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Regional Emulation and the Design of Transparency Policies

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Abstract

How do countries make policy in an uncertain world? Do policymakers look inward, rationally designing policies to fit domestic interests, ideas, and institutions? Or do they look outward, imitating policy elements from other countries? And if the latter, where do they look? Focusing on the specific policy area of Freedom of Information laws, I argue that regional emulation plays an important role in shaping policy design. Policymakers face substantial uncertainty over the consequences of different design choices, and so emulate other countries as policy models. I further argue that, due to availability bias, countries in the same region serve as the most important such models. After reviewing numerous examples of such emulation, I model the policy similarity between 4,096 pairs of countries, and find that countries in the same region, or more geographically proximate, tend to have more similar laws than other country-pairs. These results are robust to different categorizations of region, fixed effects capturing country-specific features, and testing against alternative forms of emulation as well as alternative diffusion mechanisms of competition, coercion, conditionality, and learning. This approach also highlights the diffusion of policy *design*, as opposed to *adoption*, as an important future direction for policy diffusion research.

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1.   Introduction[1]

How do countries make policy in an uncertain world? Do policy-makers look inward, rationally designing policies to meet domestic goals and interests, and fit domestic institutional structures and cultures? Or do they look outward, imitating policy elements from other countries? And if the latter, where do they look?

Many different literatures have studied such questions of the independence or interdependence of policy-making, though often with differing terms and frameworks. Studies of policy diffusion focus on "how a given country's policy choices are affected by the prior choices of other countries" (Simmons et al. 2006: 782). Studies of policy convergence examine "the tendency of policies to grow more alike, in the form of increasing similarity in structures, processes, and performances" (Drezner 2001: 53). Policy transfer, on the other hand, has been defined as a "process in which knowledge about policies, administrative arrangements, institutions and ideas in one political setting (past or present) is used in the development of policies, administrative arrangements, institutions and ideas in another political setting" (Dolowitz/ Marsh 2000: 5). Research in organizational sociology has focused on institutional isomorphism, "a constraining process that forces one unit in a population to resemble other units that face the same set of environmental conditions" (DiMaggio/Powell 1983: 149). Another literature on spatial dependence has focused on statistical approaches to modeling interdependence of policy-making and other state behaviors (Franzese/Hays 2008; Neumayer/Plümper 2012). All of these approaches share two fundamental questions, however: First, whether policy-making is independent or interdependent; and second, what form that interdependence takes.

One important mechanism that has been proposed to explain policy interdependence is emulation, "when governments choose to adopt policies similar to another country's because they find them attractive, not because they are being compelled by circumstance" (Hoberg 2001: 127). Instead of engaging in independent, *de novo* policy design, actors engage in a search process, "looking for institutional designs outside their own realm to solve certain problems or to mimic the behavior of their peers" (Börzel/Risse 2012: 9). Emulation is driven by uncertainty, because policy-makers "cannot accurately judge whether policy A is better than policy B with any certainty" (Simmons et al. 2006: 799). DiMaggio/Powell (1983: 151) referred to emulation driven by policy uncertainty as mimetic isomorphism, writing that "when organizational technologies are poorly understood (…) when goals are ambiguous, or when the environment creates symbolic uncertainty, organizations may model themselves on other organizations."

Emulation can take the form of active lesson-drawing, wherein "actors look to others for policies and rules that effectively solved similar problems elsewhere and are transferable into their domestic context," or more passive mimicry, wherein actors engage in "the automatic 'downloading' of an institutional 'software' irrespective of functional need, simply because this is what everybody does in a given community" (Börzel/Risse 2012: 9-10). Many quantitative studies have also focused on the important role of emulation

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1 This working paper is the result of research conducted at the Kolleg-Forschergruppe (KFG) "The Transformative Power of Europe," hosted at the Freie Universität Berlin, where the author was a Post-Doctoral Fellow in 2012-2013. The KFG is funded by the German Research Foundation (DFG) and brings together research on the diffusion of ideas in the EU's internal and external relations. For further information please consult www.transformeurope. eu.

in driving the diffusion of policies including economic liberalization (Simmons/Elkins 2004; Henisz et al. 2005), central bank independence (Polillo/Guillén 2005), and the organizational practices of firms (Guler et al. 2002).

This paper focuses on the case of a single type of policy, Freedom of Information (FOI) laws, which have spread rapidly across the world over the last several decades. I examine the policy design of these laws, specifically the tendency for countries to pass laws very similar to existing laws in other countries. I argue that regional emulation best explains these patterns. Countries not only emulate the FOI law design choices made by other countries, but they are most likely to emulate their regional neighbors. Policy-making, especially for new governance reforms, takes place under conditions of high uncertainty over the consequences of different policy design choices. Under such circumstances, countries rely on availability heuristics (Kahneman et al. 1982) and look to their neighbors for readily available policy models.

Building a quantitative model of policy similarity between pairs of countries, I show that countries in the same region tend to have more similar FOI laws than countries which are not.[2] Shared regional membership is an important and robust driver of policy similarity between country-pairs, even after taking into account different possible definitions of region, the domestic features of individual countries, institutional similarity among country pairs, other possible forms of emulation, and other commonly hypothesized diffusion mechanisms, including competition, coercion, conditionality, and learning. These results highlight the important role of regional emulation in the diffusion of policy design. While these results are from the specific case of one type of policy, future research should investigate the extent to which they generalize to others. Further, while such statistical results alone cannot constitute conclusive evidence of particular motivations for policy decisions, I present this evidence in conjunction with a wealth of illustrative evidence from concrete cases in which the emulation of countries in the same region has also been highlighted as a key factor.

In the last decade, an extensive quantitative literature on policy diffusion has focused on testing the different mechanisms and international linkages that drive the *adoption* of new policies, but has focused little on the potential for the diffusion of policy *design*. Not only does this study offer an argument that regional emulation is an important driver of policy design, it also highlights the diffusion of policy design as an important future avenue of policy diffusion research. Focusing on policy design rather than policy adoption offers new opportunities to test different diffusion mechanisms, mediums, and potential firewalls (Solingen 2012) in more sophisticated ways than previous research has done.

The second section of this paper details the global spread of FOI laws and the variation that exists in their design. The third section presents a theory of emulation based on the high level of uncertainty policy-makers face in designing FOI laws, and reviews the available illustrative evidence from examples of FOI design and passage around the world. The fourth section introduces data on the design of FOI laws, and

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2 Policy emulation need not be limited to similarity on the part of entire pieces of legislation. Countries may also mimic specific provisions or other subsets of other countries' policies. However, by focusing on the similarity of FOI regimes in a holistic manner, this analysis sets a higher bar for evidence in favor of regional emulation as an important factor shaping policy design. Emulation of individual policy provisions remains an important topic for future research.

a quantitative approach to modeling the policy similarity between pairs of countries. The fifth section presents the results of a series of quantitative models testing regional emulation along with other potential diffusion mechanisms. Finally, the sixth section concludes.

2.   The Global Spread of the Freedom of Information

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

Sweden passed the world's first FOI law in 1766, and was followed by Finland in 1951, and the United States' Freedom of Information Act in 1966. Following passage in the United States, other states passed similar laws at an increasingly rapid rate, taking the shape of a "norm cascade" (Finnemore/Sikkink 1998). Other industrialized countries passed their own similar laws over the ensuing decades, some earlier than others. Relatively early adopters include France, the Netherlands, Australia, New Zealand, and Canada, which all passed FOI laws in the period 1978-1982. On the other hand, the United Kingdom and Germany delayed until 2000 and 2005, respectively. Among developing countries, Colombia was the first to pass a FOI law, passing "Law 57 of 1985 by which the Disclosure of Official Acts and Documents is Ordered" in 1985 (Mendel 2009). The next to be passed outside of the developed world were in Eastern Europe, with Hungary and Ukraine both passing FOI laws in 1992. By the end of 2000, 19 developing or transition countries had passed FOI laws. Today, over 90 countries have passed FOI laws across every region of the world.

Many international institutions and treaties have recognized the freedom of information as an important component of the freedom of expression. Article 19 of the Universal Declaration of Human Rights, while pertaining mostly to the freedom of expression, notes the right to seek and receive information as well: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers" (United Nations 1948). Indeed, Article 19, a major international NGO working on FOI issues, named itself after this article at its founding in 1987. The International Covenant on Civil and Political Rights similarly recognizes the right to "receive and impart information and ideas of all kinds" as part of the freedom of expression. More recently, regional institutions around the world have agreed to documents recognizing the freedom of information as a human right, such as the 2000 Inter-American Declaration of Principles on Freedom of Expression, the 2002 Declaration of Principles on Freedom of Expression in Africa, and several Joint Declarations by the United Nations, the Organization for Security and Cooperation in Europe, the Organization of American States, and the African Commission on Human and Peoples' Rights. However, these documents make only very vague recommendations, if any at all, about the legal design of FOI laws that countries might pass in order to put these rights into effect.

FOI laws have been the subject of little outright conditionality. They have only been part of country agreements with the World Bank or regional development banks in a handful of cases (although the World Bank has recently promoted FOI laws in "softer" ways, such as by providing funds for interested governments to hold public consultations). The EU has not included the passage of FOI laws among accession criteria until very recently – for Croatia only. At the urging of the Croatian civil society group GONG, amending the 2003 FOI law was included in the 2012 Comprehensive Monitoring Report on Croatia's preparedness for membership.[3] The report called for Croatia to "adopt the new law on access to information, in order to strengthen the legal and administrative framework in the area of access to information."[4] Poor implementation of existing FOI laws has also been mentioned briefly in progress reports for Serbia, as well as for Bosnia and Herzegovina's potential future membership, but the focus of this present study is on legal design, not implementation after passage. In Romania, the European Commission did highlight the issue once a domestic campaign for passage was already underway and a legislative draft had already been tabled. The European Commission's 2001 report on Romania's accession progress noted that "Access to information is an important issue that is closely related to both the accountability of government and the fight against corruption. Although the principle of access to information is enshrined in the 1991 Constitution there is no effective implementing legislation" (European Commission 2001). On the other hand, when asked what role the EU had played in struggles for passage and implementation of the 2000 Access to Public Information Act in Bulgaria, the representative of a key NGO there emphatically said that they had been of no help whatsoever.[5]

While the international and domestic determinants of passage of FOI laws have already been the subject of much research, both qualitative and quantitative (Ackerman/Sandoval-Ballesteros 2006; Berliner forthcoming; Florini 2007; Grigorescu 2003; Kasuya 2012; Michener 2010; Michener 2011; McClean 2011; Roberts 2006), less research has focused on variation in the design of FOI laws around the world (although Michener 2010 studies variation in design among Latin American countries).

There is substantial variation in the design of FOI laws around the world. Some apply to a broader range of branches of government, agencies, and types of information than others. Some have broader exemptions from disclosure for reasons such as national security, privacy, and commercial secrets, while others have fewer exemptions, or put in place a public interest test to balance those exemptions against the public's interest in disclosure. Some FOI laws also create stronger and more independent avenues of appeals, oversight, monitoring, and sanctions. Indeed, research on independent Information Commissions has concluded that they contribute to FOI laws which are stronger in practice (Holsen/Pasquier 2012).

In India, for example, the 2005 Right to Information Act applied to state and local governments as well as federal agencies, created an independent Information Commission, and puts all exemptions to a public interest test "whereby information may be released if the public interest in disclosure outweighs the harm

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3   See http://www.gong.hr/en/good-governance/access-to-information/new-foia-a-step-towards-open-government (retrieved 01 October 2013).

4   See http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/hr_rapport_2012_en.pdf (retrieved 01 October 2013).

5   Interview, Sofia, Bulgaria, October 2012.

to the protected interest" (Banisar 2006). India's law has been very successful by many measures. The information commissioner has exercised its authority to fine officials for non-compliance, requests have been used to expose official corruption, and Indian citizens filed roughly two million information requests in the law's first two and a half years (Roberts 2010).

In Serbia, the 2004 Law on Freedom of Access to Information of Public Importance contained minimal exemptions, a public interest test, and created an independent commissioner whose decisions are binding on public authorities (Banisar 2006). A monitoring report found that in 2011, 53,000 requests had been filed in the previous year, a substantial number for a country of Serbia's size, and that over ninety percent of denied requests which were appealed to the Information Commissioner were ultimately resolved in favor of the requester (Serbian Commissioner for Information of Public Importance and Personal Data Protection 2012).

Other laws, however, are much weaker. In the Dominican Republic, the 2004 Law on Access to Information contained "a seriously overbroad regime of exceptions, which recognises secrecy provisions in other laws and which does not include a harm test or public interest override" (Mendel 2009: 67), provided for no independent appeals or oversight agency, and even required requesters to declare their reasons for seeking information (Banisar 2006; Mendel 2009). Weak FOI laws are not limited to developing countries, either. In Germany, the 2005 Federal Freedom of Information Act contained so many exemptions of such breadth that one expert said that "from the user's point of view, this is a disaster" (Global Integrity 2007: 1). This paper focuses on how such variation in the design of FOI laws is shaped by external policy models.

3.   The Diffusion of Policy Design

3.1   Uncertainty and Emulation

What explains variation in the design of FOI laws? Not only are some stronger than others, but different countries' laws exhibit different strengths and weaknesses in different design elements. I argue that, rather than being designed to meet domestic goals and interests, or to fit domestic institutions, external factors are critical in shaping the design of FOI laws. I argue that given the high uncertainty around the consequences of different design choices, policy-makers are likely to emulate the design of FOI laws that they see as salient policy models, and that countries in the same region are likely to be used as such models.

There are several reasons for policy-makers to have a high degree of uncertainty regarding the design of FOI laws. Freedom of Information is a relatively new idea in most countries passing these laws, and policy-makers have little prior experience with the relevant issues. This was the case in the United States in the 1960s as much as it was the case in Niger in 2011. The design choices that must be made involve complicated tradeoffs between different values, like secrecy and openness, and top-down and bottom-up models of accountability, which are difficult to reconcile. Even further, policy-makers face uncertainty over the consequences of FOI law passage, and of different design choices they may make. Will the law have major or minor consequences for economic efficiency, political accountability, ordinary citizen

empowerment, and the political survival of incumbents? Policy-makers generally have no way of answering these questions *a priori*, and so look for external examples to serve as policy models.

When selecting policy models, to what countries do policy-makers look? There are several possible bases for choosing such models. Policy-makers may look to high-profile examples, like the United States, or a former colonial power. They may look for countries that are similar to their own, in terms of culture, history, or institutional structure. They may also look to countries with which they regularly interact in international networks, such as through international organizations. However, I focus in this paper primarily on policy models selected on the basis of an availability heuristic (Kahneman et al. 1982), which "leads actors to base decisions on the few cases at their fingertips (Dobbin et al. 2007: 461).

Weyland (2005) focused on cognitive heuristics as crucial in shaping the diffusion of pension privatization in Latin America, writing that: "The availability heuristic makes people pay disproportionate, excessive attention to especially proximate, vivid, striking, and memorable events (…) The availability heuristic gives innovations designed by a neighboring country special weight because they are much more concretely available than changes made halfway around the globe" (Weyland 2005: 23-24). Similarly, Meseguer (2004) differentiates emulation from rational learning as follows:

> *"Overall, emulation is different from learning in that it does not ascribe full analytical capabilities to politicians when it comes to analyzing available information. Rather, politicians resort to cognitive heuristics to process information. When imitating, the emphasis is not so much on all available information as on relevant information. Finally, emulation, unlike rational learning, does not entail an enhanced understanding of the causal links between policies and outcomes in the light of experience" (Meseguer 2004: 313).*

Thus, I expect that policy-makers will use external policy models to shape the design of their own countries' FOI laws. These policy models may include high profile examples and similar countries, but I expect that neighbor countries in the same region will be particularly prominent due to their availability as examples. I first investigate the plausibility of the regional emulation approach by reviewing illustrative evidence of countries making use of foreign policy models in the design of FOI laws, and then introduce data on such design that allow the testing of emulation with quantitative models.

3.2   Illustrative Evidence

There are numerous examples of emulation in the design of FOI laws. In some cases, policy-makers explicitly searched for policy models in other countries, while in others they were presented with comparisons to other countries by domestic civil society or international NGOs. In many cases these processes emphasized regional neighbors, while in others they emphasized former colonial metropoles or globally high-profile laws such as the United States Freedom of Information Act.

Repeta and Schultz (2002) wrote that the United States law "served as a model and inspiration for Japan's

law," which was passed in 1999. Writing about FOI laws in Latin America, Michener (2010: 28) wrote that "the Mexican law became the regional model to be emulated, much in the same way as the Chilean private pension system served as a model for Latin America and other parts of the world." Indeed, in Ecuador, "Mexican consultants were hired" to contribute to drafting the 2004 law (Michener 2010: 28), and in Guatemala, "legislators noted that Mexico's transparency movement has served as a model in the creation and passage of Guatemala's law," which was passed in 2008.[6]

In Serbia, where domestic civil society groups played a key role in drafting the FOI bill which was ultimately introduced in the National Assembly, the group of lawyers and other experts who created the draft began their process with an extensive examination of several other countries' FOI laws. These included laws from the United States, Denmark, and Norway, as well as more recently passed and geographically proximate laws in Bosnia and Herzegovina and Slovakia.[7]

Angola's 2002 Law on Access to Administrative Documents was largely copied from Portugal's 1993 law of the same name (Banisar 2006). Similarities between the two laws include the order of specific articles, definitions of terms, and even specific requirements for members of the oversight commissions. Following Brazil's 2011 passage of a FOI law, the Uganda-based Africa Freedom of Information Centre noted the potential for influence on Portuguese-speaking African Countries, writing:

> "Africa has five Lusophone countries (Angola, Cape Verde, Guinea-Bissau, Mozambique and São Tomé and Príncipe). Delays in adoption of FOI laws in these countries (except Angola) have always been attributed the difficulties in obtaining models drafted by native Portuguese speakers. Translations from English are not always coherent, it is argued. The emergence of a law from Brazil should now lay to rest this argument. It provides opportunities to initiate advocacy for adoption where it does not yet exist and to intensify efforts in countries like Mozambique where campaign for adoption has been iterative."[8]

In Bangladesh, a 2008 legal analysis of draft legislation, conducted jointly by the international NGO Article 19 and three local NGOs, pointed out sections of the draft law which were modeled after India's 2005 Right to Information Act. The analysis states that

> "Section 21 establishes a regime of sanctions for obstruction of access that appears to be closely modeled on the Indian approach. It provides for the Commission to impose daily fines up to a maximum of BDT25,000 (approximately USD370) for a number of unreasonable failures in relation to the law, and for the Commission to recommend disciplinary action against any officer who has, unreasonably and persistently, engaged in a number of listed failures. This is a reasonable package of punishments and protections."[9]

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6   See http://www.freedominfo.org/2009/02/guatemala-looks-to-mexican-model-for-access-implementation (retrieved 01 October 2013).

7   Interview with a lawyer involved in the original drafting process, Belgrade, Serbia, 20 May 2013.

8   See http://africafoicentre.org/index.php/en/?option=com_content&view=article&id=1580:brazils-foi-law-lessons-for-africa&catid=293:afic-news&Itemid=561 (retrieved 01 October 2013).

9   See http://www.article19.org/data/files/pdfs/analysis/bangladesh-foi-sub.pdf (retrieved 01 October 2013).

While Belarus has not to date passed a FOI law, a 2008 draft law was analyzed by a Russian legal expert at the behest of the Organization for Security and Co-operation in Europe (OSCE). The analysis noted that

> *"the rationale for the need to prepare the Draft Law of the Republic of Belarus on Information, Informatization and Protection of Information states that 'in preparing the draft law, the legislation of the United States, Germany, France, Italy, Belgium, Norway, Switzerland, Hungary, Greece, Estonia, Lithuania, Azerbaijan, Kyrgyzstan, Uzbekistan, Moldova and the Russian Federation has been analyzed.'"*[10]

In some countries, legislators went on fact-finding trips to other countries to study their FOI laws. In Nigeria, a FOI bill was under consideration in 2000, although ultimately no law was passed until 2011. Nonetheless, when the 2000 draft was referred to the House of Representatives Information Committee, "the Committee members decided that they needed to undertake a study tour of other more advanced democracies that have freedom of information laws to see how they function" (Media Rights Agenda 2003). While resources limited the extent of the study tour, "the committee members were eventually able to undertake the trip and travelled to the U.S. and the U.K, where they met with representatives of such organisations as Article 19 in London and Freedom House in New York, among others" (Media Rights Agenda 2003). Similarly, in Mexico, Michener (2010: 168) notes that the legislative drafting process for the 2002 law included "governmental trips to the U.S., Canada, Britain and France."

External models also played important roles in two territories which are not fully sovereign countries: the Cook Islands (a country in free association with New Zealand) and the Cayman Islands (a British Overseas Territory). At a 2008 conference held in the Solomon Islands, the Cook Islands Ombudsman "said the Cook Islands FOI legislation was based on the New Zealand Official Information Act and includes provisions for the Ombudsman to investigate and review decisions by government officials to withhold requested information."[11] At the same conference, a speaker from the Cayman Islands Freedom of Information Unit said that "in Cayman Islands, we have designed FOI legislation which is suited to our island situation, given the smallness of our community. We looked at other FOI legislation like those from Jamaica, the United Kingdom, New Zealand and the State of Florida and we picked relevant sections of these laws that suited our situation the best."[12]

In other countries, domestic or international civil society emphasized other countries' laws as models. In a 2007 letter to Indonesia's President Yudhoyono, the international NGO Article 19 emphasized comparisons with other Asian FOI laws in calling for provisions of the draft Indonesian law to be strengthened.[13] Regarding independent oversight bodies, the letter wrote that "this is widely followed in State practice. The Indian Right to Information Law 2005, for example, goes to some lengths to ensure the independence of

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10 See http://www.right2info.org/resources/publications/laws-1/laws_osce-comments-on-belarus-foi-bill (retrieved 01 October 2013).

11 See http:Www.forumsec.org/pages.cfm/newsroom/press-statements/2008/foi-leads-better-service-delivery.html (retrieved 01 October 2013).

12 See http://www.forumsec.org/pages.cfm/newsroom/press-statements/2008/foi-leads-better-service-delivery.html (retrieved 01 October 2013).

13 See http://www.article19.org/data/files/pdfs/letters/indonesia-foi-letter.pdf (retrieved 01 October 2013).

the oversight body." Regarding subjecting state-owned enterprises to the law, the letter wrote that

> *"once again, this is widely recognized in State practice. In India, for example, anybody which is owned, controlled or substantially financed by government is subject to disclosure obligations. In Japan, a special right to information law – the Law Concerning Access to Information Held by Independent Administrative Entities – was adopted to give effect to this principle. The Thai Official Information Act of 1997 also covers State enterprises."*

The letter did not specifically name any other individual laws aside from those of India, Thailand, and Japan. The director of Article 19's law program was also quoted in the *Jakarta Post* making similar comparisons, stating that "within Asia, countries such as India, Thailand, Nepal and Japan include public bodies within the scope of their legislation."[14]

In Bolivia, which has not to date passed a FOI law, a 2011 analysis of a draft law by Article 19 made comparisons to other Latin American countries in encouraging stronger a oversight body: "We note that over sixty states including as Chile, Honduras and Mexico provide for an independent, administrative oversight body to review refusals to provide access to information and oversee the implementation of the law."[15]

In Brazil, the civil society group National Forum for the Right to Access Public Information organized a conference in April 2009 which "brought together representatives of all three branches of government, civil society groups, media representatives and international experts to discuss the right to information."[16] The international experts included "representatives of the Mexican Federal Institute for Access to Information (IFAI) and the Chilean Council for Transparency," who were thus able to offer their own countries' laws as models.

What can one conclude from these examples? Policy-makers routinely conduct a "search" process for policy models in the rest of the world, often looking to readily available models from countries in the same region, countries with shared languages or colonial histories, or high-profile examples. These insights match up well with arguments about emulation made by many scholars of policy diffusion (Simmons/Elkins 2004; Simmons et al. 2006; Guler et al. 2002; Henisz et al. 2005; Polillo/Guillén 2005). Additionally, transnational advocates also often make explicit comparisons with other countries in lobbying for strengthened policy design. It is possible that advocates expect comparisons with countries in the same region to have more resonance in attempting to persuade policy-makers than comparisons with more distant countries.

Presumably, these limited examples are indicative of a much more widespread process. To assess the extent to which emulation takes place systematically, and to assess the types of policy models that countries tend to use as reference points, I turn to quantitative methods.

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14 See http://www.thejakartapost.com/news/2008/03/28/sanctions-information-misuse-039should-be-dropped039.html (retrieved 01 October 2013).

15 See http://www.article19.org/data/files/medialibrary/1831/11-03-09-MEMO-bolivia.pdf (retrieved 01 October 2013).

16 See http://www.article19.org/data/files/pdfs/press/brazil-government-promises-to-adopt-right-to-information-law.pdf (retrieved 01 October 2013).

4.   A Quantitative Approach to Policy Design and Policy Similarity

4.1   Measuring the Design of FOI Laws

I measure the design of FOI laws using the Global Right to Information Rating (RTI Rating), a "comprehensive comparative analysis of the legal frameworks for accessing information in each of the 89 countries where such a system exists" (Centre for Law and Democracy 2011). This project was conducted by the NGOs Centre for Law and Democracy and Access Info Europe, in consultation with 79 experts from all over the world, and first released in September 2011 (later updated in 2012). Each FOI law was scored in 61 different indicators, most ranging from 0-2 points each, but some higher. This coding system yielded a total possible score of 150 points for a country's FOI law, although in practice the observed scores range from 39 to 135. These indicators in turn comprise seven different categories, listed in **Table 1** below.[17]

Table 1: Categories in Global Right to Information Rating

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

Source: RTI Rating

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

The creators of the measure emphasize the rankings of countries, with the top scorers being Serbia, India, and Slovenia, and the worst being Austria, Liechtenstein, and Greece. However, the simple sum of all 61 indicators may disguise important covariation among them. Some laws may be stronger in some design elements but weaker in others. To assess this, I conduct a principal components analysis of the 61 indicators,

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17 Definitions of all 61 individual indicators can be found at http://www.rti-rating.org (retrieved 01 October 2013).

across 91 laws. Principal components analysis (PCA), simply put, seeks to explain as much variation as possible with as few dimensions as possible, for a given dataset.[18] If, for example, countries with high scores on one variable tend to have high scores on another variable, those two variables will load more strongly onto the same dimension. If an entire series of indicators are all just different ways of measuring the same underlying concept, then PCA is likely to identify one dominant dimension explaining most of the variation, with additional dimensions explaining only little. However, if there are multiple underlying concepts, then PCA is likely to identify multiple dimensions, orthogonal to each other, all explaining substantial components of the variation.

Indeed, the principal components analysis of the RTI Rating indicators identifies a first dimension which explains 15.8 percent of the variance in the data, a second dimension which explains 10.1 percent, a third which explains 9.3 percent and a fourth which explains 5.8 percent. All other dimensions each explain fewer than 5 percent of the variance. The presence of these different dimensions implies that it is overly simplistic to characterize FOI laws simply on a weak-strong axis. As such, I develop a framework to assess the policy similarity among country-pairs that does not rely on such a uni-dimensional approach.

4.2   Modeling Policy Similarity among Country-Pairs

In order to model potential emulation and isomorphism among FOI laws, I employ a dyadic approach, treating country-pairs as the unit of analysis, and the similarity between the laws of each pair as the dependent variable. This approach is inspired by Elkins (2010), the only quantitative study specifically of the diffusion of legal design (national constitutions in his case) that I have been able to identify. Each observation is made up of one "receiving country" which passes a new law, and one "sending country" which is a potential model for policy design. "Receiving" and "sending" here refer to Everett Rogers' (1962) framework for the diffusion of innovations between senders and receivers via various channels of communication.

I only count a country-pair as an observation if the receiving country (RC for short) law was passed subsequently to the sending country (SC for short) law, to exclude the possibility of isomorphic influence flowing backwards in time. Each observation is thus a directed dyad; for example, there is an Angola-Albania observation, but no Albania-Angola observation. This is necessary to maintain the direction of time in the study: observations only exist in the dataset where the SC law was available as a potential model for the RC to consider. By employing such country-pairs as the unit of analysis, the resulting dataset contains 4,096 observations, one for each directed dyad.

The dependent variable in this approach is the similarity between the legal design of the two laws in each country-pair. I measure similarity in two different ways: First, as the proportion of 61 legal design indicators which are identical between the two laws, and second, with the correlation coefficient between the two

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18 Principal components analysis has been used by many political scientists to study such topics as institutional characteristics (Putnam et al. 1994; Coppedge et al. 2008), public attitudes (Mishler/Rose 1997), party ideologies (Gabel/Huber 2000), and electoral responses to economic performance (Kayser/Peress 2012).

laws across the 61 indicators. Each of these is multiplied by 100 for ease of discussion, so that each ranges roughly from 0 to 100.

For example, India's law and Mexico's law share 37 identical design elements, according to the RTI Rating, while 24 are dissimilar. This yields a similarity score of 60.7. The correlation coefficient between the two laws across all 61 indicators, on the other hand, yields a correlation score of 64.8. The similarity measure ranges from 13.1 to 80.3, with a mean of 43.6, median of 42.6, and a standard deviation of 9.4. The correlation measure ranges from -10.1 to 89.6, with a mean of 61.9, a median of 64.2, and a standard deviation of 13.3. While the two measures only correlate with each other at 0.498, the substantive results of the models are largely similar no matter which one is used, so I focus primarily on the similarity measure.

Since both dependent variables are roughly normally distributed, I employ a standard linear model. The main independent variables I employ are features of the dyadic relationship between countries in each pair. Chief among these is whether they are in the same region. This variable takes a value of 1 if two countries are in the same region, and a value of 0 otherwise. I base this variable on a categorization of countries into six regions: the Americas, East Asia and the Pacific, Eastern Europe and Central Asia, the Middle East and North Africa, Sub-Saharan Africa, and Western Europe. I use this relatively small number of regions (compared to other possible categorizations) to avoid leaving too few FOI laws in each region. The most laws exist in the Americas, with twenty, while the fewest are in the Middle East and North Africa, with only four.

However, given the important role played by membership in regional groupings in this analysis, I also use an alternative categorization used by the United Nations. This consists of twenty-two separate regions: Australia and New Zealand, Caribbean, Central America, Central Asia, Eastern Africa, Eastern Asia, Eastern Europe, Melanesia, Micronesia, Middle Africa, Northern Africa, Northern America, Northern Europe, Polynesia, South America, South-Eastern Asia, Southern Africa, Southern Asia, Southern Europe, Western Africa, Western Asia, and Western Europe. Here, the most FOI laws are in South Europe, with twelve, while three regions have no countries with FOI laws. Since six of these regions have only one or two countries with FOI laws, using the UN region categorization strongly curtails the ability of the models to identify regional emulation, so I use this only in a robustness check.

Finally, I also use a measure of geographic neighbors which relies on no categorization at all: the distance between the two countries' capital cities. I treat this variable alternately as the logged total distance, or with dummy variables taking a value of 1 for distances under 500 kilometers and 1,000 kilometers, respectively. All of these alternative measures for regional neighbors capture the extent to which regional peers are likely to be salient policy models for new FOI laws. I also include in all models a control for the length of time which has elapsed between passage of the two countries' laws, as more recently passed laws are likely to be more salient as policy models. This variable is the logged number of years elapsed between the passage of the SC's law and the RC's law.

Since the design of national laws is likely to be substantially shaped by features of domestic politics, existing institutions and bureaucratic cultures, and the particular goals of political actors, I employ fixed effects for receiving countries. These fixed effects automatically control for any variables at the country-level (such as the level of development, regime type, or particular cultures of transparency or secrecy), by only taking

into account variation *within* sets of country-pairs with the same RC. For example, in assessing the extent to which laws in the same region are more similar to each other, the model *only* takes into account whether each individual RC's law is more similar to laws in the same region than it is to laws in other regions, thereby automatically controlling for any features of the specific country itself.[19] In a dyadic context such as this, fixed effects are a powerful tool to ensure that the results are not biased by characteristics of individual countries.

After the initial results have been established, I also add additional variables to capture alternative mechanisms of policy diffusion, including different types of diffusion, competition, coercion, conditionality, and learning. Each of these variables will be introduced and defined in the relevant section presenting the model results.

5.   Model Results

5.1   Regional Emulation

Table 2 presents the results for the first set of models. Model 1 includes a measure of the time elapsed between laws and an indicator of laws in the same region. The results show that laws which were passed further apart in time tend to be less similar to each other, and conversely that pairs where less time has elapsed tend to have more similar laws. The results also show that laws in the same region are, on average, 4.4 points more similar to each other than laws in different regions. While the measure of similarity ranges from roughly 13 to 80, its standard deviation is only 9.4. A difference equivalent to almost one-half of a standard deviation on the dependent variable is substantively quite large. This is clear evidence in favor of a regional emulation effect whereby countries tend to look to their regional peers as policy models. To reiterate, the inclusion of fixed effects for receiving countries captures all possible characteristics of the individual countries passing FOI laws, and so additional control variables for such characteristics are not necessary (and indeed would be perfectly collinear with these fixed effects).

Model 2 uses an alternative indicator of countries in the same region using the United Nation's categorization of countries into twenty-two regions. The measure is still positive and statistically significant, this time showing that laws in the same region are, on average, 4.1 points more similar. The consistency of the results between these two models, using categorizations of countries into six and twenty-two regions, provides assurance that the results are not artifacts of any particular choice of region categories.

Model 3 omits the Same Region indicator altogether, instead using a measure of the logged distance between capital cities, which shows that countries closer together tend to have more similar laws. The results of Models 4 and 5 use dichotomous versions of this variable, showing that countries with capital cities

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19 For example, comparisons between India-Pakistan, India-Thailand, and India-Mexico observations contribute information to the model's results, as they share the same receiving country. However, comparisons between India-Pakistan, Thailand-Mexico, and Panama-Guatemala contribute no information to the results, as they have different receiving countries and are potentially biased by, for example, institutional features of India, Thailand, and Panama.

within 500 kilometers of each other tend to have laws 6.3 points more similar to each other, while countries with capitals within 1000 kilometers tend to have laws 4.4 points more similar to each other than countries whose capitals are not as close. Finally, Model 6 includes the indicator of Same Region but uses the alternative dependent variable, based on the correlations between the sixty-one design elements of the FOI laws in each country-pair. Using this dependent variable, countries in the same region tend to have laws 4 points more similar to each other.

Table 2. Linear models of the similarity of FOI laws among country-pairs

	Model 1	Model 2	Model 3	Model 4	Model 5	Model 6
Year Difference	-0.448 ***	-0.545 ***	-0.579 ***	-0.552 ***	-0.552 ***	-0.732 ***
	(0.101)	(0.102)	(0.1)	(0.102)	(0.102)	(0.129)
Same Region	4.421 ***					4.006 ***
	(0.353)					(0.45)
Same Region (UN)		4.141 ***				
		(0.563)				
Distance between Capitals			-2.319 ***			
			(0.167)			
Distance < 500 km				6.319 ***		
				(0.926)		
Distance < 1000 km					4.424 ***	
					(0.559)	
R^2	0.197	0.176	0.204	0.175	0.178	0.349
Number of observations	4096	4096	4096	4096	4096	4096
Standard errors in parentheses; *** $p < 0.001$, ** $p < 0.01$, * $p < 0.05$						

Linear models of the similarity of FOI laws among country-pairs. Each observation constitutes one "receiving country" which passes a new law, and one "sending country" which previously passed a law and is a potential model for policy design. The dependent variable is the proportion of 61 legal design indicators which are identical between the two laws, multiplied by 100, except for Model 6, which uses the correlation between the design indicators of the two countries as the dependent variable. All models include fixed effects for receiving countries (this is why control variables for receiving country characteristics are not included – these are already captured by the fixed effects). Constant term not shown to save space.

5.2   Alternative Diffusion Mechanisms

Table 3 investigates the role of alternative diffusion mechanisms which have been suggested in the literature. The first three models include other potential attributes of country-pairs which could be bases for emulation. Model 7 includes the number of *Shared IGO (inter-governmental organization) Memberships* between the two countries, in the year that the RC passed its law. Other research has found IGO memberships to be important pathways for the diffusion of democracy (Pevehouse 2002) and human rights

(Greenhill 2010). Indeed, the results of this model show that each additional shared IGO membership is associated with 0.08 points greater similarity between laws. An increase in shared IGO memberships from the mean number (36.3) to one standard deviation above the mean (49.5) would thus lead to 1.1 points greater similarity between two countries' FOI laws. Model 8 and 9 each include indicators for factors which could lead potential Sending Countries to be seen as salient peers for emulation: sharing the *Same Colonial History*, and sharing the *Same Language*. The results show that countries with the same colonial history tend to have laws 2.8 points more similar to each other, while countries with the same official language tend to have laws 1.8 points more similar. Importantly, in all three of these models, the coefficient for Same Region remains positive, statistically significant, and of greater magnitude than the coefficients for any of the other alternative emulation variables. However, these results also highlight that emulation takes place based on a wider variety of shared attributes than geography alone. In addition to a tendency to mimic the FOI laws of their neighbors, countries also exhibit tendencies to mimic the legal design of countries with whom they share historical, linguistic, and institutional ties.

Models 10 and 11 include two different variables to capture the potential role of competition. Competition approaches to policy diffusion hold that, "given policy interdependence, countries carefully watch policies of their competitors to ensure that they are not disadvantaged due to 'bad' policies" (Cao/Prakash 2011: 113). Applied to the design of FOI laws, the competition mechanism would expect that countries are likely to adopt laws more similar to those of their international economic competitors. For example, if two countries are competing for exports to the same destinations or in the same sectors, and if they believe that certain design elements of a FOI law may have either positive or negative consequences for their competitiveness, then one country may include provisions in their FOI law that the other has already included.

To test this possibility, I construct two different measures to capture the extent to which two countries are competitors with each other, in the year that the RC passed its law. The first is *Export Destination Similarity*, the correlation between two countries' export destination profiles – the total value of their exports to each other country in the world (using bilateral trade data from the Correlates of War project). The second is *Export Sector Similarity*, the correlation between two countries' sectoral shares of exports. This variable is constructed using data from the World Bank World Development Indicators on the shares of each countries' merchandise exports in five sectors: agricultural raw materials, food, fuel, manufactures, and ores and metals. For both measures, countries with higher scores are those which export to similar destinations, or export similar mixes of goods, making them competitors in the global economy. However, neither of the coefficients for these variables are statistically significant. These results show that competition is not an important driver of the design of FOI laws.

Models 12 and 13 include two different variables to capture potential roles of coercion and conditionality. If coercion is taking place in the realm of FOI law design, then we would expect to see greater similarity of laws when the power asymmetry between two countries is larger. To test this, I include a measure of the *Difference in Logged Total GDP* between two countries, in the year that the RC passed its law. This measure takes positive values where the potential SC has a larger economy than the RC, and negative values where the reverse is true. If weaker countries tended to adopt FOI laws similar to those of more powerful countries, then we would expect to find a positive coefficient for this variable. In fact, the results of Model 12 show the opposite, as the coefficient is negative and statistically significant. This reflects a greater tendency

for more powerful countries to adopt laws more similar to those of less powerful countries. In the realm of governance reform, more powerful countries may be followers, not leaders. To capture the potential role of aid conditionality to influence the design of FOI laws, Model 13 includes a dichotomous variable taking a value of 1 if the potential SC is a donor of *Foreign Aid* to the RC. However, its coefficient is negative and statistically significant, showing that aid recipients tend to pass FOI laws dissimilar from those of their aid donors. These results, rather than providing evidence for coercion or conditionality mechanisms, show entirely opposite patterns to what those mechanisms would expect.

Models 14 and 15 include two measures of institutional similarity between countries, the results of which can be interpreted in multiple ways. *Regulatory Similarity* is the correlation between the two countries across the fifty-four different measures of regulatory systems included in the Fraser Institute's Economic Freedom Dataset.[20] *Regime Similarity* is the correlation between the two countries across the six component variables in the Polity 4 dataset.[21] Both are measured in the year that the RC passed its law, or the most recent prior year with available data. Indeed, the coefficients for both are positive and statistically significant.

However, two different interpretations of this finding are possible. The first possibility is that this reflects a type of learning based on institutional fit – if countries tend to select FOI law design features which policy-makers reason are most suited for their own contexts, as those features have been used in countries with similar institutions to their own. In this case, the results of these models provide evidence for a learning diffusion mechanism. The second possibility, however, is that these findings do *not* reflect any type of diffusion at all. If countries do indeed engage in independent (as opposed to interdependent) policy-making, designing FOI laws which are suited to their own institutional contexts, then we would observe exactly this pattern, whereby countries with more similar institutions have more similar laws. If this is the case, then the important takeaway from this model is that *even after* controlling for these effects, the Same Region variable remains positive, statistically significant, and of comparable magnitude (4.4 and 4.2, in Models 14 and 15 respectively). This is important evidence that the regional emulation effect is not an artifact of similar countries simply passing similar laws.

Finally, Models 16 and 17 include two measures which capture the potential for learning based on performance, rather than on institutional fit. Ideally, one would include a measure of the actual performance of each FOI law, in terms of its success in enabling individuals to access the government information that they seek. Unfortunately, data does not yet exist across countries and time periods that would allow inclusion of this in the analysis here. I do however include measures of potential Sending Countries' performance on two broader outcomes that some transparency advocates claim will be influenced by transparency policies: economic growth and corruption. *Sender Economic Growth* measures the potential SC's economic growth in the year the RC passed its law, while *Sender Corruption Reduction* measures the average annual reduction in corruption over the last five years, using the measure of corruption from the International

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20 These fifty-four measures fall into five categories: Size of Government; Expenditures, Taxes, and Enterprises; Legal Structure and Security of Property Rights; Access to Sound Money; Freedom to Trade Internationally; and Regulation of Credit, Labor, and Business.

21 These are: Regulation of Executive Recruitment, Competitiveness of Executive Recruitment, Openness of Executive Recruitment, Executive Constraints, Regulation of Participation, and Competitiveness of Participation.

Country Risk Guide. If countries tend to pass FOI laws similar to laws of countries with strong economic growth or sustained reductions in corruption, then the coefficients for these variables will be positive and significant. However, the Sender Economic Growth coefficient is not statistically significant. The Sender Corruption Reduction variable is not statistically significant either, unless a lower threshold of $p<0.1$ is used. That is, there is weak evidence that country-pairs tend to pass more similar laws when the potential policy model has reduced its levels of corruption.

To recapitulate the findings of this examination of different diffusion mechanisms, the models presented in Table 3 found evidence for multiple forms of emulation, limited evidence for learning, and no evidence for competition, coercion, or conditionality. Importantly, in every single one of the models testing alternative diffusion mechanisms, the coefficient for Same Region remained positive, statistically significant, and substantively large.

Table 3. Linear models of the similarity of FOI laws among country-pairs, each testing a different alternative diffusion mechanism.

	Model 7	Model 8	Model 9	Model 10	Model 11	Model 12	Model 13	Model 14	Model 15	Model 16	Model 17
Year Difference	-0.621 ***	-0.454 ***	-0.452 ***	-0.471 ***	-0.456 ***	-0.187	-0.194	-0.296 *	-0.438 ***	-0.812 ***	-0.463 **
	(0.106)	(0.101)	(0.101)	(0.104)	(0.118)	(0.109)	(0.11)	(0.115)	(0.115)	(0.12)	(0.146)
Same Region	3.593 ***	3.867 ***	4.178 ***	3.851 ***	4.478 ***	4.283 ***	4.299 ***	4.352 ***	4.179 ***	4.743 ***	4.488 ***
	(0.389)	(0.365)	(0.363)	(0.381)	(0.405)	(0.354)	(0.353)	(0.416)	(0.403)	(0.366)	(0.432)
Emulation (Alternatives)											
Shared IGO Memberships	0.080 ***										
	(0.016)										
Same Colonial History		2.773 ***									
		(0.49)									
Same Language			1.748 **								
			(0.596)								
Competition											
Export Destination Similarity				0.277							
				(0.628)							
Export Sector Similarity					0.22						
					(0.451)						
Coercion/Conditionality											
Diff. in Logged Total GDP						-0.451 ***					
						(0.068)					
Foreign Aid							-2.009 ***				
							(0.353)				
Learning (Instititutional Fit)											
Regulatory Similarity								4.512 ***			
								(0.748)			
Regime Similarity									1.617 *		
									(0.743)		
Learning (Performance)											
Sender Economic Growth										0.019	
										(0.031)	
Sender Corruption Reduction											1.394
											(0.722)
R^2	0.202	0.203	0.198	0.186	0.199	0.212	0.203	0.235	0.182	0.211	0.234
Num. obs.	4096	4096	4096	3808	2767	3987	4096	2728	3195	3780	2607
Standard errors in parentheses; *** $p < 0.001$, ** $p < 0.01$, * $p < 0.05$											

Linear models of the similarity of FOI laws among country-pairs, each testing a different alternative diffusion mechanism. The dependent variable is the proportion of 61 legal design indicators which are identical between the two laws, multiplied by 100. All models include fixed effects for receiving countries. Constant term not shown to save space.

6.   Conclusion

Many scholars across multiple disciplines have investigated whether national policy-making is independent or interdependent, and what mechanisms and linkages might drive such interdependence. One of the prominent mechanisms of policy diffusion, convergence, transfer, or isomorphism is emulation, whereby countries imitate the policies of others they perceive as salient policy models. Emulation is especially likely under circumstances of high uncertainty over the consequences of different policy choices.

This paper focuses on one specific type of policy, Freedom of Information laws, whose passage has rapidly diffused across the globe over the past several decades. FOI laws are a specific type of governance reform aimed at bringing about greater transparency in domestic politics and policy-making, with goals ranging from reduced corruption, greater citizen empowerment, and economic efficiency. However, when countries pass FOI laws, they must make numerous decisions over policy design, including the scope of branches of government covered by the law, the scope of information exempted from disclosure, and the types and strength of appeals and oversight mechanisms to ensure the law is implemented and enforced. These decisions involve complicated tradeoffs between secrecy and openness, and must be made in contexts where policy-makers generally have little previous experience with transparency policy. Policy-makers thus face a great deal of uncertainty over the consequences of different design choices, and so cannot rationally design FOI laws to fit domestic interests, institutions, or cultures. Instead, they look abroad for policy models to emulate. I argue that countries in the same region are particularly likely to be used as such models, as they are highly "available" as examples due to their proximity and perception as peers.

The evidence in this paper provides robust support for the important role of regional emulation in shaping the design of FOI laws. I develop a quantitative modeling framework using the policy similarity among pairs of countries to assess the factors associated with either more or less similar FOI laws among country-pairs. Countries in the same region tend to have more similar laws to each other, and this is the case using alternative categorizations of countries into regions, or using measures of geographic distance that do not rely on any such categorization. I also test regional emulation against other types of emulation, and against other diffusion mechanisms that have been highlighted in the literature. I find that emulation can also be based on policy models from countries that share IGO memberships, or which share the same official language or colonial history, but that the importance of shared regional membership predominates over these. I also find limited evidence of policy learning, but no evidence in favor of competition, coercion, or conditionality mechanisms. Importantly, these models take advantage of the country-pair design by including fixed effects to account for any possible characteristics of the countries passing FOI laws that might shape their tendency to pass laws similar to other countries.

Finally, I also show that the role of regional emulation is robust to taking into account an important potential criticism. One might argue that countries in the same region share similar structural characteristics that lead them to pass similar laws in response to those features, rather than passing similar laws as a result of emulation. However, I control for two measures of institutional similarity between countries, and find that while more similar countries do tend to pass more similar FOI laws, the effect of regional emulation remains just as strong even once including these in the model. Even among institutionally similar countries, those in the same region are still more likely to emulate each other's policies.

In addition to offering evidence of the importance of regional emulation in policy design, this study also stands as proof of concept that the diffusion of policy *design*, rather than of policy *adoption*, is a fruitful topic of study for scholars of policy diffusion engaged in quantitative research. Indeed, studies focusing on the diffusion of policy design may be able to offer new ways of testing between different mechanisms and channels of diffusion. Future research should build on this approach, and examine the extent to which the importance of regional emulation generalizes to other policy areas.

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