

Whose voice gets on air?

The role of community radio and recent reforms to democratize media markets in Uruguay, Argentina, and Chile

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Abstract

The media sector is vital to the quality of democracies, yet its products or services are often traded in commercial markets. In Latin America, media markets are usually dominated by only a few large commercial media companies. Regulation often dates back to the times of military dictatorships, while neoliberal reforms have later accelerated concentration tendencies and increased the emphasis on commercial logics. The current state of the media sector is increasingly criticized as posing severe limits to processes of democratic deliberation, illegitimately concentrating political power and complementing other forms of social exclusion. In the last few years, calls for democratizing media markets have been echoed in some countries by policy reforms in the broadcasting sector. This paper sketches the regulatory challenge of democratizing predominantly commercial and concentrated broadcasting markets in Latin America. I demonstrate that commercial diversification is a necessary but not sufficient condition for plural media markets. Furthermore, debates about “democratization” go beyond the commercial diversity of media channels and rather address the conditions of access to the public sphere. Against the background of recent legislation in Uruguay, Argentina and Chile, I identify a trend toward the promotion of non-commercial broadcasters. Although media regulation is partly modernized to account for democratic demands, the extent of the reforms differs greatly. As the democratization of concentrated media markets conflicts with the interests of commercial firms, such reforms are only to be expected where active social movements push for changes.

Keywords: Latin America (Uruguay, Argentina, Chile); democratization of media markets; media regulation; community radios

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La comunicación es una cosa demasiado seria para dejársela sólo a los medios de comunicación.¹

Benoît Hervieu,
representative for the Americas of *Reporters Without Borders*

The regulation of media markets is a tricky issue. The existence of diverse media is considered a prerequisite for functioning plural democracies because the media transports ideas, amplifies and spreads public opinion and communicates government policies. Media content is “part of the lifeblood of democracy” (Feintuck & Varney, 2006, p. 249). However, media goods are often produced and traded in commercial markets. These markets show some characteristics that contravene the idea of plurality and lead to the concentration of ownership and homogenization of content. Latin American media markets are particularly driven by commercial logics, and the high income concentration across the continent is paralleled by concentrated ownership structures in the media market (Becerra & Mastrini, 2009). For a long time, social movements and scholars alike have pointed at the negative consequences for a democratic public sphere (Dahlgren, 1995), as rich media, in the words of McChesney (1999), lead to poor democracy. While direct governmental censorship is rather uncommon in contemporary Latin America, new types of exclusion have emerged in connection with “economic censorship”, as economic criteria determine which information is available. Many years after the political systems returned to electoral democracies, calls for democratizing the media sector are increasing and in some countries answered with policy reforms.

This article² puts recent media reforms in context and discusses the democratization of broadcasting markets from a regulatory perspective. Three case studies of recent legislation in Uruguay, Argentina, and Chile provide the empirical background. I highlight that policy reforms in the three countries show some common characteristics in focusing on community

¹ English: “Communication is too important to leave it up only to the media”. Hervieu, in a comment published in the Argentinean newspaper *Página/12* (Hervieu, 2010), paraphrased the saying of the French politician Georges Clemenceau (1841–1929), who said that “war is too important to be left to the generals”.

² A previous version of this article was presented at the 52nd Annual Convention of the ISA in Montreal in March 2011. The author would like to thank all participants of this panel, Daniel Schulz and particularly Matthias Kranke for their instructive feedback and encouragement.

radios to address regulatory challenges arising from commercial media markets. The reforms, however, differ greatly in scope. This article draws on literature from communication studies and the regulation school, supplemented by the study of the recent legal documents and four qualitative interviews.

In the following section, I contextualize the calls to democratize the media market by characterizing the transition to democracy as an “unfinished business”, where spaces for popular participation have remained limited. This debate on democratizing media markets is then taken up from a regulatory perspective. By looking at the particular characteristics of media markets, I discuss the regulatory challenges for plurality and democratic access in the broadcasting market. The next section presents the three case studies of recent broadcasting legislation in southern Latin America. Then, I analyze the results of the case studies, before reflecting on the findings in the concluding section.

The transition from authoritarian rule and its limits in the media market

The reforms in media regulation aimed at the democratization of the broadcasting sector can be seen in the broader context of the transition from authoritarian rule. By the end of the 1970s, most countries in the continent, including Chile, Argentina and Uruguay, were ruled by authoritarian military dictatorships. Oppositional media was shut down and media content subject to direct censorship of the executive (Bresnahan, 2002). In Argentina, Art. 7 of the Broadcasting Law of 1980, in force until 2010, explicitly demanded that broadcasting serve the necessities of “national security”, the doctrine under which any opposition was suppressed and thousands of citizens “disappeared” during the military rule (1976–1983). Democracy was re-established when elected governments took over in 1983 (Argentina), 1985 (Uruguay) and 1990 (Chile).

In many spheres, democratic rule remained a formal enterprise with limited space for participation (Avritzer, 2002). The state of democracy in the continent demonstrates the limits of classic models of democracy that neglect the importance of social structures and instead focus primarily on institutional variables (Linz, 1990; O'Donnell, 1999). In this perspective, the transition in Latin America is often reduced to “the restoration of political competition

among elites” (Avritzer, 2002, p. 5). Here, the media market is an insightful example, because it constitutes an important part of a vibrant public sphere as precondition for democracy—and because it itself is an example for the limited role granted to democracy.

The democratization of political institutions has not been followed by a democratization of the public sphere with respect to the media. Political censorship or content control by the executive was replaced with other forms of exclusion. Neoliberal policies of deregulation sustained and perpetuated a situation in which access to mass communication is determined predominantly by economic criteria (González-Rodríguez, 2008). Few large and highly integrated conglomerates dictate Latin American media markets. Alternative and grass roots media, particularly community radios, played an important role in the transition to democracy (Bresnahan, 2007, p. 218), but afterwards struggled for legal recognition in democracy (see below). In 1993, Chile legally recognized “low power radios” while forbidding them to seek funding through advertisements. In Argentina, profit orientation was even set as a prerequisite to apply for a regular frequency until 2005. These developments indicate a paradoxical situation, where formal democratization has not facilitated democratic access to the public sphere.³ Rather, “economic censorship” in various forms determines the range of voices to be heard.

Forms of “economic censorship” went hand in hand with a close connection between the political elite and the large media enterprises. This relation went both ways: On the one hand, politicians used their discretion to allot frequencies and public advertisement to their allies (see discussions of cases below). On the other hand, media owners became politically active, either by entering politics themselves or by using their media outlets deliberately to influence politics (Boas, 2005; Page, 1996). While political influence of media might be common in any society, this specific phenomenon is characteristic of the oligopolistic market structures in Latin America. The persistence of media’s entanglement with conservative political elites has led to several clashes with elected leftist governments. Some incidents in

³ In Mexico, one could even observe that grass roots community radios were mostly ignored under the authoritarian rule of the PRI, while over the course of democratization, they were more harshly repressed and many shut down under the presidency of the PAN (see Klinger in this issue).

recent years have demonstrated conservative media's open resentment toward elected leaders when the former felt affected in their own political interests.⁴

Thus, from this perspective, the transition to democracy can be seen as an “unfinished business” when it comes to the media and their role in constituting a public sphere. Calls for reforms aimed at the democratization of media markets must be understood in this context. The following section takes up this debate from a regulatory perspective.

The regulatory challenge of democratic media markets

Characteristics of a commercial broadcasting market: Ownership concentration and content homogenization

The broadcasting sector shows particular characteristics that result from its structure and distinguish it from markets for other goods. Three of these particularities merit scholarly attention to understand the regulatory challenges of ensuring a plurality of perspectives: 1) the scarcity of the spectrum; 2) the low marginal costs of the goods produced, leading to concentration; and 3) the mediated commercial relationship between broadcasters and audience.

First, the radiomagnetic spectrum is a scarce resource because the number of available frequencies is limited (Aitken, 1994). Therefore, the number of possible stations airing on the radiomagnetic spectrum is limited as well, which distinguishes the broadcasting sector from other sectors. With standard private goods sectors, there is no such limit: At least theoretically, there may always be a further sort of packed tomato soup on offer, and the consumer can choose more or less freely which one to buy.

Second, because of the nature of the goods produced, there is a tendency toward horizontal and vertical integration of media companies (Hart, 2004, pp. 9, 18). Information and entertainment products have very low marginal costs. Once produced, the cost of offering the same content on a different media type (TV, radio, magazines or internet) or on different

⁴ Three drastic examples cited by Reporters Without Borders include broad media support and incitement for an intended coup d'état 2002 in Venezuela and a “successful” one in Honduras in 2009, as well as calls for assassinating the Bolivian president Evo Morales by oppositional radio in 2008 during a political crisis (Hervieu, 2010).

channels of the same media type is very low while original production costs tend to be high. This leads to concentration processes, observable particularly in Latin America (Mastrini & Becerra, 2002, 2006).

Third, the relationship between demand and supply in the media market is a mediated one because consumer demands do not directly translate into a specific supply. In the non-subscription sector, the producer of the good (broadcasting station) is paid not by the audience as consumers but by firms advertising in the program. Thus, the commercial relationship ultimately consists not of a media product sold to an audience but of an audience “sold” to advertising clients. The consumer, and particularly the citizen, is therefore limited in his or her choice and does not necessarily get what he or she wants to hear, but rather the program that generates the best deal for media and advertising companies. The advertising industry might even influence the survival of certain broadcasters, particularly in markets where only few advertising budgets are available (Barendt, 1995, p. 122).

The elevated position of advertisers is a critical factor in the trend of content homogenization in competitive commercial broadcasting markets. Even in the context of ownership diversity, content is similar if different stations try to sell their audiences to the same advertising clients (McQuail, 1992, p. 175). Because of the dependency of stations on advertisement, “they service audiences on advertisers’ terms” (Herman & McChesney, 1997, p. 190). Again this is particularly true for comparatively small markets in which advertising budgets are concentrated as well. Digitalization, trends of convergence, and the resulting increase in distribution channels have intensified competition because the available advertising budget has not increased proportionally. The ensuing struggle for viewers—and thus income—is usually fought at the expense of the quality of programs (Feintuck & Varney, 2006, p. 42).

In sum, textbook free market competition does not exist in the media and communications markets. Synergy effects through vertical integration, economies of scale and high market entry barriers forestall the existence of a “free market” with many suppliers (Herman & McChesney, 1997, p. 57). Deregulation in many countries thus unsurprisingly led to an “inevitable loss of diversity in media content” (Kogen, 2010, p. 335). Technical developments alter underlying market characteristics and somewhat reduce the scarcity argument, but they

do not fundamentally change the relation between media and democracy, and the role that regulation plays in this relationship (Garnham, 2000, p. 43).

Competition and plurality

The discussion of the economic characteristics of media goods shows the need for enforcing anti-trust laws to prevent concentration. However, diversified (commercial) ownership is not a sufficient criterion for plurality of perspectives, much less for democratic access. If a commercial character prevails, content diversity remains limited by the condition of profitability and access is determined by economic potency. Fierce competition might rather lead to a decrease in diversity, because it furthers homogenization of content as a result of the battle for advertisement revenues, making survival for small media much harder (Barendt, 1995, p. 122). Thus, there is not necessarily a positive correlation between competitive markets and plural perspectives; both aspects rather constitute logically different dimensions.

The distinction between the two dimensions of competition and plurality is visualized in Figure 1, together with the respective regulatory approaches.⁵ On the vertical axis, we find the economic dimension of ownership concentration with a monopolistic vs. competitive structure as the poles. This dimension might be regulated through competition law (“economic regulation”). Yet the question of a plurality of perspectives constitutes a logically distinctive dimension (horizontal axis). From the combination of the two dimensions, four stylized situations arise. Theoretically, each of the four quadrants constitutes a possible regulatory outcome. To give an example, the lower right quadrant might occur under a public broadcasting monopoly that integrates diverse perspectives through the application of far-reaching must-carry rules and a diversified institutional structure.

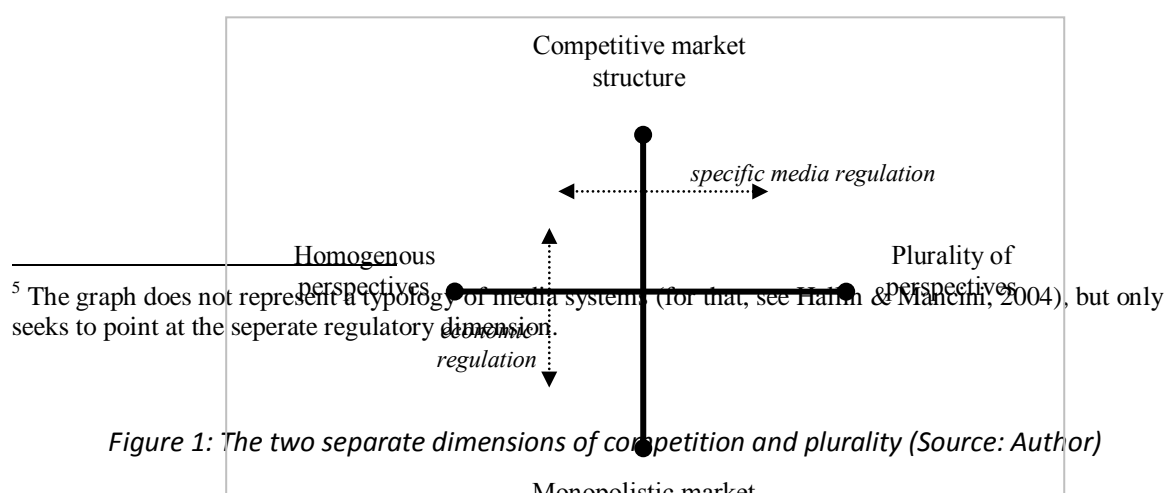


Figure 1: The two separate dimensions of competition and plurality (Source: Author)

A plural media landscape can therefore be considered a public good that is not provided by (free) markets. For many critical media observers, public broadcasting remains an important instrument to balance commercial enterprises (Feintuck & Varney, 2006, p. 104; Herman & McChesney, 1997, p. 196). However, there has never been a strong tradition of public broadcasting in Latin America. The continent followed the U.S. model of developing the broadcasting sector as a commercial endeavor from the very beginning. Family companies with strong patriarchal figures started the business and evolved into large-scale companies (Mastrini & Becerra, 2002, p. 2). A public broadcasting system was uncommon, not least because of the influence of U.S. businesses, which “pushed relentlessly for a commercial media” (Herman & McChesney, 1997, p. 162). There have been “public” media in some countries, albeit mostly managed directly by the government and thus serving more as instruments at the disposition of politicians in power (Hughes & Lawson, 2004, p. 99). Chile is at least partly an exception, as there is a strong public service television station TVN, reformed in 1992, which raises the standard for news. Still, TVN differs from the European model of public broadcasting because it has to finance itself via advertisements like its commercial competitors (Fuenzalida, 2002). Brazil, in 2007, established a public broadcasting company while Argentina has reformed existing state television in recent years to increase autonomy and reduce partisan coverage.

Beyond plurality: The conditions of access and the three dimensions of regulation

Calls for reform, however, went beyond establishing a public media system. The two separate dimensions discussed above (market structure and plurality of content) refer only to the “output” observable but disregard the “input” conditions. But after all, this is what “democratization” refers to: participation in the public sphere. The access to means of

communication is the central characteristic of democratic media markets and thus the central challenge for regulation. Community radios can play a particular role here. They constitute means for direct intervention in the public sphere, might establish alternative discursive arenas and thus contribute to render possible democratic deliberations (Cabral Filho, 2009).

When discussing media regulation with respect to democratization, one can distinguish three dimensions: regulatory goals, regulatory instruments and regulatory institutional structure. The *regulatory goal* is not necessarily plurality or “democratic access”. Media regulation might aim only for functioning markets, e.g., focusing on property rights and possibly on ownership structures, or even explicitly have minimal state influence as a goal. Other goals might include the promotion of national culture, assuring the inclusion of national minorities or communicating government policy. The problem here is that, in many cases, it is not easy to identify regulatory goals. Many regulatory approaches do not make their goals explicit nor have “a clear value system underpinning them” (Feintuck & Varney, 2006, p. 5). In Latin America, media regulation has traditionally focused less on plurality than on market opportunities, specifically since the neoliberal reforms (Wiley, 2006). The right to and the freedom of expression are usually guaranteed in national constitutions, but this has not found its way into media-specific regulation. In conflicts about community radios broadcasting without a license, one can often observe that arguments highlighting the rights of communication do not weigh heavily.

There is a broad range of *regulatory instruments*. Economic regulation aimed at market competition is not sufficient for plurality, as discussed above. Direct content regulation, on the other hand, is incompatible with democratic norms—some exceptions include age ratings for movie screening—because of the threat of censorship and the inherent difficulties of defining what “plural content” means.⁶ Another indirect “instrument” is public television, which interferes in competition by setting informal standards, e.g. with regard to the impartiality of news (Fuenzalida, 2002, p. 82). Regulation aimed at democratizing media markets is, however, additionally characterized by considerations of fair access conditions to the public sphere via the media. In the broadcasting sector, a crucial moment is the allocation of

⁶ The problems of content regulation become obvious when looking at widely interpretable “defamation paragraphs”, prohibiting, among other things, declarations damaging the “national image”. Those stipulations may be (mis)used for political purposes against critical journalists to influence editorial lines and silence opposition (Buckley, Duer, Mendel, & O’Siocrú, 2008, p. 107).

frequencies. While in the past, frequencies were sometimes even auctioned (e.g., in Chile), the Interamerican Commission of Human Rights (IACHR) has noted repeatedly that the use of economic criteria as decisive elements in frequency allocation violates democratic principles (Gómez Germano, Aguerre, & Elíades, 2009, pp. 26–27). Reforms in the three countries have established a fixed range of frequencies reserved for non-commercial media, albeit only within a very narrow margin in Chile. Two additional aspects relevant for access to frequencies are technical standards for broadcasting equipment and administrative procedures in the application processes. Both function as barriers to alternative voices. Community radios frequently complain about high fees (AUNO, 2011) and excessive technical standards established under the pretext of guaranteeing a certain quality. Indeed, these standards also serve as means to keep competitors away from large media companies (some examples can be found in Gómez Germano et al., 2009, p. 28).

Ultimately, *regulatory structure* refers to the institutional setting of regulatory agencies, their composition and competencies. As for other regulatory systems as well, there is a trend to integrate private (commercial and non-commercial) stake-holders into regulatory agencies (Jordana & Levi-Faur, 2005). With respect to the cases considered here, this is true for Uruguay and Argentina but not for Chile. These bodies execute the day-to-day application of the regulation and monitor compliance. Thus their precise composition has consequences for the relative significance of political criteria and the type of concerns that are heard and taken into consideration. Moreover, the composition of regulatory bodies reflects whether frequency management is understood as a merely technical endeavor to allocate frequencies according to externally set criteria, or whether the political character of granting frequencies is acknowledged and corresponding conflicts are treated as such. The case of the Chilean SUBTEL, managed by engineers, shows that political questions concerning the freedom of expression are not paid sufficient attention to if there is a predominantly technical self-understanding (Interview Ortega, 2010).

New media regulation in Uruguay, Argentina and Chile

Uruguay, Argentina and Chile allow for excellent case studies because recent public discussions about media reform in these countries have explicitly centered on issues of democratization. In addition, they have passed new laws in the past few years that focus on

community radios and addressed the regulatory challenges discussed above. The level of reforms is, however, quite different in the three cases. Chile, in that regard, serves more as an example showing the difficulties of reforming commercial media markets. In other countries of the continent, such as Bolivia or Ecuador, media reform has more strongly addressed the role of government intervention or measures aimed at media content. The background of those reforms is more complex, and its discussion would go beyond the scope of this article. The case of Mexico and the difficult struggle of community radios to be legalized is discussed in detail in Klinger's (2011) contribution in this issue.

The background of the three countries considered here is quite similar. As in other parts of the continent, governments relied mostly on indirect regulation, not interfering strongly or establishing own media (Lugo-Ocando, 2008; Mastrini & Becerra, 2002, p. 3). Media regulation dates from the times of military rule; only Argentina replaced it with a new one in 2009 after conflictive political debates. Concentration tendencies have gained momentum since the 1990s through neoliberal reforms, accelerating the trend toward the evolution of large conglomerates and increased influence of transnational media companies.

Chile is a case in point although it has a relatively strong public television (TVN). However, this channel relies on revenues according to quotas and is subject to similar pressures as private media, but still enjoys some additional freedom (Fuenzalida, 2002). Nonetheless, Chile has a highly concentrated and predominately conservative media market. Commercialization and depoliticization have been pervasive since the return to democracy in 1990 (Polumbaum, 2006, p. 377). Media concentration here is considered an important backup for the continuance of neoliberalism after military rule, since only the elite's points of view are represented in media (González-Rodríguez, 2008).

In Argentina, competition increased strongly after the neoliberal turn in the early 1990s, whereupon few media conglomerates (Grupo Clarín at the forefront) managed to dominate the news agenda thanks to a high degree of vertical and horizontal integration (Viale, Belinche, & Tovar, 2008). Argentina is by far the largest media market of the three considered in this paper. Radio penetration is the highest in the region and reaches 99 % of the population. Concentration in radio is high, with over 80 % of the AM-market covered by the four largest broadcasters (Becerra & Mastrini, 2009, p. 68).

Uruguay is the smallest of the three markets. In terms of content, it is highly dependent on Argentina and, to a lesser extent, Brazil, its two large Mercosur neighbors. The concentration in the media and telecommunication markets ranks among the highest in Latin America: the market leader reaches about 60% of turnovers and slightly less in audience. However, radio is still the most diverse sector with regard to ownership. Data are only available for the capital, where the four largest companies reach a market share of 37% (Mastrini & Becerra, 2006, pp. 252, 269).

Uruguay's new community radio law in 2007

The foundation of Uruguay's current broadcasting regulation was laid in 1977 during the civil-military dictatorship. Even after the return to formal democracy in 1985, the military kept a say in frequency allocation (Faraone, 2002). A basic characteristic of "regulation" until at least 2000 was the great discretionary power of the president, who regularly allocated frequencies to political or business friends. Criteria for allocation were the "merit" of the applicant, "convenience" or "usefulness" (Lanza & López Goldaracena, 2009, pp. 238, 233; Mastrini & Becerra, 2006, p. 250). Part of that system was the selective and purposefully distributed official advertisement budget. Together, those two elements constituted political interference in the media, and were instrumental to silencing critical voices and securing the political support of the favored media (Lanza & López Goldaracena, 2009, p. 241).

As a legacy from dictatorship, frequency regulation was part of the Ministry of Defense until 2005, when through Decree 155/005 responsibility was shifted to the Ministry for Industry and Energy (Lanza & López Goldaracena, 2009, p. A15). Already in 2001, the regulatory body URSEC was created as a "deconcentrated organ" within the executive. URSEC is responsible for the regulation and control of activities in the radioelectric spectrum, as well as for giving advice to the executive. It is entitled to operate under "technical autonomy", but the executive appoints and dismisses the directors and can in all cases simply override decisions. Although certain rules exist to ensure that URSEC has no own (commercial) interests in the sector and has some independence vis-à-vis party politics, there is no political independence from the executive and its policies (Lanza & López Goldaracena, 2009, pp. 237, 242).

The adoption of the Law for Community Broadcast (Ley 18.232) in 2007 marked a turning point. This law, together with the regulatory decree 374/08 of the following year, was considered the most progressive in the continent at that time and established several important changes. For the first time, community radios were acknowledged in their social and communal functions as they materialize the right to communication and information. One third of the spectrum of every band is reserved for non-commercial radios, and licenses are given for 10 years. The most important criteria for the allocation are the presented plan for community services, the measures to ensure citizens' participation in the communication project, and previous records. The process of license granting is made more transparent. Public tenders with previous public hearings are mandatory for all regular licenses. The problem for commercial radios, however, lies in informal practices. In reality, regular commercial licenses hardly exist. Instead, radios apply for "precarious permits", circumventing some of the exigencies and public tenders. URSEC regularly renews those permits as long as technical requirements, penal and fiscal codes are not violated. Violations of the promised communication project or the (illegal) sale of program slots are not accounted for and largely ignored by the agency (Lanza & López Goldaracena, 2009, p. 236).

In the institutional arena, two independent "honorary advisory" bodies have been established, one each for commercial and community radios. Their members include politicians, academics, representatives of radio organizations, and, in one case, members sent by NGOs advocating the freedom of expression. They have to be heard on all occasions, but their recommendations remain not binding for the executive.

These changes can be summed up as political efforts to promote non-commercial forms of communication. Although the regulatory foundation from military times is still in force, there have been important changes toward improving the exercise of the right to communicate. Technical requirements have been minimalized to not become barriers for community radios, the regulatory body now asks for the technical folder *after* granting the license and its technical staff is cooperating with the radios (Gómez Germano et al., 2009, pp. 28–29). Thus, the role of technical standards as barriers to communication is accounted for, yet there are still

important gaps between the norm and regulatory praxis.⁷ As is shown below, Argentina integrated parts of the Uruguayan reform into its new comprehensive law, which Uruguay, in turn, now takes up as a model for further reforms (Portal 180, 2010).

Argentina's new comprehensive media law from 2009

Since 2009, when the “Law on Audiovisual Communication Services” (“Ley SCA”) was passed, Argentina has had perhaps the most progressive media regulation of the continent with regard to plurality. It changed the basic structure of regulation and frequency management.

The regulatory system in force before (Broadcasting Law 22.285 from 1980) was legislated by the last military junta, which led one of the bloodiest dictatorships from 1976 to 1983. Several changes were made in democracy, particularly during the neoliberal period under President Menem (1989—1999). The privatization of state-owned TV stations and some radio stations was made possible and the prohibition of cross-media ownership abolished (Marino, 2009, p. 57). In 1999, the transfer of licenses was permitted, and the maximum number of licenses per person rose from 4 to 24. The constitutional reform of 1994 established superiority of international over national laws. Together with the bilateral investment treaty with the U.S., ratified in 1992, it made obsolete the limits on foreign capital shares in media companies. Living up to its reputation as a model student of the Washington Consensus, Argentina even privatized the frequency management in 1997. The center-left government of Néstor Kirchner (2003–2007) regained control of the spectrum in 2004 and introduced two further changes. In 2005, it allowed, for the first time, not-for-profit associations to apply for frequencies, following a Supreme Court decisions two years earlier (Marino, 2009, p. 62). Until then, profit orientation had been a prerequisite for a broadcasting license. Earlier the same year, however, Kirchner had given all current (commercial) licensees a decade-long indiscriminatory, additional prolongation, justified with the difficult economic recovery after the crisis some years earlier.

⁷ One example is the accepted acquisition of some radio stations by Mexican radio mogul Ángel González via figureheads, which is illegal according to the law. Although the commercial relation is obvious, URSEC refused to launch an investigation (Lanza & López Goldaracena, 2009, p. 246).

The regulatory body COMFER (Federal Committee for Broadcasting) was still directly dependent on the executive. Its directorate included—as a clear sign of its military junta heritage—three representatives from the military (Art. 96, Ley 22.285). The radio licenses were granted for 15 years plus an option for a 10-year extension. Community radios criticized the arbitrary treatment, and the mismatch between the legal rules and their application. The successive governments did nothing to combat increasing trends of concentration, fearing the conflict with powerful media companies and instead cultivated a close alliance. Even after the changes in 2005, community radios were disadvantaged by high technical and administrative demands (Marino, 2009, pp. 58, 67). Based on the initiative of several community radio organizations, a network of hundreds of individuals and organizations founded the “Coalition for democratic broadcasting” in 2004, which came up with “21 basic points for the right to communication”. Those 21 points later became the basis for the new comprehensive media law (Interview Marino, 2010). This draft was widely discussed in society over several months and then, with over 300 amendments, sent to Congress (Interview Busso, 2010; Madres, 2010). After several hearings in both chambers, it was passed in 2009 (Repoll, 2010).

The new law introduced several changes, of which three merit particular mention. First, the regulatory goal of frequency allocation is set to ensure plurality. With respect to economic regulation, the maximum number of frequencies per legal person is reduced to 10 nationwide (before 24), while no person may own stations that together reach 35 % of the total population (equaling that of the capital Buenos Aires with its suburbs). Cross media ownership is severely limited. Second, to increase plurality and promote equal access, one-third of the spectrum in every band (TV, radio AM, radio FM) is reserved for non-profit organizations. Third, the institutional structure was changed. The regulatory body AFSCA (Federal Authority for Audiovisual Communication Services, former COMFER) is now a “decentralized and autarchic organ in the realm of the executive power” (Art. 10, Ley SCA) with seven directors, of which only two are appointed by the executive. Additionally, there is a Federal Council of Audiovisual Communication (COFECOM) with 38 members from provincial governments and several sector representatives (including commercial and non-commercial broadcasters, indigenous population, universities, unions). This council is responsible for advising the executive and Congress, as well as for monitoring the compliance of the law (Art. 15). Depending on the majority situations in Congress and in the provinces, the government’s

party may not have the majority in these bodies. Together with other bodies created (including an office of an ombudsperson), there exist several cross-controls.

Argentina changed its regulatory system by addressing access conditions and plurality. Regulation now reserves a large part of the available spectrum for non-commercial forms of communication, ensures greater institutional independence of the authorities and guarantees the inclusion of sector representatives. The regulatory agency actively promotes new community radios by organizing workshops and seminars. Yet community radios continue to complain about high fees that are not adequate for non-commercial neighborhood radios (AUNO, 2011). The intent to diversify media ownership away from previous monopolistic structures particularly affects Grupo Clarín, which has to sell several of its stations and licenses under to the new media law. Clarín initiated some lawsuits that postponed the adoption of the law (Interview Hauser, 2010; Marino, 2010). To this date (May 2011), Grupo Clarín still enjoys interim injunction, though the law as such entered into force in 2010.

Chile's new community radio law from 2010

In Chile, the regulatory body for broadcasting SUBTEL (“Subsecretary for Telecommunication”) is a subsecretary of the transport and telecommunication ministry. SUBTEL therefore forms part of the executive and does not formally include any private stakeholders. It is described as a highly technical organization, consisting of engineers not interested in the political, social or cultural aspects of communication (Interview Ortega, 2010). The criteria for frequency allocation are purely technical. Every application contains a technical folder that is evaluated by SUBTEL and assigned a certain score. Content or cultural aspects are not relevant for the allocation. In the case of two equal offers, the frequency was auctioned until 2009; since then, the frequency has been allocated by lot. The technical and administrative requirements for applications are high and translate, in the absence of plurality-favoring measures, into a restrictive environment for smaller and non-commercial radios. In 1994, the category of “radios of minimal coverage” was established, making it possible for some of the already existing community radios to be legalized (Bresnahan, 2007). The limits for this category, however, were very narrow. The maximum potency was set to 1 watt, which

allows for a radius of no more than 200 meters, licenses had to be renewed in a costly process every three years, and advertisements were forbidden.

In the last years, ANARCICH, the largest organization representing community radios in Chile, intensified its efforts to improve conditions for community radios (Interview Cancino, 2010). After years of arduous negotiation, a new law for community radios was passed in 2010 (Ley 20.433). Licenses are now given for 10 years, potency is now limited to 25 watts in urban and 40 watts in rural areas. These are still restrictive limits that most radios need to exceed to communicate effectively in their urban quarter. Radios exceeding those limits, or those broadcasting without a license, are still criminalized and shut down by the administration. Because of strong opposition from commercial radios, advertisements are still highly restricted to businesses residing in the covered area. For most rural radios, this translates into a de facto prohibition because in rural and indigenous communities, there are few businesses that have an advertising budget. Still, for the first time the social character of “community radios” is acknowledged and some legal improvements made.

Critics from community radios, however, claim that the promise of increasing plurality cannot be fulfilled (Interview Ortega, 2010). Three concerns are noteworthy. First, advertisements are still severely restricted, which makes it difficult to sustain the expenses even of a not-for-profit radio. Second, the reserved spectrum for community radios is so limited (about 4 %) that even the regulatory body SUBTEL admits that, with luck, this space can at best accommodate the already existing community radios—and even less, if all of those were allowed to transmit with 25 watts, which is still too low a level for meaningful communication. Third, there are no measures or criteria to promote plurality or to counter the trend toward concentration. As the lottery still decides a tie, commercially potent applicants can present several “projects”, increasing their chances of drawing a license. The technical requirements are not reduced while the administrative ones have even increased.

Chile still has one of the most restrictive media laws from the perspective of community radios and one of the most unfavorable with regard to plurality from a regulatory perspective (Polumbaum, 2006). Nevertheless, the reform seeks—or at least pretends—to promote non-commercial media, without interfering in media content. Rather than significantly improving access conditions for (new) non-commercial broadcasters to air their voice, the reform improves some legal conditions for existing radios, which by some are considered the only

alternative voice to mainstream neoliberal policy consensus. Still, no measures are introduced to deal with the concentrated commercial oligopoly.

Toward democratic media markets?

The three cases demonstrate that, more than two decades after formal transition to democracy, the democratization of the media sector figures prominently on the political agenda in Latin America. Reforms in the sector have been pushed by community radio associations and social movements: The Uruguayan law in 2007 has been drafted by members of AMARC; the Argentinean media law of 2009 emerged out of the Coalition for Democratic Broadcasting initiated by FARCO; and the Chilean community radio law was negotiated by ANARCICH. Those organizations all represent community radios. Strategic behavior, coalition building, and the political situation have led the governments to adopt part of this agenda (Interviews with Cancino, 2010 and Busso, 2010). Non-commercial broadcasters have been granted more favorable conditions in all three countries, though just to a small extent in Chile. This is reflected not only in the reservation of parts of the spectrum but also—again with the exception of Chile—in an active engagement of regulatory institutions to promote community radios. In Uruguay, administrative procedures have been simplified and adjusted to the capacities of social actors. In Argentina, the regulatory agency AFSCA, in close contact with organizations of community radios, even organizes workshops and seminars about technical and administrative questions. The advisory body COFECOM, which reports to Congress and has a say in many regulatory decisions, even elected Néstor Busso, a representative of community radios, as president. Still, even in Argentina community radios have recently complained about license fees that almost equal those for commercial radios and are thus excessive for many small initiatives.

To place community radios at the center of democratization efforts acknowledges the regulatory characteristics of the commercially structured media markets. So far, the ownership concentration is addressed with adjusted competition rules only in Argentina. Commercial diversification is a necessary but by no means a sufficient condition for democratic media

markets, not even for diversified content.⁸ Plurality can be enhanced by specific media regulation. However, not only is it very difficult to measure (Just, 2009), but governments or regulatory agencies also cannot directly increase plurality by simply providing “missing perspectives”. These difficulties apply particularly to the highly unequal and exclusive Latin America societies. Democratizing media sectors thus refers to democratic conditions of access and goes beyond plurality measured in output. The promotion of non-commercial and local forms of communication is thus, from a regulatory point of view, an innovative approach that might facilitate access to the public sphere(s) for different sectors of society.

The three cases also show the different depth of the reforms. Indeed, in Chile, little has changed, and any practical advances toward a more accessible broadcasting system will depend on the implementation of the law. Argentina and Uruguay, by contrast, have gone furthest by reserving one-third of the spectrum for non-commercial broadcasting. In fact, this constitutes a kind of de-commodification that pushes back market criteria and even the possibility to gain profit. There is a clear trend toward downsizing the importance of economic criteria in all three cases: Auctioning of licenses has stopped even in Chile, where a lottery now decides in situations of a tie, which still disadvantages economically less potent actors. Another trend in the other two countries is the inclusion of different stakeholders in the regulatory bodies. Their members now also represent commercial and non-commercial broadcasters, NGOs, universities, unions or minority organization.

Reforms to democratize the media sector are, however, a contentious political topic. Commercial media in Chile lobbied strongly to keep stricter advertisement rules for community radios, fearing that their own market shares would decrease. The re-diversification of media ownership proves to be even harder. Through the new media law, Argentina demands some “de-investment” in monopolistic structures; unsurprisingly, the government finds itself facing hostile media campaigns and several lawsuits concerned with those clauses (Hauser, 2010; Hervieu, 2010).

⁸ Recent conflicts in Bolivia provide a good example. “Independent” newspapers, controlled by different owners, exchanged content and copied each other’s editorial sections, when it came to opposing the president’s position toward the Constitutional Assembly in 2006 and 2007 (Hetzler, 2010, p. 180).

Two caveats concerning the role of governments and technological innovations must be mentioned at this point. First, debates about media regulation are always fought with arguments about freedom of the press, which needs to be defended against intrusive governments. However, these arguments are often misused by commercial companies to circumvent any regulatory intervention.⁹ This is not to say that governments do not try to influence media. There are, on the contrary, numerous examples, including the discretionary use of public advertisement funds to reward or punish private media. In March 2011, for example, the Supreme Court in Argentina obliged the government to balance the distribution of those funds, following a lawsuit filed by an oppositional newspaper (Becerra, 2011). However, in the context of media power that is primarily commercially structured, the debates on the democratization focused less on the role of government. In trying to mirror the thrust of the debates, this paper has not paid specific attention to that aspect.

Second, technological innovations change regulatory needs. But even with low market entry costs to internet communication and a virtually unlimited number of channels in a digitalized spectrum, there is still a need for regulating democratic access to provide a plurality of perspectives. We have seen that an increase in the number of available sources neither necessarily leads to an increase in content diversity nor automatically contributes to dispersing ownership. The past has shown on a regular basis that new technologies are generally embraced and integrated by existing large companies in their interest.

Conclusion

Audiovisual products have a double character. On the one hand, they are tradable goods with very small marginal costs and no rivalry in consumption. Large and concentrated markets are therefore economically attractive for businesses. On the other hand, audiovisual products are central to the quality of democratic debates as “questions of media access, diversity, ownership and content regulation define the type and quality of public sphere within a nation or region” (Dahlgren, 1995; Galperín, 1999, p. 629).

⁹ In Argentina, the new media law was frequently presented by its opponents and by European media as a personal revenge of president Cristina Fernández against the Clarín group (Repoll, 2010). This perspective, however, largely neglects the origins and the content of the law.

The regulation of a plural broadcasting landscape is thus a tricky issue. Direct censorship of governments is uncommon; as a result of the deregulatory reforms, among other factors, it has been replaced with other, especially commercial, mechanisms restraining plurality of information or privileging certain (depoliticized and consumerist) perspectives (Bennett, 2004, p. 129). Current debates in Latin America, initiated by social movements around community radios, therefore focus on the democratization and decommodification of the media market. The media reforms discussed here have, to a varying degree, addressed this problem and sought to advance plurality and democratize access to the broadcasting sector. Chile, however, has still a long way to go. The reservation of large parts of the spectrum for non-commercial media in the other two countries opens up the communication sphere for new actors such as social movements, educative or religious groups, and community organizations. This regulation might promote not only a “commercial diversity” with limited plurality of perspectives but also a more meaningful plurality of different types of communicators.

The legislative changes discussed in this paper have all been introduced very recently. It remains to be seen if the plurality of voices in the radiomagnetic spectrum will increase. Much depends on an active communication movement, regulatory “details”, such as the height of administration fees, transparency of application procedures, or technical standards, as well as the conduct of regulatory institutions. Bureaucrats might use administrative discretion to hinder some broadcasters. These issues constitute widespread problems for community radios, although the changed institutional structure—more independence from the executive and the inclusion of several stakeholders—in Argentina and partly Uruguay might provide some safeguards in Argentina and partly in Uruguay. Only in Chile, broadcasters are not represented in regulatory bodies, which leads to frequent complaints about its lacking responsiveness toward social and political aspects of communication.

Regulatory responses to the problems of concentration and commercialization are, in certain aspects, similar in the region. This is true for the focus on community radios and, partially, the changed institutional structures. The spread and diffusion of reforms to democratize media markets is thus a relevant research topic, enabling us to understand the role of transnational communication and learning among actors, as well as the importance of international regimes (e.g., the IACHR) in the conflicts on media regulation. It would also be interesting to examine

if the presented regulatory changes alter the relationship between powerful media companies, the political elite and society.

Despite all their democratic potential, community radios are no panacea for the problems of commercially structured media markets. They constitute mass media, but operate on a precarious and, as their name already indicates, local basis. Their promotion, albeit important, therefore does not substitute for political initiatives tailored to deal with the oligopolistic nature of the media markets. Since reforms in this area are very difficult to implement politically, the conflictive debates about the role that mass media does and should play in a democratic society will (hopefully) continue. Such debates inevitably point to the corresponding responsibilities of the state, commercial companies and society.

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