



MEDIA AND DEMOCRACY: BEYOND THE GOVERNMENT – CORPORATE DICHOTOMY

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Introduction

Governments and the media have constantly been at odds with each other in most Latin American countries over the past decade. Some governments have enacted new legislation to modify the way the media are distributed, sometimes subtly but often explicitly, in the name of providing for a broader range of opinions and social participation. In response, the media have condemned such statements and measures as attacks on freedom of the press and attempts to gag journalists.²

There can be no democracy in modern societies without an unfettered press able to report freely on the mistakes, abuses and excesses of public power and of powerful private organizations. A totally free press open to all opinions is obviously an ideal that is never completely attained. Still, it is an ideal that should inform regulatory efforts, and complaints of distortions cannot become an alibi for authoritarian interventions.

From the standpoint of a commitment to democratic values including the defense of the full exercise of freedom of expression—which presupposes the existence of a free and uncensored press that is investigative, watchful, and critical, offers a wide range of opinions and is characterized by decentralized ownership and access to information by the most diverse sectors of society—, public debate over the regulation of the media is both legitimate and necessary. In order for this debate to make headway, however, it is critical that it not be dominated by the existing polarization between governments and business that currently obviates any dialogue focused on the public good.

Invoking such goals as diversity and social participation, several governments have promoted media laws and most importantly, have enforced them (or not) based on their own political agendas, in some cases unleashing a frontal assault on the free exercise of journalism and freedom of expression. Meanwhile, private media outlets have, in the name of defending freedom of expression, sought to cover up genuine problems such as the concentration of ownership and the use of the media to defend their own corporate interests, and frequently have acquiesced to tacit agreements with the administration in

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² While this has been the formula in most countries of the region, we should note that in others, the government and the media are deeply intertwined. See the article by Raul Trejo in this collection.

power that allows them to preserve their oligopolistic circumstances in exchange for a brand of “controlled” journalism.

It is frequently the case that the purported opposition overlays a web of reciprocal interests, blackmail and support between governments and the corporate sector, associated with the distribution of public concessions (which politicians often assign to themselves), or government resources for advertising and for coopting individual journalists. Even in countries where freedom of the press is in fact respected, the media, acting in their own corporate self-interest, often adhere to a code of silence and refrain from critical investigative journalism in relation to other media outlets.

In the discussion below, we identify the problems associated with regulating the media in democratic systems based on the contributions of a group of Latin American experts.³ In doing so, we seek to go beyond the opposing forces that dominate the current debate, while bearing in mind that very different national circumstances lie beneath any generalization about Latin America.

The challenge of regulation

It is important to recall that some type of government regulation of the media exists in all democratic countries. What is mainly at issue is ensuring freedom of expression, which refers primarily to the right of each individual and group to express itself freely in the public arena and universal access to information. For this reason, no single law specifically regulates newspapers and magazines in democratic countries—aside from matters associated with defamation or the use of obscene or inflammatory language—since it is assumed that any person or group could produce their own publication. This possibility was eliminated by the advent of radio and later television, since the finite nature of the electromagnetic spectrum meant: 1) access to a broadcast channel is ultimately always a public concession, which situates the government as arbiter in the distribution of a privilege, and 2) given the finite number of channels, regulations are necessary to reduce concentration and ensure the widest possible range of voices and opinions.

The European experience, in which the United Kingdom’s BBC, founded in 1921, has played a pioneering and exemplary role, features a strong presence of public radio and television channels. For many years, in fact, public television, its programming limited to certain times of day, was all that was available in many European countries. Despite the diversification that has occurred in recent recent decades spurred by the growing participation of private channels, public radio and television still retain a significant portion of the national audience, while the private sector dominates cable television.

Public television is not-for-profit and must broadcast cultural and educational contents that are not driven exclusively by the ratings, a critical factor in the ability of private television stations to secure advertising. Managerial models and directives vary among European countries, but in all cases, are supposed to be autonomous and operate independently of the government. Funding mechanisms range from annual fees paid by radio and television audiences (the British model adopted by Germany and

³ This essay is based on a series of papers written for the Democratic Platform, which are available at www.plataformademocratica.org. The analysis and interpretations offered herein are the sole responsibility of the author. I am grateful for the comments on an earlier version by Raul Trejo, Sergio Fausto, and EiLing Díaz.

Scandinavian countries), direct government financing (France and Spain), and content production methods, as in the case of the Netherlands, including support for nongovernmental, religious or political groups that produce programming and obtain air time on public channels. Advertising, which was originally prohibited on public channels, was eventually accepted by virtually all of them, usually with certain restrictions on the amount of air time that would be allocated to it.

In the United States, public funding levels⁴ have declined over time and public broadcasting plays a much less prominent role compared to Europe. Private sector donations are significant and the circumstances vary considerably from state to state. National networks sometimes partner with stations in different states, as is the case of National Public Radio (NPR), Public Broadcasting Service (PBS), American Public Television (APT), and American Public Media (APM). Government support is channeled through the Corporation for Public Broadcasting (CPB). While conservative sectors frequently criticize noncommercial channels for broadcasting contents critical of the “establishment,” 75% of the public takes a favorable view of the CPB and regards PBS as the most reliable news source.

The Federal Communications Commission (FCC) was established in 1934 as the U.S. government’s regulatory agency for the sector. In regulating the media, it distinguished between communications vehicles of public utility (mail, telegraph, and telephone) and content providers, and blocked the access of telephone companies to the cable television or electronic publications market.⁵ In both instances, the legislation was premised on the assumption that telephone company penetration in either market would inhibit competition.⁶ Licensing rules require licensees to include public interest and educational programs, provide equal access to candidates for public office, and limit the number of outlets under the same ownership, whether at the state or national level. There are also rules on license renewal and transfer and the amount of time that must be made available for educational TV broadcast via satellite, although these regulations are not always enforced.

The rules governing cable TV, which offers a wider range of channels, are less stringent, although telephone companies were prohibited from entering the sector—a decision that was later revoked—since they could create barriers for competitors to the detriment of freedom of expression.

Scarcity is therefore a pivotal issue in deciding whether or not to regulate a media outlet. According to the United States Supreme Court: the State must intervene when there are physical limitations on the number of potential broadcasters. This posture has

⁴ In some cases, support for newspapers took the form of subsidized postage stamps for mailing them.

⁵ The FCC’s mission is:

- Promoting competition, innovation, and investment in broadband services and facilities;
- Supporting the nation’s economy by ensuring an appropriate competitive framework for the unfolding of the communications revolution;
- Encouraging the highest and best use of spectrum domestically and internationally;
- Revising media regulations so that new technologies flourish alongside diversity and localism;
- Providing leadership in strengthening the defense of the nation’s communications infrastructure.

⁶ Although such controls were eased beginning in the 1990s, as Corn-Revere notes in his paper on the United States, which served as background for this section.

repercussions for regulating the Internet, where there are no limitations on universal access to the broadcast of contents. The United States Supreme Court has held that the regulations necessary for “scarce” media are not applicable to the Internet. As we will see in the next section, media convergence eliminates the classic media typology that distinguishes between the providers of lines of transmission and content producers. Take, for example the telephone, which began as an instrument of communication only to morph into a source of information (written and audiovisual), a provider of on-line commercial services, and an advertising outlet.

The situation in Latin America is the polar opposite of that of Europe. Government regulation and support is extremely limited and where they exist, public television and radio channels have small audiences and usually do not broadcast material generated through investigative journalism. In view of the region’s history, which is punctuated by authoritarian regimes, perhaps this situation has had the unintentional positive consequence of limiting the ability of dictators to use public media as an instrument of government propaganda. With the consolidation of democracy, however, it is legitimate to raise the issue of regulation. Nonetheless, the debate cannot overlook how challenging it is for countries in the region to establish regulatory agencies and state-owned enterprises that are independent of the executive branch. The problem of regulation, moreover, is occurring in a new historical context in which the communications media are undergoing profound changes that have triggered a crisis in traditional journalistic models particularly, although not exclusively, in the written press.

The impact of new technologies on journalism

The Internet has become the preeminent news source, particularly among young people, garnering an even larger audience than television news programs. This has changed not only the way in which news is conveyed, but also the type of reader and reading material. The Internet is geared towards the search for specific information, on which the navigator briefly alights before being rapidly transported via hyperlink to another site.⁷

Recent reports on the state of journalism in the United States, such as “The Information Needs of Communities” by the FCC⁸ and “Potential Policy Recommendations to Support the Reinvention of Journalism” by the Federal Trade Commission (FTC)⁹ offer an overview that, notwithstanding the national variations, is indicative of international trends:

- Revenues from newspaper advertising have declined by 45 percent since 2000. Advertising had heretofore been the main funding source for large newspapers, essentially “subsidizing” news production. Even though newspapers now reach a greater number of readers through the Internet and continue to be the main source of news associated with investigative journalism, they have not managed to parlay this broader access into a relevant source of income. Advertising

⁷ Although electronic tablet users appear to spend more time perusing the same publication.

⁸ <http://www.fcc.gov/info-needs-communities>, visited on June 25, 2011.

⁹ “Potential Policy Recommendations to Support the Reinvention of Journalism,” <http://www.ftc.gov/opp/workshops/news/jun15/docs/new-staff-discussion.pdf>, downloaded on June 26, 2011.

revenues are still associated with the printed version. Internet advertising tends to focus on search engines (which harvest information produced by others), social networks, sales centrals and systems that identify individual preferences, none of which produce original, public interest news.¹⁰ The Internet, moreover, has multiplied and fragmented the sites through which advertising is distributed. In short, whereas advertising used to piggy-back and rely on news production, that linkage is no longer necessary.

- Declining revenues have led to staff cuts. In 2008, 16,000 journalism jobs related to news production were eliminated in the United States. During that same period, the cadre of newspaper reporters shrunk by 25%, and in some major newspapers was reduced by as much as 50%. As far as television networks are concerned, the number of journalists working in the news sector has been halved since the 1980s.¹¹ A similar trend has been observed with informational magazines and local all-news radio stations. These cutbacks have been felt most strongly by local newspapers, where fewer reporters are leaving the newsroom to report on topics of community interest or the arts and sciences. Reduced coverage of relevant community events hampers the ability of newspapers to monitor, audit, and denounce abuses, waste, inefficiency, and corruption in public agencies. Although some investigative journalism is being done on the Internet as a cost-saving measure, this has not eliminated the need for investigation in the field.
- While the Internet has generated an enormous mass of information, it is extremely fragmented and websites generally focus on opinion and commentary based on material originally produced by the professional press corps. Original public information on the Internet is usually produced at the micro-local level, and rarely transcends it. No web-based commercial journalistic model has emerged as yet and most news sites are sustained by volunteer or quasi-volunteer work and donations and have limited capacity to pay for the production of original investigative material such as that generated by the “traditional” media.¹² Many websites with journalistic characteristics do not have the same legal characteristics as newspapers, in which **the newspaper and the reporter are legally liable for the contents produced**, and they do not seek the type of credibility that is the mainstay of high quality newspapers. Part of the problem lies in the nature of the Internet with its vast assortment of information sources, which stands in contrast to the quasi monopoly held by a handful of newspapers and television channels not so long ago. The potential to obtain free information on the Internet also conspires against paying for informational contents (although we cannot forget that the user pays indirectly for access to the information by paying the communications service provider, sometimes even more than before).

¹⁰ Although some of the large portals are beginning to produce news and hire journalists, generally on a part-time basis.

¹¹ Which is indicative of declining public interest in the news before the advent of the Internet.

¹² The legal problems facing *The Huffington Post* due to bloggers who contributed to the newspaper and felt betrayed by its sale to AOL suggest that there is, as yet, no clearly defined business model for Internet journalism.

The potential solutions offered in the aforementioned reports include considering rules under which search engines and news portals that are fed by information obtained from journalistic outlets would pay for the contents they use; charging radio and television stations a fee for using the spectrum and use the resources generated to support not-for-profit communications networks; establishing fees for radio, television, or Internet users, or attach such fees to the initial purchase of the devices; establishing a favorable tax policy for newspapers; boosting government resources for existing public networks; supporting the study of investigative journalism in university schools of communications; distributing coupons that citizens can use to support the media; enhancing the availability, quality, and accessibility of Internet-based information on public spending and government reports, evaluations and discussions in order to facilitate oversight of government activities, while reducing the costs of journalistic coverage; increasing public advertising resources for local media; and guaranteeing universal Internet access.

Technological media convergence is a contemporary reality and there is widespread concern in the U.S. and Europe over the future of journalism.¹³ The ever-changing panorama is difficult to regulate. Up to now, regulatory systems have been premised on clearly distinguishable forms of media that lent themselves to specific legal provisions and regulations governing such areas as grants, content definition, or the space on the electromagnetic spectrum reserved for public media outlets. As the media converge and boundaries become blurre, the notion of public (and private) space is utterly transformed. An email sent to a single individual, for example, is equivalent to a private letter, while an email sent to 100,000 people is a message in the public domain. Written or audiovisual contents subject to copyright that are sent from one person to another via email is not the same as making those contents available on a mass scale, yet the boundaries are not always clear. The point at which privacy rights give way to rules applicable in the public sphere is an issue that must be addressed in the short term, but exercising tremendous caution. And new problems are surfacing: the transparency that the Internet offers has an extremely dangerous flip side in that it leads to a sort of *voluntary totalitarianism* as personal information is posted on the Internet by citizens themselves (often minors), even intentionally, since it is often required to perform virtual transactions. Rules that require government agencies to divulge the greatest amount of information possible concerning their activities should also include protection (*vis-à-vis* the public administration and companies) of information that citizens post electronically.

The broader political and economic context

Other broader social factors that have transformed media-State relations over the past several decades are present in every democratic context, but pose an even greater challenge in Latin America due to the fragility of its democratic institutions:

- 1) The crisis of political representation reflected in weakened ideologies and political parties. The mediatization of politics, elections, and presidential candidates has further eroded the role of ideologies and the convening power of political parties and trade unions. The debilitation of traditional forms of

¹³ See the paper by Christoph Keese in this collection for more information on the European context.

political identification and mobilization, in turn, has solidified the media's role as the glue that brings to together government opposition sectors. The complaint that the media have "become" a de facto power is obviously specious for the simple reason that the media have *always* been a driving force in modern democracies. In urban and mass societies, the media have played a pivotal role in shaping public opinion and cannot be blamed for the inability of political parties to represent and guide public opinion. In this context, what can be expected of the media is that they become increasingly accountable to the public, endeavor to offer broad coverage and preserve their autonomy vis-à-vis the government, and provide space for the widest possible range of opinions and analyses.

- 2) The technological revolution in progress. Technological convergence and revolutionary developments in the production and distribution of information on the Internet are profoundly altering relations between the different corporate groups operating in the communications sector, some of which favor new forms of regulation, while others would like to hold them back. Although the media's role has, on the one hand, been empowered by the weakening of the traditional political system, on the other, companies engaged in traditional journalism, and the written press in particular, find that they are being undermined and sapped by transformations that cause their audience and advertising revenues to shrink even as politically and economically powerful competitors are coming to the fore, in particular communications service providers and the main Internet portals. Technological media convergence requires the reform of laws governing the media—which are sometimes still associated with authoritarian regimes in Latin America—in order to bring them into step with these new times. This offers governments the opportunity to propose changes which, while necessary, are often used to benefit new business groups and/or statizing positions.

Mapping the challenges

The development of new legislation poses myriad difficulties in every Latin American country, some of them associated with the dead weight of the past and others with the complexities of the present. These difficulties must not be approached from a Manichean standpoint, but rather taken up separately so that they do not meld into opposing blocs that are ideologized and over-simplified. It is worth recalling that any legislation should be geared, first and foremost, to ensuring the freedom of expression of citizens in relation to the State and the economic power elite.

Regulation of State action:

1. The distribution of concessions for radio and television should be handled through a regulatory agency created for this purpose that operates transparently and opens up its decision-making processes to public debate and scrutiny. The spectrum should be distributed so that a portion of it is reserved for non-profit organizations. This is easier said than done, however. For example, the new Argentine audiovisual communications services law assigns 33% of the spectrum to civil society. The question becomes who determines which civil society institutions will obtain the concession since, as we know, civil society is extremely diverse and lacks representative structures and therefore, no one can purport to represent society. The decision to distribute concessions to non-profit

organizations must take the various opinion sectors into account through rules that ensure the greatest possible diversity.

2. Ensure the autonomy of channels or stations that rely directly or indirectly on public funding. Here again, the rules must ensure autonomy and independence from any type of external interference, especially from the executive branch, and provide for the widest range of opinions, with an independent Administrative Council that reflects the full range of social sectors. The law, and measures to enforce it, must ensure that channels that receive public funding have management and financial rules in place that guarantee their independence from the political system.
3. The use and distribution of public endowments for official advertising must be transparent and politically neutral. If certain media outlets are to be afforded favorable treatment in the name of support for small and medium communication companies, this must be done based on transparent and universal criteria and open to public debate and scrutiny.
4. Freedom of information includes the government's duty to inform. The public availability of information concerning government budgets and spending is itself a deterrent to the abuse of power and a keystone of transparency and oversight by the general public, and journalists in particular.
5. Ensure public access to contents in such a way that they are not exposed to parasitic behavior by commercial websites, and ensure Internet neutrality. The challenge is to respect Internet use for the free transmission of contents between individuals, while prohibiting the commercial use of those contents that fails to acknowledge intellectual property rights. Neutrality rules should preclude broadcast providers from exercising any form of discrimination in terms of the quality of services offered in function of commercial interests or the contents that are transmitted.

Private sector regulation

1. The media in several Latin American countries are frequently criticized for their highly concentrated ownership and sometimes cross-media control (newspapers, radio and television).¹⁴ If oligopolistic ownership is detrimental to any area of economic activity because of the inherent abuses of power it entails, it is even more pernicious when it comes to the media given the specific nature of the public good they produce and disseminate. Ironically, this same concentration fuels the standoff between media and government since the concentration of power in the hands of certain business groups makes them easy targets for governments that feel that they are being undermined by such groups. In short, extreme concentration can jeopardize the private communications system itself. Extreme concentration should not be confused with the existence of financially sound media groups, which are better situated to preserve their independence in relation to the State. The struggle against concentration of ownership should focus on the language of the law and its

¹⁴ See, for example, the paper by Martin Becerra in this collection.

enforcement through clear, universal rules, by regulatory agencies that are autonomous of the government.

2. As noted earlier, the communications system is undergoing a profound revolution that has especially weakened the written press, which has always been, and still is, the main outlet for investigative journalism. While the Internet has facilitated the development of new forms of producing and disseminating information, to date no substitute has been found for professional investigative journalism associated with commercial communications companies, particularly newspapers. How can the continuity of the written press be ensured in the new context? There are no obvious answers to this question. One line of defense in favor of allowing a certain level of cross-media control (for example, newspapers and television and/or communications systems) by the same company is that the revenues from another sector could fund the journalism sector. We think this is a valid argument if kept in the proper perspective. Another issue, an in-depth discussion of which is beyond the scope of this article, has to do with intellectual property rights, especially in relation to the use by major commercial portals of content produced by traditional media. We think it is important to distinguish between the use of the Internet to transmit contents for noncommercial purposes and their appropriation for commercial websites. The current debate is divided between those who defend the free use of the Internet with respect to all contents (a group ranging from libertarians to the major Internet portals) and those who espouse the rigorous application of intellectual property rights.
3. One of the expert papers¹⁵ notes that business people in at least one country in the region, Chile, have adopted a policy of only placing advertisements in media that sympathize with its political opinions. If this is the case, it is a practice that should be roundly condemned. At the same time, it is very difficult to create legal mechanisms that compel private advertising to abide by universal principles. Support for the written press in the form of public funding must be based on clear and universal criteria.
4. Finally, we must not overlook the importance of raising public awareness about the importance of access to, and the ability to critique information. This challenge is magnified many times over when it comes to the Internet, where the circulation of anonymous information makes it virtually impossible to hold anyone legally liable. It is important to promote journalistic conferences and activities in the schools, as well as instruction on ethical issues and the skills required to critically analyze the contents circulated on the Internet.

Conclusions

As we have reiterated throughout this discussion, the debate over issues concerning the regulation of the media must not be appropriated solely by the parties with a direct interest in the matter. The academic community needs to become more involved in shaping the public debate in ways that do not simply reflect the individual interests in conflict.

¹⁵ See the essay by Javier Couso S.

More meticulous research is required on the current state and role of journalism in our countries. While there is much discussion of the media's capacity to influence public opinion, we actually know very little about the relationships between information broadcasters and receptors. The fact that several elections in the region were won by candidates who did not enjoy the backing of most of the media is indicative of a greater degree of public autonomy than that portrayed by certain authors, who regard the citizenry as little more than a herd. Clearly, this does not justify the wrongheaded practices of the private media, but it does suggest that the situation should not be portrayed, as it has by some politicians, as if the media control the reins of public opinion.

The impact of the new communications media has ramifications for quality of life, education, the notion of the public and the private realms, and the construction of knowledge. It is necessary, therefore, to rethink the role of the State and of business and, above all, to raise public awareness and encourage citizens to engage in the public debate in order to collectively build the future, rather than be run over by it.