Accessed: 3 September, 2010). Similarly in 1997 the World Bank argued: 'Greater information and transparency are vital for informed public debate and for increasing popular trust and confidence in the state – whether in discussing expenditure priorities, designing social assistance programs, or managing forests and other resources.' World Bank, "World Development Report 1997: The State in a Changing World," (Washington D.C.: World Bank, 1997), 10. See more recently the emphasis on transparency by the 'Stiglitz UN Commission': United Nations, "Report of the Commission of Experts of the President of the United Nations General Assembly on Reforms of the International Monetary and Financial System."

⁴⁰ Agere, *Promoting Good Governance: Principles, Practices and Perspectives*.

⁴¹ World Bank, "Sub-Sahara Africa: From Crisis to Sustainable Growth: A Long-Term Perspective Study," (Washington D.C.: The World Bank, 1989).

⁴² Ibid., 60.

⁴³ Agere, *Promoting Good Governance: Principles, Practices and Perspectives*, 2.

The 'good governance' agenda has linked institutions such as the IMF, UNESCO, UNDP, OECD and World Bank in support of FOI law and public sector transparency.

These bodies have provided significant financial and ideological support for the proliferation of the law reform. Many have specialized programs focused on the promotion of transparency and adoption of the law packaged within their unique overall vision. For example, the UNDP has a well resourced 'Access to Information and E-Governance' program that fits within its 'Democratic Governance' focus area.⁴⁴ The program provides a searchable database that catalogues the 'Access to Information Projects' supported by the organization.⁴⁵ Similarly, the World Bank has an 'Access to Information, Transparency and Governance Program' that fits within its 'Governance and Anti-Corruption' focus area.⁴⁶ The program has conducted a range of events across Asia, Africa and Latin America in support of freedom of information.⁴⁷ But perhaps an important contribution made by the program has been the financing of studies by influential figures within the field on various topics associated with FOI law, ranging from budgeting implications, enforcement models, media usage and standards of access.⁴⁸ Such ideological support, in addition to more direct activities, provides a good example of the powerful platform of support that emerged within the global political economy through the 1990s and beyond.⁴⁹

7.3.3 Support of Transnational Advocacy Network

The financial and ideological support for transparency reform provided by key organizations within the global political economy has facilitated, although not determined, the rise of an auxiliary network of transnational advocacy agencies that

⁴⁴ United National Development Programme, "Access to Information and E-Governance," http://www.undp.org/governance/focus_access_information.shtml#, (Date Accessed: 13 March 2011).

⁴⁵ UNDP Oslo Governance Centre, "Access to Information Resources," United National Development Programme, http://www.undp.org/oslocentre/flagship/access_information.html, (Date Accessed: 3 March, 2011).

⁴⁶ World Bank, "Access to Information, Transparency and Governance."

⁴⁷ ———, "Access to Information, Transparency and Governance: Past Events," <http://web.worldbank.org/WBSITE/EXTERNAL/WBI/WBIPROGRAMS/PSGLP/0,,contentMDK:22015692~pagePK:64156158~piPK:64152884~theSitePK:461606,00.html>, (Date Accessed: 13 March, 2011).

⁴⁸ ———, "Access to Information, Transparency and Governance: Publications," <http://web.worldbank.org/WBSITE/EXTERNAL/WBI/WBIPROGRAMS/PSGLP/0,,contentMDK:21985280~pagePK:64156158~piPK:64152884~theSitePK:461606,00.html>, (Date Accessed: 13 March, 2011).

⁴⁹ T. McIntosh, "Freedom of Information Laws Added to the Development Agenda," *freedominfo.org* (22 March 2006), <http://www.freedominfo.org/2006/03/foi-laws-and-development-agend/>.

actively lobby for the adoption of FOI law and work to consolidate and advance international developments.⁵⁰ The network has benefited from the support of the organizations described above, but it has also functioned as a feedback mechanism to bolster support within such organizations. The pillars of the transnational advocacy network were first laid down in 1987 with the establishment of both Article 19 and the Commonwealth Human Rights Initiative, both of which have played important roles in helping build support for access law.⁵¹ Privacy International was established in 1990 and the Open Society Institute and Transparency International in 1993.⁵² By the opening years of the twenty-first century these bodies were joined by many others, such as the Carter Center, in helping to increase the diffusion of FOI law.⁵³ In 2002 the FOI Advocates Network was setup as an online hub for supporters.⁵⁴ It was joined by other online hubs in 2002 with the establishment of freedominfo.org and right2info.org in 2007.⁵⁵

Members of the transnational advocacy network for freedom of information share a core activity in common, although each brings something unique. Generally organizations of the network promote and support the adoption and implementation of FOI law; they support local civil groups, lobby governments, review government proposals, pursue legal cases to establish legal precedents and report on trends and concerns.⁵⁶ The manner with which they undertake these core activities functions as a

⁵⁰ See for example: Berliner, "The Strength of Freedom of Information Laws after Passage: The Role of Transnational Advocacy Networks".

⁵¹ Article 19, "Article 19: Global Campaign for Free Expression." and Commonwealth Human Rights Initiative, "Commonwealth Human Rights Initiative," <http://www.humanrightsinitiative.org/>, (Date Accessed: 13 March, 2011).

⁵² Privacy International, "Privacy International," <https://www.privacyinternational.org/>, (Date Accessed: 14 March 2011, 2011). Open Society Foundations, "Open Society Foundations: Building Vibrant and Tolerant Democracies," <http://www.soros.org/>, (Date Accessed: 13 March, 2011). Transparency International, "Transparency International: The Global Coalition against Corruption," <http://www.transparency.org/>, (Date Accessed: 13 March, 2011).

⁵³ The Carter Center established an 'Access to Information Program' in 1999. The Carter Center, "Access to Information," <http://www.cartercenter.org/peace/americas/information.html>, (Date Accessed: 13 March, 2011).

⁵⁴ FOI Advocates Network, "FOIANet," <http://www.foiadvocates.net/>, (Date Accessed: 13 March, 2011).

⁵⁵ freedominfo.org, "Freedominfo.org: The Global Network of Freedom of Information Advocates." and right2info.org, "Good Law & Practice: Right2info," <http://right2info.org/>, (Date Accessed: 14 March, 2011). See also Berliner, "The Strength of Freedom of Information Laws after Passage: The Role of Transnational Advocacy Networks".

⁵⁶ See for example the activity database of Transparency International, "Access to Information: TI Projects and Activities,"

collective self-referential system, a system that legitimizes itself, in the progression and implementation of global standards of access.⁵⁷ In addition to core activities, each advocacy group tends toward a distinctive specialization, as already mentioned above. Each incorporates FOI law into a unique vision, whether it is human rights, or anti-corruption, or development, which adds to the collective strength of the network. For example, Article19 places the 'empty signifier' of FOI law within the framework of freedom of expression and its activity is conducted diffusely, whereas the Carter Center frames the law in terms of human development and its activity is conducted predominantly in Latin America, but more recently in Africa, too.⁵⁸

The growth and success of international activists for FOI law cannot be overstated. Financial support is difficult to calculate, but the general impression must be that the donor community has been generous in providing support for international freedom of information activists. For example, annual funding received by Article 19 more than doubled between 2002 and 2009, from £1,294,627 in 2002 to £2,336,245 in 2009.⁵⁹ Such funding has helped finance real successes. Recent achievements of the advocacy network include a 2006 victory in the Inter-American Court of Human Rights which meant the court became the 'first international tribunal to recognize a basic right of access to government information as an element of the right to freedom of expression.'⁶⁰ Another success was the signing of the 2008 Atlanta Declaration that saw '125 members of the global access to information community from over 40 countries' meet under the patronage of the Carter Center to adopt a 'Declaration and Plan of Action to advance the passage, implementation, enforcement, and exercise of the right of access to

http://www.transparency.org/global_priorities/other_thematic_issues/access_information/projects_access, (Date Accessed: 27 April 2011).

⁵⁷ In the literature produced by the activists, key agreements and norms developed with the help of the activists are used to legitimize claims. See for example: Mendel, "Freedom of Information: A Comparative Legal Survey," 13-16.

⁵⁸ See the notes above and also the CHRI's Right to Information program for examples of the integration of access to information within various visions of advocates: Commonwealth Human Rights Initiative, "Right to Information,"

http://www.humanrightsinitiative.org/index.php?option=com_content&view=article&id=54&Itemid=53, (Date Accessed: 14 March, 2011).

⁵⁹ Article 19, "Finance," <http://www.article19.org/about/finance.html> (Date Accessed: 14 March, 2011).

⁶⁰ Open Society Justice Initiative, "Claude v. Chile."

information.’⁶¹ The declaration finds access to information to be a fundamental human right that states should protect by enacting FOI law.⁶²

7.3.4 Support of Local Campaigners

The final benefactors within the system of transnational support for FOI law are of course national and local actors. National campaigners have benefited greatly from global supporters: efforts have received backing by a variety of sources within the global economy, such as Western foreign policy bodies, such as the United States Agency for International Development (USAID); and private foundations, like the Ford Foundation and the Open Society Institute; as well as supranational and international bodies, such as the World Bank and UNESCO; and international advocacy groups, such as Article19 and the Commonwealth Human Rights Initiative.⁶³ In a wide range of countries newly formed local civil society bodies, backed by various funding sources, have been able to exert critical pressure on governments to adopt FOI law following the transformation in world order and state formation described above. Examples include the Access to Information Program in Bulgaria; or the FOI Coalition in Indonesia.⁶⁴ USAID in Indonesia contributed US\$17million between April 2005 and April 2010 towards supporting local efforts to enact FOI law, amongst other things.⁶⁵ Law went into force in 2010. The prevalence of such assistance is rarely recognized within the literature; this is perhaps

⁶¹ The Carter Center, "International Conference on the Right to Public Information," http://www.cartercenter.org/peace/americas/ati_conference/right_to_public_information_conf.html, (Date Accessed: 14 March, 2011).

⁶² Ibid.

⁶³ See Roelofs, *Foundations and Public Policy: The Mask of Pluralism*, N. Guilhot, "Reforming the World: George Soros, Global Capitalism and the Philanthropic Management of the Social Sciences," *Critical Sociology* 33, no. 3 (2007).

⁶⁴ Exceptions to the trend of such funding include MKSS in India; as discussed at more length in part two of the case study analysis (see 9.3.3).

⁶⁵ USAID Indonesia, "Democratic Reform Support Program," http://indonesia.usaid.gov/en/USAID/Activity/142/Democratic_Reform_Support_Program_DRSP, (Date Accessed: 12 June, 2010). A USAID press release regarding the publication of a Manual on Freedom of Information by the Indonesia Ministry of Information and Communication explains: 'USAID and its Democratic Reform Support Program have been active supporters of freedom of information and have partnered with both Government and civil society on this issue. We will continue to work with civil society to fully socialize the law.' ———, "Mininfo Introduces FOIA Manual," USAID Indonesia, http://indonesia.usaid.gov/en/USAID/Article/367/MinInfo_introduces_FOIA_Manual, (Date Accessed: 12 June, 2010). The World Bank Institute also played an important role. See: World Bank Institute, "Workshop on the Implementation of Freedom of Information Law in Indonesia," World Bank Institute, <http://siteresources.worldbank.org/PSGLP/Resources/FOIImplementationWkspAgendaFINAL.pdf>, (Date Accessed: 12 June 2010, 2010).

because much of the recent literature is funded by organizations like the World Bank or the Open Society Institute—therefore authors do not critically consider such backing within the broad context of the diffusion of access law.⁶⁶

None of this is to suggest the growth in transnational support has artificially producing national campaigns for FOI law. The transnational support system has generally responded to national circumstances and provided assistance where possible within Hobbesian adopters, while at the same time facilitating a conducive environment. This development in support and environment, in addition to the brevity of diffusion, is unique in itself. Campaigns prior to the emergence of the global political economy for FOI law were set within the parameters of the sovereign nation-state system of the post-WWII international economy: early Lockean adopters enacted and implemented FOI law based largely on gradual national developments without the type of international and transnational support highlighted above; their major external influence was limited to ‘lesson drawing’ from similar states (see 6.3.3). Recent Hobbesian states, on the other hand, have tended to adopt the law with more sudden national developments and they have done so with considerable transnational support.

7.4 Passive Revolutions in Freedom of Information

Adoption of FOI law amongst Hobbesian states must be understood as distinctive in comparison to adoption within Lockean states. As addressed in the following section, the thesis utilizes the Gramscian concept of ‘passive revolution’ in order to conceptualize this unique process of adoption amongst Hobbesian states (see 7.4.1 below). According to this perspective, *national adoption is a unique reflection of transnational consensus that occurs separately within the context of each state*. China and India are examples highlighted below, and examined further in following chapters, that demonstrate this, as in both cases national factors were primary to adoption, and yet these factors were intimately tied to international developments (see 7.4.1). The concept of passive revolution ultimately provides a platform for understanding the interplay between

⁶⁶ For example: Mendel, "Freedom of Information: A Comparative Legal Survey.", Puddephatt, "Exploring the Role of Civil Society in the Formulation and Adoption of Access to Information Laws: The Cases of Bulgaria, India, Mexico, South Africa and the United Kingdom."

transnational and national variables and the nature of adoption amongst recent Hobbesian adopters that can feed into better understandings of, for example, the actions of actors and the challenges faced in implementation (7.4.2).

7.4.1 Passive Revolutions amongst Hobbesian Adopters

The nature of adoption amongst recent Hobbesian states, its abruptness and national/transnational dynamic, is not well understood or conceptualized within the FOI literature. A starting point for such an understanding must be the difference in adoption between Lockean and Hobbesian states. Adoption within Lockean states had ‘slow-moving causes’ that developed gradually across and within each country of the heartland.⁶⁷ The basis for access law within Lockean states developed through ‘cumulative’ national developments that reached a ‘threshold’ in the twentieth century, linked to a growth in bureaucracy, when the law diffused throughout a number of Lockean states in a process of lesson drawing within the Cold War international economy.⁶⁸ *Late* Lockean adopters were influenced by international developments that began to emerge in the 1990s and yet within each a foundation for the law had been developing for some time.⁶⁹ In contrast, adoption amongst Hobbesian contenders has been sudden and tied to international developments.⁷⁰ Hobbesian states adopted transparency law as part of a swift shift in state formation within a post-Cold War emergent global political economy. Hobbesian adopters have been substantially influenced by international developments and national/transnational dynamics unique to the global political economy.

The term ‘passive revolution’ may be used to describe the adoption of FOI law amongst Hobbesian states. As Chapter Five showed (particularly 5.4.3), Gramsci used the term to describe the manner in which reformist social and political change may occur, especially in relation to national/international links. Passive revolution suggests the adoption of a reform within a state is often ‘a reflection of international developments

⁶⁷ P. Pierson, *Politics in Time: History, Institutions and Social Analysis* (Princeton: Princeton University Press, 2004), 82.

⁶⁸ Ibid.

⁶⁹ Ackerman and Sandoval-Ballesteros, "The Global Explosion of Freedom of Information Laws," 113.

⁷⁰ Pierson, *Politics in Time: History, Institutions and Social Analysis*, 79-102.

which transmit their ideological currents to the periphery.’⁷¹ This process of reflection is visible in the contemporary diffusion and adoption of FOI law. Adopters of the law within the recent explosion have predominantly been peripheral and have adopted the law reform in reflection of international developments. These passive revolutions in FOI law are less the result of a developed groundswell in each adopter and more the result of ideas and practices making their way from the core to the periphery of the global political economy. However, an important point to make is that adoption as passive revolution is not a top down process; rather, the reflection of international developments happens in the context of the ‘originality and uniqueness’ of each state.⁷² The ‘empty signifier’ of FOI law is filled within each state and the process of national adoption is separate and unique from international developments, although fundamentally tied to it.

A quick comparison of the adoption of FOI law in China and India, examined in more depth later (see Chapters Eight and Nine), demonstrates the application of passive revolution as a concept. In both cases adoption can be described as a unique reflection of recent international developments. The adoption of FOI law in each case was unique and independent, to a degree. The Chinese Open Government Information Regulations that came into effect on 1 May 2008 were entirely developed by the Chinese Communist Party and were heavily influenced by local ideas on the utility of government-held information for economic growth and public sector management (as shown at 9.3.1); whereas the Indian *Right to Information Act* that came into effect on 13 October 2005 evolved from public service reform and grassroots social activism and the law is associated with social development and equality (see 9.3.3). This demonstrates the uniqueness and independence of adoption in each case. However, adoption in both cases was also tied intimately to transnational support. Adoption in China was linked to pressures for transparency coming from the World Trade Organization (WTO) and occurred with a degree of ‘norm emulation’ of international developments (see 9.2). Similarly, the campaign for FOI law in India benefited substantially from active support provided by the Commonwealth Human Rights Initiative, a member of the transnational advocacy

⁷¹ Gramsci, *Selections from the Prison Notebooks*, 240.

⁷² Ibid.

network, and 'good governance' norm emulation within the public service (as elaborated at 9.2).

7.4.2 Utility of Understanding Passive Revolutions

As demonstrated by the brief look at China and India above, passive revolution, as a theoretical tool, provides a way to conceptualize the relationship between national and transnational factors within recent Hobbesian adopters. Passive revolution firmly places national factors as primary to the adoption process, while understanding transnational factors as a crucial facilitative factor. Neither national nor transnational factors are essentially more important than the other; each simply plays a relative role within a process of passive revolution that intertwines both. The motives of national and transnational actors, in relation to one another, may also be understood. National actors have generally used the extensive transnational support system as a tool to legitimize and bolster local campaigns. On the other hand, transnational actors, especially those of the transnational advocacy network (see 7.3.3 above), have looked for openings within national circumstances to provide assistance and facilitate the agenda for transparency law. They have attempted to find an avenue for supporting law reform within the unique context of each state.

The utility of passive revolution in providing new insights into the adoption process amongst Hobbesian states also extends to understanding the challenges faced by the law (these challenges are explored further with reference to China, Mexico and India in the following chapters, particularly 9.5.1). Recently adopted transparency laws naturally have a degree of national support, or they would never have been adopted; however, as reflections of international developments, recently adopted laws have generally been put into place by a limited circle of reformers in the context of transformation in Hobbesian state form. This presents a challenge for the adopted transparency law. In order for it to consolidate as a check on government it requires social support and a capacity on behalf of the state apparatus to fulfill legal obligations. The concept of passive revolution suggests transnational support has facilitated the widespread diffusion of transparency law, and national circumstances have enabled adoption in each case, and in doing so the concept also suggests a lack of fundamental

support made up of domestic constituencies of potential users and capable, responsive agencies. The issue of consolidation is nowhere more paramount than within Hobbesian adopters.⁷³

7.5 The Future of Diffusion

The final issue addressed in this macro-historical analysis of the diffusion of access law is the potential future of diffusion. The future within current adopters, in terms of consolidation and progressive reform, is an important issue.⁷⁴ However, the overall concern for historical diffusion here necessitates a focus on the future of transparency law outside current adopters, amongst current non-adopters. There are perhaps two key concerns for the future diffusion of FOI law understood in this manner. The first is the question of why some countries have not adopted the law, and whether or not they will adopt it in the near future; on this topic the section suggests non-adopters are generally of unique positions within the global political economy and have 'harsh environments' of direct and indirect obstacles that are likely to temper the diffusion curve of transparency law, make it plateau and stabilize (see 7.5.1 below). Second, there is the question of the evolution of access rights in an era of 'structural pluralism', when public authority has widely seeped from the state apparatus to private corporations and institutions beyond the nation-state (7.5.2 below). This is an open question and the next frontier for freedom of information supporters.⁷⁵

7.5.1 Obstacles amongst Non-Adopters

This thesis has argued that a transnationalization of economic and social relations, alongside an internationalization of the state apparatus within the context of the emergent global political economy, dominated by American neo-liberal ideology, has helped drive the recent proliferation of transparency law. This argument implies non-adopters of the law reform have in some way been exempt from such forces. Indeed, Africa and the

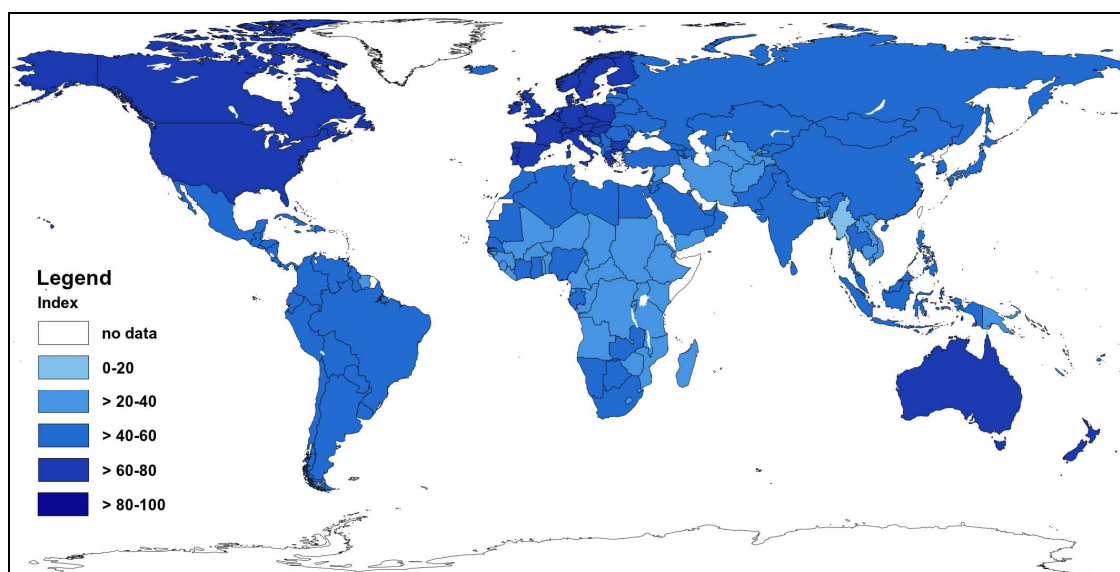
⁷³ See Roberts, *Blacked Out: Government Secrecy in the Information Age*, 115.

⁷⁴ See for example discussions about FOI Version 2.0 and push/pull systems, respectively: R. Snell, "Opening up the Mindset Is Key to Change," *Public Sector Informant* 2008. Xiao, "China's Limited Push Model of FOI Legislation."

⁷⁵ Roberts, "Structural Pluralism."

Middle East, regions with the least FOI laws (as shown at 3.2.1), are also the least integrated regions in the global economy, as demonstrated by Figure 12 below, which graphically shows contrasting levels of globalization across countries based on social, economic and political variables.⁷⁶ But the relationship between the global political economy and national adoption is not just a matter of integration. There are also nuance issues related to the position of the country within the global economy: oil-rich states, for example, have a unique position within the global political economy that has allowed many to bump the recent democratization trend; and very few have FOI law.⁷⁷ Overall the main argument for non-adoption must be that such countries, to varying degrees, have remained at a relative distance from pressures to reflect international developments in national contexts that support local advocacy.

Figure 12: Levels of Globalization, 2008



Many non-adopters within these unique positions of the global political economy, especially in Africa and the Middle East, present what Rick Snell refers to as ‘harsh

⁷⁶ Swiss Federal Institute of Technology, "KOF Index of Globalization 2008," <http://globalization.kof.ethz.ch/map/#>, (Date Accessed: 14 March, 2011). These variables include levels of internet usage, foreign direct investment, international tourism, as well as the number of international treaties signed.

⁷⁷ See M. L. Ross, "Does Oil Hinder Democracy?," *World Politics* 53, no. 3 (2001).

environments' that hinder or complicate the adoption of FOI law.⁷⁸ He points out that many of these states are conflict/post-conflict environments or that they are dominated by a single ruling party.⁷⁹ The 'harsh environments', Snell suggests, might include high levels of corruption, slow economic development, low literacy levels, high levels of government paternalism, poorly functioning public services, low levels of records management capacity and/or low levels of press freedom.⁸⁰ To build upon Snell's concept of 'harsh environments', the specific obstacles impeding the adoption of FOI law in non-adopters of Africa and the Middle East and beyond might be divided into 'direct' political and 'indirect' non-political, capacity categories.

Direct obstacles are principally political. The essential characteristic inherent to political obstacles is a continued claim by the state apparatus to a Hobbesian right to restrict access to information. Political obstacles are common in states that have not felt the full force of the recent shift in world order and state formation helping to drive transnational support and the unexpected proliferation of FOI law outside the Lockean heartland. The vast majority of these states are geopolitically located on the periphery of the global political economy (Africa and the Middle East) and yet there are isolated cases of direct political obstacles to FOI law in almost every region. Take for example Belarus, Venezuela and Singapore; each embodies a unique political obstacle that prevents the development of a 'right to know.'⁸¹ The content of direct political obstacles varies between region and state. For example, a direct regional obstacle to FOI law in the Middle East is exceptional authoritarianism, whereas a direct, state-specific obstacle to FOI law in Venezuela is a socialist experiment suspicious of international pressure.⁸²

Indirect obstacles are non-political, they relate to issues of capacity. Indirect obstacles stem from the inability of state apparatuses to enact and implement transparency law. Non-adopters in the Third World, especially Africa, are faced with indirect obstacles that stem from 'weak states' lacking in institutional capabilities to overcome corruption, and ethnic, religious and political divisions, as well as bureaucratic

⁷⁸ Snell, "FOI - One Element of a Supportive Network of Laws, Institutions and Practices."

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ See for example Rodan, *Transparency and Authoritarian Rule in Southeast Asia: Singapore and Malaysia*.

⁸² E. Bellin, "The Robustness of Authoritarianism in the Middle East: Exceptionalism in Comparative Perspective," *Comparative Politics* 36, no. 2 (2004).

inadequacies, to implement transparency law.⁸³ Nigeria and Cambodia are good examples here. In both cases efforts to enact law have stretched back several years: delay of an FOI bill within the Nigerian National Assembly even reached record proportions as the longest proposal to stand before parliament in the country's political history.⁸⁴ Corruption and fears of the way access law may empower the media while hindering parliamentary sovereignty, have fed into a stop-go process in Nigeria spanning more than ten years.⁸⁵ The law was only passed in 2011. In Cambodia, assistance of donors such as USAID and the World Bank that started around 2003 has helped in the development of government policy and yet officials have not signed off on the proposal that they say is still under review, despite consistent calls from opposition parties and civil organizations for enactment.⁸⁶ Nigeria and Cambodia, among other Third World states, have struggled to overcome obstacles that are necessarily political, but which have more to do with the capacity of the state to meet fairly common political and bureaucratic concerns.

Direct and indirect obstacles have prevented the adoption of FOI law in many countries to date, but they do not entirely prevent the adoption of law in those countries in the future. Such obstacles indicate that a certain amount of political and institutional groundwork has yet to be conducted to pave way for transparency law; however, that groundwork may still develop and enable adoption, or it may not. For instance, the recent political uprising across North Africa and the Middle East may spell a turning point (from Hobbesian to Lockean) for a region exceptionally authoritarian in an era of democratization.⁸⁷ The uprisings may facilitate the rise of representative political institutions that may then relinquish the Hobbesian right to secrecy currently prevailing there. So, to put it simply, the answer to the question of whether or not more states will adopt FOI law is a tempered yes. The global proliferation of transparency law has

⁸³ J. S. Migdal, *Strong Societies and Weak States: State-Society Relations and State Capabilities in the Third World* (Princeton: Princeton University Press, 1988). See

⁸⁴ E. Maduabuchi, "Freedom of Information Bill Falls Again," *Daily Independent* (25 January 2010), <http://allafrica.com/stories/201001260707.html>.

⁸⁵ Editorial, "Nigeria: Freedom of Information for None," *Vanguard* (17 February 2011), <http://allafrica.com/stories/201102170805.html>.

⁸⁶ B. Reaksmey Kongkea, "Journos Seek Greater Access," *The Phnom Penh Post* (16 November 2010), <http://khmernz.blogspot.com/2010/11/journos-seek-greater-access.html>. Also see R. Snell, "Cambodia - Weeks 1-2," Information and Access Blog, <http://informationandaccess.blogspot.com/2007/07/cambodia-weeks-1-2.html>, (Date Accessed: 17 February, 2011).

⁸⁷ Bellin, "The Robustness of Authoritarianism in the Middle East: Exceptionalism in Comparative Perspective."

reached a peak now where it is faced with adoption in states presenting an array of direct and indirect obstacles on the periphery of the global political economy. The diffusion curve of FOI law is therefore likely to plateau and stabilize and continue at a much lower rate than the previous decade.

7.5.2 Diffusion beyond the State

The future of the diffusion of FOI law may not be amongst nation-states, but beyond them. FOI law originally applied to government departments and agencies on the grounds that government executed public authority with sovereignty and therefore, under the Lockean conception of the consensual relationship between society and the state apparatus, departments and agencies should be required to provide access to information regarding its decisions and activities, or lack thereof. The foundation of this logic must be reconsidered given that public authority has substantially seeped beyond the state apparatus in recent years.⁸⁸ The state apparatus remains an executive institution in relation to society, but an unprecedented degree of authority has been transferred to private enterprises, through privatization, outsourcing and corporatising, and international/supranational institutions, through globalization. Debates have necessarily emerged on the topic of whether or not FOI law should apply beyond the state apparatus to the bodies that have acquired new degrees of public authority.⁸⁹

This issue of information rights beyond the state apparatus is complicated and evolving, so it is therefore perhaps only appropriate here to highlight the fact that there is a general agreement on the need to extend information rights and some efforts to do so. A general consensus has emerged amongst scholars, officials and activists that information rights should extend beyond the state apparatus.⁹⁰ This consensus is encapsulated in the suggestion by Alasdair Roberts that:

⁸⁸ Roberts, "Structural Pluralism."

⁸⁹ The Carter Center structured a whole discussion group around the issue at the 2008 International Conference on the Right to Public Information. The Carter Center, "International Conference on the Right to Public Information." See R. Calland, "Prizing Open the Profit-Making World," in *The Right to Know: Transparency for an Open World*, ed. A. M. Florini (New York: Columbia University Press, 2007), T. S. Blanton, "The Struggle for Openness in the International Financial Institutions," in *The Right to Know: Transparency for an Open World*, ed. A. M. Florini (New York: Columbia University Press, 2007).

⁹⁰ M. Bovens, "Information Rights: Citizenship in the Information Society," *Journal of Political Philosophy* 10, no. 3 (2002), A. M. Florini, *The Coming Democracy: New Rules for Running a New World* (Washington, D. C.: Island Press, 2003).

information rights should generally be recognized where organizational opacity can be shown to have an adverse effect on the fundamental interests of citizens... This approach to information rights is... pragmatic and open to experimentation. It rejects the classical liberal insistence on differential treatment of the public and private spheres, recognizes that harm to fundamental interests could as easily arise from either sector, and establishes information rights where these seem likely to avert such harm.⁹¹

The way in which information rights resembling FOI law, in one form or another, can or should be applied to non-state actors is debated.⁹² But already progress is visible. For example, the South African *Promotion of Access to Information Act* (2000) (and its system of exemptions to protect interests) applies to the private sector in general, while in Australia national privacy law has been amended to impose access rights on private contractors strictly concerning personal (not policy) information.⁹³ In addition, international financial institutions such as the World Bank have been forced to improve their disclosure policies, although critics argue there is more to be done in order development robust access regimes to deepen transparency and open political space.⁹⁴

7.6 Conclusions

The current chapter completed the nomothetic understanding of the diffusion of FOI law begun in the previous chapter. The chapter moved forward from the emergence and early diffusion of FOI law discussed in the previous chapter to examine the recent proliferation of the law and its future. The chapter considered the foundational shift in world order and state formation within the emergent global political economy that made possible the recent explosion of FOI law beyond the Lockean heartland into Hobbesian states. This transformation involved increased transnational relations and the rise of American neo-liberal capitalism, and it has enabled the development of a transnational support system

⁹¹ Roberts, "Structural Pluralism," 244.

⁹² Access to Information Review Task Force, *Access to Information: Making It Work for Canadians*, 33, Independent Review Panel, "The Right to Information: Reviewing Queensland's Freedom of Information Act," 78-105, Australian Law Reform Commission and Administrative Review Council, *Open Government: A Review of the Federal Freedom of Information Act 1982*.

⁹³ *Privacy Amendment (Private Sector) Act 2000*

⁹⁴ See for example: Global Transparency Initiative, "Transparency Charter for International Financial Institutions: Claiming Our Right to Know," Global Transparency Initiative, http://www.ifitransparency.org/doc/charter_en.pdf, (Date Accessed: 19 February, 2011).

for public sector transparency headed by the emergent transnational historic bloc that incorporates supranational and international bodies, donors, international advocacy groups and local campaigners. The process of diffusion and adoption within this national/transnational setting can be described as passive revolution. Adoption within each Hobbesian state may be understood from the perspective of passive revolution as a unique national reflection of international developments. The chapter concluded that the future diffusion of the law amongst states is likely to plateau, but that diffusion is likely to expand in some form or another beyond the state apparatus to incorporate new public authorities.

8: COMPARATIVE CONTEMPORARY CASES I: HISTORY

8.1 Introduction

The purpose of the previous two chapters was to apply transnational historical materialism on a macro-historical level to provide a nomothetic understanding of the emergence and transformation of certain forms of state and their relevance to the historical diffusion of FOI law and the rise of public sector transparency. The analysis provided a broad historical understanding. However, the broad nature of macro-historical analysis meant the *contemporary* global proliferation of transparency law, a critical reason for the current study, remained relatively unexamined in terms of ‘the idiographic character of access rights’ with reference to specific recent cases of adoption.¹ Therefore this chapter sets out, as the first step in a two part analysis that includes the next chapter, to begin to remedy that shortfall in contemporary analysis by turning to examine the process of transformation and adoption within three influential and diverse Hobbesian case study countries: China, Mexico and India. The current chapter provides insight into the historical relationship between state forms and freedom of information within the cases, while the following chapter then highlights the national/transnational dynamics in the recent adoption of access law in processes of passive revolution.

This chapter is divided into five major sections. The first section outlines the primary objective of the chapter and addresses questions of case study selection regarding China, Mexico and India. The second section of the chapter considers the emergence and key variations between modern Hobbesian states within the case studies. These key variations divide China and Mexico along totalitarian and authoritarian lines,

¹ Darch and Underwood, *Freedom of Information and the Developing World: The Citizen, the State and Models of Openness*, 144.

respectively, and place India as an exceptional Third World parliamentary democracy. The third section of the chapter considers how these variations in the twentieth century state formation across the cases fed into relative differences of public information flows. Then the chapter turns to examine the contemporary transformation of Hobbesian states towards a more facilitative environment for information access. Section four highlights comparative, although fundamentally similar, changes in state formation across China, Mexico and India within the global political economy. The final section of the chapter links such change with an increased liberalization in information flows within each case study. Key domestic and transnational factors in the actual adoption of FOI law are then examined in the next chapter.

8.2 A Preface to Case Study Analysis

The initial section of this chapter provides preliminary comments to case study analysis. The section first highlights the significance and aim of case study analysis with reference to the thesis and the FOI literature (see 8.2.1 below). Overall the chapter is important because it investigates the contemporary adoption of FOI law within important Hobbesian states in a manner that complements both the macro-historical analysis provided in the previous chapters, and the growing literature on the recent diffusion of the transparency law. Second, this initial section of the chapter emphasizes the justifications for the selection of China, Mexico and India as comparative case studies (see 8.2.2). The case studies are chosen on an 'interpretative' basis, as interesting in themselves, rather than on the basis that they might help develop generalizations for the theoretical foundation of transnational historical materialism.² The most important reason for choosing the three specific cases is therefore the status of each as unique and important within the diffusion of FOI law and within the global political economy.

8.2.1 Significance and Aim

The significance of the comparative case study analysis provided here and in the following chapter can be understood within the context of the current study, but also

² Lijphart, "Comparative Politics and the Comparative Method," 692.

within the context of the FOI literature. To begin with, the analysis fulfills the need for in-depth analysis of the contemporary diffusion of FOI law amongst Hobbesian states within the context of the overall diffusion considered in the previous macro-historical analysis. Essentially, Chapters Six and Seven examined the nomothetic dynamics involved in the historical transformation of state forms and the rise of access to information within the context of macro-historical time, whereas this chapter and the next focuses specifically on contemporary proliferation by examining the comparative dynamics involved in state formation and the adoption of FOI law within contemporary Hobbesian examples. This primary objective of the chapter is achieved with a form of comparative case study analysis that allows for broad observations of similarities and differences in the rise of law reform within various Hobbesian cases.

While the comparative analysis is linked to the macro-historical analysis of the previous chapter, it also stands independent, with a degree of autonomy. The case study analysis presented below and in the following chapter draws from primary and secondary sources available on the cases of China, Mexico and India and complements this literature by utilizing it in a unique comparative manner.³ Existing research of transparency law in China, Mexico and India is generally confined within the context of national adoption and tends to examine adoption without a fuller understanding of the historical Hobbesian context; in contrast, the comparative analysis provided here examine Hobbesian adoption as a process in its own right and with its own characteristics, as a comparative phenomenon. The comparative case study analysis presented here and in the following chapter recognizes important research conducted on the adoption of FOI law in each case and utilizes it in a comparative manner to provide insights unattainable through national studies unaware of the Hobbesian context of adopters. This additional level of analysis enables the differences and similarities between the cases to be identified and examined in order to gain a more sophisticated understanding of national processes of adoption within Hobbesian states.

³ For example: Xiao, "Freedom of Information Reform in China: Information Flows Analysis", Michener, "The Surrender of Secrecy: Explaining the Emergence of Strong Access to Information Laws in Latin America", A. Roy and N. Dey, "Fighting for the Right to Know in India," (2002).

8.2.2 Case Selection

Case study selection is a critical methodological concern tied to the significance and aim of the analysis. The thesis uses a method known within the social science literature as 'interpretative.'⁴ This method basically suggests case studies, as they relate to adopted theoretical orientation, should be chosen for their own reasons; case studies should not be solely selected on the basis of how they may or may not affirm theoretical orientation, but also on the basis that they hold some value within themselves.⁵ The aim of the selection method is not to select case studies solely on the basis that they potentially improve theoretical generalizations, but may provide a situation in which theoretical propositions are used to shed light on case studies of interest that may or may not provide positive or negative feedback for the base theoretical foundation, which in this study is transnational historical materialism.⁶ The selection of case studies is therefore informed by characteristics of the cases themselves and China, Mexico and India each present themselves as special interest cases, both in terms of transparency law and global political economy. Yet the cases are also interesting as a comparative collective because of the diversity they present, as discussed below.

The cases selected for analysis are of special interest due to their association within the recent proliferation of FOI law. China, Mexico and India were chosen principally because of their status within the contemporary diffusion of transparency law and the growing body of FOI literature as cases of special interest that can be examined from the perspective of transnational historical materialism. Each has adopted FOI law in recent years under unique and interesting circumstances. For example, China is a case of widespread interest within the FOI literature because of the paradox it presents: national FOI regulation, traditionally a liberal democratic reform, was adopted in 2008 within China by an undemocratic, one-party regime.⁷ India is also flagged as a special interest case within the literature due to the exceptional grassroots activism; whereas Mexico is often considered important because of the way media advocacy facilitated the adoption of

⁴ This approach to case study selection is referred to as 'interpretative' or 'disciplined-configurative'. Lijphart, "Comparative Politics and the Comparative Method," 692. Eckstein, "Case Study and Theory in Political Science," 99-104. Kaarbo and Beasley, "A Practical Guide to the Comparative Case Study Method in Political Psychology," 374.

⁵ Lijphart, "Comparative Politics and the Comparative Method," 692.

⁶ Ibid.

⁷ Xiao, "Freedom of Information Reform in China: Information Flows Analysis", 11-12.

progressive legislation.⁸ The foundation of transnational historical materialism is applied within and across each of these unique cases in the next two chapters to provide a new comparative perspective.

The special interest of the selected case studies also extends beyond the narrow reference of FOI law adoption, into the realm of global political economy. China, Mexico and India are each symbolic peripheral developing states within the modern world system and global economy. Put together the countries house almost 40% of the world's population; and China and India, the 'giants' of Asia, are each likely to make their mark as global powers in the first half of the twenty-first century.⁹ The structural changes experienced in recent years by these states can be argued to be reflective, to some extent, of other changes that are taking place in emergent countries around the world; and indeed the structural changes felt within these cases are likely to influence future trends amongst states, especially developing states, within the global political economy, given their growing size and power. Analysis of these comparative cases and the identification of trends within them is therefore a significant endeavor that may provide the foundation for future examination of contemporary cases of adoption of public sector transparency from a transnational historical materialist perspective.

In addition to their similarity as interesting cases in terms of FOI law and global political economy, the case studies can also be noted for their diversity, and this is perhaps an important avenue in beginning to introduce the cases. Table 12 below highlights some of the key contrasting factors amongst the cases. Population, Gross Domestic Product (GDP), urbanization, religion, and language find great variety amongst the cases. For example, China and India are far larger countries than Mexico in terms of population and economy. And yet Mexico presents a more socially and industrially developed picture, with higher levels of GDP per capita and urbanization than China and India. Mexico also seems to present a more homogenous social system, with a relative degree of homogeneous linguistic and religious traditions, compared to China and India,

⁸ For example: H. Mander and A. Joshi, "The Movement for Right to Information in India: People's Power for the Control of Corruption," (1999). Mendel, "Freedom of Information: A Comparative Legal Survey," 81.

⁹ Population Division of the Department of Economic and Social Affairs of the United Nations Secretariat, *World Population Prospects: The 2008 Revision* (New York: United Nations, 2009).

which are large countries that embody a variety of linguistic and religious traditions that remain strong today.

Table 12: Diversity: China, Mexico and India

	China	Mexico	India
Population	1.3 billion	113 million	1.1 billion
GDP (PPP)	\$9.8 trillion	\$1.5 trillion	\$4 trillion
GDP Per Capita (PPP)	\$7,400	\$13,800	\$3,400
Urbanization	47%	78%	30%
Religion	Taoist, Buddhist, Christian (3-4%), Muslim (1-2%)	Roman Catholic (76.5%), Protestant (6.3%)	Hindu (80%), Muslim (13.4%), Christian (2.3%), Sikh (1.9%) plus others
Language	9+	Spanish only (92.7%), Spanish and indigenous (5.7%), Indigenous only (0.8%)	14+

Notes on Table

All latest 2010/2011 data obtained from the CIA –World Factbook. Accessed on the 4th May 2011 (<https://www.cia.gov/library/publications/the-world-factbook/>).

8.3 Comparative Twentieth Century Hobbesian States

The current chapter considers the historical relationship between state formation and public information flows within China, Mexico and India. The current section begins this process by examining the emergence and variation of comparative twentieth century Hobbesian states within the cases. The section first observes the early development of independent modern state forms that occurred in the first half of the twentieth century across the cases (see 8.3.1 below). The importance of colonialism, dependency and independence in the modern world system with reference to the emergence of these independent modern state forms is highlighted. The section then reviews the key variations between these comparative twentieth century Hobbesian state forms (8.3.2 below). It shows that while China and Mexico can be divided into totalitarian and authoritarian categories, respectively; India stands as an exceptional parliamentary democracy of the Third World. These key variations in state formation are important because they invariably feed into relative differences in theoretical and practical access to information (examined in the following section).

8.3.1 Emergence of Hobbesian States

Modern independent state forms emerged gradually in China, Mexico and India within the context of the world system. Each case embodies unique pre-modern cultural, social and political traditions that date back centuries and these traditions, which necessarily feed into contemporary circumstances, must be appreciated.¹⁰ For example, Hindu traditions of harmony and diversity have been attributed to influencing modern political culture within India and the country's exceptional experience with post-colonial parliamentary democracy.¹¹ Nevertheless, in spite of this substantial variation and diversity, the case studies share in a collective history of peripheral countries that developed within the modern world system.¹² These peripheral countries emerged outside and in response to the expansion of the core European/ Lockean powers central within the system, as the technologically advanced countries of the core exploited peripheral countries by transforming them into 'colonies, open-door countries or dependencies' in order to extract primary resources for manufacture and development at home.¹³ This process fundamentally impacted upon peripheral countries: it lead to dependency, and underdevelopment.¹⁴ For example, a 'development of underdevelopment' was the norm in India prior to independence in the late 1940s because 'policies were determined in Britain and in the interests of the British economy and the British capitalist class.'¹⁵

However, by the mid-twentieth century, following widespread decolonization and growth in local industry, a large segment of peripheral countries sought independence and indigenous development led by the state apparatus. China, Mexico and India all emerged as independent modern state forms by the 1940s. In each country a Hobbesian state formation emerged, led by a dominant vanguard party that remained the leading force within society, sanctioned with a mandate for ensuring catch-up industrialization and

¹⁰ S. P. Huntington, *The Clash of Civilizations and the Remaking of World Order* (New York: Simon & Schuster, 1996).

¹¹ V. Randall, "Why Have the Political Trajectories of India and China Been Different?," in *Democratization*, ed. D. Potter, et al. (Cambridge: Polity Press, 1997), 204.

¹² J. Galtung, "A Structural Theory of Imperialism," *Journal of Peace Research* 8, no. 2 (1971).

¹³ M. S. Alam, "A Short History of the Global Economy since 1800," (Boston: Northeastern University, 2003), 10.

¹⁴ B. N. Gosh, *Dependency Theory Revisited* (Aldershot: Ashgate, 2001).

¹⁵ B. Chandra, M. Mukherjee, and A. Mukherjee, *India after Independence 1947-2000* (New Delhi: Penguin Books, 2000), 9-10.

development (as discussed at 6.4). The independent historic blocs that emerged within the case studies shared the fundamental characteristic of peripheral Hobbesian states: the state apparatus was sanctioned with a mandate to lead society and was led by a dominant political class (see 6.4.1).¹⁶ In each case a dominant party within the state apparatus lead society and championed modernization and development for much of the twentieth century (as discussed below); in China there was the Chinese Communist Party, which rose to power in the 1940s following the devastation of WWII and the subsequent civil war; in Mexico there was the Institutional Revolutionary Party, which emerged gradually following the 1910 Mexican Revolution; and in India there was the Indian National Congress, which led the country following independence in the 1940s (as discussed below). These parties remained a leading force throughout the twentieth century within each state form.

8.3.2 Key Variation across the Hobbesian Cases

Unfortunately there is not enough space here to provide in-depth analysis of the development and constitution of each case of twentieth century Hobbesian state form. Analysis therefore focuses on drawing out the central comparative differences between the cases, especially as these differences contribute to relative differences in real or potential access to information prior to the adoption of FOI law. Such comparative differences are relatively straightforward. As suggested already, China was a totalitarian state; Mexico was an authoritarian state; and India was an exceptional Third World state that sustained stable parliamentary democracy. These fundamental differences are of great importance, especially in terms of implications for access to information. As will be discussed below (8.4), the make-up of the Chinese and Mexican states politicized information flows and therefore restricted access. Information flows were less politicized in India and yet secrecy, conducted in the public interest, was still the general rule.

In the previous chapter variation between *totalitarian* and *authoritarian* Hobbesian states was discussed at some length (see respectively 6.4.2 and 6.4.3). As case studies, twentieth century China and Mexico exemplify this dichotomy. The twentieth century Chinese Hobbesian state, led by the Chinese Communist Party (CCP), was a

¹⁶ van der Pijl, *Transnational Classes and International Relations*, 80-81.

good example of totalitarian state formation, within which pluralism is rejected by the vanguard party due to ideological commitments (as mentioned at 6.4.2). The CCP constructed a Leninist structure headed by Mao Zedong that actively mobilized society in pursuit of communist revolution and the creation of a new socialist civilization.¹⁷ On the other hand, the twentieth century Mexican state, led by the Institutional Revolutionary Party (PRI), was a classic example of authoritarian state formation, within which limited pluralism is respected by the state apparatus (see 6.4.3). In fact, the PRI regime, which ruled Mexico for over seventy years, has been described as 'the perfect dictatorship.'¹⁸ The PRI regime provided for popular support through corporatist structures and populist rhetoric (often espousing a revolutionary myth and outlook of national unity), alongside a marginal role for opposition parties, while preventing serious challenges through the use of electoral fraud and selective repression directed by a strong presidential executive with an 'extraordinary range' of 'metaconstitutional powers.'¹⁹ In both totalitarian China and authoritarian Mexico limiting access to information, especially government-held information, was a political issue of concern to the ruling party, as discussed in the following section (8.4.1 and 8.4.2 below).

Unlike China and Mexico, India does not fit neatly into the totalitarian/authoritarian dichotomy of twentieth century Hobbesian states. The Indian state was an exceptional case of resilient Third World parliamentary democracy, although there can be no doubt about the fundamental Hobbesian nature of the twentieth century Indian state form. The Indian National Congress (INC) emerged a leading force in society to champion national independence in the 1940s and dominated elections amongst other

¹⁷ Teiwes, "The Chinese State During the Maoist Era." and I. C. Y. Hsu, *The Rise of Modern China*, 6th ed. (New York: Oxford University Press, 2000), 619-755.

¹⁸ Lawson suggests there are three reasons for this title: 1) its façade of liberal democratic institutions 2) its concentration of authority in the presidency and 3) its institutionalized mechanism for power transfer. C. Lawson, "Mexico's Unfinished Transition: Democratization and Authoritarian Enclaves in Mexico," *Mexican Studies* 16, no. 2 (2000): 271. Cothran argues that there are six factors: institutionalization, adaptability, economic effectiveness, elite unity, use of coercion, and location next to the United States. D. A. Cothran, *Political Stability and Democracy in Mexico* (Westport: Praeger, 1994).

¹⁹ J Weldon, "The Political Sources of *Presidencialismo* in Mexico," in *Presidentialism and Democracy in Latin America*, ed. S. Mainwaring and M. S. Shugart (Cambridge: Cambridge University Press, 1997). K. J. Middlebrook, *The Paradox of Revolution: Labor, the State and Authoritarianism in Mexico* (London: The Johns Hopkins University Press, 1995). J. A. Hellman, *Mexico in Crisis* (New York: Holmes & Meier Publishers 1978), 33-55. Lawson, "Mexico's Unfinished Transition: Democratization and Authoritarian Enclaves in Mexico," 268.

parties throughout the post-independence period.²⁰ The Congress dominated the parliamentary system generally through absorption, division and leadership, not repression; although repression was an important factor during emergency rule in the 1970s.²¹ The INC fought competitively with potential rivals while regarding itself as the protectorate of Indian national unity: Jawaharlal Nehru, an influential INC leader in post-independent India, ran for election in 1953 with the slogan, 'the Congress is the country and the country is the Congress.'²² National unity and leadership were important to the ideology of the INC, although as evident by the longevity of the parliamentary system, the INC also subscribed to constitutionalism, democracy and secularism. The question of how exactly to categorize Indian democracy has been a concern for political scientists for some time; one firm suggestion is to consider it a 'consociational democracy': an arrangement in which agreements between national leaders of an ethnically, tribally and religiously divided society help to secure political stability.²³ Nevertheless, of primary relevance here is the way in which the Hobbesian Indian state facilitated or hindered access to government-held information, compared to China and Mexico.

8.4 Relative Information Restrictions

The comparative differences in Hobbesian state formation between China, Mexico and India feed directly into different information environments. The communist totalitarian state led by Mao Zedong from the late 1940s until the late 1970s understood access to government-held information, and indeed access to any information, within the context of Leninist vanguard ideology: the CCP sought to totally control information flows between society and the state apparatus for the benefit of the revolution (see 8.4.1 below). This understanding of access to information was not a factor within Mexico and India, although in each case secrecy tended to prevail. In Mexico the authoritarian PRI regime nominally allowed for freedom of information but in fact worked to hinder access to

²⁰ F. Robinson and P. R. Brass, "Introduction: The Development of the Indian National Congress," in *The Indian National Congress and Indian Society, 1885-1985*, ed. P. R. Brass and F. Robinson (Delhi: Chanakya Publications, 1987).

²¹ B. D. Dua, "Indian Congress Dominance Revisited," in *The Indian National Congress and Indian Society, 1885-1985*, ed. P. R. Brass and F. Robinson (Delhi: Chanakya Publications, 1987).

²² Robinson and Brass, "Introduction: The Development of the Indian National Congress," 3.

²³ A. Lijphart, "The Puzzle of Indian Democracy: A Consociational Interpretation," *The American Political Science Review* 90, no. 2 (1996).

information and information flows, particularly through clientelism, which placed a political price on information (8.4.2 below). Similarly, within the parliamentary system of India, access to information was nominally protection, yet such protection existed alongside official secrecy law and other hindrances to access, such as poverty and illiteracy (8.4.3).

8.4.1 Maoist Totalitarian Control

The social and political control of the Maoist state brought with it great information control. Public access to government-held information was an ideologically nonsensical idea within totalitarian China: why would the leader of the revolution, the party and the state apparatus allow potential reactionaries access to official information, which such dissidents could then use against it? The party was in full control. The absence of any essential rule of law within the affairs of the Leninist totalitarian state and the mobilization of society prevented any guarantees of access and politicized potential users (as mentioned in theoretical terms at 6.4.2). Information was controlled and utilized by departments and agencies according to ideological requirements: the Maoist state ensured 'firm party control of the media and constant oversight of permissible discussion in particularly politicized periods.'²⁴ The system of political information control undertaken was influenced by the experience of other totalitarian states, especially the Soviet Union: information was dominated by official propaganda that worked as a 'transmission belt' for indoctrination and mass mobilization.²⁵ Information flows were the privilege of the CCP and were used in its interest; the CCP exercised total ownership of information and truth.

The 1956-57 Hundred Flowers Movement and the subsequent Anti-Rightist Campaign provides a good example of the control exercised on information in twentieth century China. In the mid-1950s a liberalization of information flows, mainly in the form of limited criticism of the state apparatus by society, was sanctioned on the grounds that it may contribute to the 'rectification' of the CCP and the improvement of bureaucratic

²⁴ Teiwes, "The Chinese State During the Maoist Era," 116.

²⁵ Shambaugh, "China's Propaganda System: Institutions, Processes and Efficacy," 56. On the system of control within the Maoist state more generally see Schurmann, *Ideology and Organization in Communist China*.

deformities.²⁶ This relaxation meant a degree of criticism would be tolerated within the existing system of information control. After initial reluctance, an avalanche of hostile criticism by students and intellectuals came down on the Party, calling for an end to its political monopoly.²⁷ The CCP was placed on the defensive. It reacted to the critical information flows with a swift return to control: after less than twelve months, the easing of ideological control was superseded by a campaign against 'Rightists' and critics; over 500,000 people were reported to have been imprisoned or cast out.²⁸ This backlash to the freedom of information, however limited, that came with the Hundred Flowers Movement clearly demonstrates the intimate relationship between information control and political control for the regime. Both were total.

8.4.2 Mexican Authoritarian Restrictions

In Mexico no such ideological barriers existed against information, although there were significant barriers in public information flows. The state was authoritarian. The ruling party ruled with force but it did not seek to champion society according to an absolutist doctrine. Limited pluralism existed. The state legally provided for a degree of freedom in the flow of information through constitutional guarantees on freedom of expression and opinion, and these existed with a degree of legal positivism: the post-revolution constitution enacted in 1917 protected freedom of expression and freedom in the flow of information.²⁹ However, the concept of freedom of information initially embodied in the constitution did not include a right to government-held information and the patron-client politics of the state form largely hindered the evolution of such a right.³⁰ Key information users such as media outlets lacked the autonomy and oppositional nature required in championing a 'right to know'; indeed, the media did not place substantial pressure on government in the 1980s when a chance to pursue the matter arose (see further below).

²⁶ The CCP declared, 'Let a hundred flowers bloom, let a hundred schools of thought contend.' J. Fenby, *The Penguin History of Modern China: The Fall and Rise of a Great Power* (London: Allen Lane, 2008), 386. A. Hunter and J. Sexton, *Contemporary China* (London: Macmillan Press, 1999), 26-27.

²⁷ Fenby, *The Penguin History of Modern China: The Fall and Rise of a Great Power*, 392-95.

²⁸ Hunter and Sexton, *Contemporary China*, 27.

²⁹ Historical Text Archive, "1917 Constitution of Mexico (as Amended),"

<http://historicaltextarchive.com/sections.php?action=read&artid=123#TitleVII>, (Date Accessed: 2 March, 2011). Article 7 ensured 'Freedom of writing and publishing writings on any subject is inviolable.'

³⁰ Carpizo, "The Constitution and Information."

Patron-client politics even extended to the bureaucracy, who would not pursue internal administrative reform due to the political value in withholding information (see below).

Media outlets, considered a key constituent of access to government-held information by Western observers, suffered from a system of cooptation and coercion that prevented any substantial challenge for a right to access official information within Mexico's 'perfect dictatorship.'³¹ Media outlets and journalists were co-opted by the regime through a system of subsidies and other benefits, including revenue from government advertising, which was a financial necessity for many in the business.³² In addition, government held a monopoly on newsprint.³³ Therefore the media was reliant on the regime and any adversarial coverage would be met with resource sanctions, in addition to the withholding of other perks enjoyed by regime friendly journalists.³⁴ And, as Greg Michener explains, 'If promoting compliance through co-option failed, more coercive means for persuasion could be deployed.'³⁵ For example, in 1974, following a period of critical media coverage relating to government sponsored massacres, the powers of the executive office enabled President Luis Echeverria to force the removal of a senior editor from a particularly critical newspaper.³⁶ Such a system of cooptation and coercion in press-government relations fostered a media culture of acceptance of the official line presented by government. A reporter posed a question at the first presidential press conference of President Miguel de la Madrid in 1982 that may now be interpreted as indicative of the situation:

We have witnesses to your untiring labor and we have tried to inform our readers, listeners, and viewers of your work and of the necessity of supporting it. Do you wish, Mr. President, to direct a message to the people

³¹ See Lawson, "Mexico's Unfinished Transition: Democratization and Authoritarian Enclaves in Mexico," 271.

³² C. Lawson, *Building the Fourth Estate: Democratization and the Rise of a Free Press in Mexico* (Berkeley: University of California Press, 2002), 28-34. Lawson estimates that until the late 1990s government subsidies of one kind or another made up roughly 70 per cent of the revenue of print publications. Lawson, *Building the Fourth Estate: Democratization and the Rise of a Free Press in Mexico* 213.

³³ When newsprint was withheld by government, newspapers were forced to import the material at a high cost. See, for example: Michener, "The Surrender of Secrecy: Explaining the Emergence of Strong Access to Information Laws in Latin America", 94.

³⁴ Amongst other things, Michener notes, 'New professionals enjoyed free travel, lodging, entertainment and food in return for favorable coverage.' Ibid.

³⁵ Ibid.

³⁶ Ibid., 86.

of Mexico... and to give us the answer to some question in particular that you would have wished us to ask?³⁷

The Mexican media botched an opportunity to champion a public 'right to know' against the PRI when in 1977, during a period of political reform, the Mexican constitution was amended to stipulate a right to information will be guaranteed by the state, which implied a right to government-held information.³⁸ The amendment was followed by national debate, which surfaced periodically throughout the 1980s and 1990s, about legislation to enable such a right.³⁹ In the end, however, the amendment was not legislated upon due to 'debate, disagreement, division, disorientation and ultimately, debilitating inaction.'⁴⁰ It seems that, on the one hand, the PRI regime attempted primarily to use the opportunity to place legal obligations relating to 'effective' dissemination of official information on the media that would tilt press-government relations further in favor of the government; while, on the other hand, media outlets did not rally on a proposal that officials should provide the public access to government-held information.⁴¹ Jorge Carpizo argues there was an element of 'bad faith' in the response by many media outlets to the reform proposals; he, and other commentators, like Michener, especially cite the co-opted nature of the media in explaining such 'bad faith.'⁴²

Without strong external pressure there was little possibility that the Mexican bureaucracy would, in some way, systematically volunteer internal information, or pursue internal administrative reform for public sector transparency. No internal administrative support, which would later rise following the demise of the PRI regime (as discussed at 9.3.1), existed at the time. Despite attempts to rationalize them, extensive government departments and agencies were closed systems that cannot be characterized entirely as

³⁷ S. Hughes, *Newsrooms in Conflict: Journalism and the Democratization of Mexico* (Pittsburgh: University of Pittsburgh Press, 2006), 51.

³⁸ Michener, "The Surrender of Secrecy: Explaining the Emergence of Strong Access to Information Laws in Latin America", 85.

³⁹ Carpizo, "The Constitution and Information."

⁴⁰ Michener, "The Surrender of Secrecy: Explaining the Emergence of Strong Access to Information Laws in Latin America", 85.

⁴¹ Ibid., 87.

⁴² Carpizo, "The Constitution and Information." and Michener, "The Surrender of Secrecy: Explaining the Emergence of Strong Access to Information Laws in Latin America", 91-98.

‘rational-legal’: the bureaucracy suffered from politicization and personalization.⁴³ For example, the Mexican president held considerable authority over public servants and every six years bureaucratic positions were reorganized, which generally meant loyalties were predominantly personal.⁴⁴ Corruption was a customary practice within the Mexican bureaucracy. One journalist went so far as to say, ‘Corruption is not a characteristic of the system in Mexico... it is the system.’⁴⁵ Public information exchange under the PRI regime was therefore characterized by restriction based on patronage and power.

8.4.3 Tensions of Nominal Access in India

Much like the authoritarian PRI-led Mexican state, the twentieth century Indian state, led by the INC, without ideological barriers, provided a legal framework for the free flow of information within society, but not access to government-held information (see below). And, as in the case of Mexico, a lack of media support alongside strong traditions of bureaucratic secrecy hampered, or, perhaps, failed to maximize, access to information. However, India is also unique in the level of poverty and illiteracy that reduced the social demand within the local ‘information market.’⁴⁶ But perhaps the most interesting and certainly unique aspect of public information flows in the case of twentieth century India was the presence of secrecy law, which legalized the government’s right to restrict access to official information.⁴⁷ This law, still active today, is a relic of British colonialism and highlights traditions of secrecy, not just within the Hobbesian periphery, but also within the Lockean heartland (as discussed below).

The legal framework of India’s INC-led state was, in part, conducive to the free flow of information. The post-independence constitution of 1950, which remains in force today, does not provide for a right to information directly, but it does guarantee freedom

⁴³ R. F. Adie and G. E. Poitras, *Latin America: The Politics of Immobility* (Englewood Cliffs: Prentice Hall, 1974), 231.

⁴⁴ M. S. Grindle, "Patrons and Clients in the Bureaucracy: Career Networks in Mexico," *Latin American Research Review* 12, no. 1 (1977).

⁴⁵ S. D. Morris, "Corruption and the Mexican Political System: Continuity and Change," *Third World Quarterly* 20, no. 3 (1999): 623.

⁴⁶ Glanor, "Government Secrecy: Exchanges, Intermediaries, and Middlemen," 34.

⁴⁷ *Official Secrets Act 1923*

of speech and expression.⁴⁸ In addition to such constitutional protections, a number of laws facilitated the disclosure of government-held information. For example, the *Factories Act* (1948) requires the disclosure of information to factory workers ‘regarding dangers including health hazards and the measures to overcome such hazards’ in the workplace.⁴⁹ A right to information was even recognized by the Indian Supreme Court: beginning in 1973 the Supreme Court began to interpret the constitution on a number of occasions in a manner that provides for freedom of information as a necessity to freedom of speech and expression.⁵⁰ In 1985 the Court expressed: ‘The basic purpose of freedom of speech and expression is that all members should be able to form their beliefs and communicate them freely to others. In sum, the fundamental principle involved here is the people’s right to know.’⁵¹

However, in spite of the Supreme Court’s interpretations and the disclosure requirements of laws such as the *Factories Act*, internal bureaucratic and political support and external media support for the public’s right to access government-held information was lacking. A lack of internal support for access to information within the Indian bureaucracy meant neither the central government, nor any subnational governments, sought to enable with legislation the ‘fundamental principle’ identified by the Supreme Court. Indeed, a 2001 report by Article 19 suggests that the Indian bureaucracy was hostile and/or apathetic to information access and that the capacity of departments and agencies to actually provide effective access was poor, due to such things as poor record keeping.⁵² Although media outlets in post-independence India were seen generally as some of the most vibrant within the Third World, mainstream Indian media was faced with a variety of issues that hindered its independence and therefore reduced its capacity as an external pressure on government to provide access to information. A major issue was ownership: ownership of India’s major news outlets throughout the twentieth century was concentrated in the hands of industrialists unwilling to stir up relations with

⁴⁸ Article 19 protects freedom of speech and expression. Ministry of Law and Justice, "Consitution of India (Updated to the 94th Amendment Act)," <http://indiacode.nic.in/coiweb/welcome.html>, (Date Accessed: 2 March, 2011).

⁴⁹ Article 19 et al., "Global Trends on the Right to Information: A Survey of South Asia," 66.

⁵⁰ *Ibid.*, 64-65.

⁵¹ *Ibid.*, 64.

⁵² *Ibid.*, 68-69.

government.⁵³ Another issue was the presence of restrictive laws, including defamation and official secrecy law (discussed at more length below), which could be used to stifle media coverage.⁵⁴

A lack of social support was perhaps the most important factor that prevented the twentieth century legal and political superstructure of India from guaranteeing a public 'right to know', as other liberal democratic systems in the West had (see 6.3). The divided and weak social base of India's 'consociational democracy', maintained through steady leadership, prevented the development of social support for freedom of information.⁵⁵ Tribal and ethnic division, illiteracy and poverty hampered the formation of a public campaign to pressure government for access to information. In addition to the media issues flagged above, the underdevelopment and division of Indian society meant constituencies for information were weak.⁵⁶ Civil organizations, treated with indifference, if not hostility, by the INC did not develop in India until the 1970s and 1980s with the rise of 'new social movements' and support from international donors and a reduced government role in development.⁵⁷ Only with the rise of civil society and social movements in India were officials pressured to implement guarantees of information access (see 9.3.3).

Unlike in the cases of China and Mexico, the twentieth century Indian state actually legislated for official secrecy, in spite of, or perhaps because of, its liberal democratic roots. The *Official Secrets Act* (1923) is a copy of the British *Official Secrets Act* (1911).⁵⁸ The act is essentially anti-espionage law. It outlaws helping an enemy state against the Indian state, especially with regards to the provision of information; the Act firmly places public information in the custody of government and the state apparatus.⁵⁹

⁵³ S. K. Aggarwal, *Investigative Journalism in India* (New Delhi: Mittal Publications, 1990), 67. and S. Banerjee, "Crisis of Indian Press: Irrelevance of Press Commission," *Economic and Political Weekly* 17, no. 23 (1982).

⁵⁴ Aggarwal, *Investigative Journalism in India*, 77-93.

⁵⁵ Lijphart, "The Puzzle of Indian Democracy: A Consociational Interpretation."

⁵⁶ See Snell, "In Search of the Freedom of Information Constituency: Case 1 - the Media."

⁵⁷ B. S. Baviskar, "NGOs and Civil Society in India," *Sociological Bulletin* 50, no. 1 (2001): 5. H. Berglund, "Civil Society in India: Democratic Space or the Extension of Elite Domination?," in *Working Paper (Department of Political Science)* (Stockholm University, 2009), 23.

⁵⁸ Article 19 et al., "Global Trends on the Right to Information: A Survey of South Asia," 67-68.

⁵⁹ R. Sarin, "Relevance of Official Secrets Act No Limited, RTI Act Will Prevail If There's Any Direct Conflict, Says CIC," *Indian Express* (14 October 2007), <http://www.indianexpress.com/news/relevance-of-official-secrets-act-now-limite/228511/>.

In attempting to prevent spying, it broadly restricts information flows: it prohibits approaching or inspecting any prohibited place, making, obtaining or communicating any sketch, plan or note which may be useful to an enemy, or obtaining or communicating any secret code which may be useful to an enemy, or which is likely to affect the sovereignty of India, the security of the state or friendly relations with other countries.⁶⁰ Individuals can be charged under the *Official Secrets Act*, and face somewhere between three to fourteen years in prison, even if the offence was unintentional or not intended to endanger the security of the state.⁶¹ The act has naturally received criticism from openness advocates. The Indian Press Commission, for instance, considered the act had ‘a chilling effect on the press’ and that the act has the potential to ‘prevent *any* information from being disclosed to the public.’⁶²

The presence of secrecy law in India, as well as in Britain, Ireland and New Zealand, highlights the strong traditions of secrecy within both the Hobbesian periphery and the Lockean heartland throughout much of modern history and especially the twentieth century, at a time when the role and size of the state apparatus expanded. The Hobbesian right of the state apparatus to withhold information in its own interests and therefore in the interests of society has essentially been a matter of degrees across Hobbesian and Lockean states. The state apparatus in Maoist China embodied a total Hobbesian right to secrecy (as discussed at 8.4.1 above). In Mexico and India the right to secrecy was not total, but it was certainly strong, evident by the power of the Mexican executive to stem the flow of media information (8.4.2 above) and the presence of the Indian *Official Secrets Act*. But the Hobbesian right to secrecy is also evident within the British *Official secrets Act* and the American history of secrecy in government. The rise of public sector transparency and FOI law in the late twentieth century must therefore be understood overall as a general historical shift in the modern state apparatus towards a new balance of secrecy and openness in government. Openness has gradually replaced secrecy as a guiding principle.

⁶⁰ Article 19 et al., "Global Trends on the Right to Information: A Survey of South Asia," 67.

⁶¹ Ibid.

⁶² Emphasis added. As quoted in Ibid., 68.

8.5 Late-Twentieth Century State Transformations

The independent modern state forms that emerged in the first half of the twentieth century in China, Mexico and India underwent a process of transformation in the final decades of the twentieth century that facilitated a liberalization of information flows. These transformations are necessarily understood within their corresponding national contexts, yet they were all fundamentally connected to a broader shift in production relations and world order, discussed in the previous chapter (7.2.1 and 7.2.2). Structural change occurred in all three state forms that reflected American-led trends within the emergent global political economy (see 8.5.1 below). The Hobbesian nature of each state form (i.e. the sovereignty of the state apparatus over society) was relatively reduced in a gradual process of reform (see 8.5.2). This transformation in relations between the state apparatus and society within each case facilitated a corresponding transformation in information environments and ultimately the adoption of FOI law, discussed in the final section of the chapter.

8.5.1 Impact of the Emergent Global Political Economy

The twentieth century Hobbesian state forms of each case underwent a process of structural change in the 1980s and 1990s. These changes are unique in each case but the general trend between all three is a shift away from Hobbesian state formation facilitated by increased transnational relations and the hegemony of American liberalism. The case studies were certainly tied in with increased transnational relations that grew with the emergent global economy. Table 13 below exhibits data from the Swiss Federal Institute of Technology that measures the interconnectedness of countries according to political variables, such as the number of embassies in a country and membership in international organizations, and economic variables, such as trade and foreign direct investment (with 100 being the highest possible level.)⁶³ The table shows political and economic globalization in all three state forms increased substantially from the 1970s onwards. The importance of this increased interconnectedness is in the fact that it demonstrates the increasing transnational nature of political and social relations within each case: if the

⁶³ Swiss Federal Institute of Technology, "Index: Economic Globalization.", ———, "Index: Political Globalization."

programming of the state apparatus is influenced by the social foundation upon which it rests then the increasing transnationalization of social relations and internationalization of political relations suggests the state apparatus in each case is no longer simply a national event, but an event substantially informed by associations of the global political economy (see 5.3.3).

Table 13: Political and Economic Globalization of Cases, 1970-2007

	Political Globalization					Economic Globalization				
	1970	1980	1990	2000	2007	1970	1980	1990	2000	2007
China	24.61	40.36	60	78.65	86.6	18.29	18.67	32.98	44.41	56.82
India	60.49	67.13	77.19	88.69	92.69	16.53	16.52	17.97	30.43	44.68
Mexico	60.99	67.71	59.34	70.72	72.34	42.25	43.04	57.63	61.2	61.28

Globalization opened each state form to currents within the emergent global political economy, especially the post-Cold War American-led hegemony of neoliberalism. The 'ideal' of liberal democracy and free markets became the benchmark of the expanding global political economy that stretched into Hobbesian states, and China, Mexico and India.⁶⁴ International developments within the global political economy supported a relative reduction in Hobbesian state authority and intervention, while also tending to empowering (civil) society. An unprecedented wave of democratization and liberalization swept through Latin America, Eastern Europe and parts of Africa and Asia.⁶⁵ These developments unfolded differently within each unique national state formation and this is visible throughout the cases of China, Mexico and India. The types of changes in state formation and the manner in which they occurred are unique within each case. Nevertheless, all follow the trend of international developments away from the interventionist, developmental state apparatus, towards the competition, Schumpeterian state.⁶⁶

⁶⁴ Robinson, *Promoting Polyarchy: Globalization, US Intervention and Hegemony*, ———, "Promoting Polyarchy in Latin America: The Oxymoron Of "Market Democracy"."

⁶⁵ Grugel, *Democratization: A Critical Introduction*, Potter et al., eds., *Democratization*.

⁶⁶ Cerny, "Paradoxes of the Competition State: The Dynamics of Political Globalization.", Jessop, "Post-Fordism and the State."

8.5.2 Comparative Changes in Hobbesian State Form

Late-twentieth century structural change in each case was comparatively different, although fundamentally similar. In China structural change principally involved a transition from totalitarianism to authoritarianism.⁶⁷ The twentieth century revolutionary Leninist structure headed by Mao Zedong lost a large degree of legitimacy due to hardships produced by the 'Great Leap Forward' and the 'Cultural Revolution' and began a process of transformation following his death in 1976.⁶⁸ The CCP was placed under a second generation of leadership that moved away from communist revolution towards practical reform. The new Party leader, Deng Xiaoping, sought to develop 'socialist democracy' and a 'socialist market economy.'⁶⁹ He is attributed to saying with reference to ideology and development: 'No matter if it is a white cat or a black cat; as long as it can catch mice, it is a good cat.'⁷⁰ Economic reform took precedence over political reform as the CCP continued to maintain it had legitimacy to rule.⁷¹ Modernization, specifically within the four key fields of agriculture, industry, national defense, and science and technology, became the platform for the CCP to maintain authoritarian rule.⁷² However, a potential 'fifth modernization' agenda within the political realm has not been a key priority for the regime; civil society in China remains largely 'state-led.'⁷³ Chinese state formation therefore shifted in the 1980s and 1990s from totalitarian communism to authoritarian capitalism.⁷⁴

In contrast to China, structural change in Mexico involved substantial political upheaval. Fading legitimacy in the PRI regime due to bloody confrontations with public protests and diminishing returns from the country's state-led import-substitution development model, as well as a foreign debt crisis, instigated economic and political

⁶⁷ S. Guo, *Post-Mao China: From Totalitarianism to Authoritarianism?* (Westport: Praeger, 2000).

⁶⁸ Ibid.

⁶⁹ Hsu, *The Rise of Modern China*, 950-59.

⁷⁰ H. Harding, *China's Second Revolution: Reform after Mao* (Sydney: Allen and Unwin, 1989), 172-99.

⁷¹ B. L. McCormick, *Political Reform in Post-Mao China* (Berkeley: University of California Press, 1990).

⁷² Hsu, *The Rise of Modern China*, 803.

⁷³ J. Seymour, ed., *The Fifth Modernization: China's Human Rights Movement, 1978-1979* (Stanfordville: Human Rights Publishing Group, 1980).

⁷⁴ Guo, *Post-Mao China: From Totalitarianism to Authoritarianism?*

reforms.⁷⁵ The Mexican state form underwent a substantial process of change involving political democratization and economic liberalization, which included joining the North American Free Trade Agreement (NAFTA). The authoritarian PRI and the corporatist system it headed were replaced by procedural democratic institutions, including free elections, freedom of the press, and civilian control over the military.⁷⁶ This process culminated in the 2000 presidential election of Vincente Fox, the first non-PRI candidate to gain the position in over seventy years, and the political force behind FOI law (see 9.3.1). State-led development within society was also replaced by neoliberal political economy: Susanne Soederberg writes that the 'restructuring of the relations between the state and civil society was marked by the transformation from a developmental state to a competition state' wherein ideology 'leaned heavily on the neoliberal belief in the rationality of the market over state-led decisions.'⁷⁷ Clientelism gave way to citizenship and society gained a degree of oppositional autonomy *vis-à-vis* the state apparatus.

Similarly within India the state apparatus withdrew as a driving force within society. Already a representative democracy, structural transformation centered on a withdrawal of the state apparatus from development. Change within the Indian state form throughout the 1990s largely involved a deinstitutionalization of state-led investment and coordination alongside the construction of market-oriented alternatives; the introduction of a 'New Economic Policy' involved the dismantling of a complex system of industrial licensing, privatization, deregulation and the removal of trade barriers.⁷⁸ The state apparatus retreated from a post-colonial interventionist position within society to a relatively detached, receptive position. In addition, a 'Responsive Administration' reform agenda mirroring the 'new public management' (NPM) reforms of the West was directed

⁷⁵ M. A. Centeno, *Democracy within Reason: Technocratic Revolution in Mexico*, 2nd ed. (Pennsylvania: Pennsylvania State University, 1999), 8-11.

⁷⁶ J. Fox, "The Difficult Transition from Clientelism to Citizenship: Lessons from Mexico," *World Politics* 46 (1994), Lawson, "Mexico's Unfinished Transition: Democratization and Authoritarian Enclaves in Mexico."

⁷⁷ S. Soederberg, "From Neoliberalism to Social Liberalism: Situating the National Solidarity Program within Mexico's Passive Revolutions," *Latin American Perspectives* 28, no. 3 (2001): 109.

⁷⁸ A. Kohli, "Politics of Economic Growth in India, 1980-2005 (Part 2: The 1990s and Beyond)," *Economic and Political Weekly* 41, no. 14 (2006), ———, "Politics of Economic Growth in India, 1980-2005 (Part 1: The 1980s)," *Economic and Political Weekly* 41, no. 13 (2006).

at making departments and agencies more accountable, transparent and citizen friendly.⁷⁹ Initiatives introduced by departments and agencies as part of the reform process included citizens charters, information and facilitation counters, and public grievance redress mechanisms; and, indeed, access to information was a key component of the reform agenda.⁸⁰

The twentieth century Hobbesian state forms of China, Mexico and India were transformed in the final decades of the century within the global political economy and these transformations would ultimately have a flow on effect into respective information environments. The manner of structural change was unique to each state: in China it involved a shift from totalitarianism to authoritarianism and economic liberalization, in Mexico it involved political democratization and economic liberalization and in India it involved economic liberalization and administrative reform. These structural changes reduced the Hobbesian nature of each state across the board and in the process they also alleviated barriers to information access within each case. Fundamentally the state apparatus was placed in a more responsive position in relation to society and this, in different ways, helped produce a 'surrendering of secrecy' by government to society.⁸¹

8.6 'Surrendering Secrecy' in Different Ways

Secrecy was surrendered in each state form in relation to an alleviation of the barriers that restricted access throughout much of the twentieth century under the former Hobbesian structures. The final section of this chapter briefly examines this surrendering of secrecy in state formation with an emphasis on overall national characteristics, especially in terms of change within the state apparatus and/or society. In terms of national characteristics, the single most important shift in Chinese state formation was a transformation from totalitarian rule to authoritarian rule, which brought with it a relaxation of ideology and an increase in the rule of law that enabled a regulated surrendering of secrecy motivated

⁷⁹ N. Jha, "Initiatives of Government of India on Regulatory Reform in the Context of the Action Plan for Effective and Responsive Government," (OECD, 1998). A. K. Sharma, *Bureaucracy and Decentralisation* (New Delhi: Mittal Publications, 2004), 53-61.

⁸⁰ Sharma, *Bureaucracy and Decentralisation*, 53-61.

⁸¹ This term is borrowed from Michener, who has written about 'surrendering secrecy in Mexico'. Michener, "The Surrender of Secrecy: Explaining the Emergence of Strong Access to Information Laws in Latin America".

largely by modernization efforts (see 8.6.1 below). On the other hand, political reform was paramount in Mexico; information access had been hindered under the PRI state form due mostly to the patron-client relations that placed a political price on information, but the fall of the PRI regime and increased democratization alleviated these patron-client relationships, and the media especially, with a new oppositional autonomy, demanded greater access (8.6.2 below). Political reform was less important in India. The predominant hindrance throughout the twentieth century had been the relative strength of the state apparatus in relation to society and this was reduced in the final decades of the century as the state withdrew and previously underdeveloped civil actors became more powerful (8.6.3).

8.6.1 Internal Reform of CCP

The Chinese information environment was recast with the transition from totalitarian to authoritarian rule by the CCP. Totalitarian ideology, a major contributing factor to information control under the totalitarian system, diminished in importance with the onset of authoritarian rule and pragmatic reform. Without the filter of communist ideology, which had previously dictated the parameters of truth and who rightfully dictates such parameters, information gained a degree of objective reality, although the continued political dominance of the CCP means it 'remains fully capable of controlling the content of information that reaches the public *when it decides to do so*.'⁸² Alongside the reduction in ideological restrictions, a development in the rule of law now provides the basis for objective commitments.⁸³ Concrete non-ideological information relations have been made possible where before total party control previously demolished any guarantee of access.⁸⁴ Notably, these changes to the Chinese information environment largely involved change within the state apparatus and within the relationship between the state apparatus and society. There is a notable lack of change within society (i.e. increased demand) due to the continued dominance of the CCP over society. Nevertheless, the changes just

⁸² Shambaugh, "China's Propaganda System: Institutions, Processes and Efficacy," 27.

⁸³ R. Peerenboom, *China's Long March toward Rule of Law* (Cambridge: Cambridge University Press, 2002).

⁸⁴ Xiao, "Freedom of Information Reform in China: Information Flows Analysis", 96-112.

described have fed into a surrendering of secrecy motivated by the post-revolutionary modernization platform of the CCP.

The Chinese state apparatus surrendered secrecy by way of an internal revolution directed by administrative reform (see 9.3.1). Secrecy was marginally surrendered, as part of the post-Mao reform process, by the CCP in an effort to maintain legitimacy and increase capacity.⁸⁵ Officials came to believe promoting a degree of transparency and access to information held by departments and agencies would reduce corruption and increase efficient and effective management. Indeed, Weibing Xiao notes the Chinese freedom of information reform agenda first emerged in attempts to revise the *Law on the Protection of State Secrets* and employ transparency as a way of improving classification systems to better utilize scarce government resources.⁸⁶ Officials also associated increased information access with advanced economic development (as discussed at 9.3.1). 'Informatisation' within society and the economy was promoted by government to increase economic growth and this process invariably involved promoting openness in government affairs, considering around 80% of Chinese information is estimated to be held by the state apparatus.⁸⁷ After the gradual introduction of a number of subnational access regulations, as experiments in openness, national Open Government Information Regulation therefore came into effect on 1 May 2008.

8.6.2 Democracy and Media Freedom: Demands for Access in Mexico

The changing information environment in Mexico involved change within the state apparatus and within society; both were tied to the end of the PRI regime and the patron-client relations that characterized it and tended to hinder information access. Change within the state apparatus worked in favor of increased access to information (as discussed at 9.3.1). The demise of the corporatist PRI system saw a gradual reform of patron-client relations that had placed a political price on information access (see 6.4.2 above). Access to information became a reform issue especially tied with administrative

⁸⁵ McCormick, *Political Reform in Post-Mao China*, 3. Hubbard, "China's Regulations on Open Government Information: Challenges of Nationwide Policy Implementation."

⁸⁶ Xiao, "Freedom of Information Reform in China: Information Flows Analysis", 121-22.

⁸⁷ H. Zhou, "Open Government in China: Practice and Problems," in *The Right to Know: Transparency for a New World*, ed. A. M. Florini (New York: Columbia University Press, 2007), 104-07. J. P. Horsley, "Toward a More Open China?," in *The Right to Know: Transparency for an Open World*, ed. A. M. Florini (New York: Columbia University Press, 2007), 60-61.

attempts to reduce corruption; Vicente Fox, the first non-PRI president in over seventy years, ran for office promising greater access to information in order to ensure corruption was revealed and addressed.⁸⁸ However, transformation within the state apparatus towards greater access to information was hindered by political concerns relating to the continued influence of the PRI as a force within parliament, and the potential that information access may impact public sentiment by revealing past injustices by the former PRI regime.⁸⁹

Change within Mexican society provided the most important foundation for improved information access. The demise of clientelism gave society and the media, formally co-opted into the PRI system, a newfound degree of oppositional autonomy. Mass media gradually became more representative of various social viewpoints and more independent of official control through a combination of democratization, increasing commercial pressure, changing journalistic norms and new communication technologies.⁹⁰ An important element within this transformation was a rise in journalistic professionalism and a shift in the way journalists view their role in society, from official mouthpiece to 'fourth estate' professionals, which enabled the establishment of independent publications.⁹¹ However, post-PRI press freedom in Mexico should not be overstated. Throughout the 1980s and 1990s, during the period of transformation in question, press freedom consistently ranked as 'partially free' according to Freedom House.⁹² Nevertheless, the separation between the state apparatus and the media gave the latter an independence to demand greater access to information.

A surrendering of secrecy in Mexico therefore involved internal and external pressures to the state apparatus. In a manner similar to Chinese officials, Mexican officials believed providing greater access to government-held information had the

⁸⁸ A. Franco-Barrios, "Building Transparent and Honest Government in Mexico: Institutional Reforms and Anti-Corruption Policy," (Interministerial Commission for Transparency and Against Corruption in the Federal Public Administration, 2003).

⁸⁹ Michener, "The Surrender of Secrecy: Explaining the Emergence of Strong Access to Information Laws in Latin America", 153-54. ———, "Engendering Political Commitment: The Grupo Oaxaca--Expertise, Media Projection--and the Elaboration of Mexico's Access to Information Law", 13-15.

⁹⁰ Lawson, *Building the Fourth Estate: Democratization and the Rise of a Free Press in Mexico* 3-7.

⁹¹ *Ibid.*, 4-5.

⁹² Freedom House, "Freedom of the Press: The Americas (Scores and Status, 1980-2008)," http://www.freedomhouse.org/uploads/fop/historical/2008/Scores%20and%20Status-Americas_2008.xls, (Date Accessed: 4 March, 2011).

potential to improve public management by reducing corruption. Information access became a key policy theme for incoming, post-PRI politicians (as indicated above). Yet the factor that ultimately produced a substantial surrendering of secrecy in Mexico was pressure from society placed on the state apparatus. Newly empowered activists, educators, journalists and editors sought to ensure a public 'right to know' within the newly established democratic system; a coalition of campaigners known as the 'Oaxaca Group' brought together activists and professionals to improve official proposals and ultimately ensure a progressive degree of secrecy was surrendered (as shown at 9.3.2). The coalition was central to the development of the *Federal Law of Transparency and Access to Public Government Information*, which was signed by President Fox in June 2002 and came into effect in June 2003.

8.6.3 Rise of Administrative and Social Support for Access in India

In a manner similar to Mexico, improved information access in India involved change within the state apparatus and within society, although the former was an administrative matter in India, whereas it was largely a political matter in Mexico. The post-colonial state apparatus of India followed the traditions of public sector transparency set by Britain, enshrined in the *Official Secrets Act*. But as openness and transparency emerged as an issue within the West as a component of NPM reforms, so too did access to information become an issue within the India bureaucracy as an aspect of internal administrative reform inspired by NPM (as discussed at 9.3.1). Indian officials, much like Chinese and Mexican officials, came to believe that information access was a potential remedy for maladministration and corruption through increased oversight.⁹³ The public service committed itself to increasing public access to information within departments and agencies. Yet, as in Mexico, it took a social demand for information in order to produce a concrete and progressive surrendering of secrecy.

A large part of the change in the Indian information environment was social following the transformation of state form in the 1980s and 1990s. A social demand for access to information grew with the demise of state developmentalism and the rise of

⁹³ See K. Mathur, "Good Governance and Pursuit of Transparency in Administration: The Indian Efforts," in *Governance for Development: Issues and Strategies*, ed. P. Sahni and U Medury (New Delhi: Prentice-Hall of India Private Limited, 2003).

neo-liberal political economy. The state apparatus of the post-independent period was relatively strong compared to society due to colonial inheritance and this prevented the early development of a social demand for information access. However, gradually from the 1960s onwards civil actors developed within society; this development was boosted with a relative withdrawal of the state as a leading force in the 1980s.⁹⁴ Civil organizations increased in number and social function, especially as they gained support from transnational actors.⁹⁵ A market for freedom of information grew with civil space to place pressure on the state apparatus for access where before there had been no pressure. Within this context, grassroots activism, headed by former public servants, demanded a surrendering of secrecy in order to ensure development projects are conducted without maladministration and corruption (see more on this at 9.3.3). Social activism that helped ensure the adoption of transparency law in several subnational spheres beginning in 1997 grew into a national campaign for the *Indian Right to Information Act*, which came into effect on 13 October 2005.

8.7 Conclusions

The chapter has provided an overview of the twentieth century relationship between state formation and access to information in China, Mexico and India as Hobbesian case studies in the rise of FOI law and public sector transparency. Independent Hobbesian state forms emerged in the first half of the twentieth century to place relative restrictions on information access. These restrictions were influenced by the nature of Hobbesian state formation within each case. Chinese totalitarianism supported total restrictions, while in Mexico and India a degree of pluralism and legal positivism allowed for at least a recognition of a right to freedom of information, although this nominal guarantee found little basis in actual access to government-held information. Such restrictions were recast in the final decades of the twentieth century. China, Mexico and India all underwent structural transformations in line with the emergent global political economy. These structural transformations, unique in each case, generally diminished the Hobbesian nature of state formation, diminished the role of the state apparatus as a sovereign force

⁹⁴ Berglund, "Civil Society in India: Democratic Space or the Extension of Elite Domination?," 23-34.

⁹⁵ Baviskar, "NGOs and Civil Society in India."

in society, and allowed for a rise in social and political demands for information and access to government-held information. A surrendering of secrecy therefore occurred.

9: COMPARATIVE CONTEMPORARY CASES II: ADOPTION

9.1 Introduction

The previous chapter provided an overview of the relationship between state formation and information access throughout the twentieth century within the comparative Hobbesian cases. It demonstrated that Hobbesian state forms and information restrictions predominated within the cases throughout much of the twentieth century but that these state forms underwent a fundamental transformation facilitative of transparency and FOI law in the late-twentieth century. The current chapter focuses more closely on the late-twentieth century ‘surrendering of secrecy’, discussed briefly in the final section of the previous chapter, across the cases, specifically the comparative adoption of FOI law. The chapter is especially concerned with the nature of contemporary adoption amongst Hobbesian states. It demonstrates adoption in China, Mexico and India has been a unique national process in each case, but that each adoption process has been fundamentally tied to increased transnational support. Therefore the contemporary adoption of FOI law amongst the cases, and perhaps more generally in Hobbesian adopters, is characteristic of a passive revolution, wherein adoption is a unique national reflection of international developments, as discussed in previous chapters (see 5.4 and 7.4).

The current chapter is divided into three major sections. The first section considers supportive transnational factors of adoption within the cases. These transnational factors highlight the importance of recent international developments in support of public sector transparency (as elaborated at 7.3). Section one particularly highlights ‘norm emulation’ and ‘foreign support’ as key transnational factors amongst the cases. The second section of the chapter examines central national factors of adoption

within the cases. These national factors form the basis of comparative passive revolutions or national reflections of international developments amongst the cases. Each case generally embodies several national factors, although one is typically prominent in each case. These national factors include ‘administrative reform’ in China, ‘media advocacy’ in Mexico and ‘social activism’ in India. These factors have been primary to adoption and have filled the ‘empty signifier’ of FOI law within each case (see 2.2.1). The third and final section of the chapter considers China, Mexico and India as signposts for the future, especially amongst Hobbesian states. It argues the nature of passive revolution raises concerns related to consolidation and concludes by considering variation in law reform within the cases and how this variation reflects potentially conflicting differences in the meaning and purpose of public sector transparency amongst the wide range of actors and adopters today.

9.2 Supportive Transnational Factors

The first section of this chapter highlights the importance of transnational factors. The chapter examines transnational factors prior to national factors, which are examined in the next section, not because they are primary, but because they highlight the conducive environment of international developments that provide the context for unique and primary national factors of adoption. Transnational factors are the facilitative factors of passive revolution stemming from contemporary international developments supporting the expansion of public sector transparency that emerged within the global political economy from the 1990s onwards (see especially 7.3). The following section particularly examines two categories of transnational factors identifiable in different ways within China, Mexico and India: namely ‘norm emulation’ (9.2.1 below) and ‘foreign support’ (9.2.2).

9.2.1 Norm Emulation

Norm emulation is a complicated process whereby perceived standards within the international community are reflected or honored within individual states in a manner not dissimilar to the way individuals adhere to community norms of dress, speech, language

or etiquette in order to fit in with their friends, colleagues and neighbors.¹ International standards of public information access have developed considerably since the founding of the United Nations and the establishment of Article 19 of the Universal Declaration of Human Rights that everyone has a right to seek, receive, and impart information regardless of frontier.² Access to information has now even become, according to some, a universal human right that states must respect.³ States adhere to this evolving international norm not necessarily because it is enforced but because it is seen as legitimate, as confirming to accepted standards, and therefore may provide the adherent state with a degree of legitimacy, or status of authority, within the international community.⁴ However, international standards, as visible in treaties, declarations and charters, only set the benchmark for information access and adherents must therefore look to existing adopters, to their instruments of access, their FOI law, to gain practical knowledge. The *Freedom of Information Act* of the United States has been particularly influential in this way.⁵

Norm emulation has been especially facilitated in recent years due to the increase in interconnectedness described previously (see 8.5.1, for example). Global networks generally place pressure on states to emulate reforms perceived as successful, and this is certainly the case with transparency law. A large amount of global support for access law is linked to transnational capital flows and associated attempts to curb practices understood as counterproductive to such flows within the global economy, such as corruption.⁶ States signing up to regional or global agreements or bodies aimed at facilitating economic liberalization, such as the NAFTA or the OECD, have often

¹ Florini, "The Evolution of International Norms." There is a large body of literature addressing the diffusion and transfer of policy norms: see for example J. C. Sharman and D. Marsh, "Policy Diffusion and Policy Transfer," *Policy Studies* 30 (2009), Newmark, "An Integrated Approach to Policy Transfer and Diffusion."

² The Commonwealth Human Rights Initiative provides an informative overview of the various international and regional agreements and declarations that have gone into establishing basic international standards of access: Commonwealth Human Rights Initiative, "International Standards," http://www.humanrightsinitiative.org/programs/ai/rti/international/intl_standards.htm, (Date Accessed: 21 September, 2011).

³ Mendel, "Freedom of Information as an Internationally Protected Human Right."

⁴ Florini, "The Evolution of International Norms," 356. and T. Risse and K. Sikkink, "The Power of Human Rights: International Norms and Domestic Change," in *The Power of Human Rights: International Norms and Domestic Change*, ed. S. C. Ropp, T. Risse, and K. Sikkink (Cambridge Cambridge University Press, 1999), 38.

⁵ Lamble, "United States FOI Laws Are a Poor Model for Statutes in Other Nations."

⁶ Florini, "Does the Invisible Hand Need a Transparency Glove? The Politics of Transparency".

therefore experienced increased pressure to adopt and implement transparency measures. Pressure to emulate public sector transparency norms and practices flow through economic, political and social channels within the global political economy. This is clearly visible in the cases of both China and Mexico, and to a lesser extent India.

Norm emulation was a visible and explicit factor in the adoption of FOI law within both China and Mexico. Within China pressures for norm emulation undoubtedly developed as the country became more integrated within the international community under an 'open door policy' following the end of the Maoist era.⁷ Central to such pressures for increased openness was accession to the World Trade Organization (WTO).⁸ Transparency requirements placed on membership had a direct influence on the city of Guangzhou, an early subnational adopter of access regulation and a major economic hub within China.⁹ It seems the transparency requirements placed on member states by the WTO may have been a general stimulant for reform linked with internal administrative attempts to transform the Chinese economy; Xiao, for example, notes that the State Council Informatisation Office wrote that 'the legislation of FOI was necessary to extend China's reform and opening up policy (*Gaige Kaifang*) that commenced in 1978, and was a measure to cherish and extend the achievement of 15 years of tough WTO accession negotiations.'¹⁰ In emulating the sort of international norm presented by the WTO, Chinese reformers drew on international experience: a research group of the Chinese Academy of Social Sciences tasked with the job of researching and drafting legislation on open government information was headed by Zhou Hanhua, a law professor, who 'conducted extensive research on information access laws around the world.'¹¹

Similarly, Mexico was faced with pressures of norm emulation and reformers drew from international experience in constructing transparency law. There was certainly pressure on Mexico, as Michener writes, with reference to the important role played by

⁷ Hsu, *The Rise of Modern China*, 858.

⁸ Horsley, "Toward a More Open China?," 61-62.

⁹ Xiao, "Freedom of Information Reform in China: Information Flows Analysis", 125.

¹⁰ *Ibid.*, 124-25.

¹¹ Horsley, "Toward a More Open China?," 69. Officials conducted a fact finding mission to Europe and the United Kingdom; they visited the Constitutional Unit at the University College. London G. Sutton and S. Holsen, "China Progresses Information Access and Data Protection Laws," *Open Government: a Journal of Freedom of Information* 2, no. 2 (2006): 2-3.

the first popularly elected non-PRI president since the 1910 revolution, Vicente Fox, and his anti-corruption platform (discussed in more depth below, 9.3.1):

Anticorruption reforms gained salience during the first months of Fox's administration. The Government's decision to prioritize these measures followed the signing by Mexico in the mid-1990s of a number of international agreements, compelling it to adopt and implement measures to tackle corruption and guarantee financial transparency¹²

Michener also notes:

a host of international actors strongly suggested that the Mexican government adopt access to information and other measures to increase transparency. The World Bank, for one, had emphasized the gravity of the theme in consultations with Fox even before he was elected president.¹³

Such pressures for norm emulation were met with a degree of lesson drawing. Reformers, especially those associated with the 'Oaxaca Group', a coalition of editors, journalists, academics, lawyers and activists that would ultimately ensure the adoption of progressive reform in Mexico following a breakdown of administrative reform (discussed in more depth below, 9.3.2), drew upon international experience in drafting proposals.¹⁴ The Group, lacking in-depth legal knowledge of freedom of information, mainly borrowed legal standards from a model provided by Article 19, the key member of the public sector transparency transnational advocacy network discussed previously (7.3.3).¹⁵

In contrast to China and Mexico, norm emulation seems less important as a factor within the process of adoption in India, although it remains visible. There is little evidence important social advocates in India (discussed below at 9.3.3) were primarily guided by international pressure or practice, as they were heavily embedded in local

¹² Puddephatt, "Exploring the Role of Civil Society in the Formulation and Adoption of Access to Information Laws: The Cases of Bulgaria, India, Mexico, South Africa and the United Kingdom," 14. Michener also notes these developments: Michener, "The Surrender of Secrecy: Explaining the Emergence of Strong Access to Information Laws in Latin America", 104.

¹³ Michener, "Engendering Political Commitment: The Grupo Oaxaca--Expertise, Media Projection--and the Elaboration of Mexico's Access to Information Law", 11.

¹⁴ Puddephatt, "Exploring the Role of Civil Society in the Formulation and Adoption of Access to Information Laws: The Cases of Bulgaria, India, Mexico, South Africa and the United Kingdom," 15-16.

¹⁵ Michener, "The Surrender of Secrecy: Explaining the Emergence of Strong Access to Information Laws in Latin America", 151.

issues of poverty and development.¹⁶ However, it seems foreign practice and international standards were used to guide the construction of proposals, especially within the context of transparency as an aspect of public sector administrative reform. Toby Mandel writes in a recent publication on public service reform in India that the local experience ‘reflects a unique combination of successful integration of approaches from other countries and a creative ability to build on and adapt these to fit with the wider Indian experience.’¹⁷ Indeed, a degree of norm emulation in India was embedded within an agenda of public sector administrative reform directly inspired by the global rise of ‘new public management’ and ‘good governance’ developed in the 1990s that raised public information sharing as an important issue within the public service, as discussed below (9.3.1).¹⁸

Norm emulation, socialization and learning were therefore a transnational factor visible in all three cases; however, it is worth noting that norm emulation does not necessarily lead to policy convergence. For example, the process of emulation visible within China and Mexico was not in any way simply a ‘copy cat’ affair—in both cases international norms and foreign practice were utilized in different ways to provide unique outcomes. Chinese internal administrative reformers appear to have emulated only aspects of common practice suitable to the authoritarian regime, while discarding others (as discussed at 9.3.1 below).¹⁹ On the other hand, Mexican reformers, mostly civil society advocates, drew from the best practices to produce state-of-the-art FOI law (9.3.2 below).²⁰ Such variation between transparency law reform in China and Mexico, which is relatively new within the history of FOI law, is an issue addressed in the final section of the chapter, when discussion turns to considering future issues related to the adoption of FOI law within the cases and the way in which future international standards on FOI

¹⁶ The website of the Campaign provides an overview of the diffusion of the law, detailed case studies of a variety of case studies, including the United States, Brazil, Pakistan, and Australia. National Campaign for People's Right to Information, "Right to Information in Other Countries," <http://righttoinformation.info/rti/>, (Date Accessed: 12 March, 2011).

¹⁷ T. Mendel, "Implementation of the Right to Information: Ideas for India from Canada, Mexico, and South Africa," in *Public Service Delivery in India: Understanding the Reform Process*, ed. V. K. Chand (New Delhi: Oxford University Press, 2010), 341.

¹⁸ Mathur, "Good Governance and Pursuit of Transparency in Administration: The Indian Efforts."

¹⁹ Xiao, "China's Limited Push Model of FOI Legislation."

²⁰ Mendel, "Freedom of Information: A Comparative Legal Survey," 80.

law may be influenced by such variation; and essentially whether or not there will be a 'trading up' or 'trading down' of standards (see especially 9.4.2 and 9.4.3 below).²¹

9.2.2 Foreign Support

Transnational factors have not simply seeped into national adoption through norm emulation: active transnational support for adoption has been provided by global and regional advocates. As discussed in previous chapters (7.3 especially), transnational actors have been crucial to developing international norms of access to information and they have functioned to support the process of adoption around the world. They have functioned in various ways within each of the cases examined here (as discussed below). These actors have principally played a supportive role within each case. Indeed the general aim and practice of their activities in each case is captured in the stated objective of the EU-China Information Society Project, a joint project setup by the Chinese government and European Union to support access to information in China; the project aimed to 'support the development of a regulatory framework.'²² In China, Mexico and India the milieu and focus of foreign support varied, but their support of the development of a regulatory framework remained the same across the board. In India such support was specific and direct, whereas in China and Mexico it was plural and indirect.

Foreign support appears to have been a direct factor in the adoption of FOI law in India. This is evident in the activities of the Commonwealth Human Rights Initiative (CHRI), an international non-government organization that helped support the development of a regulatory framework of access to information in India.²³ The CHRI works to ensure the 'practical realization of human rights' in the group of Commonwealth nations, which consists of fifty four independent states, all formally of the British Empire (except two), on the basis of international human rights law; the CHRI receives funding from a range of supporters, especially donors and grant-makers.²⁴ The CHRI conducts a

²¹ See C. J. Bennett, "Globalization and Access to Information Regimes," Access to Information Review Task Force: Government of Canada, (Date Accessed: 15th October, 2008).

²² Carter and Yanbin, "Access to Government Information in Europe and China: What Lessons to Be Learned?," 1.

²³ See C. Sanger, "A Clear and Steady Voice: The Commonwealth Human Rights Initiative at 20," *The Commonwealth Journal of International Affairs* 96, no. 4 (2007).

²⁴ Commonwealth Human Rights Initiative, "Who We Are," http://www.humanrightsinitiative.org/index.php?option=com_content&view=article&id=47&Itemid=29,

specialized 'Right to Information Program' amongst other programs, like many other transnational advocates of transparency and openness.²⁵ The program focuses on 'monitoring and supporting the push for recognition and implementation' of the right to information throughout the Commonwealth, although a clear focus on India has certainly developed within the program.²⁶

The CHRI conducted a range of supportive activities, dating back to 1998, in India. Representatives have worked in a variety of ways and have collaborated at times with important domestic actors; for example, the organization submitted analysis and recommendations of proposals to government.²⁷ But perhaps the primary activity undertaken by the CHRI has been to conduct local workshops, consultations and seminars to raise public awareness of the importance of access to public information.²⁸ Seventy seven such events are reported to have been held in the decade between 1998 and 2008 at both the national and subnational level.²⁹ On average, then, the CHRI held roughly one such event every two months for ten years.³⁰ However, as Figure 13 below shows, the majority of these events were held between 2000 and 2004, a crucial period in which proposals were put to government for consideration on the national level.³¹ An especially busy year was 2003, with around twenty four events held that year alone, which averages roughly two events every month for the entire year.³² The awareness raising conducted by

(Date Accessed: 12 March, 2011), ———, "Annual Report 2008-09," (New Delhi: 2009), 45. and ———, "Annual Report 2003-04," (New Delhi: 2004), 21. Reports from 2003 to 2009 are available online: ———, "CHRI Annual Reports," http://www.humanrightsinitiative.org/index.php?option=com_content&view=article&id=187&Itemid=503, (Date Accessed: 21 September, 2011).

²⁵ For example, the Cater Center has an 'Access to Information Project', while the World Bank has a 'Access to Information, Transparency, and Governance Program.' (see 7.3)

²⁶ Commonwealth Human Rights Initiative, "Right to Information," http://www.humanrightsinitiative.org/index.php?option=com_content&view=article&id=54&Itemid=53, (Date Accessed: 17 December, 2010).

²⁷ ———, "National Level RTI," http://www.humanrightsinitiative.org/index.php?option=com_content&view=article&id=65&Itemid=84, (Date Accessed: 8 May, 2011).

²⁸ ———, "Training and Workshops," http://www.humanrightsinitiative.org/index.php?option=com_content&view=article&id=67&Itemid=86, (Date Accessed: 4 December, 2010).

²⁹ Ibid.

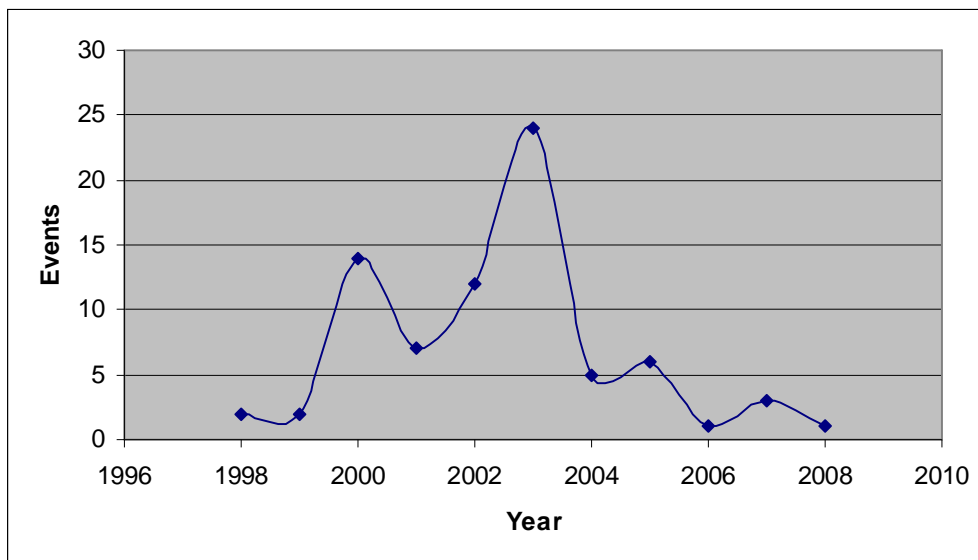
³⁰ Ibid.

³¹ S. Singh, "The Genesis and Evolution of the Right to Information Regime in India," [freedominfo.org](http://freedominfo.org/documents/India2010singhCountry%20Paper%20FINAL.pdf), <http://freedominfo.org/documents/India2010singhCountry%20Paper%20FINAL.pdf>, (Date Accessed: 4 March 2011).

³² Commonwealth Human Rights Initiative, "Training and Workshops."

the CHRI through the large number of mostly small community based events, in addition to other activities, would have certainly helped place pressure of government and supported indigenous advocacy for a right to information conducted by social activists from the late 1990s onwards (see 9.3.3 below).

Figure 13: CHRI Events in India, 1998-2008



The support of transnational actors within China for access to information was more plural and less direct than in the case of India. A variety of transnational actors supported experiments in ‘open village affairs’ at the local government level that ultimately provided the incremental experimentation needed for central government support for access to information law reform (this is discussed in more depth below, 9.3.3).³³ In the mid-1990s the Ministry of Civil Affairs, the body assigned to oversee nationwide implementation of village level democracy, actively sought the support of actors such as the UNDP, the International Republican Institute, the European Union and

³³ See for example: The Carter Center, "Carter Center Delegation Report: Village Elections in China," (The Carter Center, 1997).

the Carter Center.³⁴ These foreign bodies generally observed and evaluated local reforms, particularly elections; for example, the Carter Center sent seven representatives to observe elections within two provinces.³⁵ The delegation also held discussions with Chinese officials about electoral reform issues and provided evaluative feedback on the conduct of the elections observed.³⁶ The Carter Center concluded 'the village elections are a serious and positive development in empowering China's 900 million villagers, even though many parts of the country might not have fully implemented the election rules yet.'³⁷ Such feedback provided support the Ministry was able to utilize internally to combat opposition and bolster their efforts and activities.³⁸

Although substantially less than in the case of local political and administrative reform, which provided the groundwork for the evolution of open government within China, a degree of *direct* support for the development of access to information legislation was also provided by transnational actors in China. The EU-China Information Society Project was established with the overarching aim of supporting:

the development of a regulatory framework for Information Society that provides for reliable investment, economic and social improvement and the maximization of benefits to Chinese citizens through the new opportunities that Information Society brings about.³⁹

Experts from the Constitution Unit of the University College London were sent to China to participate, albeit with some handicaps, including language barriers, within discussions at the national level and provide information about law reform within the United Kingdom at a sub-national level, as part of this project.⁴⁰ The Constitution Unit also produced a report for the Project that highlighted key issues of concern related to the

³⁴ R. Pastor and Q. Tan, "The Meaning of China's Village Elections," *The China Quarterly*, no. 162 (2000): 490-93. and K. J. O'Brien and L. Li, "Accommodating 'Democracy' in a One-Party State: Introducing Village Elections in China," *The China Quarterly*, no. 162 (2000): 483-84.

³⁵ The Carter Center, "Carter Center Delegation Report: Village Elections in China."

³⁶ *Ibid.*

³⁷ *Ibid.*, 1.

³⁸ T. Shi, "Village Committee Elections in China: Institutionalist Tactics for Democracy," *World Politics* 51, no. 3 (1999): 408-10.

³⁹ Carter and Yanbin, "Access to Government Information in Europe and China: What Lessons to Be Learned?."

⁴⁰ Sutton and Holsen, "China Progresses Information Access and Data Protection Laws."

implementation of reform.⁴¹ Such activities are notable, although, as already suggested, their impact is not comparable to the impact of similar activities by foreign bodies on local governance reform that fed into nationwide open government reform, principally because the activities of the Information Society Project did not seem to penetrate the closed internal administrative reform conducted by the CCP for transparency law to any substantial degree.

Within Mexico the support of international and transnational actors was also relatively plural and indirect, although direct support is evident. Much of the support provided by transnational actors in Mexico for access law was indirect. The adoption of FOI law reform in Mexico formed part of anti-corruption efforts in a way similar to which FOI regulation in China occurred within a context of post-Mao local governance reform: both contexts formed the basis for internal administrative support. And, as in the case of local government reform in China, anti-corruption policy in Mexico received important support from international and transnational actors. *Transparencia Mexicana*, the Mexican chapter of Transparency International, quickly set about advocating and supporting anti-corruption reform after establishment in 1999.⁴² The organization employed an 'impressive array' of editors, academics and activists (including a former Attorney General and former Supreme Court Justice), and involved itself extensively with the anti-corruption efforts of the Fox administration.⁴³ *Transparencia Mexicana* worked on an institutional level with the country's peak anti-corruption body, the Federal Comptroller, which developed early proposals for FOI law (as discussed at 9.3.1).⁴⁴ Nevertheless, direct transnational support for adoption is also visible. For instance, Article 19 provided commentary on international legislative standards on access to information during early discussions open to the media and public, held by Mexican academics, aimed at reviewing government proposals for law reform.⁴⁵ In addition, as

⁴¹ Carter and Yanbin, "Access to Government Information in Europe and China: What Lessons to Be Learned?."

⁴² S. D. Morris, "Fox's Anti-Corruption Campaign in Mexico: A Preliminary Look at Approaches and Strategy" (paper presented at the Latin American Studies Association, Washington D.C., 2001), 36-37.

⁴³ Ibid.

⁴⁴ R. Labardini, "The Fight against Corruption in Mexico," *United States-Mexican Law Journal* 11 (2003): 202.

⁴⁵ Puddephatt, "Exploring the Role of Civil Society in the Formulation and Adoption of Access to Information Laws: The Cases of Bulgaria, India, Mexico, South Africa and the United Kingdom," 15.

already indicated, representatives of the World Bank, met with President Fox directly to stress the importance of transparency law, especially as it related to anti-corruption efforts.⁴⁶

In terms of global political economy it is also worth noting the funding sources of the transnational actors that functioned in each case to support local transparency law reform. There is a mixture of funding from private foundations, transgovernmental bodies, and corporations, all tied to the global economy and the 'transnational historic bloc', discussed in previous chapters as the social force behind the global diffusion of public sector transparency (see 7.3.1). For example, the CHRI, India's most active transnational supporter of the right to information, is predominantly funded by private foundations and transgovernmental bodies, such as the Sir Dorabji Tata Trust, the Ford Foundation, the British High Commission and the Netherland Minister for Development and Cooperation.⁴⁷ On the other hand, the Carter Center, important in supporting early Chinese experiments in open government, generally receives roughly half its annual funding from corporations, including Coca-Cola, IBM and Pfizer.⁴⁸ The case of *Transparencia Mexicana* in Mexico is a little more complicated due to its status as a national chapter of a non-government international organization: at the national (Mexican) level the organization is financed by an array of wealthy local corporations, government bodies and individuals, alongside external sources such as the British Embassy; whereas, at the international level, Transparency International is overwhelmingly financed by transgovernmental bodies, especially the international development agencies of major European countries, followed by private foundations, such as the Hewlett Foundation and Open Society Foundations.⁴⁹

⁴⁶ Michener, "Engendering Political Commitment: The Grupo Oaxaca--Expertise, Media Projection--and the Elaboration of Mexico's Access to Information Law", 11.

⁴⁷ Commonwealth Human Rights Initiative, "CHRI Annual Report," http://www.humanrightsinitiative.org/index.php?option=com_content&view=article&id=187&Itemid=503, (Date Accessed: 9 December, 2010).

⁴⁸ For the annual reports since 1998, which include information on donors, see: The Carter Center, "Annual Reports," http://www.cartercenter.org/news/publications/annual_reports.html, (Date Accessed: 9 December, 2010).

⁴⁹ Transparencia Mexicana, "Rendición De Cuentas," <http://www.transparenciamexicana.org.mx/quienessomos/rendiciondecuentas/>, (Date Accessed: 9 December, 2010). and Transparency International, "Transparency International Audited Financial Reports," http://www.transparency.org/about_us/annual/financial_reports, (Date Accessed: 9 December, 2010).

9.3 Primary National Factors

While transnational factors of norm emulation and foreign support, visible in each case to varying degrees, have been important in facilitating reform, they clearly only present contextual elements of the picture—they only present the penetration of international developments supporting public sector transparency into the Hobbesian cases. National factors, discussed at length in the previous chapter with a view of the relationship between state formation and public information access, and examined more specifically in relation to the adoption of transparency law in the section below, have filled the ‘empty signifier’ of FOI law in ways that are unique within each case and have formed the basis of each national reflection of international developments, of each passive revolution. The following section categorizes these national factors into three distinct categories: ‘administrative reform’ (see 9.3.1 below), ‘media advocacy’ (see 9.3.2) and ‘social activism’ (9.3.3). Each case generally incorporates more than one of these national factors, although the cases also tend to embody one in particular, and all are tied to the process of transformation in state formation that occurred from the 1980s onwards, discussed in the previous chapter (8.5 and 8.6).

9.3.1 Administrative Reform: the Chinese Dilemma

Internal support within the state apparatus is necessarily a component of the adoption of FOI law within every jurisdiction; state officials must agree to adopt transparency law and respect it; they must therefore be involved within the process of adoption and implementation. Internal administrative reform processes have contributed within all three cases of adoption. Administrative reform contributed to the adoption of FOI law in Mexico as officials and newly elected politicians sought to address the history of corruption produced under the PRI regime (as discussed below). Similarly, administrative reform aimed at openness and transparency to combat maladministration and corruption produced early proposals for reform in India (discussed below). However, in both Mexico and India administrative reform was ultimately boosted by external pressure from society in order to ensure the final adoption of FOI law; only in authoritarian China was administrative reform the single overarching factor in the adoption of FOI law and this

impacted the final result: the Chinese transparency regulations only provide a commitment to transparency rather than a legal 'right to know'.⁵⁰

The adoption of FOI law in Mexico was in part the product of administrative reform tied to democratization and in particular with the first popular election of a non-PRI president, Vicente Fox.⁵¹ As a member of the National Action Party, a center-right Christian democrat party founded in 1939, Fox promised a government of change. A major platform in Fox's election campaign was the issue of addressing corruption; he pledged to implement anti-corruption measures, and the adoption of FOI law became an aspect of this pledge.⁵² Fox promised immediate action and an Inter-Ministerial Commission on Transparency and Against Corruption in the Federal Public Administration was quickly established to develop access to information law.⁵³ However, the thrust of internal administrative reform soon faltered. The Commission did not formally meet until roughly nine months after Fox's electoral victory and, to make matters worse, the law reform process became entangled in broader political issues of access to information, especially information with the potential to 'air out' past injustices of the PRI, a party that remained an influential force within Congress with the power to frustrate reform.⁵⁴ Ultimately, draft FOI law was 'leaked' to the media by the Federal Comptroller (a supervisory body of government accounting and financial reporting), one of a number of departments involved in the early development of proposals.⁵⁵ The issue was then picked up and championed by a coalition of civil actors supported by the media,

⁵⁰ Xiao, "China's Limited Push Model of FOI Legislation."

⁵¹ See for example: T. Mendel, "The Right to Information in Latin America: A Comparative Legal Survey," (Quito: UNESCO, 2009), 109. Open Society Justice Initiative, "Transparency & Silence: A Survey of Access to Information Laws and Practices in Fourteen Countries," 76. Puddephatt, "Exploring the Role of Civil Society in the Formulation and Adoption of Access to Information Laws: The Cases of Bulgaria, India, Mexico, South Africa and the United Kingdom," 14.

⁵² Morris, "Fox's Anti-Corruption Campaign in Mexico: A Preliminary Look at Approaches and Strategy".

⁵³ Michener, "Engendering Political Commitment: The Grupo Oaxaca--Expertise, Media Projection--and the Elaboration of Mexico's Access to Information Law". Franco-Barrios, "Building Transparent and Honest Government in Mexico: Institutional Reforms and Anti-Corruption Policy."

⁵⁴ Michener, "The Surrender of Secrecy: Explaining the Emergence of Strong Access to Information Laws in Latin America", 153-54. ———, "Engendering Political Commitment: The Grupo Oaxaca--Expertise, Media Projection--and the Elaboration of Mexico's Access to Information Law", 13-15. See also K. Doyle, "'Forgetting Is Not Justice': Mexico Bares Its Secret Past," *World Policy Journal* 20, no. 2 (2003): 68.

⁵⁵ Michener, "The Surrender of Secrecy: Explaining the Emergence of Strong Access to Information Laws in Latin America", 147-50. Other offices include the President's Office and the Secretary of the Interior ———, "The Surrender of Secrecy: Explaining the Emergence of Strong Access to Information Laws in Latin America", 153.

who would eventually ensure Mexico adopted one of the most progressive FOI regimes in the world (see 9.2.2).

Similarly, administrative reform was a key factor within India but it was not the decisive factor. The government of India established a working group in 1997 on the Right to Information and Promotion of Open and Transparent Government that came to be known as the 'Shourie Committee.'⁵⁶ The Committee was mandated to make recommendations regarding any necessary revision of secrecy legislation and the feasibility of introducing a 'full fledged' right to information act.⁵⁷ The Committee reported that access to information was necessary in a democracy for citizens to make informed choices; it also suggested transparency has a cleansing effect on the operation of the public service.⁵⁸ A draft proposal was produced. Also in 1997, transparency became a key issue on the agenda of a conference of Chief Ministers, a meeting of the heads of state governments within India; the conference produced an 'Action Plan for Effective and Responsive Government' that suggested openness was essential to minimizing corruption in the public sector and the ministers collectively endorsed the draft proposal produced by the Shourie Committee.⁵⁹ Ultimately, however, the work of the Committee was criticized for a lack of public consultation and the draft proposal produced was criticized as 'diluted' compared to other proposals that would later be championed by civil society.⁶⁰

Unlike the case of Mexico and India, internal administrative reform was the only national factor of importance within China. China, of all Hobbesian adopter cases examined here, is unique in terms of the central importance of internal administrative reform within the adoption process. FOI regulation in China represented 'another self-revolution' by the CCP.⁶¹ This 'self-revolution' in transparency, which has produced a unique FOI regime with 'Chinese characteristics', was conducted as a matter of priority as a response by Chinese officials to perceived failures of the Russian 'glasnost' policy: officials wanted to avoid the turmoil caused in Russia by the sudden freeing of

⁵⁶ Mathur, "Good Governance and Pursuit of Transparency in Administration: The Indian Efforts," 53.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Article 19 et al., "Global Trends on the Right to Information: A Survey of South Asia," 74-75.

⁶¹ Xiao, "Freedom of Information Reform in China: Information Flows Analysis", 17.

information flows.⁶² Gradualism and control became a key feature of Chinese transparency reform. Indeed the prominence of control by the state within the process of adoption is visible in the fact that the reform agenda for transparency law first emerged in attempts to revise the *Law on the Protection of State Secrets*.⁶³ This revision sought to employ transparency as a way of improving classification systems and better utilizing scarce government resources.⁶⁴

Driving the 'self-revolution' in transparency were a number of motives that came from throughout the CCP and participants in the reform process, especially a group of experts commissioned to develop proposals under the auspice of the Chinese Academy of Social Science.⁶⁵ The long-term driver was certainly an attempt to restructure the Chinese system of government according to post-Mao ideals of socialist democracy (as discussed in 8.5.2). From this viewpoint transparency is seen as allowing a degree of supervision of officials by the public and other officials in a spirit of democratic management.⁶⁶ However, political reform in post-Mao China considerably and consistently lagged behind economic reform, so it should perhaps come as no surprise to find that from early on the transparency reform was depoliticized in China and largely presented as an avenue to promote economic efficiency and development.⁶⁷ Transparency was seen as a way to liberalize the vast amount of information held by branches of the state in order to foster 'informatisation' within the private and public sphere.⁶⁸ In addition, a perception that transparency may reduce corruption within the economy also drove a section of state officials to support the regulation.⁶⁹

Chinese transparency law has been a reform almost entirely generated by internal administrative reform, not principally as a way of ceding power from the state apparatus to society, but as a way of transforming the manner in which state power is exercised.

⁶² Ibid., 74-75.

⁶³ Ibid., 121-22.

⁶⁴ Ibid.

⁶⁵ Horsley, "Toward a More Open China?," 69.

⁶⁶ Xiao, "Freedom of Information Reform in China: Information Flows Analysis", 84.

⁶⁷ For example: Ibid., 82.

⁶⁸ Zhou, "Open Government in China: Practice and Problems," 104-07. and Horsley, "Toward a More Open China?," 60-61. For a critical examination of the utility of providing access to government information as a tool for economic stimulus see Xiao, "Freedom of Information Reform in China: Information Flows Analysis", 114-25.

⁶⁹ Xiao, "Freedom of Information Reform in China: Information Flows Analysis", 125-31.

The regulation gradually became a priority within the post-Mao reform era as an avenue to transform the way centralized power is conducted in the context of widespread political decentralization and economic liberalization. Paul Hubbard found:

sincere central political support for the policy based on the promise that popular supervision of the administrative apparatus can aid the center's control of a decentralized government. The regulations are a top-down political project rather than a liberal political reform.⁷⁰

The regulation is 'instrumentally valuable' to the regime because of the promise it holds for increased oversight, efficiency and effectiveness within the reformed totalitarian, now authoritarian, system.⁷¹ This goes some way to a) explain why a Leninist party would adopt a (historically) liberal democratic reform and b) support those who challenge the claim that transparency is principally tied to liberal democracy.⁷² Recent commentary on the situation in China has even presented the concept of 'transparent authoritarianism.'⁷³

The Open Government Information Regulations (OGI Regulations), which were adopted in 2007 and implemented in 2008, have been noted for their restrictive nature, which is perhaps to be expected from an internally administered reform within an authoritarian regime. As an 'empty signifier', FOI law in China is principally filled with concerns over the continued rule of the CCP, especially manageable political concessions, administrative efficiency and oversight, and economic growth. The regulations have a limited access mechanism.⁷⁴ They do not emphasize the 'pulling' of information by members of the public; a right of access is only implied by the regulations, which places a potential needs test on applicants.⁷⁵ Officials may refuse requests for information on the basis that the information sought is unrelated to the requestors' special needs, but they may also refuse access on the basis of broad

⁷⁰ Hubbard, "China's Regulations on Open Government Information: Challenges of Nationwide Policy Implementation," 2-3.

⁷¹ Ibid.: 5.

⁷² W. R. Schumann, "Transparency, Governmentality, and Negation: Democratic Practice and Open Government Policy in the National Assembly of Wales," *Anthropological Quarterly* 80, no. 3 (2007): 853-54.

⁷³ P. Lorentzen, P. Landry, and J. Yasuda, "Transparent Authoritarianism? An Analysis of Political and Economic Barriers to Greater Government Transparency in China," (APSA 2010 Annual Meeting Paper, 2010).

⁷⁴ Xiao, "China's Limited Push Model of FOI Legislation."

⁷⁵ Ibid.: 349-50.

exemption categories.⁷⁶ The OGI Regulations emphasize the ‘pushing’ of information from government departments and agencies into society. The Regulations predominantly concern what information should be proactively published and how it should be published.⁷⁷ The regulations present *minimum standards* of disclosure and *general criteria* for the release of additional information.⁷⁸

China’s OGI Regulations have faced regular criticism and considerable challenges since adoption; yet they have also managed to provide some degree of hope for supporters. A variety of critics have argued for more comprehensive transparency reform in the Chinese context and indeed implementation of transparency regulation in China is faced with unique challenges related to the relatively narrow nature of the regulations (as described above), as well as the size, history and politics of the Chinese state.⁷⁹ However, the basic obstacles to implementation in China are necessarily the same as in other states, including potential deficiencies in resources, training, and record management practices, as well as weak public awareness and limited bureaucratic culture for openness.⁸⁰ Early evaluations suggest such challenges are a real concern: for example, Jamie Horsley notes that academics at Peking University recently analyzed the timeliness and contents of the first round of OGI Regulations annual reports, and gave a passing score to only 41% of provincial-level governments and 17% of central government departments.⁸¹ Nevertheless, the OGI Regulations appear to have shown some promise because of a diversity of requestors, a relative increase in disclosure, and a general shift in government culture.⁸²

⁷⁶ Ibid.: 349.

⁷⁷ Ibid.: 348-49.

⁷⁸ Ibid.

⁷⁹ J. P. Horsley, "Update on China's Open Government Information Regulations: Surprising Public Demand Yielding Some Positive Results," freedominfo.org, (Date Accessed: 23 April, 2011), Hubbard, "China's Regulations on Open Government Information: Challenges of Nationwide Policy Implementation."

⁸⁰ S. J. Piotrowski et al., "Key Issues for Implementation of Chinese Open Government Regulations," *Public Administration Review* 69, no. s1 (2009).

⁸¹ Horsley, "Update on China's Open Government Information Regulations: Surprising Public Demand Yielding Some Positive Results."

⁸² Ibid.

9.3.2 Media Advocacy: Voices for Reform in Mexico

Administrative reform was the primary national factor in China due to its authoritarian structure; however, administrative reform in both Mexico and India was supplemented in important ways by external advocacy from within society. More specifically, advocacy for reform from media outlets was an important national factor in both Mexico and India. Elements of the Indian media presented their own draft proposal and provided criticism of the administrative reform proposal (as discussed below). However, only in Mexico, of the three cases examined here, was media advocacy fundamental to adoption. A campaign coalition heavily supported by the media, constituted by academics, lawyers, journalist and editors, captured the transparency law reform process in Mexico and ensured the enactment of world-class legislation that provides a far more substantial guarantee of access compared with, for example, the Chinese ‘push’ model discussed above (as discussed below).

Administrative reform proposals for FOI law in India tied to the Shourie Committee were presented in 1997, but earlier proposals that promoted administrative reform on the national agenda were presented in 1996 by the Press Council of India.⁸³ The Council worked with the newly established ‘National Campaign for Peoples’ Right to Information’ (NCPRI), which brought social activists, journalists, lawyers, professionals, retired civil servants and academics together, to produce a draft proposal.⁸⁴ The proposal was made public at a large conference in Delhi attended by representatives of the major political parties; it was discussed in detail and endorsed by participants, including participants from major parties.⁸⁵ Subsequently the draft proposal was submitted to the government of India, an act which instigated the Shourie Committee.⁸⁶ Although the role of media advocacy is notable in India, especially in relation to the role played by the Press Council, the major national factor in the ultimate adoption of FOI law, which would not happen until 2005, was social activism (as discussed below) and this is evident from quite early on; it is visible in the early role played by the NCPRI and

⁸³ Article 19 et al., "Global Trends on the Right to Information: A Survey of South Asia," 71-72.

⁸⁴ Singh, "The Genesis and Evolution of the Right to Information Regime in India." and Article 19 et al., "Global Trends on the Right to Information: A Survey of South Asia," 71-72.

⁸⁵ Singh, "The Genesis and Evolution of the Right to Information Regime in India."

⁸⁶ Ibid.

an additional draft proposal submitted by the Consumer Education Research Council, also in 1996.⁸⁷

Whereas media advocacy was only a notable factor in India, it was a central factor in the case of Mexico. Draft transparency law developed by government officials was leaked to the media in Mexico and commentators have generally consider this leak a crucial turning point within the Mexican adoption process.⁸⁸ Critics expressed dismay at the 'low profile, non-participative and "non-transparent" manner' in which the law reform was being developed, and they attacked the leaked proposal as flawed.⁸⁹ Amongst other deficiencies, the leaked draft provided officials with the power to decide on a case by case basis what information could be withheld, effectively licensing complete discretion on the part of officials.⁹⁰ A conference sponsored by major news organizations, journalistic associations, human rights organizations, various foundations, think tanks and universities was organized in the city of Oaxaca for the public to air their concerns.⁹¹ An alliance, dubbed the 'Oaxaca Group' by a *New York Times* columnist, emerged from the conference with a declaration affirming six democratic principles to be applied in the consideration and construction of FOI law.⁹² The Group, Michener explains, 'harbored two goals: apply pressure to the executive branch in order to encourage the elaboration of

⁸⁷ Article 19 et al., "Global Trends on the Right to Information: A Survey of South Asia," 72-73.

⁸⁸ For example: Z. Bookman and J. Guerrero Amparan, "Two Steps Forward, One Step Back: Assessing the Implementation of Mexico's Freedom of Information Act," *Mexican Law Review* 1, no. 2 (2009): 13.

⁸⁹ Michener, "Engendering Political Commitment: The Grupo Oaxaca--Expertise, Media Projection--and the Elaboration of Mexico's Access to Information Law", 15.

⁹⁰ ———, "The Surrender of Secrecy: Explaining the Emergence of Strong Access to Information Laws in Latin America", 149.

⁹¹ ———, "Engendering Political Commitment: The Grupo Oaxaca--Expertise, Media Projection--and the Elaboration of Mexico's Access to Information Law", 16.

⁹² G. Thompson, "Mexicans Move to Pry Open Potentially Explosive Files," *New York Times* (12 October 2001), <http://www.nytimes.com/2001/10/12/international/americas/12MEXI.html>. Michener translates and abbreviates these principles from Spanish to English as: 1) modifying the constitution to make clear that public information in possession of the state belongs to citizens; 2) legislating access to information so that citizens might have the right to scrutinize information possessed by the various levels of government and government contracts with private businesses. 3) establishing sanctions for public servants who do not properly attend to the task of providing information upon request; 4) clearly establishing a chapter which would define exceptions to the law and assuring that exceptions remain at a minimum; 5) creating an institution autonomous from government whose purpose it is to resolve disputes among individuals and authorities; 6) to reform and repeal all legislation which runs counter to the right of access to information. Michener, "Engendering Political Commitment: The Grupo Oaxaca--Expertise, Media Projection--and the Elaboration of Mexico's Access to Information Law", 16.

robust access to information law, and secure the support of the political opposition for a bill they themselves had elaborated.⁹³

The Oaxaca Group campaigned for reform and championed its own draft access law. The activities of the Group gained considerable news coverage with the help of media members of the coalition.⁹⁴ In this way the Group was able to elevate public awareness of the situation and the importance of access to information law reform within the country.⁹⁵ Academics in the Oaxaca Group and international experts, along with invited political actors, were provided with editorial space to participate in debate and explain the promise of a 'right to know' to the public.⁹⁶ In addition to campaigning for reform, the Group actually presented its own proposals for reform informed by international standards (as discussed in the previous section) and these proposals gained the support of major opposition parties.⁹⁷ Representatives of the Group were even empowered by the opposition parties with the opportunity to negotiate a compromise with the Fox administration between the government's proposal and their own.⁹⁸ These negotiations resulted in 'a far better proposal—and one that looks in places very much like the draft' sent by the Oaxaca Group.⁹⁹

In Mexico the media-based alliance of civil actors was able to challenge what appeared to be a poor effort producing inadequate proposals within government. This challenge was able to produce a 'sea change' in the government's original proposal.¹⁰⁰ It is difficult to say what may have resulted from Fox's proposals for reform had not the Group emerged and conducted the challenge it did. Sergio López Ayllón, the chief bureaucrat in charge of negotiating with civil society and the lead drafter of the final

⁹³ Michener, "The Surrender of Secrecy: Explaining the Emergence of Strong Access to Information Laws in Latin America", 130.

⁹⁴ Puddephatt, "Exploring the Role of Civil Society in the Formulation and Adoption of Access to Information Laws: The Cases of Bulgaria, India, Mexico, South Africa and the United Kingdom," 17.

⁹⁵ Michener, "The Surrender of Secrecy: Explaining the Emergence of Strong Access to Information Laws in Latin America", 131-46.

⁹⁶ Puddephatt, "Exploring the Role of Civil Society in the Formulation and Adoption of Access to Information Laws: The Cases of Bulgaria, India, Mexico, South Africa and the United Kingdom," 17.

⁹⁷ Michener, "Engendering Political Commitment: The Grupo Oaxaca--Expertise, Media Projection--and the Elaboration of Mexico's Access to Information Law", 26-28.

⁹⁸ Michener has interviewed some of those individuals present at the negotiations and provides unique insight. *Ibid.*, 29-32.

⁹⁹ K. Doyle, "Mexico Passes New Freedom of Information Law," *National Security Archive* (2 May, 2002), <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB68/index3.html>.

¹⁰⁰ *Ibid.*

versions of the transparency law, has argued the proposals presented by the government and the Group 'coincided on fundamental points and differed primarily on technical questions and details.'¹⁰¹ However, Michener points out that Fox's initial commitment was vague and initiatives faced considerable bureaucratic and legislative hurdles, hence the leak of draft proposals, which might suggest the Group was a critical factor in producing reform considered by experts as one of the most progressive of its kind in the world.¹⁰² Indeed, without the presence of the Oaxaca Group, the case of Mexico may have developed much like the case of China, where isolated internal administrative reform produced only conservative regulation in favor of openness.

The Mexican *Federal Law of Transparency and Access to Public Government Information*, adopted in 2002 and implemented in 2003, is considered one of the most progressive FOI laws in the world.¹⁰³ The 'empty signifier' of FOI law was filled in Mexico by a sense of democratic urgency driven by the newly independent media. Indeed, Human Rights Watch considered the law 'may prove to be the most important step Mexico has taken in its transition to democracy since the 2000 election.'¹⁰⁴ Unlike the Chinese 'push' model, the Mexican law provides a robust access right that does not require a motive for request.¹⁰⁵ The right of access is covered by procedural guarantees requiring requests to be processed in a facilitative manner; for example, officials failing to comply with the system, by perhaps destroying information or denying access negligently or fraudulently are administratively liable and may face sanctions.¹⁰⁶ Yet perhaps the most unique aspect of the Mexican FOI law is the function of a 'very strong and independent' oversight mechanism: the Federal Institute for Access to Public Information (IFAI), which functions, amongst other things, to interpret the law as an administrative regulation, monitor implementation and make recommendations in case of

¹⁰¹ Bookman and Guerrero Amparan, "Two Steps Forward, One Step Back: Assessing the Implementation of Mexico's Freedom of Information Act," 14.

¹⁰² Michener, "The Surrender of Secrecy: Explaining the Emergence of Strong Access to Information Laws in Latin America", 75.

¹⁰³ Mendel, "Freedom of Information: A Comparative Legal Survey," 80.

¹⁰⁴ Human Rights Watch, "Lost in Translation: Bold Ambitions, Limited Results for Human Rights under Fox," (New York: 2006), 4.

¹⁰⁵ Mendel, "Freedom of Information: A Comparative Legal Survey," 80.

¹⁰⁶ Ibid.

non-compliance, provide advice to applicants, develop forms for information requests, promote training, and prepare guides on usage of the law for the public.¹⁰⁷

The progressive FOI regime adopted in Mexico has been implemented with general appraisal. One author suggests the IFAI has ‘*revolutionized* the way in which institutions deliver information. Key information is now available through each government agency’s website.’¹⁰⁸ Abraham Benavides argued in 2006 that the law is ‘creating a new culture of openness and transparency that will eventually provide a more participatory democracy for all citizens.’¹⁰⁹ A more recent review by Zachary Bookman and Juan-Pablo Amparan, however, presented a sobering appraisal that emphasized the dangers of a perceived lack of political will that tended to allow questionable refusals, especially in high ranking agencies, such as the Auditor General Office.¹¹⁰ Bookman and Amparan also emphasize that the apparent impact on corruption has been ‘unimpressive.’¹¹¹ They explain that given the entrenched nature of corruption within Mexican sociopolitical fabric and the lack of support mechanisms for FOI law in the fight against corruption, such as a robust ombudsman’s office, the bulky transparency apparatus has not shown a reliable reduction in corruption or rise in accountability.¹¹² They pessimistically muse: ‘Like sunlight on a polluted puddle, transparency seems to have disclosed additional wrongdoings and corruption in Mexico without really cleaning the water.’¹¹³

9.3.3 Social Activism: India’s Right to Information Movement

Social activism is a national factor in the adoption of FOI law often closely tied with media advocacy, as visible in Mexico in the composition of the Oaxaca Group of academics, lawyers and activists. However, social activism must be given independent

¹⁰⁷ Ibid., 81.

¹⁰⁸ J. R. Leon, "One Step Forward, Two Steps Back? Budget Transparency and Access to Information in Mexico," in *Mexico's Right-to-Know Reforms: Civil Society Perspectives*, ed. J. A. Fox (Santa Cruz: Center for Global, International and Regional Studies, 2007), 164.

¹⁰⁹ A. D. Benavides, "Transparency and Public Administration in Mexico: How the Enactment of a Law Is Changing Culture," *Journal of Public Affairs Education* 12, no. 4 (2006): 461.

¹¹⁰ Bookman and Guerrero Amparan, "Two Steps Forward, One Step Back: Assessing the Implementation of Mexico's Freedom of Information Act."

¹¹¹ Ibid.: 49.

¹¹² Ibid.

¹¹³ Ibid.

consideration because it presents a unique factor. This sort of activism is visible to some degree in all three cases. Here the cases of China and India will be highlighted given that a glimpse of Mexican social activism has just been provided in association with media advocacy. Social activism is actually detectable in China, despite the authoritarian state form, but only in an indirect and deceiving manner, because such activism contributed to reform processes that preceded national transparency reform and was captured and directed quite quickly by the CCP (as discussed below). India provides the best example of social activism wherein an independent grassroots movement, led by former public servants and other professionals, provided the driving force for reform and filled the empty signifier of FOI law in association with local needs relating to poverty and development (see below).

There is an element of grassroots advocacy in the case of China. A unique system of 'open village affairs' (discussed briefly above, see 9.2.2) emerged in China in the post-Maoist reform era of the 1980s that provided precedence for the OGI Regulations.¹¹⁴ Local cadres and brigades formally setup to manage communal production began to collapse with the introduction of family farming and decollectivization under the post-Mao leadership of Deng.¹¹⁵ Many towns and villages degenerated into in a state of disorder and paralysis as a result.¹¹⁶ The vacuum was gradually filled by a system of self-governing village committees, staffed by publicly elected officials, that practiced a new type of *open* public administration.¹¹⁷ These committees were a practical solution to a crisis in authority, but they were also an experiment in a new ideology of socialist democracy promoted by the CCP.¹¹⁸ Throughout the 1980s and 1990s 'open village affairs' were actively investigated, promoted and implemented by central agencies, as a

¹¹⁴ Xiao, "Freedom of Information Reform in China: Information Flows Analysis", 71-95.

¹¹⁵ J. C. Oi and S. Rozzelle, "Elections and Power: The Locus of Decision-Making in Chinese Villages," *The China Quarterly*, no. 162 (2000): 523-27, M. K. Jennings, "Political Participation in the Chinese Countryside," *American Political Science Review* 91, no. 2 (1997): 361, A. C. Choate, "Local Governance in China: An Assessment of Villagers Committees," (The Asia Foundation, 1997), 5.

¹¹⁶ D. Kelliher, "The Chinese Debate over Village Self-Government," *The China Journal*, no. 37 (1997): 66.

¹¹⁷ O'Brien and Li, "Accommodating 'Democracy' in a One-Party State: Introducing Village Elections in China.", Choate, "Local Governance in China: An Assessment of Villagers Committees.", A. F. Thurston, "Muddling Towards Democracy: Political Change in Grassroots China," (Washington: United States Institute of Peace, 1998).

¹¹⁸ In 1980 Deng Xiaoping stated that 'facilitating the democratic management of the state, especially at the basic local level' is a new aim for Chinese leaders. Choate, "Local Governance in China: An Assessment of Villagers Committees," 6.

matter of 'life and death' for the long term security and survival of the CCP.¹¹⁹ Various communications and laws were handed down in support of the reform agenda and these later functioned as early experiments in government transparency. For example, Article 22 of the *Organic Law of the Villagers' Committees* (1998) requires that village committees publicize laws, regulations and state policies in order to facilitate understanding among the villagers and apply a system of open administration of village affairs in order to enable supervision by villagers.¹²⁰

There is perhaps little doubt that 'open village affairs' provided precedence for openness in public administration in post-Mao China; however, the extent to which it actually represents genuine social advocacy for transparency is highly debatable. The reform agenda originated spontaneously amongst concerned villagers but was quickly taken up by the CCP within a year or two as a suitable avenue for reform to be directed in the interest of the maintenance of the Party through political concession.¹²¹ 'Open village affairs' became a localized political reform agenda directed by China's centralized state, with substantial involvement of the Ministry of Civil Affairs in particular.¹²² The process of reform leading to early experiments in open government in China was orchestrated from above by government agencies; it did not have the same autonomous, activist character as, for example, the social activism within India (discussed below). 'Open village affairs' were developed and implemented from above as a reform agenda to ensure legitimacy and stability for the CCP in much the same way that transparency would later be perceived on a broader level within China. The gradualist, internally controlled way in which 'open village affairs' evolved in China provided a preview as to how transparency would be introduced more widely throughout the various levels of governance, especially on the national level (see 9.3.1 above).

India is an exceptional case study in the adoption of FOI law because of the central importance of social activism within it. Such activism was crucial in providing the basis for collective action for the adoption of FOI law. Social activism for freedom of

¹¹⁹ Shi, "Village Committee Elections in China: Institutional Tactics for Democracy," 392.

¹²⁰ "Organic Law of the Villagers Committees of the People's Republic of China,"

<http://www.china.org.cn/english/government/207279.htm>, (Date Accessed: 13 February, 2011).

¹²¹ See Kelliher, "The Chinese Debate over Village Self-Government.", Pastor and Tan, "The Meaning of China's Village Elections."

¹²² See Kelliher, "The Chinese Debate over Village Self-Government."

information in India has multi-faceted, it incorporated a range of actors, including groups such as the Consumer Education Research Council, mentioned above (see 9.2.2); however, the most important element was grassroots and rural. Indeed, Harsh Mander and Abha Joshi, Indian activists involved in the campaign for transparency law, explain:

The most important feature that distinguishes the movement for the people's right to information in India from that in most other countries, whether of the North or the South, is that it is deeply rooted in the struggles and concerns for survival and justice of the most disadvantaged rural people.¹²³

Central to the development of a right to information movement in India was Mazdoor Kisan Shakti Sangathan (MKSS), literally the Workers' and Farmers' Power Organization, which was formed in the late 1980s in Rajasthan, a poverty stricken and drought prone area, by a mixed nucleus of experienced and inexperienced social activists, all seeking to build an organization for the poor.¹²⁴ A leader amongst the group, Aruna Roy, for example, was a former senior civil servant with the Delhi public service, who sought to empower the poor of India at a community level.¹²⁵ The activists sought to embed themselves within the community and empower the rural poor; they avoided the trappings and perks often enjoyed by wealthy non-government organizations (NGOs). Mander and Joshi explain:

They would not accept funding or set up the conventional institutional structures of buildings and vehicles common to most NGOs, they would not set up the usual delivery system of services, they would accept no more than minimum wages for unskilled labour, and this too they would derive mainly from small research projects and assistance from friends, they would not accept international or government funding for their work, and they would not live with facilities superior to those accessible to the ordinary small farmer of the surrounding countryside.¹²⁶

MKSS became involved in a variety of 'basic issues of the rural landless poor', especially land redistribution and minimum wage concerns, that often involved

¹²³ Mander and Joshi, "The Movement for Right to Information in India: People's Power for the Control of Corruption."

¹²⁴ Jenkins and Goetz, "Accounts and Accountability: Theoretical Implications of the Right-to-Information Movement in India." and D. Mahaan, "Transparency and Poverty: Interview with Aruna and Nikhil Dey," <http://www.worldpress.org/Asia/1014.cfm#down>, (Date Accessed: 4 January, 2011).

¹²⁵ Mahaan, "Transparency and Poverty: Interview with Aruna and Nikhil Dey."

¹²⁶ Mander and Joshi, "The Movement for Right to Information in India: People's Power for the Control of Corruption."

government-sponsored public works—a major source of income within the impoverished countryside.¹²⁷ Inadvertently, the organization also became involved in issues of access to information because, as Aruna Roy and Nikhil Dey write:

Every time the workers asked to be paid the minimum wage, they were told that they had not done the work, a claim that, they were also told, was based on records. When the MKSS demanded to see the records, the reply was that these were government accounts and therefore secret.

And so it was that a simple demand for minimum wages became a fight for the right to information.¹²⁸

MKSS began to incorporate access to information into its platform in the early 1990s.¹²⁹ Amongst other things, MKSS conducted *jan sunwais*, a sort of public hearing, where documents obtained from officials (generally relating to public works, the pay due and paid to those employed, and the services rendered and paid for) are read out and explained to the people (many of whom are illiterate) in open public meetings.¹³⁰ Workers and members of the community are then able to respond. Such meetings empowered marginalized sections of the community and revealed substantial fraud and corruption.¹³¹ And, most importantly, these activities provided the basis for the development of the right to information movement tied to poverty and development in India.

The philosophy of MKSS, and perhaps the philosophy of the right to information movement in India in general, considering the activities and activists of MKSS fed into the NCPRI, was relatively radical in the sense that the right to information is tied to aspirations for participatory democracy.¹³² Shekhar Singh, a founding member of the NCPRI, even suggests MKSS may be considered an alternative to armed struggle; he writes with a Lockean undertone that ‘whereas one tried to counter regressive State power by the power of the gun, the other tried to use transparency to progressively disempower the State in favour of empowering the citizen, thereby somewhat righting the

¹²⁷ Roy and Dey, "Fighting for the Right to Know in India," 4.

¹²⁸ Ibid.

¹²⁹ Mahaan, "Transparency and Poverty: Interview with Aruna and Nikhil Dey."

¹³⁰ Jenkins and Goetz, "Accounts and Accountability: Theoretical Implications of the Right-to-Information Movement in India."

¹³¹ Mander and Joshi, "The Movement for Right to Information in India: People's Power for the Control of Corruption."

¹³² Singh, "The Genesis and Evolution of the Right to Information Regime in India."

imbalance in the power structure.’¹³³ MKSS and the Indian right to information movement has struggled to increase access to information as a means of empowering everyday people in order to bridge an apparent gap between the state apparatus and society. Leaders within the movement state clearly, ‘The present demands of India’s citizens... are no longer for a particular concession, but for a share of governance itself.’¹³⁴ What this means exactly is uncertain, but it certainly suggests a radical cause removed from rudimentary administrative reform (see 9.3.1 above), which it bolstered to produce legislation.

The adoption of FOI law in India is unique in the manner with which it has been driven by social activism and grassroots campaigns. The Indian ‘empty signifier’ was filled with a social dimension associated with national concerns of development, poverty, corruption, maladministration and power. The force of the social activism behind the adoption of the *Right to Information Act*, adopted and implemented in 2005, is visible in its name.¹³⁵ Other names for similar laws adopted around the world have typically included ‘access to information’ or ‘freedom of information’ and suggest government-held information should be accessible or free from restraint. However, the ‘right to information’, as a title, firmly conveys the message, inherent in Indian social activism, that members of the public have a ‘right to know’ to empower themselves with information and that transparency law aims to provide a functional mechanism for this right. The *Right to Information Act* is a progressive law reform that has a developed regime for pro-active disclosure, an independent oversight body, strong promotional measures, and a narrow regime of exemptions.¹³⁶

As in the cases of China and Mexico, a certain amount of achievement and success is discernable from the very fact that transparency reform was adopted in India, however, the harsh reality of implementation and usage during the first few years of existence raises concerns. In a recent study, Alasdair Roberts suggests the implementation of FOI law in India has been examined more ‘doggedly’ than in any

¹³³ Ibid.

¹³⁴ Roy and Dey, "Fighting for the Right to Know in India."

¹³⁵ The issue of the importance of the name of the law has been an issue within recent law reform in Australia: Independent Review Panel, "The Right to Information: Reviewing Queensland's Freedom of Information Act," 322-25.

¹³⁶ Mendel, "Freedom of Information: A Comparative Legal Survey," 55.

other country.¹³⁷ He synthesizes a range of reports produced by external actors such as the CHRI, and internal bodies such as a committee of central and state information commissioners.¹³⁸ Roberts suggests that although somewhere around two million requests were made under the new transparency regime in the first two and a half years of its existence, more requests might have been expected had it not been for limited, uneven public awareness and ‘a host of factors that make it difficult for citizens [and the media] to make requests under the law.’¹³⁹ These barriers to access include bureaucratic indifference or outright hostility towards requests and proactive disclosure, as well as inadequately resourced review mechanisms.¹⁴⁰ Nevertheless, Roberts is optimistic about the future given evidence of a number of innovations in implementation, including a challenge to the public/private divide, and the fact that the law has only been in place several years.¹⁴¹

9.4 Signposts for the Future

The chapter has so far examined the adoption processes in the important case studies of China, Mexico and India in historical context as passive revolutions that combined facilitative transnational factors and primary national factors. The final section of the chapter examines the adoption processes amongst the cases with a view to the future of public sector transparency reform. The section addresses issues born of passive revolution and the dynamic of national/transnational factors unique to recent Hobbesian adopters (see 9.4.1 below). The nature of passive revolution as a national reflection of international developments necessarily raises concern over motives for adoption and issues of consolidation. The section then turns to consider the variation between law reforms within the cases and argues such variation contradicts universalistic claims submitted by activists and reflects variable understandings of the meaning and purpose of public sector transparency today (9.4.2 below).

¹³⁷ Roberts, "A Great and Revolutionary Law? The First Four Years of India's Right to Information Act."

¹³⁸ Ibid.: 926.

¹³⁹ Ibid.: 927.

¹⁴⁰ Ibid.: 927-31.

¹⁴¹ Ibid.: 931-32.

9.4.1 Issues Born of Passive Revolution

The recent passive revolutions in the adoption of FOI law in China, Mexico and India separate Hobbesian adopters with earlier, and even later, Lockean adopters. This is because while adoption within Lockean states had 'slow-moving causes' that developed gradually across and within each country, adoption amongst Hobbesian contenders has been sudden and tied to international developments.¹⁴² The basis for access law within Lockean states developed through 'cumulative' national developments that reached a 'threshold' in the twentieth century when the law diffused throughout a number of Lockean states in a process of 'lesson drawing' within a family (or families) of nations within a Cold War international economy (as discussed at 6.3).¹⁴³ Late Lockean adopters were influenced by international developments that began to emerge in the 1990s and yet within each a foundation for reform had been developing for some time.¹⁴⁴ In contrast, Hobbesian states, like China, Mexico and India, adopted transparency law as part of a sudden shift in state formation within a post-Cold War emergent global political economy (see 7.2 and 8.5). Hobbesian adopters have been substantially influenced by international developments and national/ transnational dynamics unique to the global political economy (as shown in previous sections). Prompt adoption linked with international developments distinguishes Hobbesian adopters from Lockean adopters and raises concerns especially unique to the former.

Perhaps the most serious issue born of passive revolution is the possibility of international developments outpacing national developments and the subsequent impact this may have on the nature of adoption. For example, it may be argued that in China the adoption of the OGI Regulations were tied to limited national development associated with the continued rule of the CCP and significant pressure from transnational networks within the global economy (see 9.2.1 and 9.3.1). This is an issue, because without appropriate national support and context reform may become no more than window dressing, 'good-looking from a distance, perhaps, but ill-suited to any useful end and

¹⁴² Pierson, *Politics in Time: History, Institutions and Social Analysis*, 79-102.

¹⁴³ *Ibid.*, 82.

¹⁴⁴ Ackerman and Sandoval-Ballesteros, "The Global Explosion of Freedom of Information Laws," 113.

even dysfunctional in practice.’¹⁴⁵ Evidence, supported in the case of China, suggests the strength of transparency law reform is generally weaker within cases where law has resulted from heavy transnational pressure than in cases where national factors were paramount: for example, Michener argues, the international pressure applied to Honduras and the Dominican Republic had an adverse impact on the quality of law, whereas in Mexico strong local media advocacy helped produce robust legislation.¹⁴⁶ Such pressure and adoption may have several long-term consequences that reach beyond the strength of particular transparency law, especially consequences related to consolidation.

Issues of passive revolution feed into consolidation of FOI law as a functioning regime for access. Transnational actors and international donors have been charged with ignoring the importance of building national support structures to facilitate the utility of the law by narrowly focusing on getting law adopted.¹⁴⁷ The narrow focus of many transnational supporters and the prompt nature of adoption within the case studies and other Hobbesian adopters leave important elements of a functioning FOI regime, such as public demand and state capacity, to catch-up. Even Hobbesian adopters with an apparently strong domestic base have struggled. For example, India is a case within which a widespread national campaign for a right to information developed and yet actually consolidating the law has still presented a challenge; the review produced by Roberts of current evaluations of the performance of the *Right to Information Act* concludes that after two and a half years and roughly two million requests ‘the use of the law was constrained by uneven public awareness, poor public planning and bureaucratic indifference or outright hostility.’¹⁴⁸ Issues of consolidation are not completely unique to Hobbesian adopters (as Lockean states have also struggled in consolidation), but they necessarily take on more importance given historical state-society relations within those states, the importance of external pressure and the relatively sudden nature of adoption.

¹⁴⁵ G. Michener, "FOI Laws around the World," *Journal of Democracy* 22, no. 2 (2011): 146.

¹⁴⁶ ———, 7 December 2010.

¹⁴⁷ G. Papagiannis, X. Hu, and A. Caine, Interview 2009.

¹⁴⁸ Roberts, "A Great and Revolutionary Law? The First Four Years of India's Right to Information Act," 925.

9.4.2 Variation in Law Reform amongst Cases

Another, perhaps less immediate, but certainly substantial issue that arises from the adoption of FOI law in China, Mexico and India is variation. FOI laws amongst recent adopters vary substantially. Whereas during the early diffusion of the law legal principles and architecture remained relatively stable, today recently adopted laws vary in important ways. Such variation is nowhere more visible than between the cases of China and Mexico. The recent regulation adopted in China, which is not currently law, although still legally binding in a court of law relating to administrative review, does not incorporate a substantial access mechanism whereby citizens can actively request information and instead the regulation emphasizes the need for government to proactively push information into the public domain.¹⁴⁹ On the other hand, Mexico is considered, on paper anyway, to have the most progressive transparency law in the world: amongst other things, it is supported by unique electronic tools and is overseen by a well-funded review body endowed with powers to punish uncooperative officials.¹⁵⁰

This sort of variation is a long-term question. Clearly, even without in-depth legal analysis, and from only the key points of variation highlighted above, it is easy to see that China presents one possible standard of access, while Mexico presents another. Some commentators may argue the Chinese FOI regime is in a state of gradual progressive reform towards a Mexican-type model.¹⁵¹ However, such a view is debatable, especially given the fact that the CCP has principally affirmed its right to authoritarian rule on a consistent basis and the fact that relative transparency—the type of transparency embodied by the recent Chinese reform—is sustainable under authoritarian rule.¹⁵² Assuming the Chinese model represents a relatively stable standard, the real question is how much the type of variation visible between China and Mexico may impact international standards. In 2001 Colin Bennett noted ‘the adoption of FOI legislation in one country has direct consequences for information policies of others.’¹⁵³ He further noted ‘there is evidence that freedom of information regimes are becoming increasingly

¹⁴⁹ Xiao, "China's Limited Push Model of FOI Legislation."

¹⁵⁰ Mendel, "Freedom of Information: A Comparative Legal Survey," 81.

¹⁵¹ See for example: Y. Keping, "Toward an Incremental Democracy and Governance: Chinese Theories and Assessment Criteria," *New Political Science* 24, no. 2 (2002).

¹⁵² See Rodan, *Transparency and Authoritarian Rule in Southeast Asia: Singapore and Malaysia*.

¹⁵³ Bennett, "Globalization and Access to Information Regimes."

interdependent.¹⁵⁴ Bennett suggests such direct interdependence may either produce a 'trading up' of FOI standards, or the opposite.¹⁵⁵ The question may be put: will the standard amongst recent adopters potentially 'trade down' and perhaps follow the example set in China, or will it 'trade up' and perhaps follow the example of Mexico?

There is a third option, however, to universal 'trading down' or 'trading up' of standards within the current state of variation: a situation of national and regional variation in public sector transparency according to political systems and local contexts. There is evidence to suggest the types of access law reform adopted in Mexico, and perhaps China, are influencing more recent adopters in contextual ways. Mexico's 'strong' access law has provided a model for emulation elsewhere in Latin America.¹⁵⁶ For example, Jesse Franzblau of the National Security Archive reported in February of 2009 that 'in a testament to Mexico's [sic] frontrunner role in the global transparency movement' the Vice President of Guatemala, Rafael Espada, led a delegation of officials to discuss implementation issues and the 'inner workings of Mexico's [sic] information system' with officials from Mexico's progressive oversight body, the IFAI.¹⁵⁷ Guatemala had passed 'moderately strong' access law in September 2008.¹⁵⁸ Such emulation has not yet been reported of the Chinese OGI Regulations, yet it is probable that other authoritarian regimes may draw from the regulations in an attempt to develop 'transparent authoritarianism' that provides minimal political concessions while partially satisfying the pressures of advocates and the global political economy.¹⁵⁹ Potential emulators may include Singapore or Cambodia, or authoritarian regimes within Africa or the Middle East.

¹⁵⁴ Ibid.

¹⁵⁵ Ibid.

¹⁵⁶ Michener, "The Surrender of Secrecy: Explaining the Emergence of Strong Access to Information Laws in Latin America", 30.

¹⁵⁷ J. Franzblau, "Guatemala Looks to Mexican Model for Access Implementation," *freedominfo.org* (13 February 2009), <http://www.freedominfo.org/2009/02/guatemala-looks-to-mexican-model-for-access-implementation/>.

¹⁵⁸ Michener, "The Surrender of Secrecy: Explaining the Emergence of Strong Access to Information Laws in Latin America", 30.

¹⁵⁹ Lorentzen, Landry, and Yasuda, "Transparent Authoritarianism? An Analysis of Political and Economic Barriers to Greater Government Transparency in China."

9.4.3 Future Meaning and Purpose of Public Sector Transparency

The variation in law reform amongst China, Mexico and India, and the wider existence of such variation runs contrary to universalistic claims often put forth by advocates, who attempt to present a 'one size fits all' model argued to provide specific benefits relating to public administration, public participation and economic growth, amongst other things.¹⁶⁰ The variation suggests the future meaning and purpose of public sector transparency is a contested phenomenon. Indeed, public sector transparency may be, like democracy, an 'essentially contested concept.'¹⁶¹ There is a general consensus that democracy means rule by the people; however, the realization of this concept is open to complexity and contradiction; similarly in the case of public sector transparency: general agreement that public sector transparency means access to government-held information is widespread and basic, but the realization of this in terms of what information should be accessible and how it should be accessible is highly contested, and perhaps *essentially* contested.

There is no single meaning and purpose for public sector transparency and that is why variation exists between the cases. This is highlighted by David Heald: he notes transparency can function in different directions and in different varieties.¹⁶² FOI law provides vertical 'downwards' transparency in terms of the state-society hierarchy that allows the 'ruled' to observe the conduct, behavior or results of 'rulers', and this 'downwards' transparency is 'inwards' in the sense that it allows outsiders (society) the ability to observe conduct, behavior or results within an organization (the state apparatus).¹⁶³ Yet in spite of this essence, public sector transparency and access law are open to a number of variations, which Heald notes under three headings:

- 'event versus process transparency',
- 'transparency in retrospect versus transparency in real time', and
- 'nominal versus effective transparency.'¹⁶⁴

¹⁶⁰ Darch and Underwood, *Freedom of Information and the Developing World: The Citizen, the State and Models of Openness*, 13-46.

¹⁶¹ W. B. Gallie, "Essentially Contested Concepts," *Proceedings from the Aristotelian Society* 56 (1955-1956).

¹⁶² D. Heald, "Varieties of Transparency," in *Transparency: The Key to Better Governance?*, ed. C. Hood and D. Heald (Oxford: Oxford University Press, 2006).

¹⁶³ *Ibid.*, 27-29.

¹⁶⁴ *Ibid.*, 29-35.

Each of these variations may find a different balance within each transparency regime depending on the context and perceived meaning and purpose of access. Indeed, from the case studies of China, Mexico and India tension between variable views of public sector transparency that balance Heald's varieties in different ways are discernable.

There appears a tension between *instrumental* and *intrinsic* views of public sector transparency within the case studies.¹⁶⁵ On the one hand, China presents an instrumental, utilitarian viewpoint, a perspective also visible in the way the WB emphasizes how FOI law contributes to institutional quality or 'better quality governance.'¹⁶⁶ From this perspective transparency should be valued instrumentally and applied according to a cost benefit analysis that may include a reason to limit transparency on the basis that 'ignorance... may contribute positively to social functioning.'¹⁶⁷ On the other hand, India and Mexico present an intrinsic view of public sector transparency and this view, value-laden with reference to democratic politics, is also visible in support provided by international human rights advocates such as Article 19, who stress the importance of freedom of expression and political participation.¹⁶⁸ Without stretching the dichotomy too far and recalling the key differences in transparency law reform flagged by Heald already highlighted above, it may be possible to position these two viewpoints of public sector transparency on either end of Heald's variations; so an instrumental concept of FOI law may provide a form of transparency that is events based, retrospective and relatively nominal, whereas an intrinsic concept of FOI law may provide a form of transparency that is focused on processes, not just events, in real time with a degree of effectiveness in the use of information (see Table 14, below).

¹⁶⁵ See for example the contrasting views presented by P. Birkinshaw, "Transparency as a Human Right," in *Transparency: The Key to Better Governance?*, ed. C. Hood and D. Heald (Oxford: Oxford University Press, 2006). and D. Heald, "Transparency as an Instrumental Value," in *Transparency: The Key to Better Governance?*, ed. C. Hood and D. Heald (Oxford: Oxford University Press, 2006).

¹⁶⁶ R. Islam, "Do More Transparent Governments Govern Better?," (World Bank Institute, 2003).

¹⁶⁷ Heald, "Transparency as an Instrumental Value," 60.

¹⁶⁸ Birkinshaw, "Transparency as a Human Right," 59.

Table 14: Variable Concepts of Public Sector Transparency

Instrumental Transparency (China/World Bank)	Intrinsic Transparency (India and Mexico/ Article 19)
<u>Event</u> : Access to points/states that are measurable	<u>Process</u> : Access to flow of information
<u>Retrospective</u> : Access to dated documents	<u>Realtime</u> : Access to current documents
<u>Norminal</u> : Modest receptors for use of information	<u>Effective</u> : Strong receptors capable of processing, digesting and using information

The instrumental and intrinsic dichotomy of concepts of public sector transparency presented here is only supposed to highlight variety and tension—each concept is only an ‘ideal type’ suitable for analysis.¹⁶⁹ In reality concepts of public sector transparency are more complicated and intertwined within a single regime: each access regime embodies a tension between the extremes of each concept, between instrumental and intrinsic values and varieties. This tension has always existed, since the first FOI Act was adopted in Sweden, and is related to the historically contested balance between secrecy and openness, visible within both the Lockean heartland and the Hobbesian contenders, and how much openness should represent a complete reversal of secrecy or a tempering of it. But due to the widespread diffusion of FOI law and public sector transparency, this tension is visible now more than ever. It is a tension unlikely to find resolution in any universalistic way; it is perhaps most likely to find balance within certain historical, social and political contexts.

9.5 Conclusion

This chapter formed the second part of a two part analysis of China, Mexico and India as comparative Hobbesian adopters of FOI law that began in the previous chapter. While the previous chapter looked at the historical relationship between state formation and access to public information within the cases, the current chapter examined more closely the factors involved in the the adoption of FOI law. The chapter reviewed the transnational and national factors of adoption through the lens of passive revolution, which

¹⁶⁹ Weber, "'Objectivity' in Social Science," 211.

conceptualizes adoption in each case as a unique national reflection of international developments. Intertwining supportive transnational factors, including norm emulation and foreign support, and primary national factors, including administrative reform, media advocacy and social activism were reviewed in turn. The final section of the chapter then considered the important case studies as signposts of the future. It argued the nature of passive revolution raises concerns for consolidation. But perhaps more importantly in terms of the future of public sector transparency following the widespread diffusion of access law in recent years, the chapter suggested variation in reform outcomes between the cases, particularly China and Mexico, reveals contrasting models that contest the universalistic claims of activists and potentially provide the basis for further future variation within the current age of open government.

10: CONCLUSIONS

10.1 Introduction

This thesis addressed the causes of the diffusion of FOI law, as a case study in the rise of public sector transparency. The study broke with a strong tradition of legal formalism and empiricism within the FOI literature to utilize theoretical and methodological tools developed in the social sciences. Socio-legal analysis, which leverages these tools, was used in the thesis to a) draw out the largely implicit modernization and agent-centered theoretical assumptions of existing diffusion explanations and b) provide the basis for the selection of an alternative theoretical foundation of assumptions of socio-political change that may be used to address the research question. Transnational historical materialism, the theoretical foundation adopted in the study, presented a critical alternative to current modernization and agent-centered foundations of diffusion, which tend to focus (respectively) on political reform as an element of capitalist development and on the activities of social actors. From the perspective of transnational historical materialism, the causes of the diffusion of FOI law and the rise of public sector transparency function within a broad structural framework centered on the history of states in the modern world system.

The final chapter of the thesis is divided into four main sections. The first section briefly considers the importance of the study in terms of understanding the rise of public sector transparency. In focusing on the diffusion of a case study transparency reform—FOI law—the study attempted to provide a platform for understanding the rise of public sector transparency, which represents a fundamental transformation in the way information is managed within secular executive government. The second section of the chapter deals strictly with contributions made by the thesis to the FOI literature. This

section emphasizes how the thesis has contributed to recent attempts to build socio-legal perspectives within the literature; the section also highlights the way in which socio-legal analysis was utilized to critique existing explanations of the diffusion of FOI law and to provide an alternative theoretical foundation, transnational historical materialism. Together sections three and four of the chapter present the conclusions drawn from applying transnational historical materialism on multiple levels. More specifically, the third section of the chapter highlights conclusions discernable from the nomothetic understanding provided through macro-historical analysis; whereas the fourth (and final) section of the chapter highlights idiographic conclusions discernible from contemporary case study analysis.

10.2 Understanding the Rise of Public Sector Transparency and FOI Law

The broad subject of this study has been the rise of public sector transparency as a historical phenomenon and contemporary event. The rise of transparency in government represents a fundamental transformation in the way departments and agencies have been traditionally administered. Most governments throughout modern history have operated on the premise that access to government-held information should be restricted unless specific reasons for releasing it exist, but now many governments around the world operate on the premise that information should be accessible unless there are specific reasons for withholding it. It may be said that secrecy has gradually, and, in more recent years, dramatically been replaced by openness as a guiding principle in public sector information management. This study has sought to provide a platform for understanding this transformation via a socio-legal study of the diffusion of FOI law, a reform widely regarded as an indicator of overall levels of public sector transparency.¹

The socio-legal starting point of the thesis, which enables the utilization of a wide variety of theoretical and methodological tools from the social sciences, potentially provides multiple avenues for understanding the diffusion of FOI law and the rise of

¹ See for example: McClean, "Who Pays the Piper? The Political Economy of Freedom of Information," 392.

public sector transparency. Such avenues include the largely implicit modernization and agent-centered perspectives prevalent within existing FOI literature (as examined in Chapter Four). The thesis leveraged the versatility of socio-legal analysis in order to go beyond these existing approaches to explore the diffusion of FOI law with a strand of global political economy, namely transnational historical materialism (see Chapter Five). The diffusion of FOI law and the rise of public sector transparency were understood from this perspective as embedded in the changing formation of states within the modern capitalist world system. This understanding provides both historical and contemporary insights, which are highlighted below (see 10.4 and 10.5). But, before these conclusions are examined, it is necessary to draw the frame of reference down from public sector transparency into how the thesis has contributed particularly to the study of FOI law in order to demonstrate how such conclusions were reached.

10.3 Contribution to the FOI Literature

The thesis made a distinct socio-legal contribution to the FOI literature. FOI studies are strong in addressing the architecture and usage of FOI law (see 10.3.1 below), but only recently have scholars begun consciously building socio-legal approaches that appreciate social, political, economic and/or technological context(s) (10.3.2 below). The current thesis has been a contribution to this recent building of socio-legal analysis. It addressed the research question of the causes of the diffusion of FOI law from a socio-legal standpoint that allows for an exploration and application of otherwise largely implicit theoretical assumptions regarding the context in which FOI law should be understood (10.3.3). The thesis chose to apply transnational historical materialism as a theoretical foundation, which may be considered a novel example of the utility of socio-legal analysis in providing new insights into the context of FOI law (10.3.4).

10.3.1 Strengths of the FOI Literature

Chapter Two of the thesis examined the constitution of FOI literature in terms of overlapping but representative themes of analysis. These themes included ‘legal analysis’, ‘media analysis’, ‘government investigation’, ‘administrative analysis’, and ‘socio-legal analysis’ (2.3). Each theme of analysis examines FOI law from a unique

perspective with its own set of questions and concerns. For example, ‘legal analysis’, by far the most prominent form of analysis within the FOI literature, and conducted generally by legal scholars and activists, is concerned with the letter and spirit of access law, both within individual jurisdictions and across comparative jurisdictions (2.3.1). ‘Administrative analysis’, on the other hand, conducted generally by researchers associated with the study of public administration, is concerned, from an academic perspective, with how government departments and agencies fulfill or fail to fulfill procedural requirements (2.3.4). ‘Government investigation’ presents a similar frame of reference to administrative analysis, although it is conducted by review bodies setup by government, and facilitated by scholars and supporters, concerned with how specific jurisdictions may better meet or define the requirements of legislation (2.3.3).

The FOI literature is overall strong in its consideration of the architecture and usage of access law, in examining access law as a singular entity used critically by civil actors, especially the media, in attempting to hold departments and agencies to account. Legal analysis provides ongoing commentary on comparative legal components and how they function in relation to interpretation and application (2.3.1). Media analysis highlights the importance of media outlets as important actors that utilize transparency law on behalf of the public and its ‘right to know’ (2.3.1). However, outside of the relatively narrow frame of reference incorporating architecture, usage and utility, the FOI literature lacks development; it tends to be legalistic and empirical.² Analysis of the *context* of FOI law within the literature remains weak. This weakness has been addressed in recent years by administrative analysis (through its consideration of how government cultures often inform varying administrative practices), but also, especially, socio-legal analysis, which draws on the humanities, particularly social and political science, to provide theoretical and methodological tools for better understanding the context of access law (2.3.5).

10.3.2 Building Needed Socio-legal Analysis

Socio-legal analysis holds the key to developing a contextual understanding of access law as an embedded transparency mechanism that functions within a supportive network of

² Darch and Underwood, *Freedom of Information and the Developing World: The Citizen, the State and Models of Openness*, 50.

laws, institutions, cultures and practices. Socio-legal analysis has, however, generally been an underdeveloped and implicit theme within the FOI literature, due largely to a lack of interdisciplinary research (2.4). Early socio-legal studies include a study by Greg Terrill that examined the inherent individualism of access law that often places a single requester up against well-learned and well-resourced institutions.³ Terrill's study suggests there is a need to combat such individualism in order to strengthen access regimens against potential institutional resistance. Another early socio-legal study was undertaken by Stephen Lamble, who argued the American model of FOI law provides a poor transplant for foreign adopting countries due to the inevitable differences in cultural, political and institutional settings.⁴ For example, he says, the adoption of the American model in Australia did not properly consider the unique requirements of the Australian Westminster system.⁵ He recommends adopters consider differences in setting and develop indigenous policy, as occurred in the case of New Zealand, a country regarded as praiseworthy due to its well-regarded, 'quaint and quixotic' *Official Information Act*.⁶

The development of socio-legal analysis has gradually become an explicit endeavour. The process of explicitly building socio-legal analysis may have begun as far back as 1991 when Colin Bennett incorporated policy transfer analysis, diffusion theory and modernization theory into several articles examining the spread of the FOI law, although the process did not come into its own until recently.⁷ In 2006 John Ackerman and Irma Sandoval-Ballesteros explained, 'There is a pressing need to systematically study the existing information and collect fresh data using a more self-conscious social science perspective.'⁸ This was followed by Colin Darch and Peter Underwood with a 2010 study of FOI law in the developing world that explicitly incorporated diffusion, bureaucratic and political theory, as well as historical analysis and political philosophy.⁹ Also in 2010, PhD dissertations completed by Weibing Xiao and Greg Michener each

³ Terrill, "Individualism and Freedom of Information Legislation."

⁴ Lamble, "United States FOI Laws Are a Poor Model for Statutes in Other Nations."

⁵ Ibid.: 52-53.

⁶ Ibid.: 53.

⁷ Bennett, "How States Utilize Foreign Evidence.", ———, "Understanding Ripple Effects: The Cross-National Adoption of Policy Instruments for Bureaucratic Accountability."

⁸ Ackerman and Sandoval-Ballesteros, "The Global Explosion of Freedom of Information Laws," 87.

⁹ Darch and Underwood, *Freedom of Information and the Developing World: The Citizen, the State and Models of Openness*.

provided unique socio-legal insights, although both dissertations tended to be behavioral and therefore relatively implicit on socio-political assumptions.¹⁰ The building of socio-legal perspectives, to which the current thesis contributes, is thus now underway.

10.3.3 Addressing the Question of Diffusion

The thesis applied socio-legal analysis to examine the causes of the diffusion of transparency law. With reference to the importance of the diffusion of FOI law, Rick Snell and Weibing Xiao note, 'There are few, if any, examples of a more rapid spread of global law reform.'¹¹ And yet the diffusion of the FOI law remains relatively unexamined from an explanatory, academic standpoint.¹² Indeed, more generally, the rise of public sector transparency, of which the diffusion of FOI law is a part, has also not been the subject of in-depth analysis: much like in the case of the FOI literature regarding the diffusion of FOI law, commentators of public sector transparency have predominantly focused on the *effects* of government transparency rather than its *causes* (1.2.3).¹³ Chapter Three of the thesis began to investigate the diffusion of FOI law and provided an overview of the diffusion of FOI law and examined differences amongst adopters and non-adopters. It flagged important and as yet inadequately addressed research questions, such as: why did access law initially emerge in eighteenth century Sweden?; what instigated re-emergence of the law reform two centuries later, in the mid-twentieth century, in the United States?; why did the law reform proliferate so dramatically at the dawn of the twenty-first century?; and, how can contemporary proliferation be explained in connection with the above average levels of globalization or interconnectedness exhibited by adopters?

The diffusion of FOI law has been the subject of a range of studies. These studies were grouped into a number of categories in relation to author and orientation in Chapter Four (see 4.2). For example, 'explanation' studies provide explanatory academic perspectives, whereas 'reform advocate' studies provide updates on the progress of

¹⁰ Michener, "The Surrender of Secrecy: Explaining the Emergence of Strong Access to Information Laws in Latin America", Xiao, "Freedom of Information Reform in China: Information Flows Analysis".

¹¹ Snell and Xiao, "Freedom of Information Returns to China," 45.

¹² Darch and Underwood, *Freedom of Information and the Developing World: The Citizen, the State and Models of Openness*, 8.

¹³ Grigorescu, "International Organizations and Government Transparency: Linking the International and Domestic Realms," 645.

adopters by influential advocacy groups campaigning for the widespread adoption of the law reform.¹⁴ Dividing existing studies in this manner is useful for beginning to critically discriminate amongst the variety of studies. However, it does not allow for an examination of the inherent, but most often implicit, assumptions of socio-political change to that fundamentally informs what is examined and how it is examined in each case. The thesis therefore draw on its socio-legal basis to go beyond these useful but limited categories in order to critique the shared assumptions of socio-political change informing studies (see 4.3 and 4.4). It demonstrated existing studies, whether 'explanation' or 'reform advocate', generally draw from two primary theoretical foundations within social and political science; the first is a 'modernization foundation' (4.3) and the second is an 'agent foundation' (4.4). Each embodies unique assumptions regarding socio-political change that informs what is considered to cause the diffusion of transparency law and, therefore, what is considered important in the focus of research.¹⁵

Both the modernization and agent foundations of the diffusion of FOI law are unique. The modernization foundation provides a macro structural functionalist ontology that understands social and political change with reference to a form of socio-political evolution inherent within capitalism (4.3.1). The foundation assumes such socio-political evolution includes political development, and the adoption of FOI law (4.3.2).¹⁶ On the other hand, the agent foundation provides a micro social exchange ontology that understands social and political change with reference to bargaining and negotiation between social actors (4.4.1). Accordingly, the diffusion of FOI law is understood to be driven by competing actors (4.4.2).¹⁷ The modernization and agent foundations each have relative strengths and weaknesses yet aside from these relative attributes, both share a

¹⁴ Contrast Bennett, "How States Utilize Foreign Evidence." and Open Society Justice Initiative, "The Rising Tide: Freedom of Information in Southeast Europe."

¹⁵ Compare, for example, Bennett, "Understanding Ripple Effects: The Cross-National Adoption of Policy Instruments for Bureaucratic Accountability." and Pinto, "Transparency Policy Initiatives in Latin America: Understanding Policy Outcomes from an Institutional Perspective."

¹⁶ For examples of modernization studies of the diffusion of FOI law see: Florini, "Does the Invisible Hand Need a Transparency Glove? The Politics of Transparency". and Organisation for Economic Co-operation and Development, "Public Sector Modernisation: Open Government."

¹⁷ For examples of such studies see Pinto, "Transparency Policy Initiatives in Latin America: Understanding Policy Outcomes from an Institutional Perspective." Puddephatt, "Exploring the Role of Civil Society in the Formulation and Adoption of Access to Information Laws: The Cases of Bulgaria, India, Mexico, South Africa and the United Kingdom." Grigorescu, "International Organizations and Government Transparency: Linking the International and Domestic Realms."

fundamental strength, as social theories similarly inspired by natural science, in their 'ability to fix limits or parameters to a problem area and to reduce the statement of a particular problem to a limited number of variables which are amenable to relatively close and precise examination.'¹⁸ However, this strength is also a weakness as it tends to objectify (take as a given) and fragment (divide into bits) the diffusion of FOI law (4.5). The thesis therefore attempted to provide an alternative foundation, one that is not restrained by the same limitation and one that contributes a novel socio-legal approach to existing approaches, for understanding the diffusion of FOI law.

10.3.4 Applying Transnational Historical Materialism as Socio-legal Foundation

The thesis utilized a critical foundation of global political economy, called transnational historical materialism, to understand the diffusion of FOI law, as a case study in the rise of public sector transparency. Transnational historical materialism provides a holistic foundation for understanding the diffusion of FOI law as a whole. As suggested already, FOI diffusion studies informed by modernization or agent foundations tend to isolate and fragment the spread of FOI law in an attempt to achieve objectivity and falsifiability and, in doing so, they dramatically reduce their scope of explanation.¹⁹ Transnational historical materialism, presented in Chapter Five, is a critical foundation that does not aim to explain the diffusion of FOI law, as a scientifically provable fact; it aims instead to understand diffusion with an orientation towards appreciating the totality of the historical dynamics involved in the process. The foundation is concerned with understanding the *longue durée* of the modern capitalist world system and the historical evolution of structures within it. The multi-level framework of transnational historical materialism incorporates analysis of the transformation of production relations, state forms and world orders within the modern world system (5.2).

A central feature of transnational historical materialism, also important in understanding the rise of FOI law and public sector transparency, is analysis of the

¹⁸ Cox, "Social Forces, States and World Orders: Beyond International Relations Theory," 129.

¹⁹ See for example Bennett, "Understanding Ripple Effects: The Cross-National Adoption of Policy Instruments for Bureaucratic Accountability." Pinto, "Transparency Policy Initiatives in Latin America: Understanding Policy Outcomes from an Institutional Perspective.", respectively.

transformation of states in modern history. The state is understood by transnational historical materialists as an ‘extended’ structure that incorporates both the essential institutions of government—the state apparatus—plus the social relations immediately surrounding such institutions (see 5.2.2 and 5.3). The extended state is a fluent and historically informed structure that finds quasi-permanency in historical forms. These forms are analyzed and understood as Weberian ideal types that model unique state-society relations within the context of the extended state. Two principle ideal types of state formation that have developed within the modern world system are the ‘Lockean’, within the European heartland of the world system, and the ‘Hobbesian’, within the periphery of the world system (6.2). An understanding of the emergence and transformation of state-society relations embodied within these state forms helps to shed light on the diffusion of FOI law, both as a historical event and a contemporary phenomenon.

The concept of forms of state in the modern world system was applied in the thesis at two levels to examine the spread of FOI law. The first level was macro-historical; it focused on broad transformations in state formations and how these transformations relate to the emergence and diffusion of FOI law. State-society relations within Lockean states, which *tended to elevate society as a governing force above the state apparatus*, facilitated the emergence and early diffusion of transparency law. Hobbesian states, on the other hand, which *tended to elevate the state apparatus as a governing force above society*, presented a bulwark throughout the twentieth century to the further diffusion of access law. Not until a fundamental transformation in production relations, state forms, and world order—essentially, the emergence of the global political economy—occurred in the final decades of the twentieth century did widespread proliferation occur, beyond Lockean states and amongst Hobbesian states. Applying transnational historical materialism on a second level of analysis then shifted the focus from macro-historical transformation down into contemporary changes in Hobbesian state-society relations. China, Mexico and India were presented as case studies in the contemporary reconstruction of internal state-society relations that facilitated the proliferation of transparency amongst Hobbesian states. The concept of ‘passive revolution’ was used to describe this process of change and reform, which intertwines

both national and transnational factors, within such Hobbesian states (see 10.4.2 and 10.5.2 below).

10.4 Macro-historical Diffusion

The macro-historical nature of transnational historical materialism provided a unique basis for providing a nomothetic understanding with a focus on state formation of the overall diffusion of FOI law, including its initial emergence and early diffusion; its contemporary proliferation, and, to a lesser extent, its future, as shown in Chapters Six and Seven. The thesis showed how FOI law initially emerged and diffused amongst a small group of Lockean states (see 10.4.1 below), buffered by an array of Hobbesian states, within the post-WWII international economy, and that only with the onset of the emergent global political economy, with historical transformations in world order and state formation, did the transparency law diffuse beyond the Lockean heartland (10.4.2 below). The macro-historical picture provided in the thesis suggests future diffusion faces considerable obstacles due to the nature of non-adopting states with harsh environments on the periphery of pressure for transparency within the global political economy (10.4.3).

10.4.1 Initial Emergence and Early Diffusion

The macro-historical utility of transnational historical materialism combined with its focus on transformation of state forms allows a novel perspective on the initial emergence and early diffusion of FOI law, as demonstrated in Chapter Six. The foundation places the emergence within the early development of the Lockean state. In fact, the world's first FOI law sprung from a unique Swedish experiment with Lockean political philosophy ahead of its time (as highlighted at 6.3.2).²⁰ The early diffusion of FOI law, prior to its contemporary proliferation, occurred within a heartland of Lockean states, and transnational historical materialism provides a basis for understanding this, but it also provides a basis for understanding why FOI law did not find support outside the Lockean

²⁰ The Freedom of the Pen and Press Act was adopted in 1766 by the sovereign Swedish Rikstag parliament, only the second of its kind in the world at the time, including the British parliament. Svanstrom and Palmstierna, *A Short History of Sweden*, 192.

heartland: Hobbesian states, which, contrary to the Lockean model, elevated the state apparatus above society, did not provide grounding for a local ‘right to know’ needed in order to facilitate a more widespread diffusion of FOI law (6.4).

The Lockean heartland is the historical origin of FOI law. The social and political relations that emerged in seventeenth and eighteenth century Europe laid the foundations for a transformation in information relations and flows whereby government information was no longer held by a privileged few ruling monarchs or aristocrats but gradually dispersed amongst parliamentarians, journalists and citizens (6.3.1). After the law’s initial appearance in Sweden, it re-emerged in a significant way in the United States in the middle of the twentieth century when secretive bureaucratic departments were expanding and threatening the Lockean rights of society to know and act with popular sovereignty (6.3.2). Following adoption of FOI law in the United States, then the most advanced Lockean state form, the law was transferred in the second half of the twentieth century amongst a handful of Lockean states facing similar tensions between an expanded state apparatus and society (6.3.3). However, FOI law did not initially diffuse completely throughout the Lockean heartland, and this may be understood in one of two ways: either the presence of quasi-FOI practices or culture delayed the necessity of adoption, or the ever-present tendencies of balancing openness with government secrecy in the public interest delayed adoption (6.3.4).

Before, and throughout most of, the twentieth century FOI law remained a legal reform adopted by well established Lockean states because outside those states, especially within the Cold War era, were a series of Hobbesian states, fundamentally adverse to public sector transparency. Hobbesian states of various kinds represent a historical attempt by the periphery to respond to and catch up with the Lockean heartland (6.4.1). The states tended to privilege the state apparatus as a productive force in society, sanctioned with a mandate to lead catch-up development strategies, and therefore diminished notions of popular sovereignty and the public as oppositional to government. Twentieth century Hobbesian states predominantly fall into two categories: totalitarian (6.4.2) or authoritarian (6.4.3). Each of these forms of Hobbesian state presented a unique socio-political setting for information flows. A total commitment to ideology and the politicization and mobilization of society within *totalitarian* states meant there was

absolutely no basis for a legal mechanism that provided oppositional access to government-held information (6.4.2). The picture is different in *authoritarian* states, which are undemocratic states that tend to provide a relatively stable degree of rule of law and pluralism; this means the idea of FOI law is plausible, although not common because of the privileged position of government (6.4.3).

10.4.2 Contemporary Explosion

The turning point in the historical diffusion of FOI law in the 1990s, when the law unexpectedly diffused beyond the Lockean heartland and into the Hobbesian periphery, is understood by transnational historical materialism in the context of a broad transformations in world order and state formation, as shown in Chapter Seven. Transnational historical materialism provides a detailed understanding of the process of globalization and its relation to the proliferation of FOI law amongst Hobbesian states (see 5.4 and 7.2) (whereas previous studies have tended to simply flag the importance of ‘globalization’ without presenting a framework for understanding how it relates to the proliferation of FOI law).²¹ National state forms, especially Hobbesian state, were transformed by increased transnational relations within the emergent global political economy from the 1970s onwards (7.2.1). Extended state forms, which had previously functioned as generally self-contained national units, were gradually transnationalized and opened to increasing transnational support for public sector transparency, which especially developed under the auspice of a post-Cold War American-led neo-liberal reform agenda of both political and economic streams (7.2.2). State formation, particularly Hobbesian state formation, was transformed from a national event to a transnational event within the emergent global political economy dominated by American neo-liberalism (7.2.3).

Motives for the contemporary proliferation of public sector transparency within the global political economy may be understood in relation to the power structures. An emergent capitalist transnational structure of social, political and economic relations and institutions at the apex of the global political economy supported and resourced

²¹ See for example Blanton, "The Openness Revolution: The Rise of a Global Movement for Freedom of Information," 16-17. Florini, "Does the Invisible Hand Need a Transparency Glove? The Politics of Transparency", 2.

transparency on the basis that increased public information flows might facilitate increased stability and therefore minimize risk within the otherwise volatile global economy (7.3.1). This capitalist transnational structure, which penetrates state forms, was essentially the social force behind the recent global diffusion of access law; its power fed into foundational support for government transparency within key international and global institutions, such as the World Bank and IMF, and their donation and reform programs, especially the broad political reform agenda of ‘good governance’ (7.3.2). The financial and ideological support for transparency reform provided by such key organizations within the global political economy has, in turn, facilitated, although not determined, the rise of an auxiliary network of transnational advocacy agencies that have actively lobbied for the adoption of FOI law and worked to consolidate and advance international developments (7.3.3). This transnational advocacy network, constituted by organizations such as Article 19 and the Commonwealth Human Rights Initiative, which each support access law within their own unique agendas of freedom of expression, or development, or democracy, or corruption, emerged to become the ‘prime engine of growth’ in the diffusion of FOI law within the global political economy (7.3.3).²² Finally, there are also those motives unique to each national circumstance and it is largely these motives, in the end, that ultimately provided the basis for national adoption within each case (7.3.4).

FOI law was adopted in a fast pace string of unique national ‘passive revolutions’ (see especially 5.4.4, 5.4.5 and 7.4). *International developments in support of public sector transparency provided the basis for unique national reflections amongst Hobbesian states.* Within each contemporary Hobbesian adopter the process of adoption, the actors involved and the fundamental motivation for adoption, is completely unique and must be understood as operating independently of international developments, to some extent; however, each process has been invariably made possible by international developments and, indeed, in many instances of adoption an interplay between transnational and national factors is clearly visible (see the case studies of China, Mexico and India in Chapter Nine, for example). These passive revolutions in FOI law are as

²² Darch and Underwood, *Freedom of Information and the Developing World: The Citizen, the State and Models of Openness*, 51.

much the result primary national factors in each adopter as the result of ideas and practices making their way from the core to the periphery of the global political economy—each adoption represents a unique national reflection of international developments.²³ This is what makes recent Hobbesian adopters unique when compared to earlier (or even later) Lockean adopters: whereas adoption in the latter generally occurred through a cumulative process mostly involving domestic developments, adoption in the former generally occurred suddenly as part of a shift in state formation that involved national/transnational dynamics unique to the global political economy (7.4.1).

10.4.3 The Future of Diffusion

The future of FOI law now that it has proliferated widely throughout the modern world system is today an open question, but one transnational historical materialism provides some insight into (7.5). From a nomothetic standpoint concerning the possibility of the further future diffusion of FOI law amongst states, the foundation especially highlights two things. First, it highlights the nature of non-adopting states as structures in unique positions within the global political economy that are inhibited with obstacles (7.5.1). Second, transnational historical materialism also brings into question the ‘hollowing out’ of the state apparatus and current trends towards the application of FOI law to formally exempt institutions that now wield significant public authority in the place of traditional bureaucratic bodies (7.5.2).

Chapter Seven suggested the diffusion of FOI law will now plateau in the near future due to direct and indirect obstacles amongst current non-adopters (7.5.1). The rationale of this argument is that most non-adopters now function with certain obstacles in unique positions within the global political economy allowing for a degree of shelter from transnational pressure. For example, the majority of non-adopters are located in Africa and the Middle East, which are both regions that embody exceptional obstacles and circumstances within the global economy (see 3.2.1, Figure 1). Africa suffers on the extreme periphery with indirect issues of state capacity, while the Middle East occupies a position of exceptionalism with direct political obstacles (7.5.1). However, there are more isolated examples of niche positions within the global political economy that have

²³ Gramsci, *Selections from the Prison Notebooks*, 116.

prevented or delayed adoption and these might include Singapore and Venezuela. In each case the position of the state in relation to pressures of the global political economy helps explain non-adoption (7.5.1). The general theme across all, including regional non-adopters in Africa and the Middle East, is the presence of unique national obstacles and the ineffectiveness of transnational support to substantially facilitate meaningful reform (7.5.1).

The understanding of FOI law, provided by transnational historical materialism, as a meaningful Lockean legal mechanism applied to the state apparatus as a restrained convener of public authority extends to an understanding of how a public ‘right to know’, in some form or another, may apply to other institutions that have gained in a recent seeping of public authority out from the state apparatus (7.5.2). The ‘hollowing out’ of the state and the emergence of ‘structural pluralism’ necessarily forces any society informed by Lockean ideals and practices to reconsider the scope of FOI law.²⁴ FOI law in its original fashion applied essentially to bureaucratic departments and agencies as the executive arm of government was considered most likely to violate against society in a practical sense. But in recent years the functions and services of such departments and agencies have been transferred to private or quasi-private entities, which are generally exempt from access law; and, moreover, executive government itself has become integrated with global institutions that substantially influence policy.²⁵ Therefore the thesis supports recent debate on ways in which information rights can be reasonably applied beyond the state in an age of global structural pluralism (7.5.2).

10.5 Contemporary Case Studies

In addition to the nomothetic understanding provided by applying transnational historical materialism on a macro-historical level, the thesis also provided an idiographic understanding of case studies in the contemporary proliferation of FOI law. The thesis compared China, Mexico and India, as contemporary comparative cases of Hobbesian adoption. This analysis revealed adoption in China, Mexico and India was fundamentally

²⁴ Jessop, "Post-Fordism and the State."

²⁵ Roberts, "Structural Pluralism."

informed by national characteristics in state form and, therefore, found there is a need to understand each case of adoption in the context of the history of each unique national state formation (see 10.5.1 below). However, the thesis also demonstrated that adoption in China, Mexico and India, as in other Hobbesian cases, may be commonly understood as ‘passive revolutions’, wherein adoption is essentially a unique national reflection of international developments (see 10.5.2). This does not diminish from the singularity of each adoption process, but rather describes the visible relationship between transnational and national factors. The comparative case studies also revealed there is considerably variation in what constitutes FOI law with each case, and, if the cases may be considered signposts for the future, there is likely to be an evolving discussion on the meaning and purpose of public sector transparency now that it has replaced secrecy as the international norm of public information management (10.5.3).

10.5.1 FOI Law in Unique State Formation

The contemporary case studies analyzed in the thesis, especially Chapter Eight, demonstrate the adoption of FOI law must necessarily be understood most fully in relation to the context of unique national state formations. Within each case study the evolving situation within and between society and the state apparatus (within the extended state) throughout the twentieth century was paramount to the adoption of FOI law. The progress towards adoption within each state form in general involved a growing demand for information within society and an agreement by the state apparatus to provide information. The way these dynamics between society and the state apparatus evolved were unique to the historical context of each state formation. Nevertheless, all show a similar trend wherein twentieth century Hobbesian state formation underwent structural change in the final decades of the twentieth century due to national circumstances, but also due to a change in world order, following the rise of transnational relations and American hegemony (8.5.1). Understanding the changing Hobbesian dynamics of state formation within China, Mexico and India is important to understanding adoption within each case.

The adoption of FOI regulation in China cannot be fully understood outside the context of the historical evolution of the Chinese Communist Party (CCP) and its position

of prominence within modern Chinese state formation. The CCP rose to power in the 1940s and constructed a totalitarian system within which information was a political resource controlled and utilized absolutely by the state apparatus, headed by the vanguard party, to safeguard and advance the people's revolution (8.3.2 and 8.4.1). The totalitarian system constructed by the CCP throughout the middle of the twentieth century began to falter in the 1970s, especially following the death of the revolutionary figurehead of Mao Zedong; after Mao's death the party sought to appease public discontent over failures by moving from revolution to reform: a series of economic and political reforms were gradually introduced to transform state-society relations from totalitarian to authoritarian (8.5.2). FOI regulation was gradually developed and adopted within this setting as an internal CCP revolution amongst other reforms to provide public oversight, increase effective public management, reduce corruption and facilitate information-based development, and ultimately to help ensure the continued reign of the CCP (8.6.1).

The history of state formation—of state-society relations—in Mexico is also important to understanding the emergence of FOI law. The twentieth century authoritarian regime in Mexico, headed by the Institutional Revolutionary Party (PRI), tended to co-opt society through patron-client relations (8.3.2). This did not bring with it a necessity of total information control. The issue of FOI law was raised in the 1970s, but faded without substantial support from key constituencies, such as the media, largely due to the dynamics of patron-client relations (8.4.2). Seventy years of rule by the PRI gradually fell apart in the 1980s and 1990s and this facilitated transformations in both society and the state apparatus; the latter underwent a process of democratization, while the former found a degree of autonomy and popular sovereignty (8.5.2). Both of these elements worked together to help produce access law. Proposals were developed by officials, and strengthened and ensured by civil advocates and media outlets motivated by a new democratic urgency (8.5.2).

FOI law was adopted in India following similar changes in state formation. Postindependence Indian state formation was characterized by exceptional parliamentary democracy and pluralism governed by the Indian National Congress (INC) (8.3.2). This exceptionalism fed into unique Hobbesian information relations: a number of laws provided disclosure requirements and the Supreme Court of India interpreted, beginning

in 1973, the national constitution in a manner that fundamentally linked freedom of information and freedom of expression (8.4.3). However, the state apparatus remained a driving force within society that withheld information under secrecy law in order to safeguard a broadly defined public interest (8.4.3). Only with an empowerment of civil society that came with increased globalization was FOI law presented as a realistic reform tied to reducing poverty and corruption (8.5.2). FOI law reform in India resulted to some extent from administrative public sector reform but was fundamentally driven by renewed social empowerment and activism (8.6.3).

10.5.2 Passive Revolution: National/Transnational Relations

While the adoption of FOI law within China, Mexico and India must be understood fully within the context of each national state formation, the collective adoption of the law by all three countries within the context of international developments must be understood, and was therefore examined specifically in Chapter Nine. The relationship between national and transnational factors cannot be ignored and is here understood through the concept of passive revolution, already discussed above with reference to adoption amongst Hobbesian states (as mentioned above at 10.3.2). The process of passive revolutions, whereby adoption is a unique national reflection of international development, is evident within all three case studies. Each case embodies unique national circumstances and factors and these have been the primary drivers of reform (see 9.3). However, national factors have been intimately tied to the development of a conducive transnational support system for public sector transparency within the global political economy (9.2).

National factors have been paramount to adoption of FOI law in each case. These factors have a singularity and independence within the circumstances of each state formation. In China these national dynamics were centered on reform efforts by the CCP in the post-Mao era aimed at maintaining legitimacy and rule. The most important national factor in the adoption of the Open Government Information Regulations (OGI Regulations) in 2008 was therefore administrative reform, linked with utilitarian economic and management concerns (9.3.1). Administrative reform was also a national factor in the adoption of the *Federal Law of Transparency and Access to Public*

Government Information in post-PRI Mexico, but more important were a decrease of patron-client relations and the development of a professional independent media, which helped to drive reform home in a strong way (9.3.2). Administrative reform was again also a factor in India; however, the 2005 *Right to Information Act* benefited most of all from the social activism of a grassroots right to information movement (9.3.3). These unique national factors drove reform through the adoption process in each case, and in some ways have come to define FOI law within each case (2.2.1).

However, that does not mean transnational factors should be given a position of second-class consideration, as they have provided a facilitative environment for national reflections. Emulation of perceived international norms or standards was an important factor in China, Mexico and India (9.2.1). Across the cases perceived international standards, as exhibited in pre-existing laws, were emulated, to some degree, within domestic reform, especially within Mexico and China (9.2.1). Moreover, a range of transnational actors, including the Commonwealth Human Rights Initiative, Transparency International and the Carter Center, actively worked within the cases to help support the activities of local supporters of reform (9.2.2). These actors have conducted a range of activities, including awareness raising and oversight, but, overall, they have essentially worked to help legitimize local reformers within their own setting (9.3.2). These transnational actors and their activities are generously funded by a mixture of private foundations, transgovernmental bodies, and corporations invested within the global political economy and the transformation of Hobbesian states within it (as discussed at 7.3). They represent the international developments that have supported unique national reflections amongst Hobbesian states.

10.5.3 Cases as Signposts for the Future

China, Mexico and India are important comparative case studies in the adoption of FOI law because they are representative and influential cases of Hobbesian adoption. They are also, as a result, important signposts for the future of public sector transparency. Chapter Nine found two important concerns in this regard. The first is that the nature of passive revolution highlights important concerns over the consolidation of enacted reforms as

socially and politically valuable information access mechanisms (9.5.1). The second point flagged by considering the case studies as signposts for the future arises from variation in the outcome of law reform processes (9.5.2). Such variation contradicts universalistic claims towards FOI law and transparency often made by activists and highlights the variable meaning and purpose of public sector transparency now that it has diffused widely, amongst contrasting political cultures and political structures (9.5.3).

There are unique issues born of passive revolution within Hobbesian adopters. This is because, as discussed above, while adoption within Lockean states had slow-moving domestic causes that developed gradually across and within each country, adoption amongst Hobbesian contenders has been relatively sudden and tied to international developments. Perhaps the most serious issue born of passive revolution is therefore the possibility of international developments outpacing national developments and the subsequent impact this may have on the nature of adoption (9.5.1). Evidence, suggests the strength of law reform is generally weaker within cases where FOI law has resulted from heavy transnational pressure than in cases where national factors were paramount and this is perhaps supported by the case of the relatively weak and limited Chinese ORI Regulations (9.3.1), which were tied to limited national development associated with the continued rule of the CCP and significant pressure from transnational networks within the global economy.²⁶ There is also the related matter of consolidation. Even with considerable national support, Hobbesian adopters such as China, Mexico and India must overcome varying histories of state-society relations relatively antithetical to public information disclosure (9.5.1).

Adoption within China, Mexico and India also raises issues concerning universalism versus pluralism in reform. Unlike early Lockean adopters of FOI law that tended to embrace relatively similar models due to a shared historical and political context, there is considerable variations between the models of FOI law adopted amongst the cases, especially between China and Mexico (9.5.2). The Chinese OGI Regulations present an instrumental view of public sector transparency emphasizing a pro-disclosure regime aimed at improving public management and stimulating social and economic

²⁶ L. Neuman and R. Calland, "Making the Law Work: The Challenges of Implementation," in *The Right to Know*, ed. A. M. Florini (New York: Columbia University Press, 2007), 180.

innovation (9.5.3). On the other hand, the *Federal Law of Transparency and Access to Public Government Information* of Mexico appears to embody an intrinsic view of public sector transparency emphasizing fluent access aimed at not only improving public management and raising social and economic development, but also protecting public sovereignty and a democratic ethos (9.5.3). While it is true that every FOI regime is likely to embody tensions between instrumental and intrinsic values, the variation in law reform between contemporary adopters like China and Mexico highlights continued tensions in the meaning and purpose of public sector transparency and contradicts a universalistic perception often presented by supporters.²⁷ Variation between recent reform in China and Mexico, now that openness appears to have replaced secrecy as the norm in public information management, suggests there is likely to be increased discussion on the meaning and purpose of public sector transparency in the near future.

10.6 Conclusion

The type of socio-legal analysis identified and developed in this thesis evidently promises to provide the basis for more sophisticated understandings of the context of access law, as a public sector transparency reform, but also as a human right, democratic mechanism and international norm, amongst other things. Theoretical and methodological tools developed within social sciences, may be used to examine transparency law from a wide range of contextual angles.

A lack of interdisciplinary research has been a, if not the, major hindrance to the development of socio-legal analysis of access law to date. This obstacle, however, appears to be diminishing and socio-legal analysis seems to have entered a growth stage. The 1st Global Conference on Transparency Research, for example, held in May of 2011, incorporated scholars from sociology, anthropology, political science, public administration, economics, political economy and business, as well as law and journalism.²⁸

²⁷ Darch and Underwood, *Freedom of Information and the Developing World: The Citizen, the State and Models of Openness*, 7.

²⁸ Rutgers University (School of Public Affairs and Administration), "1st Global Conference on Transparency Research."

The current study applied conceptual tools from the study of global political economy to present a unique understanding of the diffusion of FOI law grounded in the evolution of modern states. Additional research may be conducted following the thesis in order to further examine historical variation between cases of Lockean and Hobbesian information sovereignty, or to further investigate contemporary case studies in the transformation of information flows in Hobbesian states.

However, the promise of socio-legal analysis naturally goes far beyond the current study and the question of diffusion. The analytical terrain of socio-legal analysis of transparency law is wide, although it centers on the relationship of information control versus access in executive authority to social, political, cultural and economic factors. Recent socio-legal studies beginning to explore the relevant analytical terrain have incorporated questions of transparency law concerning individualism, bureaucracy, globalization, structural pluralism, democratic theory and human rights.²⁹

Within this terrain, an interesting focus for future socio-legal studies will be the evolving meaning and purpose of public sector transparency and information rights. The traditional, and often universalistic, Lockean notion of freedom of information, understood as access to documents held by governmental departments and agencies, has been severely challenged in recent years, both because transparency law has diffused widely into a variety of cultural and political contexts (i.e. China and Mexico), and because public authority has diffused beyond the bureaucratic state apparatus in the era of (global) governance. This contemporary dilemma of meaning and purpose is as much a legal question, concerning interpretations of applicability, as it is a question of democratic theory, concerning interpretations of the common good.

²⁹ Darch and Underwood, *Freedom of Information and the Developing World: The Citizen, the State and Models of Openness*, Roberts, "Structural Pluralism.", Stubbs, "Freedom of Information and Democracy in Australia and Beyond.", Terrill, "Individualism and Freedom of Information Legislation."

REFERENCES

- Access to Information Review Task Force. *Access to Information: Making It Work for Canadians*. Ottawa: Public Works and Government Services, 2002.
- Ackerman, J. M., and I. E. Sandoval-Ballesteros. "The Global Explosion of Freedom of Information Laws." *Administrative Law Review* 58, no. 1 (2006): 85-103.
- Adie, R. F., and G. E. Poitras. *Latin America: The Politics of Immobility*. Englewood Cliffs: Prentice Hall, 1974.
- Agere, S. *Promoting Good Governance: Principles, Practices and Perspectives*. London: Commonwealth Secretariat, 2000.
- Aggarwal, S. K. *Investigative Journalism in India*. New Delhi: Mittal Publications, 1990.
- Aitken, J. "Open Government in New Zealand." In *Open Government: Freedom of Information and Privacy*, edited by A. McDonald and G. Terrill. Basingstoke: Macmillan, 1998.
- Alam, M. S. "A Short History of the Global Economy since 1800." Boston: Northeastern University, 2003.
- Althusser, L. *For Marx*. Translated by B. Brewster. London: Allen Lane, 1959.
- . "Ideology and Ideological State Apparatuses." In *Essays on Ideology*, edited by L. Althusser. London: Verso, 1984.
- . "Marxism Is Not Historicism." In *Reading Capital*, edited by L. Althusser and E. Balidar. London: Verso, 1970.
- Anderson, J., and S. Hall. "Absolutism and Other Ancestors." In *The Rise of the Modern State*, edited by J. Anderson. Brighton: Wheatsheaf Books, 1986.
- Anderson, P. "The Antinomies of Antonio Gramsci." *New Left Review*, no. 100 (1977): 5-78.
- Anderson, S. V. "Public Access to Government Files in Sweden." *The American Journal of Comparative Law* 21, no. 3 (1973): 419-73.

- Ansari, M. M. "Impact of Right to Information on Development: A Perspective on India's Recent Experiences." Paper presented at the UNESCO Headquarters, Paris, France 2008.
- Apter, D. E. *The Politics of Modernization*. Chicago: University of Chicago Press, 1965.
- Archibald, S. "Early Years of the Freedom of Information Act, 1955 - 1974." *Political Science and Politics* 26, no. 4 (1993): 726-31.
- Arendt, H. *The Origins of Totalitarianism*. London: Allen and Unwin, 1967.
- Arrighi, G. "The Three Hegemonies of Historical Capitalism." In *Gramsci, Historical Materialism and International Relations*, edited by S. Gill. Cambridge: Cambridge University Press, 1993.
- Article 19. "Article 19: Global Campaign for Free Expression." <http://www.article19.org/>.
- . "Finance." <http://www.article19.org/about/finance.html>
- . "Promoting Practical Access to Democracy: A Survey of Freedom of Information in Central and Eastern Europe." London: Article19, 2002.
- . "Under Lock and Key: Freedom of Information and the Media in Armenia, Azerbaijan and Georgia." London: Article19, 2005.
- Article 19, Centre for Policy Alternatives, Commonwealth Human Rights Initiative, and Human Rights Commission of Pakistan. "Global Trends on the Right to Information: A Survey of South Asia." London, 2001.
- Ashley, R. K. "The Geopolitics of Geopolitical Space: Towards a Critical Social Theory of International Politics." *Alternatives* 12 (1987): 404-34.
- . "The Poverty of Neorealism." In *Neorealism and Its Critics*, edited by Robert O. Keohane. New York: Columbia University Press, 1986.
- Attorney General of Texas. *Public Information: 2010 Handbook*. Austin: State of Texas, 2010.
- Augelli, Enrico, and Craig N. Murphy. *America's Quest for Hegemony and the Third World: A Gramscian Analysis*. London: Pinter, 1988.
- Australian Law Reform Commission. "Secrecy Laws and Open Government in Australia." Canberra, 2010.

- Australian Law Reform Commission, and Administrative Review Council. *Open Government: A Review of the Federal Freedom of Information Act 1982*. Canberra: AGPS, 1995.
- Badgley, K., M. J. Dixon, and P. Dozois. "In Search of the Chill: Access to Information and Record Keeping in the Government of Canada." *Archivaria*, no. 55 (2000): 1-19.
- Bahry, D., and B. D. Silver. "Intimidation and the Symbolic Uses of Terror in the USSR." *American Political Science Review*, no. 81 (1987): 1065-98.
- Baker, A. "Nebuleuse and the 'Internationalization of the State' in the UK? The Case of HM Treasury and the Bank of England." *Review of International Political Economy* 6, no. 1 (1999): 79-100.
- Banakar, R., and M. Travers, eds. *Theory and Method in Socio-Legal Research*. Portland: Hart, 2005.
- Banerjee, S. "Crisis of Indian Press: Irrelevance of Press Commission." *Economic and Political Weekly* 17, no. 23 (1982): 933-35.
- Banisar, D. "Freedom of Information and Access to Government Record Laws around the World." London: freedominfo.org, 2004.
- . "Freedom of Information around the World 2006: A Global Survey of Access to Government Records Laws." London: Privacy International, 2006.
- . "National Right to Information Laws, Regulations and Bills 2011 Map." http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1857498.
- Bannier, C. E. "The Role of Information Disclosure and Uncertainty in the 1994/95 Mexican Peso Crisis: Empirical Evidence." *Review of International Economics* 14, no. 5 (2006): 883-909.
- Barrow, C. W. *Critical Theories of the State: Marxist, Neo-Marxist, Post-Marxist*. Madison: The University of Wisconsin Press, 1993.
- Baviskar, B. S. "NGOs and Civil Society in India." *Sociological Bulletin* 50, no. 1 (2001): 3-15.
- Bayne, P. *Freedom of Information*. North Ryde: The Law Book Company, 1984.
- Beirne, P., and R. Quinney. "Marxist Theories of Law: An Introduction." In *Marxism and Law*, edited by P. Beirne and R. Quinney. 1982: John Wiley & Sons, 1982.
- Bellin, E. "The Robustness of Authoritarianism in the Middle East: Exceptionalism in Comparative Perspective." *Comparative Politics* 36, no. 2 (2004): 139-57.

- Benavides, A. D. "Transparency and Public Administration in Mexico: How the Enactment of a Law Is Changing Culture." *Journal of Public Affairs Education* 12, no. 4 (2006): 461-78.
- Bennett, C. J. "Globalization and Access to Information Regimes." Access to Information Review Task Force: Government of Canada.
- . "How States Utilize Foreign Evidence." *Journal of Public Policy* 11, no. 1 (1991): 31-54.
- . "Understanding Ripple Effects: The Cross-National Adoption of Policy Instruments for Bureaucratic Accountability." *Governance* 10 (1997): 213-33.
- Bentham, J. *The Panopticon Writings*. London: Verso, 1995.
- Berglund, H. "Civil Society in India: Democratic Space or the Extension of Elite Domination?" In *Working Paper (Department of Political Science)*: Stockholm University, 2009.
- Bergson, A. "Reliability and Usability of Soviet Statistics: A Summary Appraisal." *The American Statistician* 7, no. 3 (1953): 13-16.
- Berlin, I. *Four Essays on Liberty*. London: Oxford University Press, 1969.
- Berliner, D. "The Strength of Freedom of Information Laws after Passage: The Role of Transnational Advocacy Networks." Paper presented at the 1st Global Conference on Transparency Research, Newark 2011.
- Berman, H. J. "The Law of the Soviet State." *Soviet Studies* 6, no. 3 (1955): 225-37.
- Bernstein, H. "Modernization Theory and the Sociological Study of Development." *Journal of Development Studies* 7, no. 2 (1971): 141-60.
- Bertoni, E. "Freedom of Information: Three Harmless Words? The Role of the Media and Access to Information Laws." Paper presented at the 1st Global Conference on Transparency Research, Newark 2011.
- Bieler, A., and A. D. Morton. "The Gordian Knot of Agency-Structure in International Relations: A Neo-Gramscian Perspective." *European Journal of International Relations* 7, no. 1 (2001): 5-35.
- . "Theoretical and Methodological Challenges of Neo-Gramscian Perspectives to International Political Economy." International Gramsci Society, http://www.internationalgramscisociety.org/resources/online_articles/articles/bieler_morton.shtml.

- Binder, C. "Freedom of Information and the United Nations." *International Organization* 6, no. 2 (1952): 210-26.
- Birkinshaw, P. "Freedom of Information and Openness: Fundamental Human Rights?" *Administrative Law Review* 58, no. 1 (2006): 177-218.
- . *Freedom of Information: The Law, the Practice and the Ideal*. 3rd ed. London: Butterworths, 2001.
- . *Freedom of Information: The Law, the Practice and the Ideal*. 2nd ed. London: Butterworths, 1996.
- . "Transparency as a Human Right." In *Transparency: The Key to Better Governance?*, edited by C. Hood and D. Heald. Oxford: Oxford University Press, 2006.
- Bishop, K. "Openness in Public Administration: Can the Government Keep a Secret?" *Australian Journal of Administrative Law* 5, no. 1 (1997): 35-47.
- Blanton, T. S. In *Japan-United States Symposium: The Internationalization of Japan and Open Government*, <http://www.gwu.edu/~nsarchiv/japan/1995foiaconferencetranscript.htm>. Tokyo, 1996.
- . "The Global Openness Movement in 2006: 240 Years after the First Freedom of Information Law, Access to Government Information Now Seen as Human Right " In *The World's First Freedom of Information Act: Anders Chydenius' Legacy Today*, edited by J. Mustonen. Kokkola: Anders Chydenius Foundation, 2006.
- . "The Openness Revolution: The Rise of a Global Movement for Freedom of Information." *Development Dialogue* no. 2 (2002): 7-21.
- . "The Struggle for Openness in the International Financial Institutions." In *The Right to Know: Transparency for an Open World*, edited by A. M. Florini. New York: Columbia University Press, 2007.
- . "U.S. Experience with Freedom of Information Law: Congressional Activism, New Media Leadership and Bureaucratic Politics." *Comparative Media Law Journal*, no. 2 (2003): 3-28.
- . "The World's Right to Know." *Foreign Policy* no. 131 (2002): 50-58.
- Blau, P. M. *Exchange and Power in Social Life*. New York: J. Wiley, 1964.
- Bookman, Z., and J. Guerrero Amparan. "Two Steps Forward, One Step Back: Assessing the Implementation of Mexico's Freedom of Information Act." *Mexican Law Review* 1, no. 2 (2009): 3-51.

- Bovens, M. "Information Rights: Citizenship in the Information Society." *Journal of Political Philosophy* 10, no. 3 (2002): 317-41.
- Brand, U., and C. Gorg. "Post-Fordist Governance of Nature: The Internationalization of the State and the Case of Genetic Resources - a Neo-Poulantzian Perspective." *Review of International Political Economy* 15, no. 4 (2008): 567-89.
- Braudel, F. *On History*. Translated by Sarah Matthews. Chicago: University of Chicago Press, 1980.
- Brooke, H. *Your Right to Know: A Citizen's Guide to the Freedom of Information Act*. 2nd ed. London: Pluto Press, 2006.
- Brucker, H. *Freedom of Information*. New York: Macmillan, 1949.
- Buci-Glucksmann, C. "State, Transition and Passive Revolution." In *Gramsci and Marxist Theory*, edited by C. Mouffe. London: Routledge & Kegan Paul, 1979.
- Bucknell University. "1936 Constitution of the USSR - Chapter X, Fundamental Rights and Duties of Citizens." <http://www.departments.bucknell.edu/russian/const/36cons04.html#chap10>.
- Bugdahn, S. "Does the EU Stifle Voluntary Policy Transfer? A Study of the Introduction of Freedom of Information in Portugal and Ireland." *Public Administration* 85, no. 1 (2007): 123-42.
- Callamard, A. "Towards a Third Generation of Activism for the Right to Freedom of Information." Paper presented at the UNESCO World Press Freedom Day, Maputo, Mozambique 2008.
- Calland, R. "Prizing Open the Profit-Making World." In *The Right to Know: Transparency for an Open World*, edited by A. M. Florini. New York: Columbia University Press, 2007.
- Camdessus, M. "The IMF and Good Governance." International Monetary Fund, <http://www.imf.org/external/np/speeches/1998/012198.htm>.
- Cammack, P. *Capitalism and Democracy in the Third World: The Doctrine of Political Development*. London: Leicester University Press, 1997.
- Cammack, P., D. Pool, and W. Tordoff. *Third World Politics: A Comparative Introduction*. London: Macmillan Press, 1993.
- Carothers, T. *Critical Mission: Essays on Democracy Promotion*. Washington: Carnegie Endowment for International Peace, 2004.

- . "The End of the Transition Paradigm." *Journal of Democracy* 13, no. 1 (2002): 5-21.
- Carpizo, J. "The Constitution and Information." *The Mexican Law Review*, no. 7 (2007): 23-46.
- Carter, M., and L. Yanbin. "Access to Government Information in Europe and China: What Lessons to Be Learned?" edited by T. Hart: EU-China Information Society Project, 2007.
- Cassinelli, C. W. "The Totalitarian Party." *The Journal of Politics* 24, no. 1 (1962): 111-41.
- Centeno, M. A. *Democracy within Reason: Technocratic Revolution in Mexico*. 2nd ed. Pennsylvania: Pennsylvania State University, 1999.
- Cerny, P. C. "Paradoxes of the Competition State: The Dynamics of Political Globalization." *Government and Opposition* 32, no. 2 (1997): 251-74.
- Chandra, B., M. Mukherjee, and A. Mukherjee. *India after Independence 1947-2000*. New Delhi: Penguin Books, 2000.
- Choate, A. C. "Local Governance in China: An Assessment of Villagers Committees." The Asia Foundation, 1997.
- Christoph, J. B. "A Comparative View: Administrative Secrecy in Britain." *Public Administration Review* 35, no. 1 (1975): 23-32.
- Chydenius, A. *The National Gain*, Translated from the Swedish Original. London: Ernest Benn, [1765] 1931.
- Clark, D. "Open Government in Britain: Discourse and Practice." *Public Money & Management* 16, no. 1 (1996): 23-30.
- Cochrane, A. "Industrialisation and Nineteenth-Century States." In *The Rise of the Modern State*, edited by J. Anderson. Brighton: Wheatsheaf Books, 1986.
- Coleman, J. S. "Social Theory, Social Research, and a Theory of Action." *The American Journal of Sociology* 91, no. 6 (1986): 1309-35.
- Collingwood, R. G. . *The Idea of History*. Oxford: Clarendon Press, 1946.
- Committee on Official Information. "Towards Open Government." Wellington, 1980.
- Committee, Report of Auckland District Law Society's Public Issues. "Freedom of Information." 8 March 1978.

Commonwealth Attorney General's Department. *Freedom of Information Act 1982-- Annual Report by the Attorney-General on the Operation of the Act, for the Period 1 Dec 1982 to 30 June 1983*. Canberra: AGPS, 1983.

Commonwealth Human Rights Initiative. "Annual Report 2003-04." New Delhi, 2004.

———. "Annual Report 2008-09." New Delhi, 2009.

———. "CHRI Annual Report."
http://www.humanrightsinitiative.org/index.php?option=com_content&view=article&id=187&Itemid=503.

———. "CHRI Annual Reports."
http://www.humanrightsinitiative.org/index.php?option=com_content&view=article&id=187&Itemid=503.

———. "Commonwealth Human Rights Initiative."
<http://www.humanrightsinitiative.org/>.

———. "International Standards."
http://www.humanrightsinitiative.org/programs/ai/rti/international/intl_standards.htm.

———. "National Level RTI."
http://www.humanrightsinitiative.org/index.php?option=com_content&view=article&id=65&Itemid=84.

———. "Right to Information."
http://www.humanrightsinitiative.org/index.php?option=com_content&view=article&id=54&Itemid=53.

———. "Right to Information."
http://www.humanrightsinitiative.org/index.php?option=com_content&view=article&id=54&Itemid=53.

———. "Training and Workshops."
http://www.humanrightsinitiative.org/index.php?option=com_content&view=article&id=67&Itemid=86.

———. "Who We Are."
http://www.humanrightsinitiative.org/index.php?option=com_content&view=article&id=47&Itemid=29.

Commonwealth Law Ministers. "Commonwealth Law Ministers' Barbados Communique." Commonwealth Human Rights Initiative,
http://www.humanrightsinitiative.org/programs/ai/rti/international/cw_standards/communique/default.htm.

- Cook, K. "Linking Actors and Structures: An Exchange Network Perspective." In *Structures of Power and Constraint*, edited by M. Meyer and R. Scott. Cambridge: Cambridge University Press, 1990.
- Cook, K., and J. M. Whitmeyer. "Two Approaches to Social Structure: Exchange Theory and Network Analysis." *Annual Review of Sociology* 18: 109-27.
- Cooper, K. *The Right to Know: An Exposition of the Evils of News Suppression and Propaganda*. New York: Ferrar, Straus & Cudahy, 1956.
- Cossins, A., and K. Harrison. *Documents, Dossiers, and the inside Dope: A Practical Guide to Freedom of Information Law*. St. Leonards: Allen and Unwin, 1993.
- Cothran, D. A. *Political Stability and Democracy in Mexico*. Westport: Praeger, 1994.
- Cox, R. W. "The Executive Head: An Essay on Leadership in International Organization." *International Organization* 23, no. 2 (1969): 205-30.
- . "Global Perestroika." In *Approaches to World Order*, edited by R. W. Cox with T. J. Sinclair. Cambridge: Cambridge University Press, 1996 [1992].
- . "Gramsci, Hegemony and International Relations: An Essay in Method." *Millennium* 12, no. 2 (1983): 162-75.
- . "Influences and Commitments." In *Approaches to World Order*, edited by Robert W. with Sinclair Cox, Timothy J. Cambridge: Cambridge University Press, 1996.
- . *Political Economy of a Plural World: Critical Reflections on Power, Morals and Civilisations*. London: Routledge, 2002.
- . *Production, Power and World Order: Social Forces in the Making of History*. New York: Cambridge University Press, 1987.
- . "Production, the State and Change in World Order." In *Global Changes and Theoretical Challenges: Approaches to World Politics of the 1990s*, edited by Ernst-Otto Czempiel and James N. Rosenau. Toronto: Lexington Books, 1989.
- . "Social Forces, States and World Orders: Beyond International Relations Theory." *Millennium* 10 no. 2 (1981): 126-55.
- . "'Take Six Eggs': Theory, Finance, and the Real Economy in the World of Susan Strange." In *Approaches to World Order*, edited by R. W. Cox with T. J. Sinclair. Cambridge: Cambridge University Press, 1996 [1992]

- . "The Way Ahead: Toward a New Ontology of World Order." In *Critical Theory and World Politics*, edited by Richard Wyn Jones. London: Lynne Rienner, 2001.
- Cox, R. W., and H. K. Jacobson. *The Anatomy of Influence. Decision Making in International Organizations*. New Haven: Yale University Press, 1972.
- Craglia, M., and M. Blakemore. "Access Models for Public Sector Information: The Spatial Data Context." In *Public Sector Information in the Digital Age: Between Markets, Public Management and Citizens' Rights*, edited by G. Aichholzer and H. Burkert. Cheltenham: Edward Elgar, 2004.
- Cross, H. L. *The People's Right to Know: Legal Access to Public Records and Proceedings*. New York: Columbia University Press, 1953.
- Dahl, R. A. *Democracy and Its Critics*. New Haven: Yale University Press, 1989.
- Darch, C., and P. G. Underwood. *Freedom of Information and the Developing World: The Citizen, the State and Models of Openness*. Oxford: Chandos Publishing, 2010.
- . "Freedom of Information Legislation, State Compliance and the Discourse of Knowledge: The South Africa Experience." *The International Information & Library Review* 37 (2005).
- Davis, K. C. "The Information Act: A Preliminary Analysis." *The University of Chicago Law Review* 34, no. 4 (1967): 761-816.
- Deflam, M. *Sociology of Law: Visions of a Scholarly Tradition*. Cambridge: Cambridge University Press, 2008.
- Diamant, A. . "Political Development: Approaches to Theory and Strategy." In *Approaches to Development*, edited by J. D. Montgomery and W. J. Siffin. New York: McGraw-Hill, 1966.
- Diebert, R. J. "Harold Innis and the Empire of Speed." *Review of International Studies* 25, no. 2 (1999).
- Dodd, C. H. *Political Development*. London: Macmillan Press, 1972.
- Dolowitz, D., and D. Marsh. "Learning from Abroad: The Role of Policy Transfer in Contemporary Policy Making." *Governance* 13, no. 1 (2000): 5-24.
- . "Who Learns What from Whom: A Review of the Policy Transfer Literature." *Political Studies* 44 (1996): 343-57.
- Doyle, K. "'Forgetting Is Not Justice': Mexico Bares Its Secret Past." *World Policy Journal* 20, no. 2 (2003): 61-72.

- . "Mexico's New Freedom of Information Law." The National Security Archive, <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB68/>.
- . "Mexico Passes New Freedom of Information Law." *National Security Archive* (2 May, 2002), <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB68/index3.html>.
- Drabek, Z., and W. Payne. "The Impact of Transparency on Foreign Direct Investment." Washington D.C.: World Trade Organization, 1999.
- Dua, B. D. "Indian Congress Dominance Revisited." In *The Indian National Congress and Indian Society, 1885-1985*, edited by P. R. Brass and F. Robinson. Delhi: Chanakya Publications, 1987.
- Eagles, I., M. Taggart, and G. Liddell. *Freedom of Information in New Zealand*. Auckland: Oxford University Press, 1992.
- Eckstein, H. "Case Study and Theory in Political Science." In *Handbook of Political Science*, edited by F. I. Greenstein and N. W. Polsby. Reading: Addison-Wesley, 1975.
- Editorial. "Nigeria: Freedom of Information for None." *Vanguard* (17 February 2011), <http://allafrica.com/stories/201102170805.html>.
- "Editorial Policies." Open Government: A Journal of Freedom of Information, <http://www.opengovjournal.org/about/editorialPolicies#focusAndScope>.
- Egan, D. "The Limits of Internationalization: A Neo-Gramscian Analysis of the Multilateral Agreement on Investment." *Critical Sociology* 27, no. 3 (2001): 74-97.
- Embong, A. R. "Globalisation and Transnational Class Relations: Some Problems of Conceptualisation." *Third World Quarterly* 21, no. 6 (2000): 989-1000.
- Emerson, R. M. "Social Exchange Theory." *Annual Review of Sociology* 2 (1976): 335-62.
- Epstein, S. B., N. M. Serafino, and F. T. Miko. "Democracy Promotion: Cornerstone of U.S. Foreign Policy?" Congressional Research Service, 2007.
- Errera, R. "Access to Administrative Documents in France: Reflexions on a Reform." In *Public Access to Government-Held Information: A Comparative Symposium*, edited by N. S. Marsh. London: Stevens and Son, 1987.
- Etzioni-Halevy, E. *Bureaucracy and Democracy: A Political Dilemma*. London: Routledge and K. Paul, 1983.

- Evans, M., and J. Davies. "Understanding Policy Transfer: A Multi-Level, Multi-Disciplinary Perspective." *Public Administration* 77, no. 2 (1999): 361-85.
- Farrands, C., and O. Worth. "Critical Theory in Global Politics Economy: Critique? Knowledge? Emancipation?" *Capital and Class* 85 (2005): 43-61.
- Femia, J. A. *Gramsci's Political Thought: Hegemony, Consciousness, and the Revolutionary Process*. Oxford: Clarendon Press, 1981.
- Fenby, J. *The Penguin History of Modern China: The Fall and Rise of a Great Power*. London: Allen Lane, 2008.
- Fesler, J. W. "The Brownlow Committee Fifty Years Later." *Public Administration Review* 47, no. 4 (1987): 291-96.
- Feyerabend, P. K. *Against Method: Outline of an Anarchistic Theory of Knowledge*. London: Humanities Press, 1975.
- Finel, B., and K. Lord, eds. *Power and Conflict in the Age of Transparency*. New York: St. Martin's Press, 2000.
- . "The Surprising Logic of Transparency." *International Studies Quarterly* 43 (1999): 315-39.
- Florini, A. M. *The Coming Democracy: New Rules for Running a New World*. Washington, D. C.: Island Press, 2003.
- . "Does the Invisible Hand Need a Transparency Glove? The Politics of Transparency." Paper presented at the Annual World Bank Conference on Development Economics, Washington D.C. 1999.
- . "The End of Secrecy." In *Power and Conflict in the Age of Transparency*, edited by B. Finel and K. Lord. New York: Palgrave Macmillan, 2000.
- . "The Evolution of International Norms." *International Studies Quarterly* 40, no. 3 (1996): 363-89.
- . "A New Role for Transparency." *Contemporary Security Studies* 18, no. 2 (1997): 51-72.
- , ed. *The Right to Know: Transparency for an Open World*. New York: Columbia University Press, 2007.
- Foerstel, H. N. *Freedom of Information and the Right to Know: The Origins and Applications of the Freedom of Information Act*. London: Greenwood Press, 1999.
- FOI Advocates Network. "FOIANet." <http://www.foiadvocates.net/>.

- Forsyth, I. "Access Law and Lost Records: A Commentary on 'in Search of the Chill'." *Archivaria*, no. 55 (2000): 21-26.
- Foucault, M. *Discipline and Punishment: The Birth of the Prison*. Translated by A. Sheridan. New York: Vintage Books, 1995.
- Fox, J. "The Difficult Transition from Clientelism to Citizenship: Lessons from Mexico." *World Politics* 46 (1994): 151-84.
- Franco-Barrios, A. "Building Transparent and Honest Government in Mexico: Institutional Reforms and Anti-Corruption Policy." Interministerial Commission for Transparency and Against Corruption in the Federal Public Administration, 2003.
- Franzblau, J. "Guatemala Looks to Mexican Model for Access Implementation." *freedominfo.org* (13 February 2009), <http://www.freedominfo.org/2009/02/guatemala-looks-to-mexican-model-for-access-implementation/>.
- Fraser, R. "Freedom of Information: Commonwealth Developments." *Australian Journal of Administrative Law* 9, no. 1 (2001): 34-41.
- Freedom House. "Freedom of the Press: The Americas (Scores and Status, 1980-2008)." http://www.freedomhouse.org/uploads/fop/historical/2008/Scores%20and%20Status-Americas_2008.xls.
- freedominfo.org. "Freedominfo.org: The Global Network of Freedom of Information Advocates." <http://www.freedominfo.org/>.
- Freedominfo.org. "Russia." <http://www.freedominfo.org/regions/europe/russia/russia/>.
- Frieden, J. A. *Global Capitalism: Its Fall and Rise in the Twentieth Century*. New York: W. W. Norton & Company, 2007.
- Friedrich, C. J., and Z. K. Brezezinski. *Totalitarian Dictatorship and Autocracy*. 2nd ed. New York: Frederick A. Praeger, 1966.
- Frihagen, A. "Norway." In *Administrative Secrecy in Developed Countries*, edited by Donald C. Rowat. London: Macmillan Press, 1979.
- Froebel, F., J. Heinrichs, and O. Krey. *The New International Division of Labour*. Cambridge: Cambridge University Press, 1979.
- Fukuyama, F. *The End of History and the Last Man*. London: Penguin, 1992.

- Gabriel, A. A., and G. B. Powell. *Comparative Politics: A Developmental Approach*. Boston: Little, Brown, 1966.
- Gallie, W. B. "Essentially Contested Concepts." *Proceedings from the Aristotelian Society* 56 (1955-1956): 167-98.
- Galperin, H. "Beyond Interests, Ideas and Technology: An Institutional Approach to Communication and Information Policy." *Information Society* 20 (2004): 159-68.
- Galtung, J. "A Structural Theory of Imperialism." *Journal of Peace Research* 8, no. 2 (1971): 81-117.
- General Assembly of the United Nations. "Declaration of Human Rights." <http://www.un.org/en/documents/udhr/>.
- Germain, R. D., and M. Kenny. "Engaging Gramsci: International Relations Theory and the New Gramscians." *Review of International Studies* 24, no. 1 (1998): 3-21.
- Gibson, J. L. "Social Networks, Civil Society, and the Prospects for Consolidating Russia's Democratic Transition." *American Journal of Political Science* 45, no. 1 (2001): 51-68.
- Giddens, A. *A Contemporary Critique of Historical Materialism*. London: Macmillan, 1981.
- . *Conversations with Anthony Giddens: Making Sense of Modernity*. Stanford: Stanford University Press, 1998.
- Gilbert, J. "Access Denied: That Access to Information Act and Its Effect on Public Records Creators." *Archivaria*, no. 49 (2000): 84-123.
- Gill, S. *American Hegemony and the Trilateral Commission*. Cambridge: Cambridge University Press, 1990.
- . "The Global Panopticon? The Neoliberal State, Economic Life and Democratic Surveillance." *Alternatives* 20, no. 1 (1995): 1-49.
- . "Globalisation, Market Civilisation and Disciplinary Neoliberalism." *Millennium* 24, no. 3 (1995): 399-423.
- , ed. *Globalization, Democratization and Multilateralism*. London: Macmillan, 1997.
- , ed. *Gramsci, Historical Materialism and International Relations*. Cambridge: Cambridge University Press, 1993.

- . "New Constitutionalism, Democratisation and Global Political Economy." *Global Change, Peace and Security* 10, no. 1 (1998): 23-38.
- . *Power and Resistance in the New World Order*. New York: Palgrave Macmillan, 2003.
- . "Reflections on Global Order and Sociohistorical Time." *Alternatives* 16, no. 3 (1991): 369-81.
- . "The Rise and Decline of Great Powers: The American Case." *Politics* 8, no. 3-9 (1988).
- Gill, S., and J. H. Mittelman, eds. *Innovation and Transformation in International Studies*. Cambridge: Cambridge University Press, 1997.
- Gills, B., J. Rocamora, and R. Wilson. "Low Intensity Democracy." In *Low Intensity Democracy: Political Power in the New World*, edited by B. Gills, J. Rocamora and R. Wilson. London: Pluto Press, 1993.
- Gills, Barry, and Joel Rocamora. "Low Intensity Democracy." *Third World Quarterly* 13, no. 3 (1992): 501-23.
- Gilman, N. *Mandarins of the Future: Modernization Theory in Cold War America*. Baltimore: The Johns Hopkins University Press, 2003.
- Glanoor, I. "Government Secrecy: Exchanges, Intermediaries, and Middlemen." *Public Administration Review* 35, no. 1 (1975): 32-42.
- Global Transparency Initiative. "Transparency Charter for International Financial Institutions: Claiming Our Right to Know." Global Transparency Initiative, http://www.ifitransparency.org/doc/charter_en.pdf.
- Goodman, N., and G. T. Marx. *Society Today*. New York: Random House, 1978.
- Gosh, B. N. *Dependency Theory Revisited*. Aldershot: Ashgate, 2001.
- Gramsci, A. *Selections from Cultural Writings*. Translated by W. Boelhower. Edited by D. Forgacs and G. Nowell-Smith. London: Lawrence and Wishart, 1985.
- . *Selections from the Prison Notebooks*. Translated by Q. Hoare and G. N. Smith. London: Lawrence and Wishart, 1971.
- Grigorescu, A. "European Institutions and Unsuccessful Norm Transmission: The Case of Transparency." *International Politics* 39, no. 4 (2002).
- . "International Organizations and Government Transparency: Linking the International and Domestic Realms." *International Studies Quarterly* 47 (2003): 643-67.

- Grindle, M. S. "Patrons and Clients in the Bureaucracy: Career Networks in Mexico." *Latin American Research Review* 12, no. 1 (1977): 37-66.
- Grugel, J. *Democratization: A Critical Introduction*. London: Palgrave Macmillan, 2002.
- Guilhot, N. "Reforming the World: George Soros, Global Capitalism and the Philanthropic Management of the Social Sciences." *Critical Sociology* 33, no. 3 (2007).
- Gundersen, K. . Interview 2009.
- Guo, S. *Post-Mao China: From Totalitarianism to Authoritarianism?* Westport: Praeger, 2000.
- Habermas, J. *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*. Translated by Thomas Burger and Frederick Lawrence. Cambridge: Polity Press, 1989.
- Hammitt, H. A. "The Legislative Foundation of Information Access Policy." In *Handbook of Public Information Systems*, edited by G. D. Garson. New York: Marcel Dekker, 2000.
- Hampton, E. M. "Freedom of Information in Post-Communist Countries: Case Studies of the Czech Republic, Croatia and Bosnia and Herzegovina." Masters, University of North Carolina, 2007.
- Harding, H. *China's Second Revolution: Reform after Mao*. Sydney: Allen and Unwin, 1989.
- Harris, J., and W. I. Robinson. "Fissures in the Globalist Ruling Bloc: The Politics of Globalization from above and Below " *cyRev*, no. 7 (2001): 2.
- Harrison, D. *The Sociology of Modernization and Development*. London: Routledge, 1988.
- Hart, T., and C. Welzel. "Freedom of Information and the Transparent State." Bertelsmann Foundation, 2003.
- Harvey, D. "Introduction." *Sociological Perspectives* 33, no. 1 (Critical Theory) (1990): 1-10.
- Haynes, J. *Third World Politics: A Concise Introduction*. Oxford: Blackwell, 1996.
- Hazell, R., B. Worthy, and M. Glover. *Does FOI Work? The Impact of the Freedom of Information Act 2000 Upon British Central Government*. London: Palgrave Macmillan, 2010.

- Heald, D. "Transparency as an Instrumental Value." In *Transparency: The Key to Better Governance?*, edited by C. Hood and D. Heald. Oxford: Oxford University Press, 2006.
- . "Varieties of Transparency." In *Transparency: The Key to Better Governance?*, edited by C. Hood and D. Heald. Oxford: Oxford University Press, 2006.
- Hellman, J. A. *Mexico in Crisis*. New York: Holmes & Meier Publishers 1978.
- Helmke, G., and F. Rosenbluth. "Regimes and the Rule of Law: Judicial Independence in Comparative Perspective." *Annual Review of Political Science* 12 (2009): 345-66.
- Hettne, B., ed. *International Political Economy: Understanding Global Disorder*. London: Zed Books, 1995.
- Hirst, J. *Australia's Democracy: A Short History*. Crows Nest: Allen & Unwin, 2002.
- Historical Text Archive. "1917 Constitution of Mexico (as Amended)." <http://historicaltextarchive.com/sections.php?action=read&artid=123#TitleVII>.
- Hobbes, T. *Leviathan*. Cambridge: Cambridge University Press, 1996 [1651]
- Hobson, J. M. "For A "Second-Wave" Weberian Historical Sociology in International Relations: A Reply to Halperin and Shaw " *Review of International Studies* 5, no. 2 (1998).
- Hoffman, M. "Critical Theory and the Inter-Paradigm Debate." *Millennium* 16, no. 2 (1987): 231-49.
- . "Restructuring, Reconstructing, Reinscription, Rearticulation: Four Voices in Critical International Theory." *Millennium* 20, no. 2 (1991): 169-85.
- Holm, N. E. "Denmark." In *Administrative Secrecy in Developed Countries*, edited by Donald C. Rowat. London: Micmillan Press, 1979.
- Holman, O. *Integrating Southern Europe: EC Expansion and the Transnationalization of Spain*. London: Routledge, 1996.
- Holzner, B. "The Transparency Syndrome in Global Change." Paper presented at the Conference of Transatlantic Consortium for Public Policy Analysis and Education: Ethics, Accountability, and Social Responsibility: A Transatlantic Perspective, University of Pittsburg 2001.
- Holzner, B., and L. Holzner. *Transparency in Global Change*. Pittsburgh: University of Pittsburgh Press, 2006.

- Homans, G. C. "Bringing Men Back In." *American Sociological Review* 29, no. 6 (1964): 809-18.
- . "Rational Choice Theory and Behavioral Psychology." In *Structures of Power and Constraint*, edited by M. Meyer and R. Scott. Cambridge: Cambridge University Press, 1990.
- . "Social Behavior as Exchange." *The American Journal of Sociology* 63, no. 6 (1958): 597-606.
- . *Social Behavior: Its Elementary Forms*. New York: Harcourt Brace Jovanovich, 1974.
- Hongxin, J., S. H. Kim, and J. Du. "The Impact of Corruption and Transparency on Foreign Direct Investment: An Empirical Analysis." *Management International Review* 43, no. 1 (2003): 41-62.
- Hood, C. "Beyond Exchanging First Principles? Some Closing Comments." In *Transparency: The Key to Better Governance*, edited by C. Hood and D. Heald. Oxford: Oxford University Press, 2006.
- . "Transparency." In *Encyclopedia of Democratic Thought*, edited by P. B. Clarke and J. Foweraker. London: Routledge, 2001.
- . "Transparency in Historical Perspective." In *Transparency: The Key to Better Governance?*, edited by C. Hood and D. Heald. Oxford: Oxford University Press, 2006.
- Hoogvelt, A., M. Kenny, and R. D. Germain. "The Millenium Symposium. Conversations with Manuel Castells, Robert Cox and Immanuel Wallerstein." *New Political Economy* 4, no. 3 (1999): 379-408.
- Horkheimer, M. "Traditional and Critical Theory." In *Critical Sociology: Selected Readings*, edited by P. Connerton. Harmondsworth: Penguin Books, 1976 [1937].
- Horsley, J. P. "Toward a More Open China?" In *The Right to Know: Transparency for an Open World*, edited by A. M. Florini. New York: Columbia University Press, 2007.
- . "Update on China's Open Government Information Regulations: Surprising Public Demand Yielding Some Positive Results." freedominfo.org.
- Hsu, I. C. Y. *The Rise of Modern China*. 6th ed. New York: Oxford University Press, 2000.

- Hubbard, P. "Accountability in the Grey Area: Employing Stiglitz to Tackle Compliance in a World of Structural Pluralism, a Comparative Study." *Freedom of Information Review*, no. 111 (2004): 26-32.
- . "China's Regulations on Open Government Information: Challenges of Nationwide Policy Implementation." *Open Government: a Journal of Freedom of Information* 4, no. 1 (2008): 1-34.
- Hughes, C. "Commentaries." *Federal Law Review* 14 (1984): 27-31.
- Hughes, S. *Newsrooms in Conflict: Journalism and the Democratization of Mexico*. Pittsburgh: University of Pittsburgh Press, 2006.
- Human Rights Watch. "Lost in Translation: Bold Ambitions, Limited Results for Human Rights under Fox." New York, 2006.
- Hunt, M., and R. A. Chapman, eds. *Freedom of Information: Local Government and Accountability*. Cornwall: Ashgate, 2010.
- , eds. *Open Government in a Theoretical and Practical Context*. Aldershot: Ashgate, 2006.
- Hunter, A., and J. Sexton. *Contemporary China*. London: Macmillan Press, 1999.
- Huntington, S. P. *The Clash of Civilizations and the Remaking of World Order*. New York: Simon & Schuster, 1996.
- Independent Review Panel. "The Right to Information: Reviewing Queensland's Freedom of Information Act." Brisbane, 2008.
- Inkeles, A., and D. H. Smith. *Becoming Modern: Individual Change in Six Developing Countries*. London: Heinemann Educational, 1975.
- Inter-American Dialogue. "Access to Information in the Americas." Washington, 2003.
- Islam, R. "Do More Transparent Governments Govern Better?" World Bank Institute, 2003.
- Ives, R. J. "The Rise and Rise of Open Government." *Contemporary Review* 283, no. 1654 (2003): 265-70.
- Jaffee, D. *Socio-Economic Development Theory*. 2nd ed. Westport: Praeger Publishers, 1998.
- Jagwanth, S. "A New Vision of Access to Information: The South Africa Legislation." *Freedom of Information Review* 90 (2000): 78-80.

- Jenkins, R., and A. M. Goetz. "Accounts and Accountability: Theoretical Implications of the Right-to-Information Movement in India." *Third World Quarterly* 20, no. 3 (1999): 603-22.
- Jennings, M. K. "Political Participation in the Chinese Countryside." *American Political Science Review* 91, no. 2 (1997): 361-72.
- Jessop, B. "Post-Fordism and the State." In *Post-Fordism: A Reader*, edited by A. Amin. Oxford: Blackwell, 1994.
- Jha, N. "Initiatives of Government of India on Regulatory Reform in the Context of the Action Plan for Effective and Responsive Government." OECD, 1998.
- Justice, Ministry of Law and. "Consitution of India (Updated to the 94th Amendment Act)." <http://indiacode.nic.in/coiweb/welcome.html>.
- Kaarbo, J., and R. K. Beasley. "A Practical Guide to the Comparative Case Study Method in Political Psychology." *Political Psychology* 20, no. 2 (1999): 369-91.
- Karniel, Y. "Case Comment: The New Freedom of Information Law in Israel Is Tested by Its Supreme Court " *Open Government: a Journal of Freedom of Information* 1, no. 2 (2005): 1-12.
- Keck, M., and K. Sikkink. *Activists Beyond Borders: Advocacy Networks in International Relations*. Ithaca: Cornell University Press, 1998.
- Kelliher, D. "The Chinese Debate over Village Self-Government." *The China Journal*, no. 37 (1997): 63-86.
- Keping, Y. "Toward an Incremental Democracy and Governance: Chinese Theories and Assessment Criteria." *New Political Science* 24, no. 2 (2002): 181 - 99.
- Keyman, E. F. *Globalization, State, Identity/Difference: Toward a Critical Social Theory of International Relations*. Atlantic Highlands: Humanities Press, 1997.
- Knudsen, T., and B. Rothstein. "State Building in Scandinavia." *Comparative Politics* 26, no. 2 (1994): 203-20.
- Kohli, A. "Politics of Economic Growth in India, 1980-2005 (Part 1: The 1980s)." *Economic and Political Weekly* 41, no. 13 (2006): 1251-59.
- . "Politics of Economic Growth in India, 1980-2005 (Part 2: The 1990s and Beyond)." *Economic and Political Weekly* 41, no. 14 (2006): 1361-70.
- Kopits, G., and J. Craig. "Transparency in Government Operations." Washington: International Monetary Fund Occasional Paper No. 158, 1998.

- Kroeber, C. B. "Theory and History of Revolution." *Journal of World History* 7, no. 1 (1996): 21-40.
- Kumar, K. "Introduction." In *Revolution: The Theory and Practice of a European Idea*, edited by K. Kumar. London: Weidenfeld and Nicolson, 1971.
- Labardini, R. "The Fight against Corruption in Mexico." *United States-Mexican Law Journal* 11 (2003): 195-206.
- Laclau, E. *Emancipation(s)*. London: Verso, 1996.
- Lamble, S. "Computer-Assisted Reporting and Freedom of Information." PhD, University of Queensland, 2002.
- . "FOI as a United States' Foreign Policy Tool: A Carrot and Stick Approach." *Freedom of Information Review*, no. 105 (2003): 38-43.
- . "Freedom of Information, a Finnish Clergyman's Gift to Democracy." *Freedom of Information Review*, no. 97 (2002): 2-8.
- . "Media Use of FOI Surveyed: New Zealand Puts Australia and Canada to Shame." *Freedom of Information Review*, no. 109 (2004): 5-9.
- . "United States FOI Laws Are a Poor Model for Statutes in Other Nations." *Freedom of Information Review*, no. 106 (2003): 51-55.
- Lane, J. E., and S. Ersson. "Unpacking the Political Development Concept." *Political Geography Quarterly* 8, no. 2 (1989): 123-44.
- Lane, M. "Introduction." In *Structuralism: A Reader*, edited by M. Lane. London: Jonathan Cape, 1970.
- Lawson, C. *Building the Fourth Estate: Democratization and the Rise of a Free Press in Mexico*. Berkley: University of California Press, 2002.
- . "Mexico's Unfinished Transition: Democratization and Authoritarian Enclaves in Mexico." *Mexican Studies* 16, no. 2 (2000): 267-87.
- Lenin, V. I. *The State and Revolution*. Sydney: Resistance Books, 1999 [1918].
- Leon, J. R. "One Step Forward, Two Steps Back? Budget Transparency and Access to Information in Mexico." In *Mexico's Right-to-Know Reforms: Civil Society Perspectives*, edited by J. A. Fox. Santa Cruz: Center for Global, International and Regional Studies, 2007.
- Leysens, A. *The Critical Theory of Robert W. Cox: Fugitive or Guru?* Houndhills: Palgrave Macmillan, 2008.

- Li, X., and J. Hersh. "Understanding Capitalism: Crises and Passive Revolutions." *Competition and Change* 6, no. 2 (2002).
- Lidberg, J. "'Keeping the Bastards Honest' - the Promise and Practice of Freedom of Information Legislation." PhD, Murdoch University, 2006.
- Lijphart, A. "Comparative Politics and the Comparative Method." *The American Political Science Review* 65, no. 3 (1971): 681-93.
- . "The Puzzle of Indian Democracy: A Consociational Interpretation." *The American Political Science Review* 90, no. 2 (1996): 258-68.
- Ling, L. H. M. "Hegemony and the Internationalizing State: A Post-Colonial Analysis of China's Integration into Asian Corporatism." *Review of International Political Economy* 3, no. 1 (1996): 1-26.
- Linklater, A. "International Relations Theory: A Critical-Theoretical Point of View." *Millennium* 21, no. 1 (1992): 77-98.
- . "Realism, Marxism, and Critical International Theory." *Review of International Studies* 12, no. 4 (1986): 301-12.
- Linz, J. J. "An Authoritarian Regime: The Case of Spain." In *Mass Politics: Studies in Political Sociology*, edited by E. Allard and S. Rokkan. New York: Free Press, 1964.
- . *Totalitarian and Authoritarian Regimes*. Boulder: Lynne Reinner Publishers Inc., 2000.
- . "Totalitarian and Authoritarian Regimes." In *Handbook of Political Science*, edited by F. I. Greenstein and N. W. Polsby. Reading: Addison-Wesley Publishing Company, 1975.
- Lipset, S. M. "Some Social Requisites of Democracy: Economic Development and Political Legitimacy." *The American Journal of Political Science Review* 53, no. 1 (1959): 69-105.
- Locke, J. *Two Treatises of Government*. New York: Mentor, 1965 [1690].
- Lorentzen, P., P. Landry, and J. Yasuda. "Transparent Authoritarianism? An Analysis of Political and Economic Barriers to Greater Government Transparency in China." APSA 2010 Annual Meeting Paper, 2010.
- Lukacs, G. *History and Class Consciousness: Studies in Marxist Dialectics*. Cambridge: MIT Press, [1923] 1971.
- Maduabuchi, E. "Freedom of Information Bill Falls Again." *Daily Independent* (25 January 2010), <http://allafrica.com/stories/201001260707.html>.

- Mahaan, D. "Transparency and Poverty: Interview with Aruna and Nikhil Dey." <http://www.worldpress.org/Asia/1014.cfm#down>.
- Mander, H., and A. Joshi. "The Movement for Right to Information in India: People's Power for the Control of Corruption." 1999.
- Manninen, J. "Anders Chydenius and the Origins of World's First Freedom of Information Act." In *The World's First Freedom of Information Act: Anders Chydenius' Legacy Today*, edited by J. Mustonen. Kokkola: Anders Chydenius Foundation, 2006.
- Marglin, S., and J. B. Schor, eds. *The Golden Age of Capitalism: Reinterpreting the Postwar Experience*. Oxford: Oxford University Press, 1990.
- Marsh, N. S., ed. *Public Access to Government-Held Information: A Comparative Symposium*. London: Steven and Sons Ltd, 1987.
- Marx, K. *A Contribution to the Critique of Political Economy*. Moscow: Progress Publishers, 1977 [1859].
- . "The Eighteenth Brumaire of Louis Bonaparte." In *Collected Works*, edited by K. Marx and F. Engels. London: Lawrence and Wishart, 1979 [1852].
- . *The Eighteenth Brumaire of Louise Bonaparte*. New York: Mondial, [1852] 2005.
- Marx, K., and F. Engels. *The Communist Manifesto*. Harmondsworth: Penguin, 1967 [1848].
- Mathur, K. "Good Governance and Pursit of Transparency in Administration: The Indian Efforts." In *Governance for Development: Issues and Strategies*, edited by P. Sahni and U Medury. New Delhi: Prentice-Hall of India Private Limited, 2003.
- McAnulla, S. "Structure and Agency." In *Theory and Methods in Political Science*, edited by G. Stoker and D. Marsh. Houndmills: Palgrave Macmillan, 2002.
- McCall, E., and A. Wilde. "Rights to Information and the Poor: Experiences from India." In *Making Democracy Deliver: Innovative Governance for Human Development*, edited by United Nations Development Programme. New York: United Nations Development Programme, 2007.
- McClea, T. "Institutions and Transparency: Where Does Freedom of Information Work Best?" Paper presented at the 1st Global Conference on Transparency Research, Newark 2011.
- . "Who Pays the Piper? The Political Economy of Freedom of Information." *Government Information Quarterly* 27, no. 4 (2010): 392-400.

- McClelland, D. C. *The Achieving Society*. New York: Free Press, 1967.
- McCormick, B. L. *Political Reform in Post-Mao China*. Berkeley: University of California Press, 1990.
- McCrann, G. "An Examination of the Conditions Surrounding the Passage of the 1966 U.S. Freedom of Information Act." *Open Government: a Journal of Freedom of Information* 3, no. 1 (2007): 1-17.
- McDonagh, M. *Freedom of Information Law in Ireland*. 2nd ed. Dublin: Thomas Round Hall, 2006.
- McDonald, A., and G. Terrill. *Open Government: Freedom of Information and Privacy*. Basingstoke: Macmillan, 1998.
- McIntosh, T. "Freedom of Information Laws Added to the Development Agenda." *freedominfo.org* (22 March 2006), <http://www.freedominfo.org/2006/03/foi-laws-and-development-agend/>.
- Meehan, D. "The Freedom of Information Act in Context." *Irish Law Times*, no. 15 (1997): 231-35.
- Mendel, T. "Freedom of Information as an Internationally Protected Human Right." Article 19.
- . "Freedom of Information: A Comparative Legal Survey." Paris: UNESCO, 2008.
- . "Implementation of the Right to Information: Ideas for India from Canada, Mexico, and South Africa." In *Public Service Delivery in India: Understanding the Reform Process*, edited by V. K. Chand. New Delhi: Oxford University Press, 2010.
- . "Legal Overview of Mexican Access to Information Law." *Comparative Media Law Journal*, no. 3 (2004): 19-38.
- . "Parliament and Access to Information: Working for Transparent Governance." Washington: The World Bank, 2005.
- . "The Right to Information in Latin America: A Comparative Legal Survey." Quito: UNESCO, 2009.
- Metcalf, M. F. "Challenges to Economic Orthodoxy and Parliamentary Sovereignty in 18th Century Sweden." *Legislative Studies Quarterly* 7, no. 2 (1982): 251-61.
- Michael, J. "Freedom of Information: Where We Were, Where We Are (and Why), Where We Are Going (and How)." In *Open Government in a Theoretical and*

Practical Context, edited by M. Hunt and R. A. Chapman. Aldershot: Ashgate, 2006.

Michener, G. "Engendering Political Commitment: The Grupo Oaxaca--Expertise, Media Projection--and the Elaboration of Mexico's Access to Information Law." Paper presented at the Southern Political Science Association, New Orleans 2006.

———. "FOI Laws around the World." *Journal of Democracy* 22, no. 2 (2011): 145-59.

———. "Lessons from Media Coverage for the Right-to-Know in Latin America." [Freedominfo.org](http://freedominfo.org).

———. 7 December 2010.

———. "The Surrender of Secrecy: Explaining the Emergence of Strong Access to Information Laws in Latin America." PhD, University of Texas, 2010.

Middlebrook, K. J. *The Paradox of Revolution: Labor, the State and Authoritarianism in Mexico*. London: The Johns Hopkins University Press, 1995.

Migdal, J. S. *Strong Societies and Weak States: State-Society Relations and State Capabilities in the Third World*. Princeton: Princeton University Press, 1988.

Miliband, R. "The Capitalist State: A Reply to Nicos Poulantzas." *New Left Review*, no. 59 (1970): 53-60.

———. "Marx and the State." In *The Socialist Register*, edited by R. Miliband and J. Saville, 278-96. London: Merlin Press, 1965.

———. "Poulantzas and the Capitalist State." *New Left Review*, no. 82 (1973): 83-92.

———. *The State in Capitalist Society*. London: Quartet Books, 1973.

Milovanovic, D. *An Introduction to the Sociology of Law*. 3rd ed. New York: Criminal Justice Press, 2003.

Mittelman, J. H., ed. *Globalization: Critical Reflections, International Political Economy Yearbook 9*. Boulder: Lynne Rienner, 1997.

Modeen, T. "Finland." In *Administrative Secrecy in Developed Countries*, edited by D. C. Rowat. London: Macmillan Press, 1979.

Moran, J. "The Dynamics of Class Politics and National Economies in Globalization: The Marginalization of the Unacceptable." *Capital and Class* 66 (1998): 53-83.

- Morris, S. D. "Corruption and the Mexican Political System: Continuity and Change." *Third World Quarterly* 20, no. 3 (1999): 623-43.
- . "Fox's Anti-Corruption Campaign in Mexico: A Preliminary Look at Approaches and Strategy." Paper presented at the Latin American Studies Association, Washington D.C., 2001.
- Morton, A. D. "The Continuum of Passive Revolution." *Capital and Class* 34, no. 3 (2010): 315-42.
- . "Social Forces in the Struggle over Hegemony: Neo-Gramscian Perspectives in International Political Economy." *Rethinking Marxism* 15, no. 2 (2003): 153-79.
- . "The Sociology of Theorising and Neo-Gramscian Perspectives: The Problems of 'School' Formation in IPE." In *Social Forces in the Making of the New Europe: The Restructuring of European Social Relations in the Global Political Economy*, edited by A. Bieler and A. D. Morton. Houndmills: Palgrave, 2001.
- . "Structural Change and Neoliberalism in Mexico: 'Passive Revolution' in the Global Political Economy." *Third World Quarterly* 24, no. 4 (2003): 631-53.
- . *Unravelling Gramsci: Hegemony and Passive Revolution in the Global Economy*. London: Pluto, 2007.
- Moynihan, D. P. *Secrecy: The American Experience*. New Haven Yale University Press, 1998.
- Murphy, C. *International Organizations and Industrial Change. Global Governance since 1850*. Oxford: Polity Press, 1994.
- Murphy, C. , and R. Rooze, eds. *The New International Political Economy*. Boulder: Lynne Rienner, 1991.
- Murphy, C. N. "Understanding IR: Understanding Gramsci." *Review of International Studies* 24 (1998): 417-25.
- Mutula, S., and J. M. Wamukoya. "Public Sector Information Management in East and Southern Africa: Implications for FOI, Democracy and Integrity in Government." *International Journal of Information Management* 29, no. 5 (2009): 333-41.
- National Campaign for People's Right to Information. "Right to Information in Other Countries." <http://righttoinformation.info/rti/>.

- Neufeld, M. A. "Reflexivity and International Relations Theory." *Millennium* 22, no. 1 (1993): 53-76.
- Neufeld, M. A. . "The Pedagogical Is Political: The 'Why', the 'What' and the 'How' in the Teaching of World Politics." In *Teaching World Politics: Pedagogies of a New World Order*, edited by L. S. Gonick and E. Weisband. Boulder: Westview Press, 1992.
- Neuman, L., and R. Calland. "Establishing a Robust Transparency Regime: The Implementation Challenge." Transparency Task Force: Initiative for Policy Dialogue, 2007.
- . "Making the Law Work: The Challenges of Implementation." In *The Right to Know*, edited by A. M. Florini. New York: Columbia University Press, 2007.
- Newmark, Adam J. "An Integrated Approach to Policy Transfer and Diffusion." *The Review of Policy Research* 19, no. 2 (2002): 151-78.
- Nordstrom, B. J. *The History of Sweden*. Westport: Greenwood Press, 2002.
- O'Brien, K. J., and L. Li. "Accommodating 'Democracy' in a One-Party State: Introducing Village Elections in China." *The China Quarterly*, no. 162 (2000): 465-89.
- O'Brien, R., and M. Williams. *Global Political Economy: Evolution and Dynamics*. London: Palgrave Macmillan, 2004.
- O'Donnell, G. *Modernization and Bureaucratic-Authoritarianism: Studies in South American Politics*. Berkeley: University of California Press, 1973.
- Oi, J. C., and S. Rozzelle. "Elections and Power: The Locus of Decision-Making in Chinese Villages." *The China Quarterly*, no. 162 (2000): 513-39.
- Olsen, Hans Peter. "From Idea to Institutions: The Global Diffusion of the Ombudsman." Paper presented at the Annual Meeting of the American Political Science Association, Philadelphia 2008.
- Open Society Foundations. "Open Society Foundations: Building Vibrant and Tolerant Democracies." <http://www.soros.org/>.
- Open Society Justice Initiative. "Claude v. Chile." <http://www.soros.org/initiatives/justice/litigation/chile>.
- . "The Rising Tide: Freedom of Information in Southeast Europe." 2003.
- . "Transparency & Silence: A Survey of Access to Information Laws and Practices in Fourteen Countries." New York: Open Society Institute, 2006.

- "Organic Law of the Villagers Committees of the People's Republic of China." <http://www.china.org.cn/english/government/207279.htm>.
- Organisation for Economic Co-operation and Development. "Public Sector Modernisation: Open Government." In *Policy Brief*, 2005.
- . "Public Sector Modernisation: The Way Forward." In *Policy Brief*, 2005.
- , ed. *Public Sector Transparency and Accountability: Making It Happen*. Paris: OECD, 2002.
- . "Public Sector Transparency and International Investment Policy." Directorate for Financial, Fiscal and Enterprise Affairs, 2003.
- Organski, A. F. K. *The Stages of Political Development*. New York: Knopf, 1967.
- Osborne, D., and T. Gaebler. *Reinventing Government: How the Entrepreneurial Spirit Is Transforming the Public Sector*. New York: Penguin, 1993.
- Overbeek, H., ed. *Restructuring Hegemony in the Global Political Economy: The Rise of Transnational Neo-Liberalism in the 1980s*. London: Routledge, 1993.
- . "Transnational Class Formation and Concepts of Control: Towards a Genealogy of the Amsterdam Project in International Political Economy." *Journal of International Relations and Development* 7 (2004): 113-41.
- . "Transnational Historical Materialism: Theories of Transnational Class Formation and World Order." In *Global Political Economy: Contemporary Theories*, edited by Ronen Palan. London: Routledge, 2000.
- Overbeek, H. W. *Global Capitalism and National Decline: The Thatcher Decade in Perspective*. London: Unwin Hyman, 1990.
- Pakistan, and International Monetary Fund. "Memorandum of Economic and Financial Policies for the Remainder of Fy 2002/03." The International Monetary Fund, <http://www.imf.org/external/np/loi/2002/pak/03/>.
- Panitch, L. "Globalization and the State." In *The Socialist Register: Between Globalism and Nationalism*, edited by L. Panitch and R. Miliband. London: Merlin Press, 1994.
- Papagiannis, G., X. Hu, and A. Caine. Interview 2009.
- Parmelee, M. "Liberal Democracy, Fascism, and Bolshevism." *Annals of the American Academy of Political and Social Science* 180 (1935): 47-54.

- Pasquier, M., and J. Villeneuve. "Access to Information in Switzerland: From Secrecy to Transparency." *Open Government: a Journal of Freedom of Information* 2, no. 2 (2006): 1-13.
- Pastor, R., and Q. Tan. "The Meaning of China's Village Elections." *The China Quarterly*, no. 162 (2000): 490-512.
- Paterson, M. *Freedom of Information and Privacy in Australia: Government Information Access in the Modern State*. Sydney: LexisNexis/Butterworths, 2005.
- Peerenboom, R. *China's Long March toward Rule of Law*. Cambridge: Cambridge University Press, 2002.
- Perkins, D., S. Radelet, and D. Lindauer. *Economics of Development*. 6th ed. New York: W. W. Norton & Company, 2006.
- Peters, G. B. "Policy Transfers between Governments: The Case of Administrative Reforms." *West European Politics* 20, no. 4 (1997): 71-88.
- Pierson, P. *Politics in Time: History, Institutions and Social Analysis*. Princeton: Princeton University Press, 2004.
- Pinkney, R. *Democracy in the Third World*. Boulder: Lynne Rienner Publishers, 2003.
- Pinto, J. "Transparency Policy Initiatives in Latin America: Understanding Policy Outcomes from an Institutional Perspective." *Communication Law and Policy* 14, no. 1 (2009): 41-71.
- Piotrowski, S. J., Y. Zhang, W. Ling, and W. Yu. "Key Issues for Implementation of Chinese Open Government Regulations." *Public Administration Review* 69, no. s1 (2009): s129-s35.
- Polanyi, K. *The Great Transformation: The Political and Economic Origins of Our Time*. Boston: Beacon Press, [1985] 1944.
- Pope, J. S. "The Roots of Freedom of Information." In *A Freedom of Information Retrospective*, edited by Freedom of Information Center. Columbia: Freedom of Information Center, 1978.
- Popper, K. *The Poverty of Historicism*. London: Routledge and Kegan Paul, 1957.
- Population Division of the Department of Economic and Social Affairs of the United Nations Secretariat. *World Population Prospects: The 2008 Revision*. New York: United Nations, 2009.

- Potter, D. "Explaining Democratization." In *Democratization*, edited by D. Potter, D. Goldblatt, M. Kiloh and P. Lewis. Cambridge: Polity Press, 1997.
- Potter, D., D. Goldblatt, M. Kiloh, and P. Lewis, eds. *Democratization*. Cambridge: Polity Press, 1997.
- Poulantzas, N. "The Capitalist State: A Reply to Miliband and Laclau." *New Left Review*, no. 95 (1976): 63-83.
- . *Classes in Contemporary Capitalism*. London: New Left Books, 1975.
- . *Political Power and Social Class*. London: New Left Books, 1968.
- . "The Problem of the Capitalist State." *New Left Review*, no. 58 (1969): 67-78.
- . *State, Power, Socialism*. London: New Left Books, 1978.
- Preston, P. W. *Development Theory: An Introduction*. Oxford: Blackwell Publishers, 1996.
- Price, S. "The Official Information Act: A Window on Government or Curtains Drawn?" *Open Government: a Journal of Freedom of Information* 2, no. 1 (2006).
- Privacy International. "Privacy International." <https://www.privacyinternational.org/>.
- Prokati, K. "Information Access and Privacy Protection in Thailand." Paper presented at the Conference of Freedom of Information and Civil Society in Asia, Japan 2001.
- Puddephatt, A. "Exploring the Role of Civil Society in the Formulation and Adoption of Access to Information Laws: The Cases of Bulgaria, India, Mexico, South Africa and the United Kingdom." In *Access to Information Working Paper Series*, edited by The World Bank. Washington, 2009.
- Pye, L. W. "The Concept of Political Development." *The Annals of the American Academy of Political and Social Science* 358 (1965): 1-13.
- Randall, V. "Why Have the Political Trajectories of India and China Been Different?" In *Democratization*, edited by D. Potter, D. Goldberg, M. Kiloh and P. Lewis. Cambridge: Polity Press, 1997.
- Ray, D. *Development Economics*. Princeton: Princeton University Press, 1998.

- Reaksmey Kongkea, B. "Journos Seek Greater Access." *The Phnom Penh Post* (16 November 2010), <http://khmernz.blogspot.com/2010/11/journos-seek-greater-access.html>.
- Rees, A. E. "Recent Developments Regarding the Freedom of Information Act: A Prologue to a Farce or a Tragedy; or Perhaps Both." *Duke Law Journal* 44, no. 6 (1995): 1183-223.
- Relyea, H. C. "Freedom of Information, Privacy, and Official Secrecy: The Evolution of Federal Government Information Policy Concepts." *Social Indicators Research* 7, no. 1/4 (1980): 137-56.
- . "Historical Development of Federal Information Policy." In *United States Government Information Policies: Views and Perspectives*, edited by C. R. McClure, P. Hernon and H. C. Relyea. Norwood: Ablex, 1989.
- . "Public Access through the Freedom of Information and Privacy Acts." In *Federal Information Policies in the 1980's: Conflicts and Issues*, edited by P. Hernon and C. R. McClure. Norwood: Ablex, 1987.
- Repeta, L. "The Birth of Freedom of Information Act in Japan: Kanagawa 1982." Cambridge: MIT-Japan Program, 2003.
- Rhodes, R. A. W. "The New Governance: Governing without Government." *Political Studies* 44 (1996): 652-67.
- Ricketson, M., and R. Snell. "FOI: Threatened by Government, Unused by Journalists - Still a Sharp Tool." In *Journalism: Investigation and Research*, edited by S. Tanner. Frenchs Forest: Pearson Education Australia, 2002.
- right2info.org. "Good Law & Practice: Right2info." <http://right2info.org/>.
- Riley, D. J., and M. Desai. "The Passive Revolutionary Route to the Modern World: Italy and India in Comparative Perspective." *Comparative Studies in Society and History* 49, no. 4 (2007): 815-47.
- Risse, T., and K. Sikkink. "The Power of Human Rights: International Norms and Domestic Change." In *The Power of Human Rights: International Norms and Domestic Change*, edited by S. C. Ropp, T. Risse and K. Sikkink. Cambridge: Cambridge University Press, 1999.
- Roberts, A. "Australia's 'Great Surprise' for the US: Negotiating the 2002 Security of Information Agreement." *Freedom of Information Review*, no. 106 (2003): 50-51.
- . *Blacked Out: Government Secrecy in the Information Age*. New York: Cambridge University Press, 2006.

- . "Dashed Expectations: Governmental Adaptation to Transparency Rules." In *Transparency: The Key to Better Governance?*, edited by C. Hood and D. Heald. Oxford: Oxford University Press, 2006.
- . "A Great and Revolutionary Law? The First Four Years of India's Right to Information Act." *Public Administration Review* 70, no. 6 (2010): 925-33.
- . "Less Government, More Secrecy: Reinvention and the Weakening of Freedom of Information Law." *Public Administration Review* 60, no. 4 (2000): 308-20.
- . "Limited Access: Assessing the Health of Canada's Freedom of Information Laws." School of Policy Studies Queen's University, Freedom of Information Research Project, 1998.
- . *The Logic of Discipline: Global Capitalism and the Architecture of Government*. Oxford: Oxford University Press, 2010.
- . "Spin Control and Freedom of Information: Lessons for the United Kingdom from Canada." *Public Administration* 83, no. 1 (2005): 1-23.
- . "Structural Pluralism and the Right to Information." *University of Toronto Law Journal* 51, no. 3 (2001): 243-71.
- . "Three Patterns in the Diffusion of Transparency Rules: Money, Guns and Human Rights." The Maxwell School of Syracuse University, 2003.
- Robinson, F., and P. R. Brass. "Introduction: The Development of the Indian National Congress." In *The Indian National Congress and Indian Society, 1885-1985*, edited by P. R. Brass and F. Robinson. Delhi: Chanakya Publications, 1987.
- Robinson, W. I. "Beyond the Theory of Imperialism: Global Capitalism and the Transnational State." *Societies Without Borders* 2 (2006): 5-26.
- . "Globalisation: Nine Theses of Our Epoch." *Race & Class* 38, no. 2 (1996): 13-31.
- . "Promoting Polyarchy in Latin America: The Oxymoron Of "Market Democracy"." In *Latin America after Neo-Liberalism*, edited by E. Hershberg and F. Rosen. New York: The New Press, 2006.
- . *Promoting Polyarchy: Globalization, US Intervention and Hegemony*. Cambridge: Cambridge University Press, 1996.
- . "Social Theory and Globalization: The Rise of a Transnational State." *Theory and Society* 30, no. 2 (2001): 157-200.

- . *A Theory of Global Capitalism: Production, Class and State in a Transnational World*. Baltimore: Johns Hopkins University Press, 2004.
- Robinson, W. I., and J. Harris. "Towards a Global Ruling Class? Globalization and the Transnational Capitalist Class." *Science and Society* 64, no. 1 (2000): 11-54.
- Rodan, G. *Transparency and Authoritarian Rule in Southeast Asia: Singapore and Malaysia*. London: Routledge, 2004.
- Roelofs, J. *Foundations and Public Policy: The Mask of Pluralism*. Albany: State of University New York Press, 2003.
- Rogers, A. *Secrecy and Power in the British State: A History of the Official Secrets Act*. London: Pluto Press, 1997.
- Rosenbaum, M. *Open to Question: Journalism and Freedom of Information*. Oxford: Reuters Foundation Fellowship Programme, 2004.
- Ross, M. L. "Does Oil Hinder Democracy?" *World Politics* 53, no. 3 (2001): 325-61.
- Rostow, W. W. *The Stages of Economic Growth: A Non-Communist Manifesto*. Cambridge: University Press, 1971.
- Rowat, D. C., ed. *Administrative Secrecy in Developed Countries*. London: Macmillan Press, 1979.
- . "Comparative Survey." In *Administrative Secrecy in Developed Countries*, edited by D. C. Rowat. London: Macmillan Press, 1979.
- . "Freedom of Information: The Appeal Bodies under the Access Laws in Canada, Australia and New Zealand." *Australian Journal of Public Administration* 52, no. 2 (1993): 215-21.
- . "How Much Administrative Secrecy?" *The Canadian Journal of Economics and Political Science* 31, no. 4 (1965): 479-98.
- Roy, A., and N. Dey. "Fighting for the Right to Know in India." 2002.
- Ruggie, John G. "International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order." *International Organization* 36, no. 2 (1982): 375-415.
- Rupert. "Newsletter." December 1986.
- Rupert, M. *Globalization and International Political Economy: The Politics of Alternative Futures*. Lanham: Rowman & Littlefield Publishers, 2006.

- . *Ideologies of Globalization: Contending Visions of a New World Order*. London: Routledge, 2000.
- Rupert, M., and H. Smith, eds. *Historical Materialism and Globalization*. London: Routledge, 2002.
- Rupert, Mark. *Producing Hegemony: The Politics of Mas Production and American Global Power*. Cambridge: Cambridge University Press, 1995.
- Rutgers University (School of Public Affairs and Administration). "1st Global Conference on Transparency Research."
<http://spaa.newark.rutgers.edu/home/conferences/1stgctr.html>.
- Sakamoto, Y., ed. *Global Transformation: Challenges to the State System*. Tokyo: United Nations University Press, 1994.
- Sanders, D. "Behaviouralism." In *Theory and Methods in Political Science*, edited by D. Marsh and G. Stoker. London: Palgrave Macmillan, 2002.
- Sanger, C. "A Clear and Steady Voice: The Commonwealth Human Rights Initiative at 20." *The Commonwealth Journal of International Affairs* 96, no. 4 (2007): 477-88.
- Sarin, R. "Relevance of Official Secrets Act No Limited, RTI Act Will Prevail If There's Any Direct Conflict, Says CIC." *Indian Express* (14 October 2007), <http://www.indianexpress.com/news/relevance-of-official-secrets-act-now-limite/228511/>.
- Sassoon, A. S. "Passive Revolution and the Politics of Reform." In *Approaches to Gramsci*, edited by A. S. Sassoon. London: Writers and Readers, 1982.
- Saward, M. *The Terms of Democracy*. Malden: Blackwell Publishers, 1998.
- Schartum, D. W. . "Information Access Legislation for the Future? Possibilities According to a Norwegian Experience." In *Public Sector Information in the Digital Age: Between Markets, Public Management and Citizens' Rights*, edited by G. Aichholzer and H. Burkert. Cheltenham: Edward Elgar, 2004.
- Scheina, R. L. *Latin America's Wars: The Age of the Caudillo, 1791-1899*. Dulles: Brassey's Inc., 2003.
- Schumann, W. R. "Transparency, Governmentality, and Negation: Democratic Practice and Open Government Policy in the National Assembly of Wales." *Anthropological Quarterly* 80, no. 3 (2007): 837-62.
- Schumpeter, J. A. *Capitalism, Socialism and Democracy*. New York: Harper Torchbooks, 1975 [1942].

- Schurmann, F. *Ideology and Organization in Communist China*. Berkeley: University of California Press, 1966.
- Screene, L. "How Prepared Are Public Bodies for the Implementation of the UK Freedom of Information Act, in January 2005?" *Records Management Journal* 15, no. 1 (2005): 34-42.
- Sebina, P. "Freedom of Information and Records Management: A Learning Curve for Botswana." PhD, University College London, 2006.
- . "Freedom of Information: Erosion of the Archive?" *Journal of the Society of Archivists* 30, no. 2 (2009): 147 - 65.
- Senate Standing Committee on Legal and Constitutional Affairs. *Freedom of Information, Report by the Senate Standing Committee on Constitutional Affairs on the Freedom of Information Bill 1978, and Aspects of the Archives Bill 1978*. Canberra: AGPS, 1979.
- Seymour, J., ed. *The Fifth Modernization: China's Human Rights Movement, 1978-1979*. Stanfordville: Human Rights Publishing Group, 1980.
- Shambaugh, D. L. "China's Propaganda System: Institutions, Processes and Efficacy." *The China Journal*, no. 57 (2007): 25-58.
- Sharma, A. K. *Bureaucracy and Decentralisation*. New Delhi: Mittal Publications, 2004.
- Sharman, J. C., and D. Marsh. "Policy Diffusion and Policy Transfer." *Policy Studies* 30 (2009): 269-89.
- Shepherd, E. "Freedom of Information and Records Management in the UK: What Has Been the Impact?" *Journal of the Society of Archivists* 28, no. 2 (2007): 125-38.
- Shepherd, E., and E. Ennion. "How Has the Implementation of the UK Freedom of Information Act 2000 Affected Archives and Records Management Services?" *Records Management Journal* 17, no. 1 (2007): 32-51.
- Shi, T. "Village Committee Elections in China: Institutional Tactics for Democracy." *World Politics* 51, no. 3 (1999): 385-412.
- Shields, S. "Global Restructuring and the Polish State: Transition, Transformation, or Transnationalization?" *Review of International Political Economy* 11, no. 1 (2004): 132-54.
- . "Historicizing Transition: The Polish Political Economy in a Period of Global Structural Change - Eastern Central Europe's Passive Revolution." *International Politics*, no. 43 (2006).

- Singh, S. "The Genesis and Evolution of the Right to Information Regime in India." freedominfo.org,
<http://freedominfo.org/documents/India2010singhCountry%20Paper%20FINAL.pdf>.
- Siraj, M. "Exclusion of Private Sector from Freedom of Information Laws: Implications from a Human Rights Perspective." *Journal of Alternative Perspectives in the Social Sciences* 2, no. 1 (2010): 211-26.
- Sklair, C. L. *The Transnational Capitalist Class*. Oxford: Blackwell Publishers, 2006.
- Slough, P., and C. Rodrigues. "India's Right to Information Movement Makes a Breakthrough." *Open Government: a Journal of Freedom of Information* 1, no. 1 (2005): 1-14.
- Snell, R. "Using Comparative Studies to Improve Freedom of Information Analysis: Insights from Australia, Canada and New Zealand." Paper presented at the 6th National and 2nd International Congress on the Right to Information, Mexico City 2005.
- Snell, R. "Administrative Compliance - Evaluating the Effectiveness of Freedom of Information." *Freedom of Information Review*, no. 93 (2001): 26-32.
- . "Cambodia - Weeks 1-2." Information and Access Blog,
<http://informationandaccess.blogspot.com/2007/07/cambodia-weeks-1-2.html>.
- . "Contentious Issues Management: The Dry Rot in FOI Practice?" *Freedom of Information Review*, no. 102 (2002): 62-65.
- . "FOI - One Element of a Supportive Network of Laws, Institutions and Practices." Carter Center,
<http://www.cartercenter.org/resources/pdfs/peace/americas/conference2010/RickSnell.ppt#256,1,FOI>.
- . "FOI and the Delivery of Diminishing Returns, or How Spin-Doctors and Journalists Have Mistreated a Volatile Reform." *Drawing Board: an Australian Review of Public Affairs* 2, no. 3 (2002): 187-207.
- . "Freedom of Information Practices." *Agenda* 13, no. 4 (2006): 291-307.
- . "Freedom of Information: The Experience of the Australian States - an Epiphany?" *Federal Law Review* 29, no. 3 (2001): 343-58.
- . "In Search of the Freedom of Information Constituency: Case 1 - the Media." *Freedom of Information Review*, no. 78 (1998): 81-84.
- . "The Kiwi Paradox: A Comparison of Freedom of Information in Australia and New Zealand." *Federal Law Review* 28, no. 3 (2000): 575-616.

- . "Opening up the Mindset Is Key to Change." *Public Sector Informant* 2008, 10-11.
- . "The Torchlight Starts to Glow a Little Brighter: Interpretation of Freedom of Information Legislation Revisited." *Australian Journal of Administrative Law* 2, no. 4 (1995): 197-216.
- Snell, R., and P. Sebina. "Information Flows: The Real Art of Information Management and Freedom of Information." *Archives and Manuscripts* 35, no. 1 (2007): 55-79.
- Snell, R., and J. Upcher. "Freedom of Information and Parliament: A Limited Accountability Tool for a Key Constituency." *Freedom of Information Review* 100 (2002): 35-41.
- Snell, R., and W. Xiao. "Freedom of Information Returns to China." *Public Administration Today*, no. 10 (2007): 44-47.
- Soderbaum, F., and I. Taylor. "Transmission Belt for Transnational Capital or Facilitator of Development? Problematising the Role of the State in the Maputo Development Corridor." *Journal of Modern African Studies* 39, no. 4 (2001): 675-95.
- Soederberg, S. "From Neoliberalism to Social Liberalism: Situating the National Solidarity Program within Mexico's Passive Revolutions." *Latin American Perspectives* 28, no. 3 (2001): 104-23.
- Sorel, G. *Systeme Historiae De Renan*. Geneva: Slatkine Reprints, 1971 [1905].
- Spegele, R. D. "Is Robust Globalism a Mistake?" *Review of International Studies* 23 (1997).
- Stiglitz, J. "On Liberty, the Right to Know, and Public Discourse: The Role of Transparency in Public Life." In *Globalizing Rights*, edited by Matthew Gibney. Oxford: Oxford University Press, 2003.
- . "Transparency in Government." In *The Right to Tell: The Role of Mass Media in Economic Development*, edited by World Bank Institute. Washington: The World Bank, 2002.
- Stirton, L., and M. Lodge. "Transparency Mechanisms: Building Publicness into Public Services." *Journal of Law and Society* 28, no. 4 (2001): 471-89.
- Strange, S. "Review: Production, Power and World Order: Social Forces in the Making of History. By Robert W. Cox." *International Affairs (Royal Institute of International Affairs 1944-)* 64, no. 2 (1988): 269-70.

- Stubbs, R. "Freedom of Information and Democracy in Australia and Beyond." *Australian Journal of Political Science* 43, no. 4 (2008): 667-85.
- Sutton, G., and S. Holsen. "China Progresses Information Access and Data Protection Laws." *Open Government: a Journal of Freedom of Information* 2, no. 2 (2006): 1-3.
- Svanstrom, R., and C. F. Palmstierna. *A Short History of Sweden*. Translated by J. Bulman. Oxford: Clarendon Press, 1934.
- Swiss Federal Institute of Technology. "Index: Economic Globalization." <http://globalization.kof.ethz.ch/query>.
- . "Index: Political Globalization." <http://globalization.kof.ethz.ch/query>.
- . "Index: Social Globalization." <http://globalization.kof.ethz.ch/query>.
- . "KOF Index of Globalization." <http://globalization.kof.ethz.ch/>.
- . "KOF Index of Globalization 2008." <http://globalization.kof.ethz.ch/map/#>.
- Taggart, M. "The Impact of Corporatisation and Privatisation on Administrative Law." *Australian Journal of Administrative Law* 51, no. 3 (1992): 368-73.
- Tasmanian Department of Justice. "Review of the Freedom of Information Act 1991 Directions Paper." Hobart, 2009.
- Teiwes, F. C. "The Chinese State During the Maoist Era." In *The Modern Chinese State*, edited by D. L. Shambaugh. Cambridge: Cambridge University Press, 2000.
- Terrill, G. "Individualism and Freedom of Information Legislation." *Freedom of Information Review*, no. 87 (2000): 30-32.
- . "The Rise and Decline of Freedom of Information in Australia." In *Open Government: Freedom of Information and Privacy*, edited by A. McDonald and G. Terrill. Basingstoke: Macmillan, 1998.
- . *Secrecy and Openness: The Federal Government from Menzies to Whitlam and Beyond*. South Carlton: Melbourne University Press, 2000.
- Teschke, B. "Marxism." In *The Oxford Handbook of International Relations*, edited by C. Reus-Smit and D. Snidal. Oxford: Oxford University Press, 2008.
- The Campaign for Freedom of Information. "1000 FOI Stories from 2006 and 2007." (2008), <http://www.cfoi.org.uk/pdf/FOIStories2006-07.pdf>.
- The Carter Center. "Access to Information." <http://www.cartercenter.org/peace/americas/information.html>.

- . "Annual Reports." http://www.cartercenter.org/news/publications/annual_reports.html.
- . "Carter Center Delegation Report: Village Elections in China." The Carter Center, 1997.
- . "International Conference on the Right to Public Information." http://www.cartercenter.org/peace/americas/ati_conference/right_to_public_information_conf.html.
- The International Monetary Fund. "Code of Good Practices on Fiscal Transparency." <http://www.imf.org/external/np/fad/trans/code.htm>.
- The Swedish Parliament. "The History of the Riksdag." http://www.riksdagen.se/templates/R_Page_798.aspx.
- Thomas, C. Y. *The Rise of the Authoritarian State in Peripheral Societies*. New York: Monthly Review Press, 1984.
- Thomas, P. *Alien Politics: Marxist State Theory Retrieved*. New York: Routledge, 1994.
- Thompson, G. "Mexicans Move to Pry Open Potentially Explosive Files." *New York Times* (12 October 2001), <http://www.nytimes.com/2001/10/12/international/americas/12MEXI.html>.
- Thurston, A. F. "Muddling Towards Democracy: Political Change in Grassroots China." Washington: United States Institute of Peace, 1998.
- Tillmann, P. "Disparate Information and the Probability of Currency Crises: Empirical Evidence." *Economics Letters* 84, no. 1 (2004): 61-68.
- Tilton, T. A. "The Social Origins of Liberal Democracy: The Swedish Case." *The American Political Science Review* 68, no. 2 (1974): 561-71.
- Todaro, M. P., and S. C. Smith. *Economic Development*. 10th ed. Boston: Pearson Addison Wesley, 2008.
- Transparencia Mexicana. "Rendición De Cuentas." <http://www.transparenciamexicana.org.mx/quienessomos/rendiciondecuentas/>.
- Transparency International. "Access to Information: TI Projects and Activities." http://www.transparency.org/global_priorities/other_thematic_issues/access_information/projects_access.
- . "Transparency International Audited Financial Reports." http://www.transparency.org/about_us/annual/financial_reports.

- . "Transparency International: The Global Coalition against Corruption." <http://www.transparency.org/>.
- . "Using the Right to Information as an Anti-Corruption Tool." Berlin: Transparency International, 2006.
- Trapnell, S. "Freedom of Information Frameworks: Using Actionable Indicators to Evaluate Design and Performance." Paper presented at the 1st Global Conference on Transparency Research, Newark 2011.
- Treasury Board of Canada Secretariat. "Federal Accountability Act." <http://www.tbs-sct.gc.ca/faa-lfi/index-eng.asp>.
- Trotsky, L. *The Revolution Betrayed*. New York: Doubleday, 1961.
- Tsolakis, A. "Globalisation and the Reform of the Bolivian State, 1985-2005." PhD, University of Warwick, 2009.
- Uhr, C. G. "Anders Chydenius, 1729-1803, a Finnish Predecessor to Adam Smith." *Western Economic Journal*, no. 2 (1964): 85-116.
- UK FOI Campaign. "Four Legislative Successes."
- UNDP Oslo Governance Centre. "Access to Information Resources." United National Development Programme, http://www.undp.org/oslocentre/flagship/access_information.html.
- United National Development Programme. "Access to Information and E-Governance." http://www.undp.org/governance/focus_access_information.shtml#.
- United Nations. "Report of the Commission of Experts of the President of the United Nations General Assembly on Reforms of the International Monetary and Financial System." New York, 2009.
- USAID Indonesia. "Democratic Reform Support Program." [http://indonesia.usaid.gov/en/USAID/Activity/142/Democratic Reform Support Program DRSP](http://indonesia.usaid.gov/en/USAID/Activity/142/Democratic_Reform_Support_Program_DRSP).
- . "Mininfo Introduces FOIA Manual." USAID Indonesia, [http://indonesia.usaid.gov/en/USAID/Article/367/MinInfo_introduces_FOIA Manual](http://indonesia.usaid.gov/en/USAID/Article/367/MinInfo_introduces_FOIA_Manual).
- van der Pijl (ed.), K. . "Transnational Relations and Class Strategy." *International Journal of Political Economy* 19, no. 3 (1998).
- van der Pijl, K. *Global Rivalries: From the Cold War to Iraq*. London: Pluto Press, 2006.

- . "A Lockean Europe?" *New Left Review*, no. 37 (2006): 9-37.
- . *The Making of an Atlantic Ruling Class*. London: Verso, 1984.
- . "Ruling Classes, Hegemony, and the State System." *International Journal of Political Economy* 19, no. 3 (1989): 7-35.
- . *Transnational Classes and International Relations*. London: Routledge, 1998.
- Vico, G. *The New Science of Giambattista Vico*. Translated by Thomas Goddard Bergin and Max Harold Fisch. 3rd ed. Ithaca: Cornell University Press, 1970.
- Virginia, University of. "Thomas Jefferson on Politics and Government." <http://etext.virginia.edu/jefferson/quotations/jeff0950.htm>.
- Vleugels, R. "Overview of All 90 FOIA Countries and Territories." 2009.
- . "Overview of All FOI Laws." 2010.
- Wallace, J. "The Canadian Access to Information Act." In *Public Access to Government-Held Information: A Comparative Symposium*, edited by N. S. Marsh. London: Stevens and Son 1987.
- Wallerstein, I. *The Modern World-System: Capitalist Agriculture and the Origins of the European World-Economy in the Sixteenth Century*. III vols. Vol. I. New York: Academic Press, 1974.
- . *The Modern World-System: Mercantilism and the Consolidation of the European World-Economy*. III vols. Vol. II. New York: Academic Press, 1980.
- . "The Rise and Future Demise of the World Capitalist System: Concepts for Comparative Analysis." *Comparative Studies in Society and History* 16, no. 4 (1974): 387-415.
- Waters, M. *Modern Sociological Theory*. London: Sage Publications, 1994.
- , ed. *Modernity: Critical Concepts*. Vol. 1 - 4. London: Routledge, 1999.
- Waters, N. *Print Media Use of Freedom of Information Laws in Australia*. Sydney: Australian Centre for Independent Journalism, 1999.
- Weber, M. *From Max Weber: Essays in Sociology*. Translated by C. W. Mills and H. H. Gerth. London: Routledge & Kegan Paul, 1948.
- . "'Objectivity' in Social Science." In *Classical Sociological Theory*, edited by C. Calhoun, J. Gerteis, J. Moody, S. Pfaff and I. Virk. Malden: Blackwell Publishing, 2007 [1904].

- Weiss, T. G. "Governance, Good Governance and Global Governance: Conceptual and Actual Challenges." *Third World Quarterly* 21, no. 5 (2000): 795-814.
- Weldon, J. "The Political Sources of *Presidencialismo* in Mexico." In *Presidentialism and Democracy in Latin America*, edited by S. Mainwaring and M. S. Shugart. Cambridge: Cambridge University Press, 1997.
- Wiggins, J. R. *Freedom or Secrecy*. New York: Oxford University Press, 1956.
- Williamson, J. "Democracy and the 'Washington Consensus'." *World Development* 21, no. 8 (1993): 1329-36.
- . "What Washinton Means by Policy Reform." In *Latin American Adjustment: How Much Has Happened?*, edited by J. Williamson: Peterson Institute for International Economics, 1990.
- Winchester, K. A., and J. W. Zirkel. "Freedom of Information and the CIA Information Act." *University of Richmond Law Review* 21, no. 2 (1987): 231-302.
- Wolf, E. R., and E. C. Hansen. "Caudillo Politics: A Structural Analysis." *Comparative Studies in Society and History* 9, no. 2 (1967): 168-79.
- Wolff, C. "The Swedish Aristocracy and the French Enlightenment." *Scandinavian Journal of History* 30, no. 3 (2005): 259-70.
- Wolman, H. "Understanding Cross National Policy Transfers: The Case of Britain and the US." *Governance*, no. 5 (1992): 27-45.
- Woods, A. "Adding Another Glass Block to the Barrier of Transparency: The Media and the Freedom of Information Acts." *Cork Online Law Review* (2004).
- World Bank. "Access to Information, Transparency and Governance." <http://web.worldbank.org/WBSITE/EXTERNAL/WBI/WBIPROGRAMS/PSGLP/0,,contentMDK:21959214~pagePK:64156158~piPK:64152884~theSitePK:461606,00.html>.
- . "Access to Information, Transparency and Governance: Past Events." <http://web.worldbank.org/WBSITE/EXTERNAL/WBI/WBIPROGRAMS/PSGLP/0,,contentMDK:22015692~pagePK:64156158~piPK:64152884~theSitePK:461606,00.html>.
- . "Access to Information, Transparency and Governance: Publications." <http://web.worldbank.org/WBSITE/EXTERNAL/WBI/WBIPROGRAMS/PSGLP/0,,contentMDK:21985280~pagePK:64156158~piPK:64152884~theSitePK:461606,00.html>.

- . "Sub-Sahara Africa: From Crisis to Sustainable Growth: A Long-Term Perspective Study." Washington D.C.: The World Bank, 1989.
- . "World Development Report 1997: The State in a Changing World." Washington D.C.: World Bank, 1997.
- World Bank Institute. "Workshop on the Implementation of Freedom of Information Law in Indonesia." World Bank Institute,, <http://siteresources.worldbank.org/PSGLP/Resources/FOIImplementationWkspAgendaFINAL.pdf>.
- Worrall, J. "Democracy and FOI: Not Just 'Part of the Wallpaper'? Analysing Stakeholder's Conceptions of Democracy in Their Interpreting, Reforming, Accessing and Administrating of FOI Objects in Australia." Honours, University of Tasmania, 2009.
- Worth, O. "The Poverty and Potential of Gramscian Thought in International Relations." *International Politics* 45, no. 6 (2008): 633-49.
- Worthy, B. "More Open but Not More Trusted? The Effect of the Freedom of Information Act 2000 on the United Kingdom Central Government." *Governance* 23, no. 4 (2010): 561-82.
- Wyatt, B. "America's Experience of FOI: An Account." In *FOIA and Civil Society*, edited by L. Arogundade. Lagos: International Press Centre, 2003.
- Xiao, W. "China's Limited Push Model of FOI Legislation." *Government Information Quarterly* 27, no. 4 (2010): 346-51.
- . "Freedom of Information Reform in China: Information Flows Analysis." PhD, University of Tasmania, 2010.
- Youm, K. H. "Freedom of Expression and the Law: Rights and Responsibilities in South Korea." *Stanford Journal of International Law* 123 (2002): 123-52.
- Zakaria, F. *The Future of Freedom: Illiberal Democracy at Home and Abroad*. New York: W. W. Norton & Co., 2003.
- Zhou, H. "Open Government in China: Practice and Problems." In *The Right to Know: Transparency for a New World*, edited by A. M. Florini. New York: Columbia University Press, 2007.