

Transparency Impact and Compliance –
A Survey of the Landscape with Insights from Latin America

Gregory Michener – Assistant Professor, FGV-EBAPE
Gregory.michener@fgv.br

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Within the last few years, a growing number of scholars have questioned the impact of transparency policies, particularly freedom of information (FOI) laws. Questions have focused on the positive impact of transparency policies (Bernstein, 2012; Calland & Bentley, 2013; Kosack & Fung, 2014; Pozen, 2017, 2018) and the (negative) impact of too much transparency (de Fine Licht, Naurin, Esaiasson, & Gilljam, 2013; Fukuyama, 2014, p. 504; Sunstein, 2018). It is indisputable that unbounded transparency can lead to negative externalities, such as stifled deliberation. Yet to question the positive impact of transparency policies seems disingenuous if not wanton in several regards. From a causal perspective, it implies an epistemological view of ‘impact’ that look askance at all but direct, quantifiable measures. From a governance perspective, it buoys proponents of opacity in an age of exclusionary politics and democratic retrenchment. Perhaps most importantly, it sidelines concerns regarding the miserable operative reliability of transparency policies.

The first part of the current paper theoretically challenges skewed thinking regarding the impact of transparency policies and provides examples of alternative means of understanding and assessing their impact. The second part of the paper, however, is primarily concerned with exploring the (un)reliability of transparency policies. After all, the impact of transparency policies is ultimately contingent on disclosures that are legally compliant and minimally consistent. In order to shed light on the more readily measured dimension of policy reliability –

compliance – the paper offers a “big picture” portrait of evaluative strategies as well as baseline numbers on transparency compliance based on more than 125 evaluations from across Latin America. This big picture portrait is useful for identifying overall trends (positive) and gaps in terms of what parts of the state evaluations are neglecting (subnational level, legislatures). It also serves to alert us to what parts of the state are faring worse (municipal governments) and suggesting how biases in measuring the performance of transparency policies could be improved.

Given the explosion of transparency policies over the past few decades, scholars have paid scant attention to testing them, or analyzing compliance within and across countries. Academic works have often relied on government data or only a few evaluations by civil society organizations (CSOs) to address questions related to policy reliability (Camaj, 2016; Hazell & Worthy, 2010; Michener, 2015; Roberts, 2006; Stewart, 2010). For their part, US transparency policies are far from representative of the “big picture”. The US FOIA, for example, has become a *sui generis* law not only by virtue of its anachronisms and sprawling addendums, but also because of the country’s singularity, including its atypical national security and regulatory (approval) systems. Moreover, relatively few scholars in the US or elsewhere are engaged in examining what dozens of evaluations by civil society organizations (CSOs), international non-governmental organizations (INGOs), or government oversight institutions are saying about the reliability of transparency policies.

Evaluations are the best means we have to understand the reliability of transparency policies. Aggregate observational and experiential assessments of transparency policies provide detailed data to indicate whether policies are going right or wrong. Longitudinal and cross-sectional data aggregated from evaluations represents a high number of observations, and evaluations

undertaken by domestic and international nongovernmental organizations, scholars, and government watchdogs together reflect the triangulation of different actors, approaches, methods, types of transparency, and policy areas (e.g. education or policing transparency). Notwithstanding a significant lack of consensus on measurement standards, a phenomenon explored in this paper, aggregate evaluations of transparency policies can provide approximate answers to questions regarding levels of compliance, consistency of disclosures, as well as evaluation loci, and evaluator strategies.

Furthermore, transparency evaluations provide useful vehicles for creating and tracing impact. Berliner (2015), for example, provides strong empirical evidence to suggest that transparency evaluations can have the effect an exogenous shock, giving rise to stronger political commitments. Evaluations can be particularly effective when their results are accompanied by indexes, checklists, or dashboard scorecards (see, for example, Kelley & Simmons, 2014).

Overall, the paper proposes two sets of lessons. First, the impact of transparency policies is often diffuse, indirect, and upstream as well as downstream. Taking into account the literature on transparency's impact, this observation begets several recommendations. On the one hand, evaluators ought to look beyond the transparency-as-a-means-to-accountability paradigm and examine the impact of transparency policies in other domains. Accountability is one of many areas in which transparency policies can have impact. On the other hand, most impacts seem to be better measured using indicators than metrics. Indeed, the current vogue in (quasi-) experimental interventions may be less appropriate for measuring impact than process-tracing.

The second set of lessons, arising from an analysis of transparency policy evaluations across Latin America, proposes that biases abound in respect to *how* transparency policy compliance is

measured, *what parts* of government are evaluated and how *the results* of evaluations can vary depending on what stakeholder is doing the evaluating. From a global policy perspective a pair of findings within these lessons should matter for policymakers. On the one hand, evaluators have tended to omit subnational levels of governance, particularly state courts as well as federal, state, and municipal legislatures from their evaluations. On the other hand, evaluations show that municipal compliance with transparency policies is dramatically weaker relative to other levels of government. The paper explores rationales behind this apparent paradox, which runs contrary to findings in advanced democracies.

TRANSPARENCY POLICY EVALUATION, IMPACT AND RELIABILITY

Policy evaluation has not kept pace with the rapid expansion of transparency policies in most democracies. Table 1 presents an illustrative list of new transparency policies enacted in Brazil over the past ten years. Here, ‘transparency policy’ refers to legal statutes that either provide extensive transparency provisions or whose stated purpose is to detail transparency obligations and rights. Functionally, transparency policies are statutes that obligate organizations to render information visible and inferable to citizens (Michener & Bersch, 2013).

[Table 1 about here]

Only three of the seven laws in Table 1 have been the subject of transparency evaluations, a point which conveys the disconnect between transparency’s legal advances, on the one hand, and lagging efforts to validate implementation, compliance, impact, or worth, on the other. A failure

to engage in evaluation deprives administrators and citizens of the ability to control, learn, improve, motivate, or celebrate the work of government (Behn, 2003).

Situating the Significance of Policy Evaluation

Policy evaluations provide institutionally credible forms of feedback, wherein evidence is ostensibly derived from methodologically and procedurally sound methods of analysis. In the hierarchy of actionable evidence, evaluations tower over anecdote or testimonials and are superseded only by the irrefutable evidence of recurring crises and scandals. Yet despite their importance, evaluations have been relegated a theoretically ancillary role in narratives on policy commitments, including reform and adoption processes.

Scholars do dote on the contribution of epistemic communities and coalitions of experts, advocates, or transgovernmental networks in policy adoption, reform and implementation processes (Haas, 1992; Keck & Sikkink, 1998; Slaughter, 2004). The agency of these actors – which shapes and is shaped by institutions – represents an analytical focal point in the literature. Yet forming part of the analytically nebulous realm of ‘ideas’ (Hall, 1993; Milner, 1997), evaluations are typically subsumed into higher-order concepts, such as ‘advocacy’ and ‘expertise’. As inexplicitly recognized as evaluations are, in their absence epistemic communities and other types of policy advocates would be reduced to mere purveyors of principles and unsubstantiated opinion.

Inattentiveness to the importance of evaluation for transparency policy has at least one important exception. As alluded to in the introduction, Berliner (2015) suggests how the issuance of legal analyses by a leading international nongovernmental organization (Article 19) of draft national freedom of information (FOI) laws is associated with more robust final laws. Berliner’s

contribution is significant in pinpointing one type of actor and one type of activity (evaluation), moving the literature beyond attributions of influence to bulky, multidimensional constructs such as ‘advocacy coalitions’ or ‘transnational activists’.

Divergent Understandings of Policy Evaluation

Berliner’s focus was on ‘legal analyses’, one of several types of ‘policy evaluation’. A basic understanding of policy evaluation is that it serves to assess or analyze any number of variables or points in the policy cycle from *ex ante* to *ex post*, from formulation to reform (e.g. OECD, 2014). These variables range from compliance, implementation, impact, to more discrete variables, such as timeliness or perceptions of efficacy. In this universal understanding, policy evaluation is actor-nonexclusive, serving as both a diagnostic tool and a catalyzer for mobilization and stakeholder commitments.

Yet there appears to be a second, progressively influential and exclusionary understanding of policy evaluation as *ex post* impact evaluation. A recent article in the journal *Evaluation*, provides an example of this understanding:

This article follows Vedung (1997, p. 3) in defining policy evaluation as the ‘careful retrospective assessment of the merit, worth, and value of administration, output and outcome of government interventions, which is intended to play a role in future practical action situations’” (Schoenefeld & Jordan, 2017, p. 274).

To many, “policy evaluation” has become synonymous with evaluations of output and outcomes – impact and, concomitantly, worth. This understanding conveys an assumption that implementation and compliance can be taken for granted. From this perspective, impact is key;

only when impact is lacking do we examine backwards linkages such as implementation and compliance. Otherwise, implementation and compliance are considered *fait accompli*.

Leaving aside the observation that policies are rarely implemented in a fulsome manner in most countries and organizations (i.e. most of the planet), an exclusive focus on impact is especially problematic for transparency policies for at least two reasons. First, these policies suffer lapses of implementation and compliance virtually everywhere, thus a focus on impact might seem premature if not of equal or lesser urgency than a focus on the nuts and bolts of compliance and implementation. Second, conceptualizations of how transparency policies exert impact suffer from important epistemological dilemmas.

Muddled Thinking about The Impact of Transparency Policies

Scholarship on transparency has not escaped the current fervor for evaluating *ex post* impact. In this sense, the impact of transparency policies is currently the subject of intense questioning among scholars. This is particularly concerning with regards to freedom of information (FOI) policies, which, as “last resort” disclosure policies, serve as important barometers of transparency ecosystems more generally. In a review piece on FOI, Calland and Bentley (2013, p. S72) comment, “there is very little evidence of the effectiveness of FOI generally or transnationally.” Echoing this observation, Pozen (2018, p. 22) claims that “over a half-century into its existence, evidence that FOIA [the United States freedom of information act] has improved the quality of governance (however measured) is slim to nonexistent.” To support this conclusion, Pozen cites a review piece by Kosack and Fung (2014, p. 79). Kosack and Fung, in turn, point out that, “the literature [on transparency] has thus far yielded frustratingly mixed

conclusions: some studies conclude that transparency has huge effects; others show little or no effect.” Kosack and Fung, in turn, cite McGee and Gaventa (2013, p. S16), who affirm in yet another review piece that “the FOI sector is rather anomalous – while work in this area has been going on for some time, there are surprisingly few studies which illustrate its impacts”. Note that McGee and Gaventa point to the lack of studies on impact, rather than impact itself. As a whole, these studies represent a clarion call for scholars of transparency to look more closely at the question of impact.

Measuring Impact: Micro v. Macro Perspectives

One of the central flaws of the claims listed above is the assumption that the impact of transparency policies can be measured using standard methodological toolkits. Though some forms of transparency may perhaps be amenable to direct measurement, most transparency policies have diffuse, indirect, long-term upstream and downstream impacts that preclude such evaluation strategies. Instead, assessing the impact of transparency policies exhorts reliance on indirect indicators from which causality is attributed only contingently. Calland and Bentley (2013), cited in the preceding paragraph, lament, “there are very serious and substantial gaps in knowledge because of the absence of a robust methodology to measure impact” (p.S84). The conclusion that emerges is that because robust methodologies are lacking, we have “little evidence of the effectiveness of FOI” (see previous paragraph: Calland & Bentley, 2013, p. S72). Yet the logic confounds measurement with effect. That once upon a time we had no reliable measure for calculating temperature did not mean that evidence of cold or heat went wanting. The proposition here is that the impact of transparency policies is best measured with indicators, which are frequently difficult to identify, collect, and far from direct. We have not yet

endeavored to count or estimate what the work of journalists or researchers who use transparency policies has revealed – the amount of money misspent, stolen and recovered; or lives lost, transformed and saved – but it certainly is possible. Some scholars have made inroads in this direction. Examining entries to the annual prize competitions of Investigative Reporters and Editors (IRE), Hamilton (2017) finds that 40 percent of 12,500 stories “involved government record requests”. Among the same entries, 24 percent of these stories “noted that laws had been passed because of the reporting.” We may deduce from these clues – the use of open records, hard-hitting news stories, and subsequent legislation – that transparency was instrumental in improving governance and, concomitantly, the lives of citizens.

By contrast to laws, which are ‘macro-contextual’ indicators of impact, metric-centered approaches using micro-level data may find no direct changes associated with new transparency policies.¹ This micro-level evidence, often collected through experimental interventions and randomized trials (see Kosack & Fung, 2014; Stanley & Hartman, 2017), is epistemologically at odds with macro-level indicators. Micro-level approaches typically provide evidence of reactions to transparency (Porumbescu, Bellé, Cucciniello, & Nasi, n.d.; Stanley & Hartman, 2017), often conditional on demographic variables (e.g. education), and whose broader social and political impact remain a mystery.

In the IRE example cited above, transparency policies influence the passage of laws, and laws in turn establish incentives and constraints that ultimately influence behavior (within the context of transparency, see Woods, 2015). As most laws erect certain constraints, they discourage

¹ See, for example, Porumbescu, Lindeman, Ceka, & Cucciniello, 2017, who find only indirect evidence of policy compliance due to policy understanding.

untoward behavior. Gauging the impact of laws (resulting partly from transparency policies) that prevent untoward behavior is akin to substantiating the impact of transparency policies by counting untoward behaviors that never happened – problematic, to say the least. Counting before-and-after changes in behavior may be possible, but equal or increased levels of incidence may occur in other populations or because of other reasons. As an important review of “25 Years of Transparency Research” concedes (Cucciniello, Porumbescu, & Grimmelikhuijsen, 2016, p. 25): “the mechanisms responsible for lending transparency its effects remain poorly understood.” De Renzio and Werner (2017), in a review of scholarship on fiscal transparency, come to a similar conclusion, finding that transparency is associated with improved budgets and development outcomes but that “only a handful of studies [...] convincingly identify causal effects”.

Looking for Impact: Blinkered Thinking

A second epistemological dilemma is *where* transparency researchers are looking for impact. Transparency interventions and corresponding reviews of impact (Kosack & Fung, 2014) have placed an inordinate focus (Roberts, 2015) on transparency as a means to accountability or participation (Lourenço, 2015). Freedom of the press permitting, greater government transparency should lead to a greater number of scandals due to increased discoveries of waste, incompetence, corruption, and so forth (Costa, 2013). A flawed yet common view is to look at the increase in negative news and dismiss transparency policies as unhelpful. Similarly, several works have found that the adoption of transparency mechanisms does little to improve perceptions of corruption (Öge, 2016). Clearly, transparency is not an antidote to maladministration but rather a means of exposing it (Cordis & Warren, 2014). A greater number

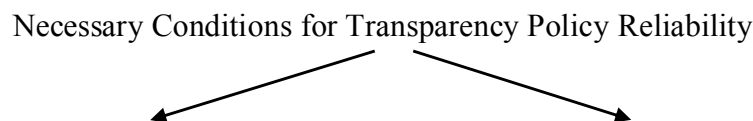
of discoveries may be an indicator that transparency is working – but the final outcome of those discoveries can also highlight how *ex post* accountability institutions (e.g. prosecutors, courts) are not (Cucciniello et al., 2016). Concurrent increases in citizen cynicism and diminished trust in institutions appear to be unavoidable externalities of effective transparency (Grimmelikhuijsen & Welch, 2012). Is the net ‘impact’ of transparency as a means to accountability positive or negative? It would seem that many view it to be negative, even though this perspective diminishes the importance of transparency in forcing indispensable confrontations with poor governance.

It also diminishes transparency’s impact in other realms. The zeal for transparency-as-a-means-to-accountability has sidelined transparency’s role in improving communication, bureaucratic capacity, information management, and policy coordination among different stakeholders, agencies, powers and levels of government. Take the example of FOI laws. In terms of capacity and information management, FOI laws exhort the formation of policies on privacy, archives, and disclosure policies and procedures; they generate new infrastructure, routines and skills; and these routines, together with the fear of exposing administrative incompetence, waste, or malfeasance, promote administrative fitness and discipline. In terms of the communicational benefits of transparency policies, government statistics in many parts of the world show that public servants are front-line users of FOI laws. These users may be signaling that transparency policies are filling-in for deficits in intra-governmental communication (see for example, Michener, Niskier, & Contreras, 2018). How to measure the downstream impact of transparency on increased capacity, information management, coordination, and communication is a question in search of answers, but partly due to the dogged focus on accountability and participation, this question has yet to be thoroughly researched.

Now, having argued that the impact of transparency policies is real and significant but frequently defies metric-based measurements, the impact of transparency can certainly be measured on the most basic level of feedbacks – by testing whether queries produce disclosures. Disclosure is an obvious precondition for the impact of transparency policies. Yet how reliable are transparency policies in terms of both the fact of disclosure and the consistency of what they disclose? The next section turns to discussing these questions before analyzing transparency evaluations from across Latin America.

The Reliability of Transparency Policies and Transparency Evaluation

For the operation of transparency policies, reliability refers to an ideal-typical Weberian consistency in bureaucratic outputs, namely, that an applicant's queries² for information held by one or more agencies should result in legally sound disclosures,³ which are reasonably consistent in terms of structure and content, and independent of circumstantial variables such as the way a query is written, the identity of the information-seeker, or the temporal context. Consistency and legal compliance are thus necessary and jointly sufficient conditions for reliable transparency policies, as illustrated below.



² Queries are defined here as either requests (passive transparency) or web-based inferences/impressions/observations (active transparency and open data).

³ Disclosures here is used as a generic term used for responses to requests (passive transparency) or web-based inferences/impressions/observations.

Perfectly reliable transparency policies obviously represent an ideal type. Public servants are not robots, after all, and even the most systematic administrative processes provide for elements of discretion that color disclosures. Yet policy reliability is nonetheless an ideal to which organizations aspire.

How do we make sense of the well-known unreliability of transparency policies? Two analytical approaches, one sociological and the other administrative, provide answers. From the Weberian sociological perspective, organizations tend toward cultures of secrecy – information is power and information disclosed is perceived as vulnerability. From public to private information, the disclosure process is rife with the politics of secrecy (Michener & Worthy, 2018). Resistance to transparency policy therefore stems from instincts towards secrecy.

The Contingencies of Where, What, Who and How

A second analytical approach sees the reliability of transparency policies as challenged by contextual contingencies germane to public administration. The reliability of just about any bureaucratic variable, such as autonomy or capacity, will fluctuate depending upon *where* you look. Gingerich (2013) identifies this as a “levels-of-analysis problem” and shows that variation in the same governance indicator among agencies in the same government frequently exceeds those we find among countries. The validity of generalizing about a government’s state capacity is therefore at best qualified and at worst ontologically transgressive. What this means for transparency policies is that countries, states, cities, agencies, agency departments, and officials will vary in their propensity to reliably adhere to transparency policies. Obviously, greater reliability will depend on resources, training, leadership, enforcement and a host of other factors.

But even so, reliability will ultimately be colored by factors as diverse as capacity and the interplay of personalities.

The contextual contingencies of public administration impact not only the *where* (above) but also the *what* of transparency policies. What is evaluated can create unreliability on several levels. First, some topics may be more susceptible to poorer compliance than others. Because officials tend to be wary about disclosing procurement contracts – potentially exposing flaws in due process, conflicts of interest, impecuniousness or corruption – disclosed information in this administrative area tends to be less reliable than disclosures in others, such as contact information and organizational structures. Variation may even exist within the same subject category. Queries that seek procurement contracts on the construction of large infrastructure projects may be less reliable than procurement contracts for items with well-known price ranges, such as cleaning supplies. Similarly, some agencies are simply more public than others, rendering disclosure less onerous for some than for others (Arellano-Gault & Lepore, 2011, p. 1044).

In addition to the question of *what*, the question of *how* one queries and *who* is doing the querying also matter in the case of passive transparency policies (Michener & Worthy, 2018). *How* queries are written – legalistically or amicably (Cuillier, 2010), descriptively or generally, grammatically correctly or incorrectly – should impact the reliability of disclosures. As for the *who*, recent studies show that the identity of the applicant can also result in differential levels of responsiveness. Researchers call this the “Google Effect”, as curious public servants use Google to search requesters and then vary their disclosures based on psychological cues and cognitive biases derived from the apprehension of requester identities.

The combination of the sociological perspective – that embedded organizational tendencies towards secrecy generate unreliability – and the administrative perspective – that unreliability is a byproduct of contextual contingencies of public administration – reinforces the idea that transparency policies suffer from grave problems of reliability.

The Reliability of Transparency Evaluation

Transparency evaluations face their own set of reliability issues. A first dilemma is representativeness. Most evaluations of passive transparency use simulated-user methodologies to send between one and five requests to any given agency. The number of requests per sent to any one agency tends to be low so as not to overburden administrators and to avoid triggering the Hawthorne effect (reactivity), whereby officials behave differently because they suspect a test is underway. One to five requests clearly furnish unrepresentative evidence on *agency* reliability. However, by aggregating responses from many agencies we may say something about the compliance of *municipal, state, or national* governments as unitary entities. To say something about particular agencies, we may enlarge our sample by including responses (or non-responses) to multiple requesters or by staggering many requests over a long period of time. For this reason, it is important for researchers to aggregate the results of multiple evaluations and multiple actors. This sort of strategy is especially important in the case of courts, legislatures, and state-owned enterprises, which unlike government agencies, tend to consolidate responsibilities for transparency into one office.

A second problem associated with evaluating transparency policies is the dilemma of adjudicating between compliant and non-compliant disclosures. If compliance represents a necessary condition for the reliability of transparency policies, being able to reliability

distinguish compliance would seem to be important. Yet it is often difficult to assess the degree to which information is complete, accurate, and timely, among myriad other characteristics enumerated among open data principles or freedom of information standards. It may not be clear, for example, whether the denial of a request or a claim regarding a supposedly “inexistent” documents is non-compliant. Informational asymmetries and imperfect information often make it impossible to know.

Positive and Negative Reporting Biases

This dilemma also raises the question of what might be called “aspirational evaluations”. Here, our ability to gauge the reliability of government transparency is distorted not by administrative or contextual contingencies but by evaluations whose validity is questionable. Such evaluations pose queries that a) push the legal limits of that which can reasonably be disclosed; and, b) push the limits of what information state entities should reasonably produce, possess, or be obliged to compile. Activists, who often push the edge of emergent norms, may understandably be tempted to request that which is legally impermissible. Taken as indicators of transparency policy compliance, aspirational evaluations may negatively bias the number of positive observations reported by evaluations.

This negative bias may be neutralized by countervailing positive biases, however. In terms of active transparency, evaluators will often measure compliance by checking-off whether categories of information are either ‘present’ or ‘absent’. The presence of a category of information (e.g. expenditures) is clearly no guarantee that information is valid, legally compliant or, indeed, transparent. As such, evaluations undertaken in this dichotomous manner will tend to positively bias reported compliance.

In terms of passive transparency, evaluations typically aggregate responses into a ‘response rate’. At least two principal variants are common: a) evaluators calculate the response rate by including only the responses they deem to be legally compliant or that meet pre-established criteria; and, b) evaluators include all responses save communications regarding internal processing, even those that are clearly non-compliant. In the latter case, which appears to be the most common, what matters for evaluators is the ‘fact’ of *any* response. The logic is that a response provides a basis for appeal and indicates that governments are minimally responsive interlocutors. Optimally, evaluators would provide a response rate and then another metric such as an accuracy or completeness rate to differentiate between substantively positive and negative responses. As it stands, however, if we aggregate response rates from multiple evaluations we lack internally consistent measures of “legal compliance”.

These drawbacks will only be solved when evaluators begin to converge on more rigorous universal standards. For passive transparency, these standards should not be that difficult to come by. Creating a simple passive transparency index based on three metrics is one of the better solutions (see Bizzo & Michener, 2017). Including all responses in ‘response rates’ – except for internal processing feedbacks (receipts, transfers) – eliminates discretion in determining what is compliant or noncompliant. Ideally, a response rate should be accompanied by secondary “quality” metric(s), such as a completeness or accuracy rate. A third ‘legal timeframe’ indicator should then be added to response and quality rates to complete a basic passive transparency index. The question of how to weight different parts will obviously entail some degree of contentiousness.

For active transparency, standards should be developed for different administrative categories: expenditures, procurement, contact information, and so forth. The difficulty here is that laws regulating these items may vary among jurisdictions, branches, and levels of government.

Criteria for evaluation should therefore be simple enough to travel cross-jurisdictionally but nuanced enough to capture several dimensions of each item. Looking to principles of open data can be useful. For instance, regardless of whether information is qualitative or quantitative, it should be timely, complete, non-discriminatory, and so on. As previous pages have communicated, however, the nature of transparency policies renders some degree of indeterminacy inevitable. Evaluation is clearly no different.

Evaluations are, however, the best information on policy reliability available. Government statistics on the use of disclosure policies may be useful for examining usage also raises a host of other problems. As the next section will illustrate, governments are reluctant to measure passive transparency. Furthermore, their statistics on responsiveness are hardly revealing.

Brazil's Federal Comptroller General (CGU), for example, reports that federal agencies responded to 99.61% of requests in 2014 – two years after the FOI law went into effect (CGU, 2015). It provides information on the breakdown of these responses: partial or complete answers (76.5%), denied responses (10.55%), and unserved (*não atendido*) (12.95%) requests because of lack of clarity, inexistence of information, and so on. But the overall statistic is hardly credible, nor do the numbers tell us anything about quality and legality. These numbers are self-reported by federal agencies to the CGU and do not constitute evaluations. Evaluations, as next section illustrates, tell quite another story.

TRANSPARENCY EVALUATIONS FROM ACROSS LATIN AMERICA

Transparency evaluations began to emerge across Latin America in 2004, two years after Panama, Mexico, and Peru enacted the region's FOI laws. Since then, all of the region's countries have adopted freedom of information (FOI) laws except Venezuela, Costa Rica, Cuba and Bolivia, the last of which has an executive order as opposed to a full law (Michener, 2015).

Enduring doubts remain about these new policies. Are governments complying, or has Latin America's embrace of open government degraded into mere "transparency theater" (Pozen, 2017, p. 125)? Latin America is, after all, a region plagued by legacies of opaque, centralized governance that in recent years has also experienced a well-documented democratic retrenchment (Zovatto, 2016). The remainder of the paper investigates what Latin America's evaluations can tell us about one half of the reliability equation: compliance.

Data Collection

The research objective of the current project was to identify, collect and analyze evaluations across Latin America, from the appearance of the region's first FOI laws in 2002 to the end of 2016. As stated, this paper's working definition of a "transparency evaluation" is a publicly available report that measures governmental commitments to the operation of transparency policies. This definition therefore excludes evaluations of de jure laws or non-experiential measures, such as perceptions. By 'report' we refer to a "thorough accounting" with a clearly identified methodology. Although we included as many reports as possible by CSOs and academics, we abided by one rule in including government reports. No government "self-evaluations" were included in our sample, but rather only evaluations undertaken by government

watchdogs responsible for evaluating transparency. So in Honduras, for example, evaluations come from the Access to Public Information Institute, rather than individual agencies.

The coding of evaluations and variables was undertaken by separate coders, with coding disagreements later resolved in a consensual manner with a third researcher acting as mediator. Extensive searches resulted in 157 transparency evaluations. However, only evaluations that provided numerical information on compliance were included in our quantitative sample, amounting to an N of 125. Nearly all of these evaluations either focus directly on the subject of FOI or use FOI laws to measure government commitments to transparency in other policy domains. Out of the 125 evaluations with numbers on the operation of transparency policies, 27 evaluations were applied in countries that had no FOI laws at the time of evaluation or still do not. Appendix 1 provides a list of all evaluations.

[Table 2 about here]

Strategies for data collection were evaluator-focused. Initial searches targeted each type of institutional ‘evaluator’ and then proceeded to extensive multi-keyword searches on the Google websites for each country (e.g. <https://www.google.com.mx>). In order to identify evaluations from civil society organizations (CSOs) and international (or regional) organizations (IOs), researchers conducted a metasearch to identify aggregators – organizations, networks, and advocacy websites – that provide lists of potential transparency evaluators. Such aggregators include the Regional Alliance for Freedom of Expression and Information, the Open Government Partnership, Freedom of Information Advocates Network, freedominfo.org, Latin American Network for Legislative Transparency, and the International Budget Partnership, among others.

Having articulated lists of CSOs and IOs, researchers scoured their websites for evaluations. For government evaluations, researchers perused those agencies responsible for implementing their country's freedom of information law, while Google searches picked up other government evaluations. For academic researchers, a thorough check of Google Scholar as well as searches of major university libraries resulted in several evaluations.

Finally, a webcrawler was programmed to search for PDF or HTML evaluations in Google, Google Scholar, and Bing in English, Spanish, and Portuguese. A database of evaluations was constructed by both the crawler and researchers. From this database, the crawler 'learned' what a transparency evaluation looked like. Upon finding potential matches, the crawler collected information on the evaluation or the evaluation itself, assigning it a score from between 0 and 1, with 1 being most 'probably' a hit. Researchers then sifted through the results to validate or discard content provided by the crawler.

Despite considerable effort to avoid omitting evaluations, the certainty is that some evaluations have remained hidden. Others that ostensibly exist simply cannot be found. The Peruvian government's record of active transparency compliance begins in 2008 – five years after its FOI law took effect – with the “Fourth Annual Report”. After much probing by researchers, the first, second, and third reports were simply not to be found. A request for these missing evaluations to the Peruvian Public Defender still awaits a response.

Authorship of the 125 evaluations referred to previously are divided as follows:

- 62% Civil Society Organizations
- 19% Government

- 12% Academy
- 7% International Non-Governmental Organization

Data Analysis

As alluded to in the previous section, two researchers independently read through each evaluation, extracting findings regarding the number of observations and compliance rates (active transparency), the number of requests and response rates (passive transparency), authors or organizations, levels of government, branches, policy topics, methods, and other sundry variables, including the presence or absence of bibliographies and references to other countries around Latin America.

One of the only common denominators among evaluations are some measure of compliance, providing metrics of passive and active transparency. Active transparency evaluations gauge the extent to which different categories of administrative information (e.g. contact information or procurement contracts) on government websites meet pre-established criteria. As alluded to earlier, some of these evaluations reflect dichotomous measures of presence/absence, but others use ordinal scales and examine active transparency through multidimensional frameworks, such as those that pertain to open data – whether information was complete, primary, presented in open formats, and so forth. In addition to providing statistics on compliance, Peru’s Public Defender, for example, counts broken and dead links as well as webpage uptime and unique visitors per month, among others metrics. We extracted compliance rates, as reported, or we aggregated them (based on performance on formal obligations) in cases where scores remained disaggregated.

For passive transparency ‘compliance rates’, we extracted response rates according to the following protocol. First, if the report’s authors clearly emphasized a response rate, we used that rate in our calculations. Self-reporting tended to be the case with most evaluations. If a response rate was not given but instead authors simply disaggregated responses by types of compliance – such as partial responses, denials, and claims of inexistent information – we interpreted anything as a response (compliance) that did not constitute a mute denial or a notice regarding internal processing or transfers. The aforementioned rule is an obvious compromise, as noted in previous sections. We were forced to satisfice given the absence of universal methodologies. As it stands, methodologies tend to be variegated and most evaluations provide little disaggregated information on responses. We discuss other methodological aspects of transparency evaluations in subsequent sections.

For both response and compliance rates, we standardized all numerical data into percentages and weighted all calculated averages by the number of institutions assessed in any given evaluation. In this way, if one Mexican evaluation assessed five agencies and the average compliance rate were 50%; and another evaluated fifty with a 60% average compliance rate, the average compliance rate would amount to 59%.⁴

Findings

The evaluations analyzed provide far too much data to summarize holistically, but for the benefit of scholars, transparency advocates, and governments, four questions would seem to be of greatest import and interest:

a) What are these evaluations about, and how reliable are they as research artifacts?

⁴ $5 \times 50\% + 50 \times 60\% = 3250$; 3250 divided by 55 total evaluations for Mexico = 59.01%

- b) What are reported compliance rates for active and passive transparency, as well as compliance rates by type of evaluator?
- c) Which branches and levels of government have evaluators been measuring?
- d) How can we make sense of weak compliance rates for municipal governments?

A Word about Evaluations

It is difficult to communicate the degree to which Latin American transparency evaluations vary in terms of quality, sophistication, and consistency. Of the 157 evaluations encountered (125 with numerical data plus an additional 35 purely qualitative evaluations), just over a third (54) provide a bibliography or section on references. A bibliography is no absolute indicator of quality, but it is surely of some significance. On the other hand, there are evaluations worthy of being published as books and distributed internationally. For example, the Centro de Investigación y Docencia Económicas (CIDE), one of Mexico's top public research universities, produced a rigorous 186-page report that evaluated active and passive transparency in all branches of Mexican states and municipalities, as well as the quality of their laws, the oversight capacities of information commissioners, and the management practices and challenges of state information offices. The evaluation involved CIDE researchers conducting 45-minute interviews with 131 information officers and senior bureaucrats, sending out 2950 requests and making 1872 unique visits to 624 state-level web portals. Presented just before the approval of Mexico's General FOI law in 2015 – a law that centrally governs and standardizes FOI for the entire

federation, political parties, and even government trusts – the evaluation helped shaped discussions that would influence the content of this precedent-setting law.⁵

In terms of policy strategies, most evaluations are focused squarely on monitoring compliance and implementation of transparency policies, especially freedom of information laws. Among the transparency evaluations on substantive policy topics (other than transparency) the database includes:

- Brazilian transparency evaluations of universities; of forced-removals of citizens for infrastructure projects prior to the Rio Olympics; of public security data; of water management; and, of mining royalties.
- Chilean transparency evaluations of universities; of government subsidies originating from the ministries of culture, planning, sports, and agriculture to four service sectors; and, of privacy of personal data in the public sector.
- An Ecuadorean transparency evaluation on environmental access to information.
- Mexican transparency evaluations of government advertising expenditures; of loans from the World Bank and the Inter-American Development Bank; and, of nonprofit organizations.

This list should make clear that the possibilities of transparency evaluations are relatively limitless – any policy topic (e.g. public security), and myriad dimensions of that topic (finances, rights, service provision, human resources) can be the subject of transparency evaluations. In this sense, transparency evaluations serve as two-in-one research projects: they help shed light both

⁵ Personal interview with Alejandra Rios Cazares, one of the evaluation's authors.

on the reliability of transparency policies and on substantive policy topics. The list should also make clear that countries with some of the most sophisticated transparency infrastructures (Brazil, Chile, Mexico) are those that are producing the most diverse transparency evaluations.

Levels of Compliance

A total of 125 evaluations are represented in figures 1 through 4. Several evaluations assess more than one country, which explains the large number of data points in the figures on active transparency. Overall trends are positive for both types of transparency, with compliance increasing for both active and passive transparency from approximately 40% in the mid 2000s to above 60% about a decade later. Figure 2 shows all active transparency evaluations that occurred *after* FOI laws were enacted. Here, compliance increased from approximately 45% to 60%. Figure 4 shows the after FOI results for passive transparency. Notably, Figure 4 shows the smallest improvement, with compliance increasing from approximately 50% to 58% over the course of 15 years. This finding communicates the difficulty of enforcing compliance with passive transparency and the ‘miserable’ reliability of this type of transparency.

[Figures 1, 2, 3 & 4 about here]

It is important to note that Figures 3 and 4 on passive transparency provide “response rates” weighted by number of institutions, meaning that the completeness, accuracy or other indicators of quality likely remain well below a passing grade. Nonetheless, variance is enormous, even within the same country and between consecutive years. One of the primary reasons for this variance is what type of information is being evaluated, including policy area (e.g. education), administrative domain (e.g. procurement) and level or branch of government. From reading

through these evaluations, certain surprising observations deserve consideration. Among the least compliant institutions on several evaluations are universities, which somehow smacks of hypocrisy. Annual evaluations undertaken by the Justice Studies Center of the Americas (CEJA), for example, focus on active transparency in the principal pages of the judiciary and public prosecutor's offices (refer to Table 1), whereas most other active transparency evaluations focus on variegated topics in the executive branch. Table 2 portrays the degree to which different branches of the state and levels of government are being evaluated and their respective rates of compliance.

[Table 2 about here]

What is most striking about Table 2 are the white spaces. Little evaluation has taken place on the judicial and legislative branches of government at the state level and on municipal legislatures.

What is also surprising are the low rates of compliance in federal legislatures and federal judiciaries, with active and passive transparency rates at 43% and 39% and 48% and 40%, respectively.

Making Sense of Weak Municipal Transparency

Among levels of government, the lowest levels of recorded compliance are municipalities, with 51% and 46% on active and passive transparency, respectively. Municipal active transparency compliance is nearly a third lower than federal levels. For example, in a 2014 evaluation by Chile's information commissioner, the Consejo de la Transparencia (2014), only 69 of 345 municipalities scored above 45%. These results are surprising, given that evaluations from more advanced countries show that cities are typically the *most* compliant among levels of

government. Newspapers Canada's annual Freedom of Information Audits, for instance, invariably places cities in front of the federal government and most provincial governments.

The paradox of weak local government transparency merits analysis on several fronts. First, Municipal governments are closest to citizens and therefore, *ipso facto*, should be the most responsive, accountable and transparent. Second, municipal governments provide the quotidian services that are most important to citizens, including policing, schools, sanitation, and so on. Because these 'life' services are so crucial to citizens, governments ought to provide considerable information on them. Why do municipal governments comply so weakly with transparency policies in Latin America?

Candidate explanations would require further research, but several lines of reasoning warrant brief expositions. First, as income concentration is high in Latin America and most citizens are poor, leaders rarely win local votes on account of being transparent; they win them through meat and potatoes issues. Whereas federal governments perform for an international audience – absorbing the costs of transparency for the benefits of appearing legitimate on the world stage – the audience costs of not being transparent at the local level are minimal, particularly outside larger cities. Being transparent and leaving oneself vulnerable to criticism is foolhardy when enforcement is weak, which tends to be the case in most Latin American cities. This calculus is especially relevant in less affluent cities, where “postmaterial” values – such as the environment, gay rights, and good governance – exert marginal influence on voting patterns. The paradox here is that the amount and quality of information provided by municipal, state, and central governments appears to be inversely proportional to the amount of influence these governments have in citizens' day-to-day lives.

The same could be said about coverage in the news media, which corresponds to a second line of reasoning to account for poor municipal transparency. Political cooptation of the news media is common at the local level in Latin America. Governments punish critical media outlets by dissuading local advertisers from supporting them or denying government advertising contracts, among other forms of direct and indirect censorship. In short, news media frequently serve more as lapdogs than watchdogs, disavowing their vocation as consumers and advocates of transparency.

It is clear from the data on municipal compliance that not only is compliance low, but so too are the number of evaluations. Fewer evaluations should equate to less pressure on policymakers. One reason that CSO transparency advocates tend to focus more on central governments than on local governments resides in the imperatives of international transparency initiatives. Central governments are the locus of the Open Government Partnership, the Open Budget Partnership, the World Justice Project, the Open Data Barometer, the Open Data Index, and the Extractive Industries Transparency Initiative, among other multilateral initiatives. As a result, CSOs are driven by funding prerogatives and other instrumental logics to evaluate central governments – at the cost of undertaking local evaluations and thereby motivating stronger local commitments to transparency.

From the perspective of costs, it can be cheaper and easier to evaluate one (central) government than many (municipalities). In countries such as Brazil, for example, municipalities have no standardized web-portals, rendering the application of evaluation protocols more arduous and precluding automation. Instrumentally, CSOs may assume that pressuring central governments

may pay dividends as examples trickle downwards and lower-level governments seek to emulate the center.

Different Evaluators, Different results?

One question that drives the current inquiry is the extent to which these diverse transparency evaluators may arrive at different results. Approaching the subject of measurement bias from a general theoretical perspective, we might expect that governments evaluate their own kind more generously and advocacy organizations are harder on state entities in order to encourage stronger political commitments.

[Figure 5 about here]

Figure 5 puts this proposition to a preliminary test. In terms of passive transparency, governments obtain similar results to non-government evaluators. In terms of active transparency, however, the differences are striking. The 22 government evaluations on active transparency achieve nearly 20% higher results than the 79 evaluations by non-governmental evaluators, a differential that is highly significant ($p < 0.0001$). This preliminary evidence suggests that government evaluators are comparatively ‘easier’ on their own entities.

So too does the low number of passive transparency evaluations carried out by governments - four. The reluctance of governments to engage in passive transparency tests points to several persuasive rationales. First, passive transparency is the more unreliable form of disclosure – it is more administratively and contextually contingent than active transparency – and therefore has a higher probability of making governments look bad. Second, passive transparency is logistically more difficult to test, particularly because nearly a third of Latin America’s laws obligate the use

of identity numbers and names when making requests, rendering government evaluators easier for responding agencies to sniff out. Third, one can certainly imagine that government evaluators testing other parts of government via requests may generate considerable acrimony among their co-workers – probably not the government’s most productive means of motivating compliance.

The database of government evaluations is still relatively small, and thus the above results must be interpreted contingently. Significantly higher compliance rates compared to other evaluators should nevertheless urge against deriving conclusions about compliance from any one evaluator alone.

CONCLUSION: THE IMPACT OF TRANSPARENCY POLICIES IN LATIN AMERICA

As previous sections have shown, evaluations across Latin America illustrate that transparency policies are demonstrating some degree of functionality. Minimally functional policies, or better, can be assumed to be exerting some type of impact- unless policies are completely without basis. Yet skeptic are wont to question transparency’s impact, as demonstrated in this paper’s second section.

Pozen, for example, pokes holes in the United States’ FOIA in two separate papers, questioning its functionality and impact on several levels. Pozen is right that the FOIA is broken in many ways. But it has nonetheless served as an incredible well of victories, inspiration for other countries, and instances of impact (Blanton, 2002). An illustrative example is Smart Procure (Rubenstein, 2013), an “open purchase history database” that owes its success to requests submitted through the FOIA. Government agencies, municipalities, states, and other entities use Smart Procure to find the best price, value, and choice for their procurement needs. The system provides peer feedback on suppliers, references, and piggybacking opportunities, such that two

or more agencies/jurisdictions can pool procurement processes to achieve improved economies of scale. It has already achieved 419 million purchase orders from 24,900 government agencies in every single American state. Economizing on outlays of public money clearly counts as impact. In this case the impact had to do with neither accountability nor state capacity – the two topics discussed earlier – but rather government financial efficiency. The message is that the impact of transparency policies is plain for those willing to look, but impact exists in no available or easily constructed database. It is not metricized, but rather anecdotal and indicator driven.

Whatever the policy or administrative domain, if transparency policy impacts are to occur, they generally tend to follow one of two causal pathways, illustrated below:

Impact for Suppliers of Transparency

Supplier reacts to transparency obligations → Impact (→ Supply of Transparency → Impact) →
Feedback

Impact for Users of Transparency

User appropriates transparent information → (Makes information available to broader number of stakeholders →) Impact → Feedback

With regard to suppliers or, in the current discussion, governments, the reaction to transparency obligations will prompt either no impact, in which obligations are ignored and may or may not spur feedback by stakeholders, or transparency obligations prompt administrative measures to supply transparency. If supplied, government is likely to experience some type of internal impact, such as a professionalization of information handling, new routines or so on.

With regard to users, when users appropriate transparent information, some type of impact is bound to occur. The impact may be small, such as a choice made. Alternatively, the information could be disseminated through a larger number of stakeholders, in which the impact is likely to be more diffuse.

The subject of impact is, admittedly, too extensive to be given an intensive treatment in the current paper. The point here, however, is to follow up on what was previously said about impact being real, yet being indirect and difficult to identify, much less attribute causality. The point is also to follow up on the previous section, in order to show how evaluations have had a decisive effect in one policy arena.

This policy arena is one that has a dramatic effect on the quality of democracy, but receives little publicity from the news media – government advertising contracts in the news media.

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