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

By
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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.
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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