Evaluative Considerations Regarding Quebec's Freedom of Information Act (FOIA)

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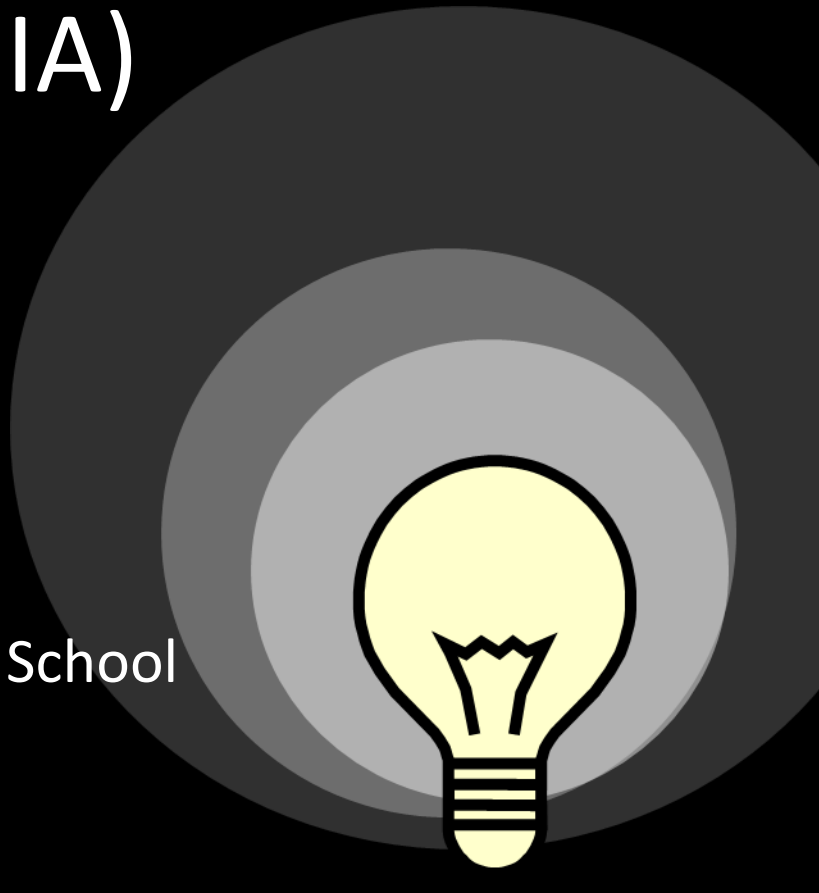
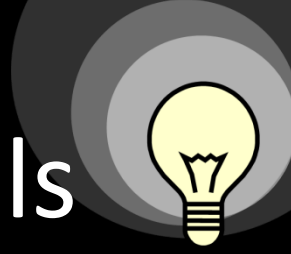
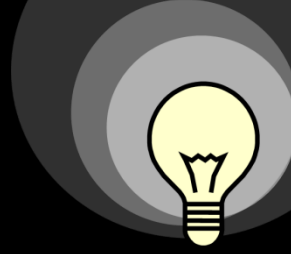


Different and overlapping goals



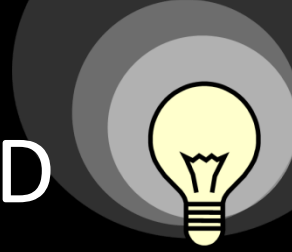
- A dissertation in public administration that is a policy analysis of Qc's FOIA
  - Aims at the understanding of the law through a certain theoretical perspective
- An evaluation of Qc's FOIA
  - Would (could) aims at the assessment of the effects, efficiency and eventually merit and worth



INFORMATION GOUVERNEMENTALE ET MARCHÉ POLITIQUE:

ÉTUDE DE LA RAISON D'ÊTRE, DE LA NATURE ET DE LA MISE EN ŒUVRE

DE LA LOI QUÉBÉCOISE D'ACCÈS À L'INFORMATION

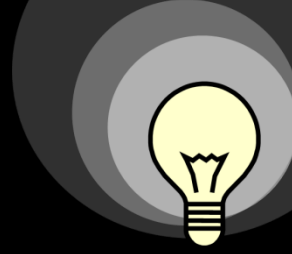


GOVERNEMENTAL INFORMATION AND POLITICAL MARKET:

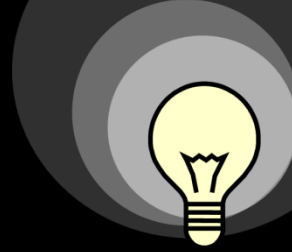
STUDY OF THE POLITICAL NEED AND JUSTIFICATION, OF THE CHARACTERISTICS AND OF THE IMPLEMENTATION

OF QUEBEC'S FREEDOM OF INFORMATION ACT

Today's agenda



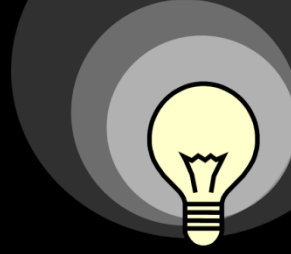
- The dissertation
  a. FOIAs' universe
  b. Research problem
  c. Theoretical framework
  d. Research questions and methodology
- The evaluation perspective
  1. What kind of program is an FOIA ?
  2. What variables/effects are to (or can) be measured ?
     - Basic causal pathway
  3. Data collection challenges



Quick look at

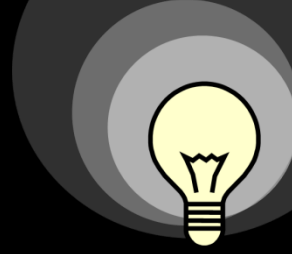
The dissertation

a. FOIAs' universe



- Qc's FOIA (like the one in the US) provides a right to access various *documents* from *public bodies*.
- The right is implemented through a regulated information request process.
- Information Officer (IO) centralize the outside flow of information in a public body by their decisions over information requests.

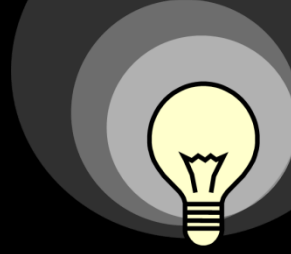
a. FOIAs' universe



- The general right of access is shaped by different constraints or parameters (exceptions):
  - What document / info ?
  - What public bodies ?
  - When is it going to be available ?
  - Discretional or mandatory dissemination ?

  - Peripheral obligations (web dissemination, systematic release)

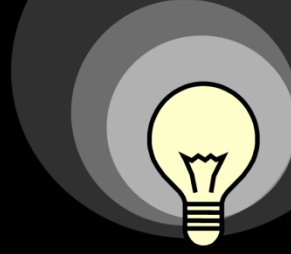
b. Research Problem



- Theoretical dimension
  - Explaining governmental information and FOIAs' roles in the accountability relationship that links the government and citizens.
- Empirical dimension
  - The positive and normative appreciation of Qc's FOIA
  - … and implementation of Qc's FOIA

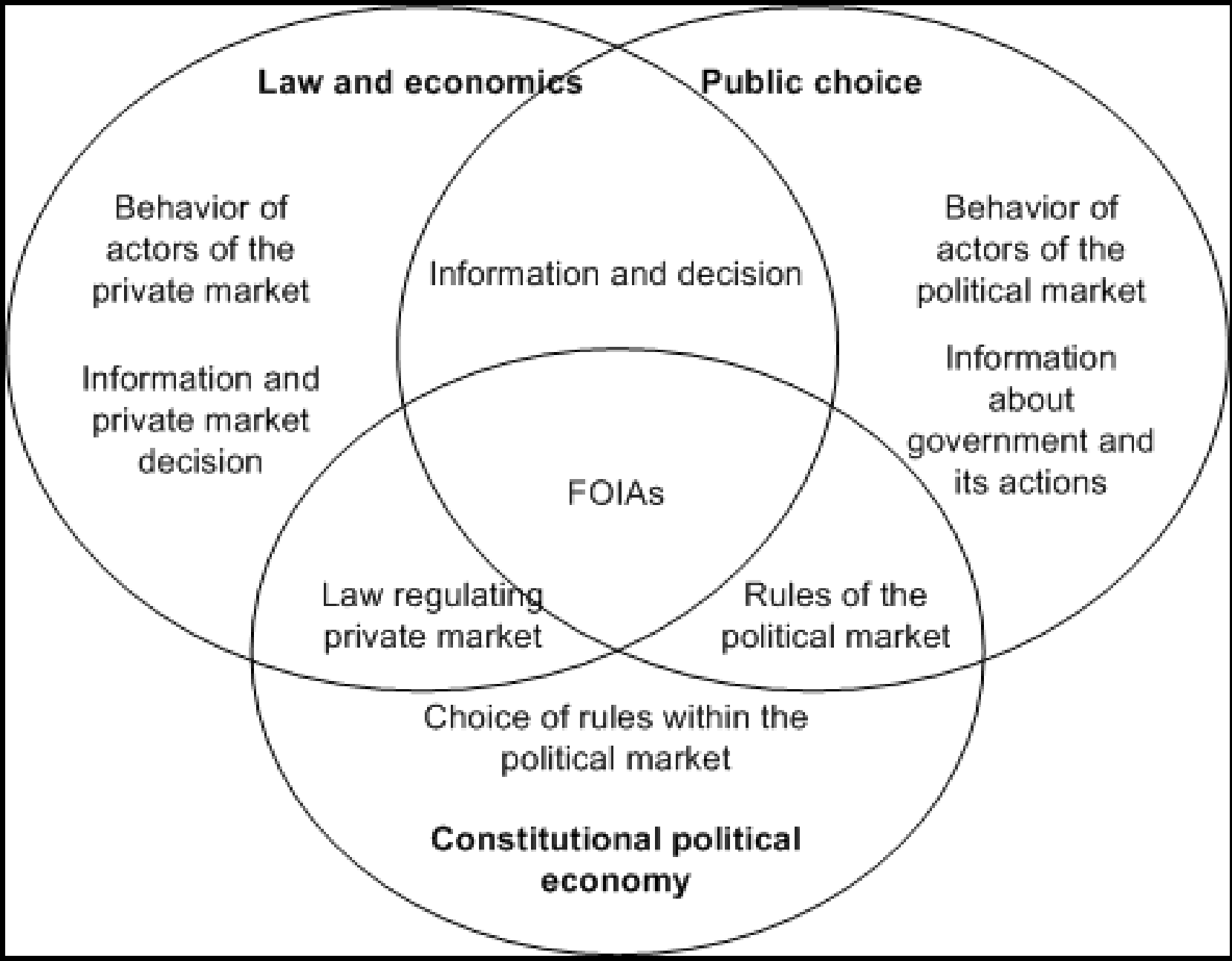
…With a non traditional theoretical perspective

c. Theoretical framework

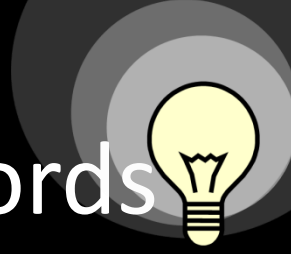


- 3 political economy schools
  - Public choice
  - Constitutional political economy
  - Law & Economics
- Focus on incentives & consequences of institutional settings

- Building up an original framework adapted to FOIAs using analogies and logical deductions.
  - Accountability point of view between government vs citizen (agency problem)

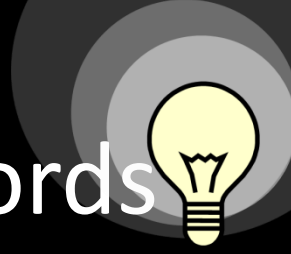

Law and economics
Public choice
Behavior of actors of the private market
Information and private market decision
Information and decision
Behavior of actors of the political market
Information about government and its actions
FOIAs
Law regulating private market
Rules of the political market
Choice of rules within the political market
Constitutional political economy

c. Theoretical framework in few words



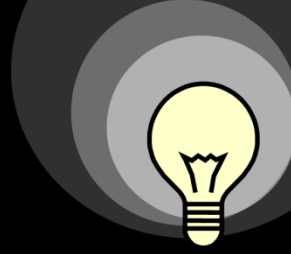
- “Rational” actor: people seek their interest as they see it in their decisions
- Information = reduction of uncertainty
- Politics as a complex set of transactions made trough political institutions
- Efficient political system = informed citizens

c. Theoretical framework in few words



- Information is valued, hence governmental information is valued
- Citizens' decisions need information regarding governmental action / responsibilities (agency problem)
- The monitored is the main detainer / producer of governmental information
- Artificial rarity of governmental information

c. Theoretical framework

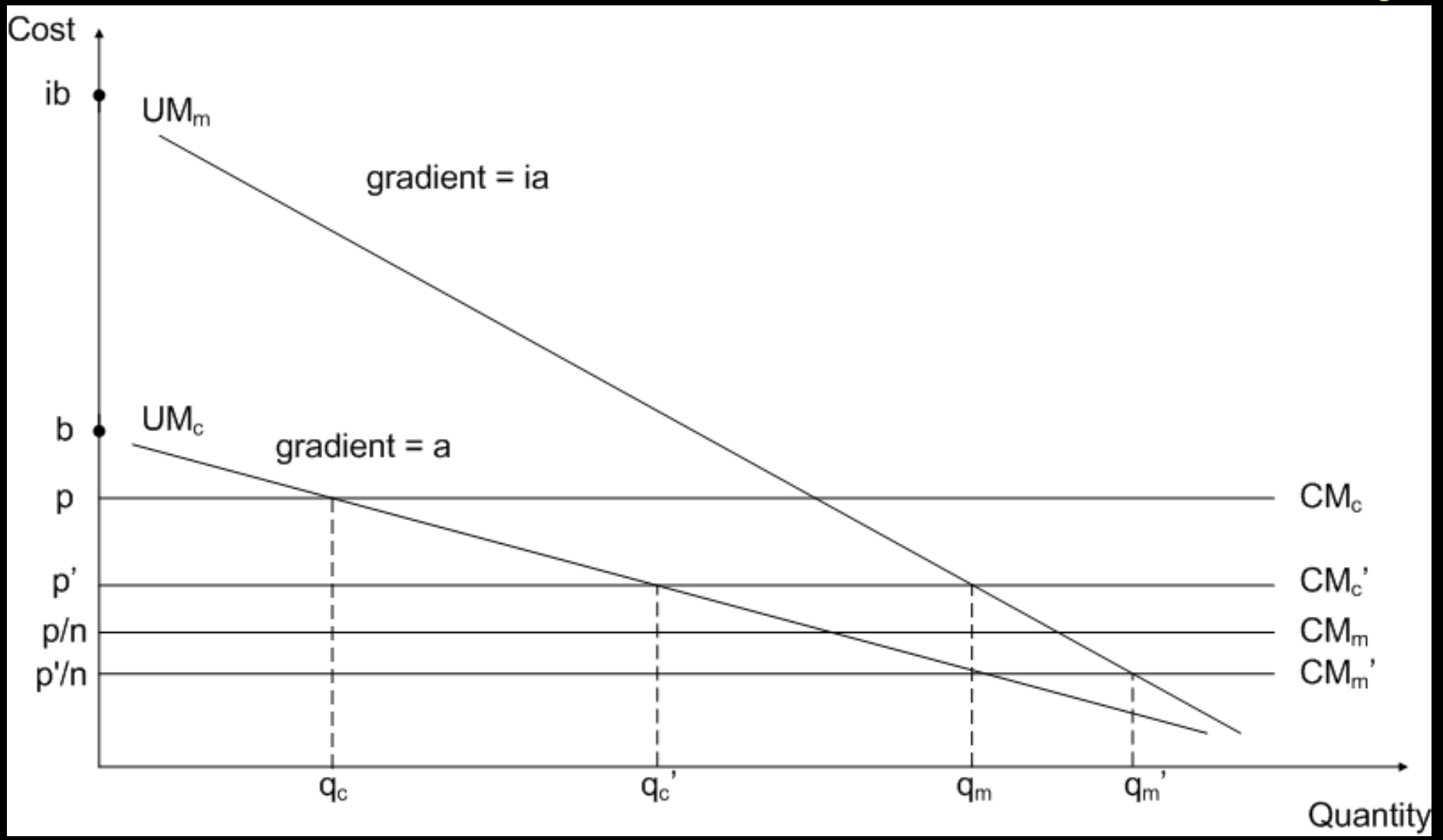


- Differences in capacity to access and use information between citizen and interested groups (+ pol.).
- Information (power) asymmetry generates biases the outcomes of the political system (“bad” policies).
- FOIAs are justified to force public bodies to behave, regarding transparency, in a way they wouldn't have if they were left to themselves.

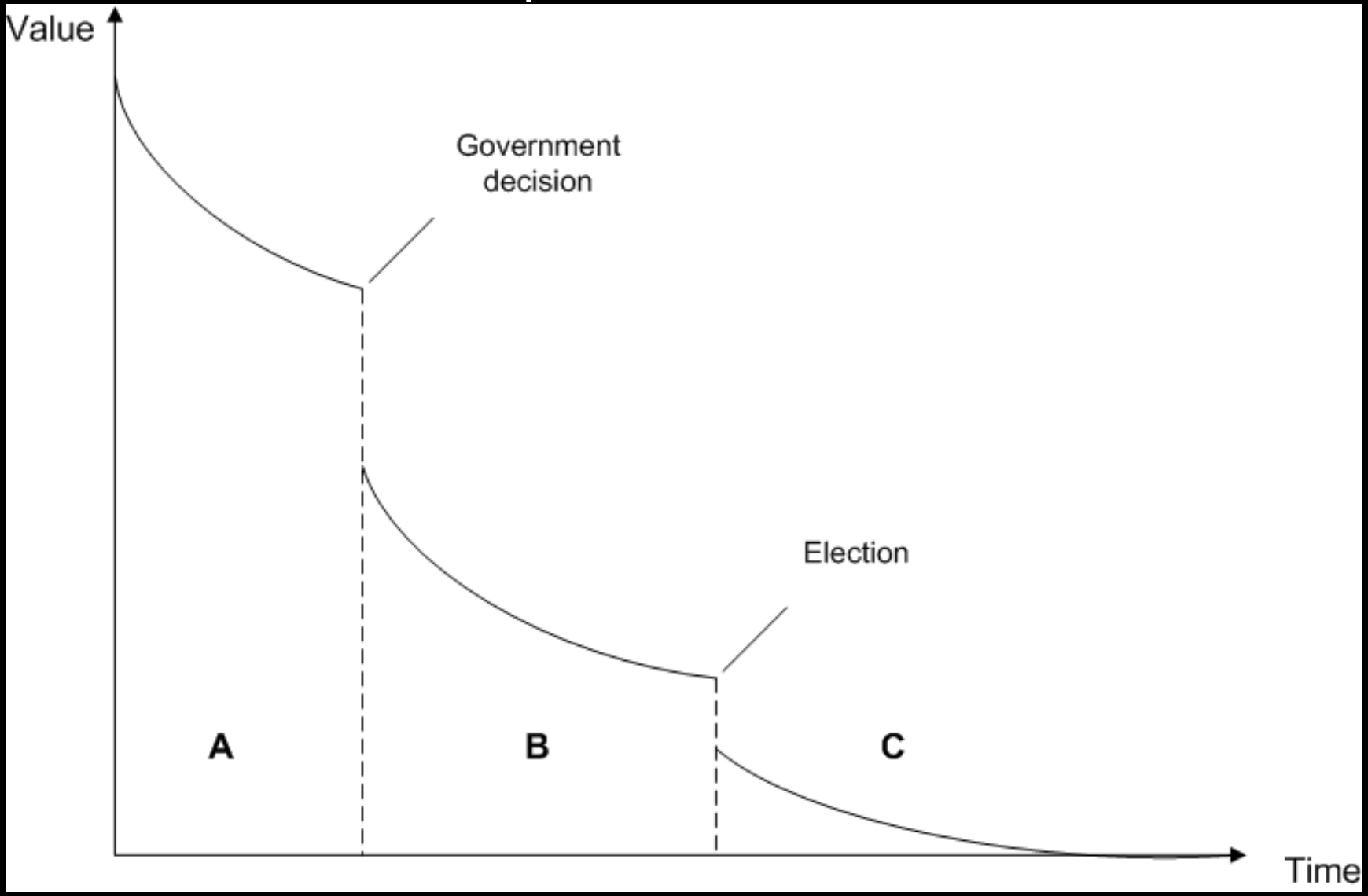
Equation on information asymmetry

$$A = \frac{b - \left(\frac{p}{in}\right)}{(b - p)}$$

Info marginal cost + utility



Information's value decreasing over time and political moments



d. Research questions and metho.

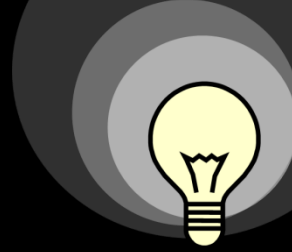
- Q0: Role of governmental information
  - Crafting of a theoretical framework (more a reflexion than a classic method)

- Q1: The characteristics of Qc's FOIA
  - Normative analysis of the law itself, identification and qualification of the incentives mechanisms using the theoretical framework

d. Research questions and metho.

- Q2: The characteristics of the implementation behavior of Qc's FOIA
  - Interviews with IOs
  - Analysis of internal policies
  - Analysis of lists of classification*
  - Generic document requests
  - Analysis of automatic disclosure websites
  - Analysis of annual management reports

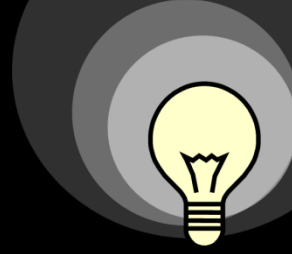
*Data was mainly collected in departments rather than in all kind of public bodies



Some thoughts about

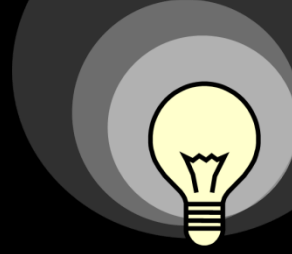
Evaluative considerations

1. What kind of program ?



- Is a law a program ?
- Is program evaluation includes law evaluation?
- What is the causal starting point ? Should’nt we look at administrative efforts instead ?

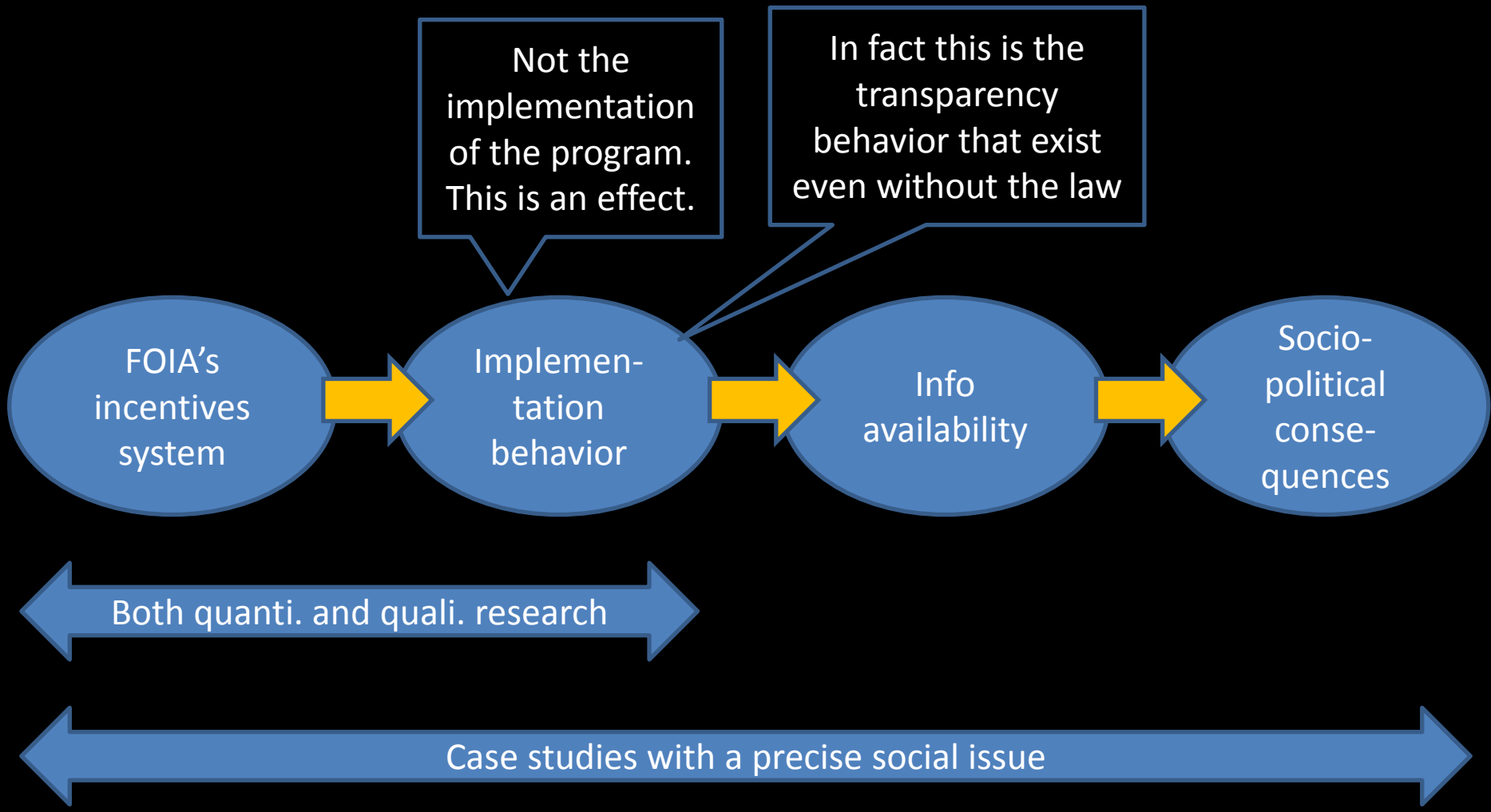
1. What kind of program ?



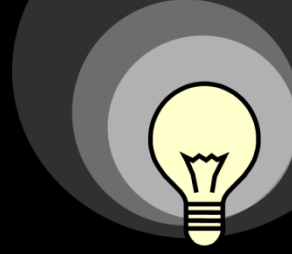
- FOIAs are efforts to change administrative behavior regarding access to public records and transparency in general
  - (at least that's their political legitimacy)

- They are regulations backed with an enforcement system (surveillance and appeal) aiming at a target population made of somehow reluctant public bodies.

2. Basic causal pathway

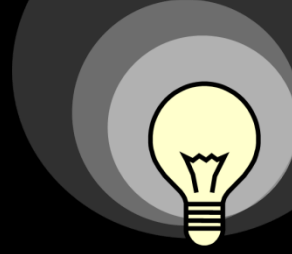


3. Data collection challenges in interviews



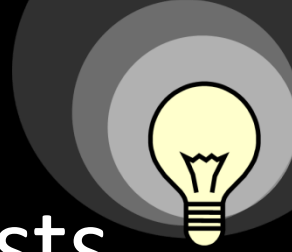
- Confidentiality and its limitations for analysis capacity
  - Crossing datas from interviews with institutional variables
- Research on transparency in a non-transparent world
  - Caution, reluctance
- Rely on very factual elements that act as proxies.

3. Data collection challenges about FOIA compliance



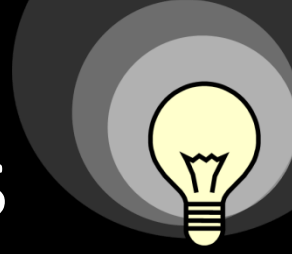
- Can’t ask people if they are transparent or not, or to collect data on their own violation of a law.
  - Well, you can ask, actually. But that is the best you can do about it.
- Absence of something tells something else
  - Penalties from FOAI have never been applied
  - IO have no way to monitor or prevent violations

3. Data collection challenges regarding decisions on info requests



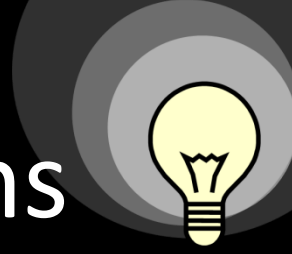
- Non-existent data banks
- A beginning of official data
- Impossibility to compare between public bodies
  - data gathering and presentation
- Weaknesses in terms of conceptual validity
  - % of dissemination vs % retention
  - % of voluntary dissemination ?

3. Data collection challenges



- Is strict compliance what we want to measure transparency ?
- In today's administrative culture the "compliance layer" is mostly ok, at least in major departments.
- Try to catch the discretional layer

Future research considerations



- This presentation was about an evaluative regard on Qc's FOIA

- But what can the theoretical framework tell us, this time, about evaluation ?
  - The nature of evaluation as a informational good in the political market
  - The strategic rational behavior regarding production and dissemination of evaluation