

The politics of Brazil's access to information policies: history and coalitions

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How did the various legislative initiatives on access to information in Brazil culminate in the 12.527/11 federal law? Using the Advocacy Coalition Framework, this article analyzes the agenda setting and strategies of different coalitions, analyzing a broad array of news, interviews, laws, and official documents between 2001 and 2012. Two coalitions were identified: one in favor of changes in legislation, comprised of sectors of the Executive, legislative, the media and civil society; and another in favor of the maintenance of restrictive rules of access to information, composed of Armed Forces, Itamaraty (Brazil's diplomatic corps) and the Senate's Legislative Commission on Defense and Foreign Affairs. The article also identifies an overlap of two public policy subsystems: the transparency subsystem and the reconciliation one. The latter monopolized the public debate on the subject, contributing to the slowness in approving a transparency law. Itamaraty also emerges as the author of a strong lobby against changes in the rules for document classification, for reasons yet to be studied.

Keywords: access to information; advocacy coalitions; agenda setting.

A política nas políticas de acesso à informação brasileiras: trajetória e coalizões

Como as diversas iniciativas legislativas sobre acesso à informação no Brasil culminaram na aprovação da Lei n. 12.527 (Lei de Acesso à Informação [LAI], 2011)? A partir da abordagem de coalizões de defesa (*advocacy coalitions framework* – ACF), este artigo analisa a formação de agenda e a atuação de diferentes coalizões, por meio da análise de amplo *clipping* de notícias, entrevistas, leis e documentos publicados entre 2001 e 2012. Foram identificadas duas coalizões: a) uma a favor de mudanças na legislação, composta por setores do Poder Executivo, do Poder Legislativo, da mídia e da sociedade civil; e b) outra a favor da manutenção de regras restritivas de acesso à informação, composta por Forças Armadas, Itamaraty e Comissão de Relações Exteriores e Defesa Nacional (CRE) do Senado. Identificou-se, também, a superposição de dois subsistemas de políticas públicas: a) o de transparência; e b) o de reconciliação. Este último monopolizou o debate público sobre o tema, contribuindo para a morosidade na aprovação da LAI (2011). O Itamaraty também emerge como autor de forte *lobby* contra modificações nas regras de classificação de documentos, por motivos ainda a explorar em profundidade.

Palavras-chave: acesso à informação; coalizões de defesa; formação de agenda.

La política en las políticas de acceso a la información brasileñas: trayectoria y coaliciones

¿Cómo las diversas iniciativas legislativas sobre acceso a la información en Brasil culminaron en la aprobación de la ley n.º 12.527 [Ley de Acceso a la Información (LAI), 2011]? Utilizando el marco de coaliciones de causa (*advocacy coalitions framework* - ACF), este artículo analiza la formación de agenda y la actuación de diferentes coaliciones por medio del análisis de amplio *clipping* de noticias, entrevistas, leyes y documentos entre 2001 y 2012. Se identificaron dos coaliciones: una a favor de cambios en la legislación, compuesta por sectores del Ejecutivo, Legislativo, medios de comunicación y sociedad civil; y otra a favor del mantenimiento de reglas restrictivas de acceso a la información, compuesta por las Fuerzas Armadas, Itamaraty (Ministerio de Relaciones Exteriores de Brasil) y la Comisión de Relaciones Exteriores y Defensa Nacional del Senado. Se identificó también la superposición de dos subsistemas de políticas públicas, el de transparencia y el de reconciliación. Este último monopolizó el debate público sobre el tema, contribuyendo a la morosidad en la aprobación de la Ley de Acceso a la Información. El Itamaraty también emerge como autor de fuerte *lobby* contra modificaciones en las reglas de clasificación de documentos, por motivaciones aún por investigar.

Palabras clave: acceso a la información; coaliciones de causa; formación de agenda.

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1. INTRODUCTION

The Brazilian legislation on freedom of information has moved slowly. Brazil was the 14th country in Latin America and the 91st in the world to approve a freedom of information law (RTI Rating, 2018). The Brazilian freedom of information law passed only in 2011, even though there were bills (*Projeto de Lei* – PL) providing on rights to information in discussion in the Chamber of Deputies for eight years. The oldest law on this matter was the PL 219/2003, written by Deputy Reginaldo Lopes, Workers' Party (PT). Other four bills were proposed in the following years, and there was no evidence these proposals could pass. The bills were: PL 1019/2007, written by Deputy Celso Russomanno, Progressive Party (PP); PL 1924/2007, by Deputy Chico Alencar, Socialism and Freedom Party (PSOL); PL 4611/2009, by Deputy Ciro Pedrosa, Green Party (PV); and PL 5228/2009, written by the executive branch (Angélico, 2012).

This article aims to understand the opposition and support role played by some social actors toward Law 12527/2011 (*Lei de Acesso à Informação*, 2011), the Brazilian freedom of information law. Common sense assumes that transparency is a topic likely to please everyone, the opposition because of the expansion of society's ability to question the running government; and the government, as a form of strengthening its image. However, there are many variations in how the different sides support these laws. The literature points to several factors that may influence the support for transparency policies, such as a) media pressure; b) the relationship between the executive and legislative branches; and c) the president's strategy (Michener, 2010).

The Brazilian case raises other questions: a quick examination on the process of this legislation shows that themes that are not directly related to transparency strongly influence the law-making process. An example was the discussion about the country's reconciliation policies, which considered the revision of Law 6683/1979 (*Lei de Anistia*, 1979), the Brazilian amnesty law. Policies of reconciliation are those that try to balance possible injustices and damages caused by political cleavages that have resulted in the restriction of fundamental rights or violence. An example of these policies is the "Truth and Reconciliation Commission," established by Nelson Mandela in 1995 to investigate crimes committed during apartheid (Gagnebin, 2010).

The Brazilian amnesty law (1979) has been questioned by various civil society groups interested in criminally investigating abuses and crimes committed at the time of the Brazilian military regime (Reis, 2010). Therefore, one of the assumptions examined in this study is that resistance to freedom of information occurred mostly because of the reconciliation agenda, rather than because of issues related to government transparency in a more comprehensive way.

The research adopts the advocacy coalition framework (ACF), an approach widely used in literature to investigate public policies (Jenkins-Smith, Nohrstedt, Weible, & Sabatier, 2014; Medeiros & Gomes, 2019; Simielli, 2013). The main characteristic of this approach is that it explores how actors organize and act to defend a particular policy. The ACF allows assuming the state is a preponderant actor in the formulation and implementation of public policies, differently from the view that the state is an actor with no major role in these processes, as suggested in the pluralist literature and the literature on public policy networks. This is crucial in the Brazilian case since the executive branch, and the party leaders have a significant role in passing legislation in Congress (Amorim, 2006; Amorim & Santos, 2003; Faria, 2003; Figueiredo & Limongi, 1999; Santos, 2002).

The analysis considered the agenda-setting around freedom of information in Brazil, including the examination of bills, laws, decrees, mentions in the media from 2002 to 2011, the periodic

Diário da Câmara dos Deputados (publication that releases the transcripts of the sessions of the Chamber of Deputies) (Câmara dos Deputados, 2010), and interviews with actors involved in the law-making process that resulted in the freedom of information law (Lei de Acesso à Informação, 2011).

Two advocacy coalitions were identified. The first one was composed of the Office of the Chief of Staff, Ministry of Justice, public archives, media, and civil society organizations. This coalition was in favor of expanding transparency (hereafter referred to as the *progressive coalition*). The second was formed by Ministry of Foreign Affairs (Itamaraty), the Armed Forces, and the Commission of Foreign Affairs and National Defense (CRE) of the Brazilian Senate, and favored greater restrictions on access to classified documents (from now on referred to as the *conservative coalition*).

The progressive coalition was divided into two groups: a) one linked to government transparency; and b) the other linked to reconciliation policies, referring to the period of the military regime in Brazil. The study characterizes this division as a superposition of two subsystems of public policy (Weible, Sabatier, Jenkins-Smith, Nohrstedt, & Henry, 2011). Regardless of the coexistence of two subsystems, there was growing support and perhaps the emergence of the epistemic community of transparency in Brazil, which was not subject to opposition by the conservative coalition.

The conservative coalition had the collaboration of two historically competing institutions, the Ministry of Foreign Affairs – Itamaraty, and the Armed Forces, as well as counting on the support of the Senate's CRE. The coalition presented, therefore, great cohesion in its deep core and in the area of public policies, which were directed at the maintenance of the system of secrecy in force in Brazil at that time. An important difference in the deep core of this coalition is that the reconciliation agenda fell particularly on the Armed Forces, while for the Itamaraty, the motivations to advocate for more secrecy varies between the fear of contestation of border demarcation (reason for the beginning of the Paraguayan War¹) and an apparent institutional-bureaucratic inability to manage and protect existing secrets.

The theme of reconciliation was crucial to the public debate about the level of secrecy of historical documents, which partially confirmed the assumptions tested in this study. However, within the scope of the internal government lobby, Itamaraty emerged as an equally important actor in the lobby for the maintenance of secrecy statuses, which is a phenomenon that deserves further study.

In addition to this introduction, this article presents a second section discussing the ACF and a third that introduces the methodological procedures adopted. The fourth section presents the history of freedom of information in Brazil until 2011, followed by a section that presents the application of the model to the case analyzed. Finally, the sixth section presents the final considerations, which summarize the study.

2. ADVOCACY COALITION FRAMEWORK

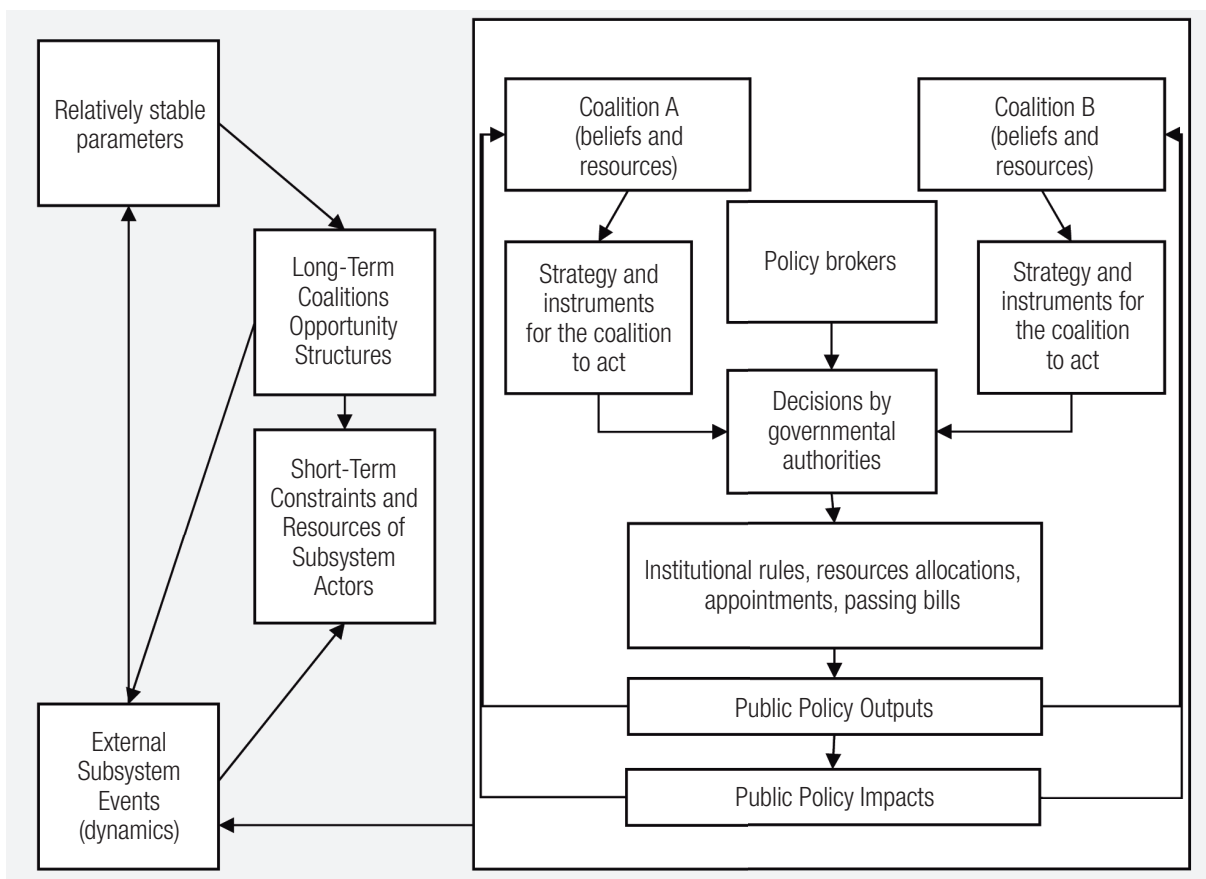
The advocacy coalition framework (ACF) offers unique tools for understanding public policy decision-making processes (Capelari, Araújo, & Calmon, 2015; Simielli, 2013; Soares & Alves, 1988; Souza & Secchi, 2014; Weible, Sabatier, & McQueen, 2009). In this case, ACF was applied to understand the agenda setting and the process of passing the Brazilian freedom of information law (Lei de Acesso à Informação, 2011).

¹The Paraguayan War (1864-1870), also known as the War of the Triple Alliance, is considered the largest international armed conflict in the history of South America. The war started when Paraguay invaded “the region of Mato Grosso, a zone that had been in dispute between settlers and the governments for more than 200 years” (Mota, 1995, p. 243, our translation).

The approach helps to understand changes in public policies in a context in which the interdependence between different social actors is essential and undeniable. It emphasizes mechanisms to intermediate interests, recognizing the importance of networks through interactions within and between different coalitions, “each one consisting of actors from a variety of governmental and non-governmental institutions that share a set of policy beliefs and act within a given policy subsystem or specific area” (Faria, 2003, p. 24, our translation).

This model attributes a central role for the state in the public policy cycle, different from what pluralistic approaches may suggest (Evans, Rueschemeyer, & Skocpol, 1985). This perspective is crucial in Brazil because the executive branch and party leaders are predominant actors in the process of making and passing laws. The executive operates through political exchanges such as distributing ministerial positions, allocating budget, and accommodating appointees to positions in the state bureaucracy. Party leaders operate controlling the agenda and reducing the deputies’ legislative capacity (Amorim, 2006; Amorim & Santos, 2003; Figueiredo & Limongi, 1999).

FIGURE 1 THE ADVOCACY COALITION FRAMEWORK



Source: Adapted from Weible and Sabatier (2007).

In the ACF, coalitions are groups of actors that act together over time and share beliefs and values. Each coalition has: a) a deep core; b) a policy core; and c) several instrumental decisions. The deep core beliefs are hard to change because they have been formed by the individuals’ intimate history.

Policy core beliefs are the essential positions about action paths, obtained by consensus within the coalition's core, and somewhat more malleable, reaching into policy subsystems as a whole. On the policy core, Medeiros and Gomes (2019, p. 4, our translation) explain:

As the political actors are great connoisseurs of relations within the political subsystem, they wish to invest in the application of certain deep beliefs regarding the development of political beliefs in that subsystem. However, there is no one-to-one relationship between these beliefs. Political beliefs are also difficult to change because they deal with fundamental political choices.

As for instrumental decisions, they are more likely to change because they are not part of the essential levels of the belief system.

To identify advocacy coalitions, two or three shared beliefs are sufficient. However, it is important to identify as many beliefs as possible in order to understand the subdivisions in the coalition. In addition, the ACF adopts time-based analyzes of at least 10 years – a reasonable time for coalitions to be formed, so that the actors who form them act together, learn, and update their strategies (Faria, 2003; Soares & Alves, 1988; Souza & Secchi, 2014; Weible & Sabatier, 2007). The arenas of advocacy coalitions are usually located in a policy subsystem, which is a set of social actors that form chains of value, as well as propose policies on specific issues or assets. The actors influence changes when believing they are needed, going beyond specific institutions. Therefore, public policies would be the set of these subsystems stably organized, enabling the execution of action plans (Weible et al., 2011).

Another key concept in the ACF approach is political learning, the central component of a subsystem, as it influences the strategies adopted by actors to have a voice in public policy choices, as well as in the definition of the coalition goals. In this way, it can be a determining factor in promoting changes in the status quo, but it is not the only explanatory variable for change. The model also addresses other variables of change, such as internal shocks (which refer to disagreements within coalitions), external shocks (coming from actors outside the coalition), and negotiated agreements (when there are no significant internal or external shocks) (Weible & Sabatier, 2007; Weible et al., 2011).

Faced with the competition of many possible policy paths, it is important to emphasize the performance of the mediators ('negotiating agents' or 'policy brokers'), defined as "political agents who act as intermediaries in the conflict between the coalitions" (Capella, 2016, p. 494, our translation). In the structuring of their strategies of policies change or conservation, the coalitions seek, through their formal and informal networks, to transform their belief systems into de facto public policies (Medeiros & Gomes, 2019). These intermediaries can assume the belief system of one or another coalition, or act autonomously. What is important is that they are not actors of the coalition and seek, particularly, to reduce or neutralize conflicts between subsystem coalitions.

The next section presents the methodological procedures adopted to apply the ACF to the trajectory of access to information in Brazil.

3. METHODOLOGY

The study used data triangulation to build the legislation's historical processes and to apply the advocacy coalition framework, collecting evidence from a) newspaper clippings of the Brazilian periodical *Folha de S. Paulo* (covering the period from 2002 to 2011); b) applying five semi-structured interviews with

key actors in the law-making process based on the bill PL 219/2003; and c) analysis of the lawmakers speeches during the process based on PL 210/2003, performed on April 14, 2010 (date of the vote in plenary) (Câmara dos Deputados, 2010).

In the cases of the speeches given by the deputies and the newspaper clippings, the intention was to identify elements in the following categories: a) Values; b) Coalitions; c) Resources; and d) Changes in strategy. The interviews were conducted between 2013 and 2015, with actors important or close to the law-making process. They were based on semi-structured scripts, and the interviewees were selected using the snowball approach. As for the profile, the five interviewees were: a) a former employee of the Ministry of Justice, who worked in the working groups related to the freedom of information law; b) a high-ranked representative of the Ministry of Defense; c) two military personnel assigned to the Brazilian Army Command and General Staff College; and d) a member of the Brazilian diplomacy working in the Ministry of Defense at the time of the freedom of information law, in 2011. Respondents asked not to be identified.

Regarding the news clippings, the newspaper Folha de S. Paulo was chosen because it is the newspaper with the largest circulation in the country (Poder360, 2018). For the analysis of the news reports in the period from 2002 to 2011, the study adopted keywords such as “direito de informação” (right to information) and “acesso à informação” (access to information). Also, the study used words referring to each of the decrees, laws, bills, and issues related to the right to information, such as the expression “sigilo eterno” (eternal secrecy), MP 228, Decree 4553, PL 219, MP 228 and Law 11111. Based on the results of the search using the keywords, 277 news items touching these issues were distributed according to a) actors involved; b) whether the access to government documents was a main or secondary topic of the news report; and c) whether the classification of national security and defense documents was the main or secondary topic. For each news dedicated entirely to one of the two themes researched, or that mentioned the themes in the news title (categorized as the main topic), the analysis attributed weight 1 in the count of the frequency of the mentions. To the secondary mentions, i.e., those sparsely presented in the body of the text of the news, the analysis considered weight 0.5. This differentiation serves to measure the focus given by the media to the facts regarding the transparency and reconciliation subsystems, allowing to better understand the relevance attributed to the themes.

4. THE TRAJECTORY OF THE BRAZILIAN FREEDOM OF INFORMATION LAW

This section presents the law-making process resulting in the Brazilian freedom of information law (Lei de Acesso à Informação, 2011), showing the first bills and the process until the law was passed and enacted. The first step toward access to public information in Brazil was the inclusion in art. 5 of the 1988 Brazilian Federal Constitution the item XXXIII stating that “everyone has the right to receive, from public agencies, information of their particular, or collective or general interest.”

President Collor de Mello sanctioned Law 8159 (Lei de Arquivos, 1991), which partially regulated access to public documents, establishing deadlines to attribute levels of secrecy of documents for the first time in the country. Although this law represented an advance in legislation regarding access to information, there were no mechanisms for the citizen to request information from the government, nor did it establish a list of information to be actively disseminated.

The first legislation that clearly defined these procedures was Decree 2134 (Decreto de Acesso, 1997), sanctioned by President Cardoso. The decree was received with enthusiasm by archivists and

researchers. However, in response to tensions resulting from the creation of an Amnesty Commission by the Ministry of Justice in 2001, President Cardoso sanctioned the Decree 4553/2002, known as the decree of “*sigilo eterno*” (eternal secrecy). The decree allowed the renewal of the level of secrecy of documents for an unlimited number of times, as well as conflicting with provisions of the law of archives (1991) (Hott, 2005; Marques & Castro, 2011; Rodrigues, 2017).

Despite the more restrictive legislation, access to information was already becoming a recurring theme in Latin America's political agenda. Mexico and Panama had just passed prominent laws on access to public information, and Peru entered the list of countries with this type of legislation in 2003 (Michener, 2010; RTI Rating, 2018). In that year and following the same international momentum, the first bill directly related to freedom of information appeared in Brazil.

4.1 Antecedents of the executive's bill

Between 2003 and 2010, five bills, one decree, and one law related to freedom of information emerged. Despite the difficulty of lawmakers to achieve success in their bill proposals, the legislative dynamic was, in the Brazilian case, a thermometer of the relevance of this topic in the political agenda. The Deputy Reginaldo Lopes, Workers' Party (PT), was the author of the first bill on freedom of information (PL 219/2003). The bill proposed general rules to allow access to information, establishing a deadline within 15 days for requests for information to be answered (Angélico, 2012).

In response to President Cardoso's 'eternal secrecy' decree, Deputy Alice Portugal, of the Communist Party of Brazil (PC do B), wrote two bills (463/2003 and 2649/2003), one on the need for publicity of archives referring to the repression during the military regime and another on the level of secrecy of classified documents, which received some attention from the media, but was not echoed in the legislative branch.

In addition, photos were leaked in 2004, showing a prisoner hanged in a cell during the military regime in Brazil. The government at the time, under the presidency of Mr. Lula da Silva, reactively responded to the crisis by signing the provisional measure MP 218/2004. The provisional measure was supported by the legislative branch and ratified into Law 11111/2005. The legislation reduced the period of confidentiality of documents but insisted on the permission that classification could be renewed indefinitely.

According to a news report from Folha de S. Paulo, the eternal secrecy was maintained due to a strong lobby from the Ministry of Foreign Affairs – Itamaraty, concerned over preserving controversial information from the Paraguayan War (Folha de S. Paulo, 2004). This argument has been repeated several times in other news reports, in line with the statement of one of the interviewees (a member of the Ministry of Justice), that Itamaraty mobilized a lobby, stronger than the one of the Armed Forces, against the law providing for access to information. However, according to one of the military interviewees, the opposition was not due only to the controversies related to the Paraguayan War. The interviewee suggested that the Itamaraty wanted, also, to protect itself from transparency mechanisms, because its classification system was not adequately implemented, which could make them subject to leaking - caused by bureaucratic failure.

Freedom of information was once again a topic of discussion in the Chamber of Deputies in 2007, with the addition of bill PL 1019/2007², by Deputy Celso Russomanno, Progressive Party (PP), to

²According to the proposal, the government would have 30 days to reply to a request for information.

the law-making process regarding the issue (Barros & Pitella, 2008). However, it was only in 2009, with the addition of the bill from the executive branch that the law-making process on freedom of information started by PL 219/2003 moved forward. Deputy Chico Alencar wrote the bill PL 1924/2007, justifying it based on the 'right to national memory' and in respect to people that disappeared for political reasons during the military regime. The bill stipulated a maximum period of 10 years to retain classified documents, defining the possibility of partial disclosure of information, if the document had only one confidential part.

Finally, in 2009, the executive branch sent the bill PL 5228/2009, establishing public documents' levels of secrecy, and the obligation to respond to a citizen's request for information within twenty days. According to Message 316/2009 from the executive to the Chamber of Deputies, the executive agencies that proposed the bill were the Office of Chief of Staff, the Office of the Comptroller General (CGU), the Ministry of Justice, and Council of Public Transparency and Fighting Corruption. The then Chief of Staff Mrs. Rousseff was the coordinator of the working groups that wrote the bill. The interviewee from the Ministry of Justice mentioned that the other ministries did not want to get involved in the initiative. The interviewee commented that it was common for other ministers and lawmakers to react, when asked about the bill, saying: "The law to access classified documents from the dictatorship period? I'm not interested, thank you." This statement denotes the low engagement of many sectors of the executive and legislative branches, which did not assess the possible impacts of the freedom of information law (Lei de Acesso à Informação, 2011) on the public administration.

4.2 Law-making process in the Chamber of Deputies

With the creation of the bill from the executive branch in May 2009, a special commission was established. This commission counted on the expertise of the Commission on Labor, Administration and Public Service (CTASP); the Commission of Foreign Affairs and National Defense (CREDN); and the Commission on Education and Culture, and Constitution and Justice and Citizenship (CECJC). The rapporteur published a favorable opinion to the bill on December 9, 2009 and, in March 2010, it was determined urgency for the appraisal of PL 219/2003. The bill was discussed in an ad hoc debate, winning an extraordinary session for its discussion.

The analysis of the PL 219/2003 using the *Diário da Câmara dos Deputados* (newspaper of the Chamber of Deputies of Brazil) (Câmara dos Deputados, 2010), shows that most parties have been in favor of the original content of the bill, including the Democrats (DEM), in the opposition at that time,. Two deputies of the Brazilian Social Democracy Party (PSDB) concentrated the opposition to the bill: Antonio Carlos Pannuzio, former president of the Commission of Foreign Affairs and National Defense (CREDN); and Marcelo Itagiba, former delegate of the Federal Police. These two deputies arguments focused on two points concerning the attribution of levels of secrecy for documents sensitive to national security and foreign affairs: a) the automatic disclosure of documents after the end of the work of attributing secrecy; and b) the independence in reassessing the secrecy attributed to documents after their time of secrecy expired. Marcelo Itagiba resorted to the blame of the government itself not to declassify documents related to the period of the military regime (Chamber of Deputies, 2010).

This overlap of the agendas *right to information* and *right to reconciliation* was also perceived within the Workers' Party (PT). According to two interviewees, on the one hand, the then Minister Rousseff strongly defended both fronts, both right to information and reconciliation. She used her personal

history of activist resisting and being arrested during the military regime as a means of pressure. President Lula da Silva, in turn, maintained his reputation as a negotiator, accepting suggestions and postponing critical decisions on the subject.

As one of the interviewees stated, for President Lula da Silva, it was not worthwhile to engage in this debate, since the law would already be a great advance even if it made possible to keep some documents classified indefinitely. As a result, in the appreciation of the bill in the plenary, the Deputy José Genoíno (PT) reached agreement with the party PSDB for the modification of the two points (automatic disclosure of documents after the end of the work of attributing secrecy, and the independence in reassessing the secrecy attributed to documents when the time of secrecy expired). However, none of the other parties agreed to move the altered bill forward.

Deputy Miro Teixeira, Democratic Labor Party (PDT), affirmed that the automatic disclosure of classified documents that had their time of secrecy expired was the core of the project. He argued that the commitment to reconciliation had already been signed by President Cardoso when he went to the Army Headquarters in Brasilia to address the issue of providing financial reparations for those that had died and disappeared during the period of the military regime (Chamber of Deputies, 2010).

Other relevant issues have emerged, even though they have not been the subject of intense debate. One of them refers to the creation of an autonomous body dedicated to overseeing and implementing the freedom of information law (Chamber of Deputies, 2010). At various meetings convened by the bill's rapporteur, civil society organizations advocated the creation of an independent body. The slow advance in this theme was due to the belief of some members of Congress that this discussion could lead to the piling up or postponement of the law-making process.

The session also debated the absence of archives and the efficient management of the documents; the lack of a specific budget to improve document's management; and the lack of focus on sanctions and punishment of civil servants who unduly retain documents and information. After the vote on these amendments, the bill passed in the Chamber of Deputies and went to the Senate as the Chamber of Deputies' bill PLC 41/2010 (Chamber of Deputies, 2010).

4.3 Law-making process in the Senate

The Chamber of Deputies' bill PLC 41/2010 was first approved in the Commission of Constitution and Justice (CCJ), in June of 2010; in the Commission for Science, Technology, Innovation, Communication, and Information Technology (CCT) in April 2011; and in the Human Rights Commission (HRC), also in April 2011, without complications.

When it arrived at the Commission of Foreign Affairs and National Defense (CRE) of the Brazilian Senate, chaired by former President and then Senator Collor de Mello, the bill was static for about four months. The different views between President Lula da Silva and the then President Dilma Rousseff about the issue were well delineated, and this difference was reflected in the Senate's behavior during the appreciation of this bill. President Lula da Silva maintained the conciliatory discourse until the end of his term; President Rousseff, however, went in another direction by joining the two agendas (right to information and reconciliation) (Angélico, 2012; Rodrigues, 2013).

For the military interviewees, President Rousseff's position was far more historical than pro-transparency. Another interviewee recalled that there were already debates about the opening of

documents of the military regime and the creation of a National Commission of Truth during President Lula da Silva's government. These discussions were formalized in the Third National Program of Human Rights, which was not implemented.

On July 18, 2011, Senator Collor de Mello published an article in the newspaper *Folha de S. Paulo* in which he argued that eternal secrecy is necessary for some documents, including those related to international agreements and state security (Mello, 2011). Senator Collor de Mello proposed an addition to the law on August 22, 2011. If the senator's proposal had passed in the Senate, the bill would have to be re-evaluated in the Chamber of Deputies, which would further delay the progress of the discussions. In his proposal, the senator suggested changes such as the maintenance of the eternal secrecy and turned non-mandatory the provision of keeping data available online (according to the senator, publishing the data online would be institutionalizing the 'WikiLeaks'). The senator's proposal would also make it mandatory to state the motivation for an information request, established that the Ministry of Defense would be released from the obligation to submit its accounts to the Office of the Comptroller General (CGU), and provided that documents related to the acts of the President of the Republic should be classified (Costa & Rodrigues, 2011).

Senator Collor de Mello's claims were opposed to international standards regarding freedom of information (Article 19, 1999). Therefore, there were many requests for him to let the law-making process move forward, including requests from the former President Henrique Cardoso, the then Chief of Staff Mr. Antonio Palocci, the former President and then Senator José Sarney, and the Minister of Defense Nelson Jobim.

During the mandate of President Rousseff, the president pressured and was pressured by the agenda of international events involving public transparency. These pressures were evidenced by a) a decree passed by the executive branch regulating the National Plan of Action on Open Government, with the support and participation of 18 Ministries; and b) the establishment of the Open Government Partnership with the United States of America. In addition, President Rousseff decided to establish the National Commission of Truth on September 21, 2011, the day of her first address to the United Nations (UN) Assembly. Also, she put pressure on the Congress to approve the bill establishing the commission in that same week, as the president would attend a seminar on transparency in New York on September 22, 2011 (Decreto de 15 de setembro de 2011, 2011; Martins, 2014; Rodrigues, 2013).

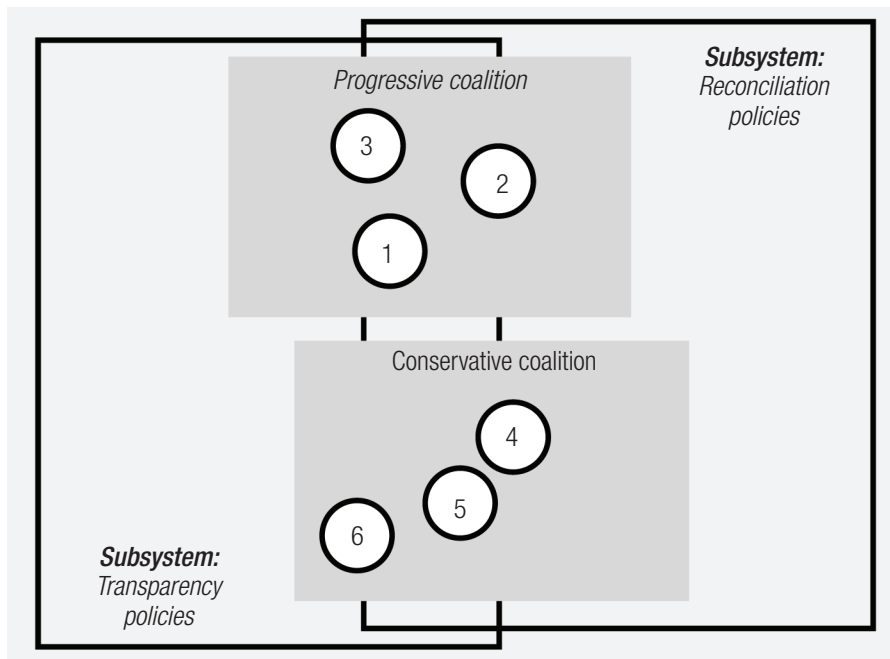
The Senate voted in favor of the termination of eternal secrecy on October 25, 2011, and Senator Collor de Mello's proposal of addition to the law was rejected by 43 votes against and 9 votes in favor. The other proposed additions to the bill PLC made by CRE were also rejected (O Portal de Notícias da Globo [G1], 2011; Rodrigues, 2013). President Rousseff sanctioned the law on November 18, 2011.

5. FREEDOM OF INFORMATION AND THE ADVOCACY COALITIONS

Based on the Advocacy Coalition Framework (ACF), this section analyzes a) the advocacy coalitions identified during the study; b) the subsystems in which these coalitions are inserted; c) the resources of each coalition; d) the explanatory variables of change; and e) the coalitions' learning experience. Two advocacy coalitions were identified, acting in opposite directions: a progressive advocacy coalition, pro-expansion of freedom of information, and a conservative advocacy coalition, concerned with the preservation of secrecy rights.

The configuration of coalitions and public policy subsystems is illustrated in Figure 2. The coalitions are represented by gray boxes, located at the intersection of the two public policy subsystems. The vertical location of the actors gives a graphic notion of their position in the debate, whether more aligned to the subsystem of transparency or reconciliation.

FIGURE 2 COALITIONS AND SUBSYSTEMS IN THE LAW-MAKING PROCESS OF THE BRAZILIAN FREEDOM OF INFORMATION LAW



Source: Elaborated by the author.

Key:

- 1: President Lula da Silva, the political party Democrats (DEM), parliamentarians from the Workers' Party.
- 2: Minister and President Rousseff, parliamentarians of the parties PP, PC do B, PT, PSOL.
- 3: Ministry of Justice and the Office of the Comptroller General (CGU).
- 4: Armed forces, parliamentarians of the party PSDB, and the Commission of Foreign Affairs and National Defense (CRE).
- 5: Ministry of Defense.
- 6: Ministry of Foreign Affairs - Itamaraty.

The progressive coalition was composed of a group favoring the implementation of reforms in the transparency legislation, composed of the Office of Chief of Staff, Ministry of Justice, public archives, media, and civil society organizations. The shared values in the deep core of the coalition included freedom of information as a fundamental right, assumption that public administration in general, lacks transparency, preservation, and availability of historical documents, and the strengthening of democracy. Box 1 lists these values.

BOX 1 VALUES OF THE PROGRESSIVE ADVOCACY COALITION

Deep core	<ul style="list-style-type: none"> – Freedom of information as a fundamental right – Assumption that public administration lacks transparency. – Strengthening democracy. – Preservation and availability of historical documents.
Public policies core	<ul style="list-style-type: none"> – Universal legislation regulating transparency standards. – Clear rules, following international standards for: <ul style="list-style-type: none"> • Passive transparency (information made available when requested). • Active transparency (information made available a priori). • Restriction to classified documents.
Implementation	<ul style="list-style-type: none"> – Following international standards of legislation on freedom of information: <ul style="list-style-type: none"> • Establishing deadlines and mandatory processes for citizens' to request information and for public administration to respond to these requests. • Establishing a list of information to be made available on governmental websites. • Reassessing the periods in which classified documents are kept in secrecy, stating the limited reasons that justify the restriction of access to documents produced by the state.

Source: Elaborated by the author.

Despite the sharing of values, there was an internal division within this coalition: one part was tied to the issue of government transparency, and the other was linked to transparency as a means of promoting reconciliation policies (relating to possible abuses committed during the military regime). This division in the coalition's deep core was so strong in the debate on freedom of information in Brazil that, in this article, it was characterized as the superposition of two subsystems of public policy.

This article makes a clear distinction between these two subsystems since the issues of reconciliation policies are completely unrelated to the subsystem transparency. The subsystem of the reconciliation policies is aimed at issues such as the revision of the Amnesty Law (1979), the location of bodies of missing persons, and financial and criminal reparations on abuse (D'Araujo, 2012). As for the subsystem transparency, it addresses issues such as open data, auxiliary technologies, and fighting corruption.

In the chronology, presented in Box 2, it is clear the intersection of these values and how it is not possible to consider only one subsystem.

BOX 2 CHRONOLOGY AND IDENTIFIED SUBSYSTEMS

	Transparency subsystem	Intersection (focus on general access)	Intersection (focus on establishing levels of secrecy)	Reconciliation subsystem
2001				[M] Creation of the Amnesty Commission (Ministry of Justice)
2002			[E] Decree 4553/2002 (eternal secrecy)	

Continue

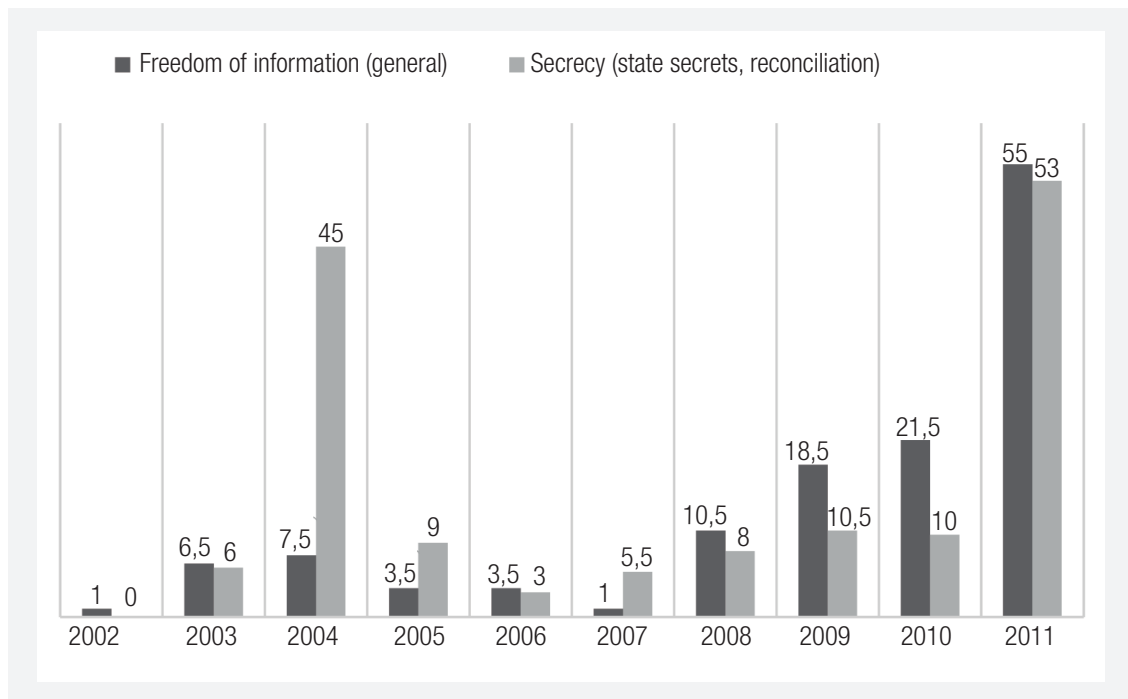
	Transparency subsystem	Intersection (focus on general access)	Intersection (focus on establishing levels of secrecy)	Reconciliation subsystem
2003	[L] PL 219 (Reginaldo Lopes - PT)		[L] PL 2649 (Alice Portugal - PT)	[L] PL 463 (Alice Portugal - PT)
2004			MP 228	[M] Leaking of photos of a political prisoner from the period of the military regime
2005			[E] Lei 11111 (eternal secrecy) [M] Release of archives from the SNI	
2006				
2007	[L] PL 1019 (Russomano - PP)		[L] PL 1924 (Chico Alencar - PSOL)	
2008				
2009		[L] PL 5228 (Executive branch)		[E] The National Plano n Human Rights is launched, providing on the creation of CNV
2010			[L] CRE stops the law-making process	[M] Brazil is found convicted by the CIDH
2011	[E] Creation of the OGP	[E/L] Law 12527	[L] CRE stops the law-making process	[E] Creation of CNV
2012		[E] Decree 7724	[E] Decree 7845	

Source: Elaborated by the author.

Key: [E]: act from the executive branch; [L]: act of the legislative branch; [M]: remarkable event; SNI: National Information Service; CIDH: Inter-American Court on Human Rights; OGP: Open Government Partnership; CNV: National Commission of True

Box 2 shows a concentration of legislative measures highly correlated with policies of the reconciliation subsystem. These measures set parameters of transparency for general public administration, but the priority was the issue of the level of secrecy of classified documents. The presence of these two policy subsystems is also noted in the categorization made in the news clippings (Graphic 1).

Graphic 1 shows the seasonality of the debates around secrecy, concentrated in 2004 and 2011. In 2004, there are two reasons for a large number of references to attributing levels of secrecy for classified documents. The first was the leaking of photos of a political prisoner hanged in prison during the military regime. Added to this is the launch of the provisional measure MP 218 (which later became Law 11111/2005), which changed some rules regarding the level of secrecy for documents, although still allowing the level of secrecy to be continuously renewed. Despite the media appeal of the leaked photos, the reports at the time indicated that the largest lobby in favor of maintaining eternal secrecy came from the Itamaraty (Folha de S. Paulo, 2004). In 2010 and 2011, the presentation of PL 219/2003 by the executive branch, the possibility of the creation of a National Commission of Truth, and Brazil's conviction in the Inter-American Court of Human Rights regarding the Amnesty Law (1979) led the media to resume the debate.

GRAPHIC 1 MENTIONS IN NEWS REPORTS PUBLISHED IN FOLHA DE S. PAULO³

Source: Elaborated by the author.

The analysis of the news clippings analysis shows the emergence of the issue of access to public information, to the detriment of a vision of transparency necessarily linked to the reconciliation subsystem. The emergence of an autonomous agenda for the reconciliation subsystem may have been instrumental to pass the freedom of information law and to the late acquiescence observed in the Commission of Foreign Affairs and National Defense (CRE) of the Senate, strengthening the establishment of an epistemic community of transparency and deviating the focus from the threat toward the amnesty law (Lei da Anistia, 1979) and other reconciliation policies (Weible et al., 2011).

In addition to the reconciliation subsystem, the progressive coalition directed its resources on the willingness of the executive branch to pass the bill on freedom of information and the growing international importance of the government transparency agenda. Therefore, the international prominence of the subject, with the support of the media, of sectors of the bureaucracy, and the legislative branch, was used to create costs to the opposition. Members of the Congress from different parties supported the bill in its different phases, including PT, PMDB, PSDB, and DEM.

The conservative coalition counted on the collaboration of two historically competing institutions (Itamaraty and the Armed Forces) and also with the CRE of the Senate. The coalition presented a united deep core. In the policies core, the coalition focused on the maintenance of the system of levels of secrecy for classified documents in Brazil.

Box 3 summarizes these values.

³As described in the methodology, the number of mentions presented in Graphic 1 was obtained using a weighing strategy: a) mentions identified as the central topic of the news report were weighed as 1; b) mentions considered as secondary in the news report were weighed as 0,5.

BOX 3 VALUES OF THE CONSERVATIVE ADVOCACY COALITION

Deep core	<ul style="list-style-type: none"> – Prominence of national security over other policies. – Assumption that the risks related to classified information should be minimized. – Resistance to revising past actions.
Public policies core	<ul style="list-style-type: none"> – Maintenance of the legislation in force at that time, or revision with increasing restrictions.
Implementation	<ul style="list-style-type: none"> – Postponement of the appreciation of the Brazilian freedom of information law: <ul style="list-style-type: none"> • Lobby in the legislative (CRE) and executive (President Lula da Silva's government) branches. – Attempt to maintain the clause on 'eternal secrecy.' – Attempt to include a clause making it mandatory for citizens to state the reasons for the information request. – Attempt to restrict the list of information to make available upfront (active transparency).

Source: Elaborated by the author.

An important difference in the deep core of this coalition is that the reconciliation agenda fell mainly on the Armed Forces, while for the Itamaraty the motivations to advocate for greater secrecy vary from the formation of the state (fear of contestation of border demarcation from the historical territorial dispute of the Paraguayan War, according to media reports) to a suspected bureaucratic inability to manage and protect existing classified information (according to a military interviewee).

The chronology in Box 2 shows that the decree of eternal secrecy and the permanence of eternal secrecy in Law 11111/2005 were interspersed with sensitive landmarks for actors in the reconciliation subsystem. The Ministry of Defense, in turn, took a conciliatory stance between the presidency and the representatives of the three forces, constituting a policy broker of both subsystems and coalitions, seeking to accommodate interests and reduce competition (Capella, 2016). According to one of the interviewees, there was an internal conciliation of interests within the Ministry, so the law would not affect the military technology and communications sectors. Regarding the information produced during the military regime, the interviewee mentioned that one possible response would be to say that all documents had been destroyed. The media portrayed Itamaraty as opposed to the legislation from 2004 when mentions regarding the institution's resistance started to appear often both in the news clippings and in the interviews conducted for this research. The territorial issue involving the Paraguayan War was a recurrent argument adopted by the institution.

The political system was not open to reconciliation policies, but it was not resistant to transparency. To build consensus, the progressive coalition demonstrated to have gone through a learning process, changing the focus of the debate to general government transparency, as shown in Graphic 1. The absence of resistance to transparency, however, did not mean automatic engagement. The interviewee from the Ministry of Justice illustrated the situation, informing that the opposition to the law in the legislative branch was originated in these two actors involved in the national defense, and there was little discussion about the repercussion of requests for information in the bureaucracy as a whole. The resistance to the legislation was fragile, but the willingness of other ministries and legislative commissions to defend the legislation was not strong at all.

The conservative coalition learned from the various legislative initiatives on freedom of information. One can say that the commotion around the decree providing on eternal secrecy (Decreto do Sigilo Eterno, 2002) was what moved the public opinion to international practices related to transparency, levels

of secrecy, and access to government documents. This event led the conservative coalition to adopt less abrupt strategies, using lobbying in the legislative and executive branches rather than top-down measures.

As for the explanatory variables of change, an important internal shock to the progressive coalition (which was still in formation) was the careless approval of the decree “*sigilo eterno*” (eternal secrecy) (2002). Another internal shock, with major impacts on both coalitions, was the leaking of photos, in 2004, of a political prisoner during the military regime, hanged in a cell. The photos strongly mobilized the pro-transparency advocacy. On the other side, the Ministry of Defense coordinated diverging interests by negotiating agreements, weighing expectations, and reassuring the military and politicians regarding the issue. When abstaining from addressing the issues of reconciliation and the revision of the amnesty law (1979) – evidence of that was the low access granted to the National Commission of Truth (Rodrigues, 2017) – the government managed to pass the provisional measure PL 219/2003, that later became the Brazilian freedom of information law.

6. FINAL CONSIDERATIONS

This study adopted the advocacy coalition framework to analyze how different actors contributed to the fact that Brazil took eight years to pass its freedom of information law (Lei de Acesso à Informação, 2011). The sanction of this legislation was late in comparison to other countries, even though Brazil already had a federal decree ensuring access to governmental documents since 1997 (Decreto de Acesso, 1997). With the growing debate over the revision of the amnesty law (Lei da Anistia, 1979), the decree on eternal secrecy (Decreto do Sigilo Eterno, 2002) was introduced, which allowed for the unlimited renewal of the levels of secrecy for classified documents.

The media highlighted the issue of secrecy of documents from this decree, gaining the attention of members of international organizations. However, this was not enough for the instrument of eternal secrecy to be banned, since the subsequent law on access to documents, Law 11111/2005, kept the possibility of continuous renewal of the secrecy status. In 2009, the executive branch decided to lead the debate and, after strong resistance from CRE, the freedom of information law was finally passed.

Two coalitions were identified.

The progressive advocacy coalition was formed by the Office of the Chief of Staff, Ministry of Justice, media, civil society, and human rights organizations. It had two distinct agendas: a) on the one hand, it defended governmental transparency; b) on the other hand, it defended access to historical documents as a tool for reconciliation policies related to the period of the military regime. The reconciliation agenda has so much influence in the public debate on access to information that it was considered a second subsystem of public policies. The conservative advocacy coalition was formed by the Armed Forces (directly connected to the issue of reconciliation and revision of the amnesty law (Lei da Anistia, 1979) and the diplomats of the Ministry of Foreign Affairs – Itamaraty, who were, at first, concerned about the release of documents related to definition of territory, produced after the Paraguayan War. Another actor in this coalition was the Commission of Foreign Affairs and National Defense (CRE) of the Brazilian Senate.

Both coalitions learned from this process: on the public agenda, it was possible to observe that transparency was not attached to reconciliation issues. Also, there was an international pressure to strengthen public opinion, and it was observed, finally, the consent of the conservative coalition, that was able to build narratives and mechanisms to avoid the risks associated with transparency – such as

using the argument that the documents were destroyed. The ACF was appropriate to the case, since the coalitions, despite including actors with different interests, remained active for a long period. The coalitions were dissolved after the sanction of the freedom of information law (Lei de Acesso à Informação, 2011).

Responding to the research question that motivated this study, under the ACF lens, it is possible to say that there were two reasons for the slowness in the approval of the Brazilian freedom of information law.

First, strong clashes between actors linked to reconciliation policies have overshadowed the institutional and technological debates about transparency. This affected the support of other ministries and members of Congress who, even when not offering resistance, also did not engage in the debate. It was only over time and with the perception of the stability of the veto power of the Armed Forces regarding the amnesty law (Lei da Anistia, 1979) (D'Araujo, 2012) that the progressive coalition resolved: a) to continue supporting the cause of access to documents of the period of the military regime; and b) using a narrative that was not directly connected to issues related to that period in history.

Second, the evidence gathered in the news clipping revealed the protagonism of the Itamaraty in the lobby for the maintenance of eternal secrecy, a fact that partially contradicts one of the initial propositions of this study (reconciliation would be the sole reason for the slowness in the approval of the freedom of information law). Despite the explicit motivation of the diplomats related to a border dispute, one of the interviewees affirmed that the low institutionalization of systems to attribute levels of secrecy for classified documents within the ministry could be part of the explanation for the resistance.

This article provides contributions on how actors behaved on sensitive issues related to freedom of information, providing inputs for policymakers interested in promoting transparency reforms and assessments. In addition, the study highlights strategies of change and resistance of the coalitions involved, demonstrating the consolidation of transparency as an issue independent of related policies.

Among the factors that led to the freedom of information law (Lei de Acesso à Informação, 2011) there are a) international pressures, especially through the co-founding of the Open Government Partnership with the United States; b) the growth and consolidation of an epistemic community that advocates mechanisms of transparency in public administration, such as the news clippings presented in this article; and, c) the confirmation of the stability of the Armed Forces veto power regarding possible revisions of the amnesty law (Lei da Anistia, 1979) (D'Araujo, 2012).

The nature of President Rousseff's mandate as a minority government, as Michener (2010) explores, may also have been a determining factor in the passage of the law. This argument, however, deserves further attention in future studies.

The limitations of this research lie in the fact that the conclusions are not generalizable since the article is structured around a single case study. In addition, the motivations of Itamaraty's resistance to the legislation were not profoundly explored, which can be studied in future research. Analyses on other phases of the policy cycle, beyond the formulation phase observed here, are needed to complement the arguments deployed above. It is possible to analyze, for instance, the impact of the belief system around these coalitions during the implementation of the freedom of information law, which, at the time of this article, has been approved for eight years. Likewise, the emergence and overthrow of Decree 9690/2019 (Câmara dos Deputados, 2019), which increased the number of civil servants with the ability to establish levels of secrecy (secret and top secret) for classified documents, resumes the debates about the endurance of the 2011 achievement.

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