

MISSED OPPORTUNITY?

DESPITE ALL THE RHETORIC, ARGENTINA'S 2009 MEDIA REFORM LAW WAS ACTUALLY BASED ON DEMOCRATIC PRINCIPLES AND IDEAS. THE PROBLEM HAS BEEN IN THE IMPLEMENTATION.

BY MARTÍN BECERRA AND GUILLERMO MASTRINI

For the past five years, Argentina's current government and the Clarín Group, the country's principal media conglomerate, have been on a collision course.

President Cristina Fernández de Kirchner has denounced the group on national TV for having once been "partners" with the military dictatorship and accused its executives of plotting against her. Meanwhile, *Clarín*, the country's most widely read newspaper (and the group's most important media property) has returned the favor with front-page denunciations of the government and scathing editorials, including one calling an initiative to limit the number of broadcast licenses held by a single company a "gag order."

The tensions between Fernández de Kirchner, now in the middle of her second presidential term, and Argentina's most powerful media group represent more than a personal quarrel. Triggered by a political falling out between the media giant and the administration, and exacerbated by a 2009 government media reform law, they underline the escalating struggle across the region to develop channels for diverse political views and free expression in an environment dominated by

giant media monopolies.

The clash between *Clarín* and the Argentine government is far from the only one of its kind. In Brazil, when then-President Luiz Inácio Lula da Silva won his second term in 2006, he complained about the "lack of neutrality" of the mass media, and challenged media companies to recognize that "they support opposition candidates."

In an even more confrontational example, the president of Ecuador, Rafael Correa, put both the owner and editor of the *El Universal* newspaper on trial in 2011. And in Venezuela and Bolivia, disputes between commercial media and the government are common.

The media structure in Latin America has traditionally been dominated by private, for-profit companies, featuring concentrated property ownership and centralized production in large urban centers. Much of its print and audiovisual content comes from the United States, instead of being domestically or locally generated.

The size of the domestic markets and the low per capita consumption of culture created a profit model for the media in which the state was a major player. Governments in a number of Latin American countries have subsidized the privately owned media system, either



directly or indirectly through state advertising. The unwritten bargain: in return, the media would turn a blind eye to government excesses or abuses, in effect giving up its watchdog role.

At the same time, links were established early on between the political system and the media owners, such as those between the Mexican *Partido Revolucionario Institucional* (Institutional Revolutionary Party) and *Televisa*, the country's main TV channel; or between the Brazilian *Globo* network, the region's largest, and the Brazilian military dictatorship, which lasted from 1964 to 1984.

The result, in the words of Elizabeth Fox and Silvio Waisbord, was a “highly controlled and hardly regulated” media model. Fox has further defined it as a politically docile commercial system,² in which certain media groups are allowed privileged positions in highly concentrated markets (more concentrated than those in Europe, the U.S. or Canada), in exchange for adopting an editorial line sympathetic to the government.

In his study on Latin American television, John Sinclair details how the media system has been shaped by

Read all about it: Argentine President Cristina Fernández de Kirchner holds a newspaper announcing a possible seizure of the Argentine Central Bank's funds by a U.S. judge.

family structures with strong patriarchal figures.³ This model, stable for decades, was dealt a blow first by the internationalization of media markets due to globalization, then by converging technological advances in the media and other information and communication

activities, and finally, by the more recent regulatory intervention by governments. Such is the case with recent regulations in Venezuela (2004, TV and radio), Uruguay (2007, community media), Argentina (2009, TV and radio) and Ecuador (2013, media in general).

The first changes occurred during the dominance of neoliberal policies in the 1990s, which promoted an extensive deregulation of the media system. The transformation intensified with the arrival of new technologies such as cable and satellite, which led in turn to the development of new markets. In the countries where cross-ownership was not permitted (Argentina, Colombia), the state initiated the formation of media conglomerates or, in countries where such groups already existed, encouraged an expansion into new markets—thereby increasing levels of concentration (Brazil, Mexico, Venezuela).

Since then, however, some governments have sought to roll back a few of these market-oriented reforms, proposing changes in media policies and related industries that call for a higher degree of state regulation and a stronger role in curbing ownership concentration. Furthermore, citizen groups have been encouraged to participate in policy discussion and in community media.

The media owners' response came swiftly.

Arguing that such measures threatened freedom of expression, they called the governments' efforts thinly veiled strategies to limit the media's capacity to criticize. As a result, the collusion between media owners and the political elite described by Fox is no longer the norm, especially in certain South American countries. On the contrary, TV channels, radio stations and newspapers have come to lead the political opposition against democratically elected governments, especially when the government seeks to change communication law.

REFORM IN ARGENTINA: TRIAL AND ERROR

Argentina offers a good example of what happens when efforts at media reform collide with media economic interests. The government has played a decisive role in television and radio, granting licenses, awarding subsidies, granting tax exemptions to select media, and directing official advertising to favored stations and holdings. Far from representing a consistent state policy, though, those efforts were intended to advantage whatever party happened to be in power.

In Argentina, private companies have largely controlled the broadcast stations in the country's principal cities. But starting with the launch of digital television in 2009, the number of state/government TV stations has increased.

There were no examples of cross-ownership among press and broadcasting outlets until the 1980s, when President Carlos Menem initiated reforms that permitted the creation of multimedia groups. Since then, media ownership in Argentina has become increasingly concentrated.

For example, Clarín now not only owns the largest-circulation national newspaper, (as well as papers in some important regional capitals such as Córdoba (*La Voz del Interior*) and Mendoza (*Los Andes*)). It also operates one of the main TV channels in Buenos Aires (*Canal 13*) and others in major cities (such as *Canal 12* in Córdoba and *Canal 7* in Bahía Blanca), a chain of radio stations (led by *Mitre* and *FM 100*), the biggest cable TV distributor (*Cablevisión*), and various cable TV channels (such as *Todo Noticias*, *Volver*, *Metro*, and *TyC Sports*).

The Clarín Group also has stakes in related indus-

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tries, such as the manufacturing of paper for journals and newspapers (an area in which it has been partners with the state since the last military dictatorship), film, radio and TV producers (it has shares in Pol-Ka Producciones, Patagonik Film Group and Ideas del Sur), news agencies (DyN) and Internet service providers (Fibertel). Clarín's media dominance is only challenged in the communications sector, by telephone companies such as Spain's Telefónica, which is also the largest provider of cellular telephone service, broadband Internet, and operates nine television stations in Argentina.

But the country's media landscape abruptly changed following passage of the 2009 Audiovisual Communication Services Law (ACSL)—the first major effort to regulate the press since 1980, when the military dictatorship banned not-for-profit groups from participating in the media system to ensure greater control over media access and content.

The military-era regulations were modified partially during the governments of Carlos Menem (1989–1999), Fernando de la Rúa (1999–2001), Eduardo Duhalde (2002–2003) and Néstor Kirchner (2003–2007).⁴ But ACSL transformed the system. It reflected both the emergence of new media technologies and the emerging efforts to link the concept of freedom of expression with human rights by reserving space on the radio spectrum for non-



War of words: Argentina's Vice President, Amado Boudou, right, holds a sign that reads "Clarín lies" next to Secretary of Trade Guillermo Moreno in Buenos Aires.

profit civil society groups. The law not only allowed not-for-profits to obtain radio and TV licenses, but set aside 33 percent of the broadcast spectrum for such groups. It also established limits for concentration and domination of the market (10 licenses per company for broadcast TV and 24 per company for cable TV) to increase the number of groups that participate. And for the first time in Argentine history, the bodies that regulate the media, rather than being selected only by the executive branch, would be selected and approved by the *Consejo Federal de Servicios de Comunicación Audiovisual* (Federal Council of Audiovisual Communication)—which includes media owners and workers and academics from the public universities and the Congress.

Moreover, the law demanded pluralism and diversity from state media, recognized explicitly the right to freedom of expression, and required television and radio stations to produce a minimum of their content locally, where they were licensed to broadcast.

The ACSL ruptured what had been a close relationship between *Clarín* and the president's predecessor and late husband, Néstor Kirchner, who, on his last working day, authorized the merger of two of the main cable TV operators that, combined, gave the Clarín Group 60 percent of the market. At the time, *Clarín's* reporting had been noticeably pro-government.

Argentina's media reforms have won praise from Frank la Rue, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and placed the Argentine ACSL within a progressive tradition in line with the Inter-American Human Rights System. Soon after Congress approved the law, the Clarín Group began filing judicial appeals to prevent application of certain articles, especially those that limited its number of cable TV licenses, the source of more than 70 percent of the company's income. The appeal is about to be resolved by the Supreme Court of Justice of the Nation.

The articles being contested by Clarín are few but fundamental: of concern are articles 41, 45, 48 and 161, which deal with the maximum number of licenses a single broad-

caster can have, the restriction on broadcasters in the same territory from using broadcast and cable TV, and limiting cable operators from broadcasting their own content on just one signal. The rest of the law is in force.

WELL INTENTIONED OR NOT, THIS ISN'T GOING WELL

All the same, four years after the law was passed, its goals have not been reached.

In the face of Clarín's judicial appeals, the Argentine government has dedicated itself to dismantling the group's domination of the market. In this dispute, the ACSL has been shoved aside and, contrary to what the law prescribes, the government has effectively turned state TV into an arm of partisan politics. Government subsidies are also directed to reward friendly stations and withheld from those that oppose the government.

Last, the government has tolerated the concentration of large, pro-government media groups, arguing that until Clarín relinquishes some of its market share, it would be asymmetrical for other groups to do so. The government has not even put into place a system to determine what percentage of radio frequencies are being used by current media, as part of its stated aim of ensuring that 33 percent of the radio frequencies are being used by non-profit groups. Without this information, it is impossi-

ble to open the spectrum to public tender so that new operators might diversify the Argentine media system.

The government's quarrel with Clarín, in effect, has distorted the entire Argentine media environment. Its attacks against the media giant have been accompanied by overt efforts to strengthen Clarín's competitors through state advertising and exemptions from key elements of the law, including the social investment requirements, limits on concentration of ownership and restrictions on granting licenses to foreign companies.

Until now, though government efforts to bolster Clarín's adversaries against the government's vowed enemy have been futile.

Clarín continues to dominate Argentine media, with 35 percent of the print market, 60 percent of the cable TV market, and two of the leading broadcast channels in Buenos Aires. Meanwhile, pro-government competitors such as the newspapers *Tiempo Argentino* (Szpolski Group) and *Página 12* (Soklowicz Group); the TV channel 7 (state television), and channel 9 (owned by Mexican national Remigio Ángel González); the radio station 10 (owned by Cristóbal López); and *Del Plata* (Electroingeniería) are far behind, despite government favoritism.

PUTTING IT IN PERSPECTIVE

The executive branch's discretionary news management, however, does not justify the alarmist actions and rhetoric of its opponents, who have denounced the law as dictatorial or a threat to freedom of expression. This perspective is echoed by a number of international organizations as well, such as the *Relatoría de Libertad de Expresión de la Organización de Estados Americanos* (Special Rapporteur on Freedom of Expression for the Organization of American States) in its annual reports⁵ and by Reporters Without Borders.⁶

Freedom of expression is real in Argentina. Moves by the government to decriminalize libel and slander are one example. There's still a lot of work to be done, not least on the part of the media groups that complain most vociferously while engaging in anti-competitive practices that restrict media diversity.

The law did not, as its supporters promised, lead to immediate democratization of the media market through expanding access to new actors. One major failure was the Argentine government's inability or lack of will to implement some of the law's most important initiatives, such as the establishment of the technical plan cited above to assign one-third of the broadcast spectrum to non-profits. Since 2009, the government has granted

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only a handful of licenses to non-profits. And the government has yet to announce a public auction for new licenses that would bring the country closer to the media diversity promised by the law.

However, media regulation has been submitted to an open and head-on debate, and there have been positive consequences. This open debate, unprecedented in Argentine history, has increased the country's awareness of its media system, its interests and the rules of the game.

No single law can transform a media culture created over several decades. But the ACSL has established a foundation for new communications policies that can increase cultural and information diversity in Argentine society. Building on that foundation, however, will not be easy. Like the rest of Latin America, Argentina needs to overcome the systemic weakness of its regulatory bodies to implement the kinds of rules that can protect an open, diverse and impartial press. The ultimate question is whether the powerful media groups that have been fighting to protect their monopoly access will see this as being in their interests as well.

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