



The Bugle and the Penguins: Democracy and the Media in Argentina

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Introduction

IN THE EARLY HOURS of 10 October 2009, after several hours of long and impassioned debate, Argentina's Senate passed a new law which, on paper, is the biggest reform of the country's regulatory framework for broadcasting in almost 30 years. When proposals to pass such a law were originally made public seven months earlier, at the opening of the new Parliamentary session, President Cristina Fernández Kirchner described media reform as a 'historical debt to Argentine democracy' (*Página 12* 2009a). The law, the *Ley de Servicios de Comunicación Audiovisual* 26.522 (the LSCA), states that its objective is to democratise the media landscape by de-concentrating media ownership (LSCA 2009: Art. 1), in order to 'universalise' access to information and communication technology. The LSCA also aims to divide the radio-spectrum into three parts: a third will be reserved for private media companies, a third for the state, and a third for non-profit organisations such as community groups, universities, and charities. In one key article, media corporations will have one year to comply with new limitations on the number and type of different media outlets that the new legislation permits them to possess (*ibid.*: Art.161).

The new law also creates *Radio y Televisión Argentina Sociedad del Estado* (RTA SE), a new body that aims in theory to develop public service media to represent the plurality of voices and opinions in Argentine society. Although Argentina, as with much of Latin America, has a history of state-funded media that promotes the government of the day, public media based on the principles of political plurality is a significant development. As such optimists see RTA SE as an important step for improving the range and quality of broadcasting in the country. Yet far from making the media more democratic, opponents of the law argue it is an attempt by the government to undermine critical voices and weaken freedom of expression in Argentina by increasing state control over the media. One of Latin America's largest media conglomerates, Grupo Clarín, will be forced to sell off many

of its assets in order to comply with the legislation, and views LSCA in very different terms to the official line. The headline in its flagship publication *Clarín* ('The Bugle') the day after the law was passed is unequivocal in its opinion: 'Now the Kirchners have the law to control the media' (*Clarín* 2009j).

In a recent comparative study, the mass media has been described as 'the connective tissue of democracy' (Gunther and Mughan 2000: 1). Accordingly, this dissertation seeks to pick a path between the competing claims and discover whether or not the *ley de medios* will enhance democracy in Argentina, or damage it. To do so, it will analyse the content of the legislation to highlight its strengths and weaknesses in this regard, but also the political context in which it was debated and sanctioned, including the legislative passage of the law. It will be supported by evidence from coverage of the LSCA in the print media, particularly the anti-Kirchner *Clarín* and left-wing *Página 12* dailies, and from semi-structured interviews with academics, think tanks, government officials and journalists. In doing so it may also be possible to understand how media regulation became a key policy of the Fernández government, and explain why this attempt at reform has been successful when a number of previous attempts in recent decades failed.

Yet in terms of media reform, Argentina is not an isolated case in Latin America. The significance of a trend has been noted by the foreign press, with the *Guardian* describing how 'from Argentina to Venezuela, governments have identified the media as a political obstacle' (*Guardian* 2010). In July 2010, Uruguay became the latest country on to the continent to open the debate on national media regulation, with the government of President José Mujica announcing that it was seeking to reform the current broadcasting legislation (*Página 12* 2010b). In Ecuador, a major political debate continues over its own media reform law, which like the Argentine legislation, claims to democratise the broadcasting landscape (Hervieu and Samson 2010; Committee to Protect Journalists 2009b). Yet reforms implemented in recent years in Venezuela by the government of Hugo Chávez have been the most controversial, and have been regularly criticised by international bodies. Comparisons have been made between these reforms and the

Argentina's legislation by those opposed to the *ley de medios* (e.g. *Clarín* 2009i), and accordingly this dissertation will assess the validity of these claims.

The first chapter of this dissertation will develop an analytical framework by exploring some of the arguments surrounding the relationship between the media, the state and democracy, in particular the tension between government intervention and freedom of expression. Chapter 1 will also highlight where these challenges have particular resonance for Latin America, for example, how the role of the media as an independent watchdog is under threat by both commercial practices and state intervention. It will also analyse recent developments in this context in Venezuela. Chapter 2 narrows the geographical focus of the dissertation, and is divided into two parts. The first charts the shifting course of media regulation in Argentina over the last 40 years, up to and including the administration of Carlos Menem. This will place in an appropriate historical context the particular features in the interaction between the state and the media in the country, and help to explain the regulatory landscape in which LSCA was developed. The second analyses the deterioration in the relationship Cristina Fernández and her husband and predecessor, Néstor Kirchner (popularly known as 'the penguins' on account of being from southern Argentina) and Grupo Clarín by exploring the political battles which have led to an 'undeclared war' between the two adversaries (Interview 2010j), and seeks to provide an understanding of the political context of the regulatory reform. Chapter 3 concerns the LCSA itself, and by examining the key features of the law, it may be possible to show if the new legislation will create the new framework for a more democratic media in Argentina as its supporters hope to achieve, or whether the implications of this may lead to very different results. Using this analysis it will become clear if the legislation can or should be compared to developments in Venezuela.

CHAPTER 1

The media and democracy

THE DEBATE OVER the *ley de medios* in Argentina has been, and continues to be, intensely political, channelled through newspaper headlines, slogans and government announcements. The purpose of the following academic literature review is to make clear, through a balanced and objective approach, that important theoretical principles underpin the new legislation. This will help inform Chapter 3's analysis of its democratic value.

Freedom of expression and freedom of the press

In liberal theories of democracy, a media that is independent from government interference is essential for two key reasons. Firstly, it ensures the flow and transmission of ideas to enable citizens to make free, informed political decisions (Street 2001: 252), while, secondly, it performs a vital watchdog function, keeping check on the power of the state in its role as the fourth estate (Lichtenberg 1990: 110). The liberal history of press liberty has been understood as 'an epic, heroic fight of the individual against political power' (Keane 1991: 37), promoting the belief that any form of government control of the media will impinge on freedom of expression and therefore be to the detriment of these democratic functions of the press. In the late 17th and 18th centuries, according to this interpretation, a link was forged between a belief in a free press and a free market (Keane 1991: 46), leading to the opinion that only the market should regulate the media. In describing this viewpoint, Nicholas Garnham writes how its supporters believe that 'the market will provide appropriate institutions and processes of public communication on democratic polity' (1990: 105).

Yet in recent decades the idea that an unfettered media landscape is universally beneficial for democracy has come under increasing criticism (Garnham 1990; Keane 1991; Lichtenberg 1990). The expansion of the media, with its increasingly commercialised nature and dramatic technological advances, have changed it beyond recognition over the centuries, and as Lichtenberg states, one needs to challenge ‘the unthinking assumption that we are all better off if the mass media are left to their own devices’ (1990: 128). Critically, one must recognise that access to the media is now ‘distributed as unequally as other forms of power’, as Lichtenberg correctly argues (1990: 103), and that some form of regulation is required to reduce this inequality. Otherwise, economic forces will control and distribute what is available in the media, and decide ‘which opinions officially gain entry in to the “market place of opinions”’ (Keane 1990: 90).

The political philosopher Torbjörn Tännsjö is clear where he places the blame for the failure of an equitable media framework to emerge. ‘The ideal of freedom of expression’, he writes, ‘has proved to be a positive obstacle to sound mass communication’ (1985: 557). Sound mass communication, based on the principles of a plurality of ideas and equality of access, has been prevented by the close relation between freedom of expression and a belief in the non-regulation of the media (1985: 553–4). As such, to quote John Keane, there is now ‘a structural contradiction between freedom of communication and unlimited freedom of the market’ (Keane 1991: 89). Thus we are left with two competing views, which Waisbord summarises in his work on the role of the press in Latin America: one which equates press freedom with a free market; the other which sees an unregulated free market as preventing a truly free press (2000b: 3–4). It is important to explore in greater detail the reasons why supporters of the second view believe that an unregulated market-based media cannot properly perform its democratic functions.

Concentration of ownership and the threat to pluralism

Without regulation, as several authors have argued, the media tends towards a concentration of ownership, which has a number of detrimental effects on the health of democracy (Keane: 1991; Baker 2007; Curran 2002). In an early study it was argued

that media owners push their own interests and agendas through their outlets, and since concentration reduces the number of different owners, fewer sources of information and views become available to citizens (Bagdikian 1986). In this manner, ownership concentration militates against the ideal of a plurality of views — an ideal bound up inextricably with the very concept of a democratic society (Ó Siochrú and Girard 2002: 7). In a recent analysis of the structure of media ownership in the United States it has been argued that the ‘dispersal of media ownership, like separation of powers, is a key structural safeguard for democracy’ (Baker 2007: 19). In Latin America, such a safeguard appears to be limited: an overview of global media governance marks out Argentina, Brazil and Mexico for exhibiting particularly high levels of concentration (Siochrú and Girard 2002: 30). Although McChesney classes the major conglomerates in Latin America, such as Grupo Clarín, Televisa (Mexico) and Organizações Globo (Brazil) as ‘second tier firms’, less powerful than their North American and European equivalents (2002: 155), within the national context their influence may be much greater than their relative global size. Globo, for example, has been ‘likened to a parallel government’ in Brazil (Waisbord 2000a: 59).

The problems of concentration of ownership in Latin America have recently been investigated in detail by two leading Argentine academics, Martín Becerra and Gabriel Mastrini (2009). In *Los Dueños de la Palabra*, they describe how concentration should be understood in three distinct ways. *Horizontal concentration* is when a media firm expands its number of products to increase its share of the market and produce economies of scale, a phenomenon particularly notable in the field of print media (2009: 31). Grupo Clarín, for example, achieved ‘unmatched horizontal expansion’ during the 1990s (Waisbord 1990a) — the reasons for this growth will be more fully explored in the following chapter. Secondly, *vertical integration* refers to investment in each phase of production. In audiovisual media, this would include both producing content and controlling the means of distribution (Becerra and Mastrini 2009: 31). Finally, the authors describe *lateral* or *diagonal integration*, in which a company invests in a variety of different types of media to reduce risk and increase income (ibid.). This is found in many instances in Latin America. In Argentina, Grupo Clarín is the dominant player in many areas, including print media, cable television, open access television, and radio (Becerra and Mastrini 2009: 60). In

the Latin American context, the problems that such concentration poses to democracy as outlined above have been recognised in the regional normative framework, with Principle 12 of the Inter-American Commission's (IAHCR) *Declaration on Principles of Freedom of Expression* stating that:

Monopolies or oligopolies in the ownership and control of the communication media must be subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people's right to information (IAHCR 2000).

Plurality in mass media is also at risk from the high economic cost of entering the market in the first place, which excludes certain social groups (Curran 2002: 229). As the journalist and press critic A.J. Leibling once quipped, 'Freedom of the press belongs to those who own one' (quoted in Baker 2007: 2). Again, Principle 12 of the IACHR Declaration recognises this problem, stating that 'the concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals' (IACHR 2000). It is on such principles that the supporters of the LSCA in Argentina argue for de-concentration of ownership and the provision of access to the media for all social groups.

Governments and the media: an unhealthy relationship?

In the years following the return to democracy in the 1990s, the dominance of economic policies known as the Washington Consensus did not leave the media market untouched. In fact, the 'trinity of privatization, liberalization, and deregulation [was] the mantra of the makers of media policies' (Fox and Waisbord 2002: 6). In terms of the private media, an absence of regulation is arguably regulation by 'what secures the greatest return for investors' (Ó Siochru and Girard 2002: 4). Curran argues that this creates the danger of media products becoming simply market-place commodities (2002: 226), when in fact media products are more than just consumer goods — they help to 'produce' society itself (Ó Siochru and Girard 2002: 3). More specifically problematic for the institutional role of the media is the argument that since entertainment and human-interest stories are more

profitable than investigative journalism, private media no longer perform their watchdog function effectively (Curran 2002: 221). Finally, as Curran argues, when profit-driven media companies form close links and interact with governments which need favourable media coverage, there is a serious danger of a corrupting influence on the ability of the fourth estate to operate as a check on the abuse of power (ibid.).

In Latin America, such a relationship is not a recent phenomenon. Waisbord argues that the history of the media in Latin American states can be characterised by 'cooperation rather than adversarialism, mutual advantages rather than autonomy' (2000a: 51). Print media, for example, were dependent on the state for importing machinery, subsidised paper and tax exemptions (Waisbord 2000b: 16). In return for these economic carrots, positive coverage of the government was expected, undermining the separation of the state and media (Waisbord 2000a: 58). Today, these problems continue, particularly with regard to state advertising, upon which many private media rely for funding. The arbitrary use of such advertising is considered to be one of the most serious ways in which governments can impinge on the freedom of expression in Latin America, and was the subject of a recent regional report by the Argentine Non-Government Organisation (NGO) Asociación por los Derechos Civiles (2008). In 2006, for example, critical coverage of Néstor Kirchner's administration in the newspaper *Perfil* and the magazine *Noticias* saw all state advertising to both publications blocked (ADC 2008: 35). In 2003 the Office of the Special Rapporteur for Freedom of Expression at the Organisation of American States (OAS) produced a report which raised serious concerns about the use of official publicity (OAS 2003), while Principle 13 of the IACHR's Declaration of Freedom of Expression is explicit that:

the arbitrary and discriminatory placement of official advertising and government loans ... with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law (IACHR 2000).

Media reform in Venezuela: regulation or censorship?

In Latin America, some analysts have commented on a recent trend of governments taking measures against the private media in a populist manner (Dinatale and Gallo 2010). According to experts, reform of old, outdated media legislation in Latin America is certainly required (Interview 2010d; Interview 2010c), and as shown there are regional standards that demand governments ensure both plurality within the media and equality of access in order to enhance freedom of expression. Yet in the same way that the popular catchphrases, such as Latin America's 'new left' (Kozloff 2008) or the 'pink tide' (BBC News 2005), fail to capture the range of political ideologies in the region, equally in terms of media reform one must pick out the variation within general patterns. With regard to media regulation, it is crucial to distinguish between the regulation of structures, and the regulation of content (Goldberg *et al.* 1998): in terms of protecting freedom of expression, it is far preferable to place controls on the former (McQuail 2005: 235). As the case of Venezuela will demonstrate, the Chavez administration appears not to hold this distinction in high regard.

One of the most significant legislative reforms in Venezuela occurred in 2004, when President Chávez passed the *Ley de Responsabilidad Social en Radio y Televisión*, commonly known as the *Ley Resorte*. The chief objective of the law is to establish 'the social responsibility of the providers of television and radio and their users to encourage democratic equilibrium between their duties, rights and interests in order to promote social justice and contribute to the formation of democracy, peace [and] human rights' (Gobierno de Venezuela 2005: Art. 1). The law has come under considerable international criticism. A recent report by the IACHR repeated earlier concerns over the vagueness of Article 29 of the *Ley Resorte*, by which sanctions can be applied to any radio or television station that is deemed to 'promote, advocate, or incite alterations of the public order' (IACHR 2009: paragraph 354). Such indeterminate language, according to the report, allows for the arbitrary use of sanctions against critical voices (*ibid.*: paragraph 356), and in doing so could directly threaten freedom of expression. Equally worrying is the fact that the two authorities charged with applying the law, the National Commission for

Telecommunications (CONATEL) and the Social Responsibility Board lack the degree of impartiality and autonomy from the executive required for their functions (IACHR 2009: paragraphs 370–1).

In 2007, the refusal to renew the terrestrial broadcast licence of Radio Caracas Television by the Chavez government reflected exactly the kind of ‘arbitrary and opaque decision-making process’ that had been feared, according to the Committee to Protect Journalists (Lauria and Gonzalez Rodriguez 2007). The government produced its ‘Libro Blanco Sobre RCTV’ to justify its decision, citing violations of various broadcasting laws (including a failure with regard to its social responsibility), and for ‘instigating civil war and a *coup d’etat*’ (Gobierno de Venezuela 2007: 11). The latter claim refers to the alleged involvement of opposition media during the coup of April 2002, which saw President Chavez briefly overthrown and imprisoned (for a recent detailed account, see Nelson 2009). Yet as Reporters Without Frontiers argued at the time, the participation of RCTV in the coup was never legally established, and as such the non-renewal of the licence was simply the result of a unilateral decision President Chavez without proper juridical backing (Cañizalez *et al.* 2007).

While it is possible to understand the antipathy that President Chavez feels for the opposition media in Venezuela for their role in 2002, it seems unlikely the current administration is truly concerned with creating a more equitable media landscape to enhance freedom of expression, despite its musings on concentration of ownership in the *Libro Blanco* (Gobierno de Venezuela 2007). As Eduardo Bertoni argues, the former Special Rapporteur for Freedom of Expression at the Organisation for American States, there is a danger that media reform’s only achievement has been to change ‘the monopolies in the distribution of ideas from the private sector to the governmental sector’ (Interview 2010d). Keane, writing in 1991, warned that ‘public intervention in the market place must avoid slipping into the reductionist demonology of the evil media baron’ (1991: 154), yet Chavez seems to have fallen into exactly this trap. In 2009, CONATEL used its regulatory powers to strip 23 radio stations and two television channels of their licences (Committee to Protect Journalists 2009), while in June 2010, the Venezuelan government

was condemned for ordering the arrest of Guillermo Zuloago, the owner of opposition television channel Globovisión (IACHR 2010).

In the debate over the *ley de medios* in Argentina, the spectre of Venezuela has been raised by those opposed to the new legislation. The opposition deputy Francisco de Narvaez claimed that the efforts of the Fernández administration to ‘control the media ... is no different to what Chávez has done in Venezuela’ (*Clarín* 2009i). Earlier in 2009, the senator and national leader of the *Union Civica Radical* Geraldo Morales warned that if the *ley de medios* was passed, ‘Venezuela va a quedar un poroto al lado de la Argentina’ (*Clarín* 2009b), roughly meaning that what is happening in Venezuela won’t be a patch on the implications of the LSCA. In assessing the validity of such claims, it is important to remember that ‘national and cultural differences remain of enormous importance in shaping both the media and their regulation’ (Goldberg *et al.* 1998: 295). Chapter 2 will therefore place the Argentine *ley de medios* in its proper national, historical and political context.

CHAPTER 2

The media and the state in Argentina

HAVING EXPLORED the complexity of state-media relations on a theoretical level and in the Latin American context, this chapter will focus on the specific case of Argentina. In the first section it will demonstrate how the legacies from several distinctive historical periods have combined to make regulatory reform ‘necessary and a matter of urgency’ (Asociación por los Derechos Civiles 2009: 1). These periods cover the nationalistic governments of Juan Domingo Perón; the authoritarian dictatorship of 1976–83; the return to democratic rule under Raúl Alfonsín; and the presidency of Carlos Menem. Changes and continuities will be highlighted to lay the groundwork for analysing the significance of the new *ley de medios* in the following chapter. The second section explores the relationship between the current president, Cristina Fernández, and the private media, which may help to explain why media policy has become so important for her administration.

PART ONE: Historical antecedents

From Peron to ‘El Proceso’

In his initial period as president of Argentina (1946–55), Juan Domingo Perón was the first leader of Argentina to fully grasp the political possibilities of the media, developing both the country’s broadcasting structure (including the creation of the first television station, *Canal 7*) and forming its early regulatory framework (Arriba 2005: 102). By the time of his overthrow by the military in 1955, he had consolidated control over the majority of the media, either indirectly or directly (Mastrini 2009: 108). Not only did Peron help to create a ‘historical identification of the public sector with the government in power’ (Landi 1988:

142), but worse, to quote a leading scholar on the history of Latin American media, ‘the Peronist experience of political manipulation of the media left a strong imprint of state control, censorship and commercial corruption on Argentine broadcasting’ (Fox 1988b: 41). These negative features were only to be enhanced by the military dictatorships which followed Perón.

The most brutal and repressive of these was the most recent, when military leaders implemented the Process of National Reorganisation (*El Proceso*) between 1976 and 1983. The death and disappearance of thousands of citizens by means of organised state terror cannot be covered here (see CONADEP 1986) but in terms of the politics of communication, the junta relied heavily on propaganda (Feitlowitz 1998), censorship and control, both direct and indirect (Potolski and Marino 2009: 186). In the kind of contradictory approach that characterised the policies of the regime, the junta preached the discourse of economic liberalism but rarely released its grip on the media (*ibid.* 178). The previous elected government, led first by Perón on his return from exile in 1973 and then by his wife Isabel, had re-nationalised the three main private television networks (Muraro 1988: 116): the junta did nothing to reverse the expropriation despite its ‘declared principles against state intervention in any sector of the economy’ (*ibid.* 117).

Although some newspapers maintained a bravely critical stance against the regime, most notably the English-language *Buenos Aires Herald* (Terrero 1982: 33), other media companies have rather more blemished records. It was not unusual for sections of the media to support dictatorships in Latin America. In Chile, for example, *El Mercurio* vocally advocated the overthrow of President Allende (Waisbord 2000b: 19). Three leading Argentine newspapers — *Clarín*, *La Razón*, and *La Nación* — have been accused of ‘complicity with state terrorism’ due to their joint ownership, with the regime of Papel Prensa, of the national newsprint factory (Cecchini and Mancinelli 2010: 17). As will be explored in the second part of this chapter, these allegations have become part of a government discourse that ties the leading media companies to the military dictatorship. In reality, there was no uniform relation between media companies and the regime. Potolski and Marino have argued that *Clarín*, for example, gradually developed a critical

posture with regard to the economic policies of the junta, while others such as *La Razón* maintained solid support (2009: 172).

In terms of regulation, the most significant development was the sanctioning of *Ley de Radiodifusión 22.285* in 1980, which continued to be the basic broadcasting legislation in Argentina until 2009. In certain respects it demonstrated a keen neoliberal character, discriminating against non-profit organisations in the awarding of broadcast licences (Potolski and Marino 2005: 179). Yet at the same time it forbade foreign investment in the media, and imposed limits on ownership, for example prohibiting print media owners from having investments in broadcasting (ibid: 180). Perhaps most significantly, the law gave sole responsibility for the awarding of licences to the executive, through the offices of the *Comité Federal de Radiodifusión*, known as COMFER (Galperín 2002: 28). Although membership of the armed forces to the board of COMFER ended with the return to democracy in 1983, its centralised and unaccountable nature as a regulatory body would continue until the LSCA was sanctioned. However, perhaps the most damaging legacy of the dictatorship regarding the relationship between the state and media was that it has been used as ‘a permanent warning against state intervention’ (Landi 1988: 147). The early experience of Peronist manipulation of public media, and the activities of the junta in terms of censorship and control of broadcasting, have created an understandable fear of any kind of state intervention, but in doing so limited until recently the terms of debate over media regulation.

The administrations of Alfonsín and Menem

During the administration of Raúl Alfonsín, who was elected to power after the collapse of the military junta in 1983, there were limited attempts at media reform, but more serious challenges to the new and fragile democracy took precedence (Fox 1988: 30). These included tackling the human rights abuses of *El Proceso* and coping with the major economic crisis of the 1980s (Com 2009). Neither a new broadcasting law nor a major reorganisation of the communications sector’s public administration, identified by Landi as the most important changes needed for the media, took place during Alfonsín’s

tenure (1988: 141). The COMFER organisation remained unaccountable, with a single government-appointed official (the *interventor*) replacing the military men who previously oversaw it (Interview 2010k). Vested interests in the both the government (which did not want to see a publicly-administered institution overseeing state broadcasting) and with the private media (who were reluctant to open up the market to new players) combined to impede reform (Landi 1988: 147). Although there was arguably a degree of consensus over a broadcasting bill in 1987 (Interview 2010f), the fact that it was debated during an election year effectively doomed it to failure, as deputies on both sides feared upsetting private media companies and risking prejudicial coverage of their campaigns (Com 2009: 204).

Far more significant for the media landscape in Argentina was the presidency of Carlos Menem, who succeeded Alfonsín in 1989. After criticising the free-market reforms of the Washington Consensus while campaigning for office, upon election Menem forced through a programme of economic liberalisation, by which he 'dismantled barriers to trade and privatised nearly all the state's vast holdings' (Reid 2007: 127). Arguably amongst all the changes that occurred in Argentina during the Menem years, the deregulation of the communications industry was 'among the most dramatic' (Galperín 2002: 22). The 1989 legislation which provided the legal basis for selling off state assets, the *Ley de Reforma del Estado* 23.696 (Vialely *et al.* 2008: 14), also amended parts of the old *Ley de Radiodifusión*, and enabled the formation of multimedia conglomerates in Argentina (Rossi 2009: 241). The law not only mandated the privatisation of all state-owned commercial stations, but it lifted the restrictions that had prevented newspaper owners from entering the broadcast arena (Galperín 2002: 29). A term used to describe the rapid liberalisation of Portugal's media system, following the collapse of the Salazar regime, seems appropriate for the Argentine experience: 'savage deregulation' (Traquina 1995). There was a dramatic increase in vertical and horizontal integration, with print media companies such as Grupo Clarín coming to dominate in cable and satellite television and radio (Vialely *et al.* 2008: 15), creating a new map of media ownership by the middle of the 1990s that was 'hyper-commercial and strongly concentrated' (Rossi 2009: 242). The map was dominated by two conglomerates, Grupo Clarín and CEI Citicorp (Vialely *et al.* 2008: 15).

Writing in the years after President Menem had left office in 1999, Hernán Galperín argued that in regard to the media and communications industry, ‘the old regulatory system has simply been loosened, without much public debate, and without being replaced by a new regulatory regime’ (2002: 24). The lack of consultation over policy was a key feature of Menem’s rule, and his charisma and dependence on the presidential decree made Argentina an archetypal ‘delegative democracy’ in which the weakness of institutional checks and balances was exploited by the executive (O’Donnell 1994). It has been argued that such an approach was essential to tackle the grave economic crisis that Argentina faced in 1989 (Peruzzotti 2001: 144), but there is perhaps some truth in the argument that Menem was able to minimise public debate on his neoliberal reforms in the private media by enabling their rapid expansion, and therefore gain their political support (Viale *et al.* 2008: 14). The institutional and legislative reform needed to keep pace with technological expansion and the growth of media conglomerates never occurred, with no single law specific to communications being passed by Menem (Galperín 2002: 30). Without this necessary institutional reform (*ibid.*: 36), the legacy of Menem’s tenure was a media system characterised by the problems associated with such deregulation: a high concentration of ownership, leading to the kind of democratic deficiencies discussed in the previous chapter.

PART TWO: Recent developments

Media regulation under Néstor Kirchner

The policies of Carlos Menem ‘developed a legal-political structure that [had] virtually eliminated any obstacles or restraints for the creation of multimedia giants’ (Viale *et al.* 2008: 25). As a result, the media lobby was so powerful that even in the wake of Argentina’s devastating financial crisis of 2001 (see Blustein 2005), the government exempted ‘cultural industries’ from a new bankruptcy law that allowed foreign creditors to take over Argentine companies which defaulted on their debts (Becerra and Mastrini 2010: 617). It is important to point out that this favourable regulatory framework was made even

more so under Néstor Kirchner, in stark contrast to the changes implemented by his wife and successor, Cristina Fernández.

Two examples are sufficient to demonstrate this. Firstly, under Decree 527/05, broadcasting licences were extended for a further ten years (Centro de Estudios Legales y Sociales [CELS] 2010: 299). Secondly, in virtually the final act of his presidency, Néstor Kirchner allowed the merger of the two leading cable providers, *Cablevisión* (owned by Grupo Clarín) and Multicanal (ibid.). In this regard, the current Fernández administration has performed a *volte-face* in its attempt to change the regulatory framework ‘for the first time in recent history’ (Becerra and Mastrini 2010: 613). This change can only be explained in the context of a relationship between Grupo Clarín and Christina Fernández that was transformed in March 2008. The events of the ‘crisis in the countryside’ that led to this change deserve a dissertation of their own, but the key elements will be covered here. Nonetheless it is an important example of an increasingly divisive political discourse promoted by the Fernández administration which attempts to place the present-day struggle with Grupo Clarín within the bitter historical context of the dictatorship and Argentina’s ‘Dirty Wars’.

El crisis de campo

There is a consensus that the relationship between the Kirchners and Grupo Clarín was changed beyond recognition by the events of March and April 2008, in what became known as ‘the crisis of the countryside’ (Interview 2010h; Interview 2010c). In brief, Christina Fernández wanted to increase taxes on agricultural products (in particular, soya) by introducing a sliding scale for export duties based on world prices. It was an act of severe political misjudgement, as thousands of landowners and producers protested against the measures with strikes and roadblocks. Moreover, middle-class *porteños* took to the streets of Buenos Aires in a traditional pot-banging protest (a *cacerolazo*) in support of the rural provinces, as they feared their food supplies could be at risk (Tenembaum 2010: 158). Coverage of the crisis placed the media outlets of Grupo Clarín firmly in support of the farmers, much to the chagrin of President Fernández, though as the journalist Ernesto

Tenembaum has pointed out many editorials in *Clarín* also expressed alarm at some of the methods used by the rural protesters (2010: 162). The crisis became so serious that President Fernández put the tax measure, Resolution 125, to a Congressional vote. In the Senate, Vice-President Julio Cobos voted against the resolution in the deciding vote, in the name of ‘social peace’ (*Página 12* 2008): President Fernández has not spoken to her deputy since. Fernández has blamed *Clarín*’s coverage of the crisis for the setbacks of her party in the congressional elections of June 2009 (CPJ 2010c).

At its height, Fernández compared the rural strike to one that occurred shortly before the *coup d’état* of 1976, but said that ‘this time, [the strikers] are accompanied not by tanks but by media generals’ (*Clarín* 2008a). From this moment, according to Tenembaum, the conflict between *Clarín* and the Kirchners acquired an intensity that ‘nobody could — or wanted — to stop’ (Tenembaum 2010: 279). As an aside, Resolution 125 drew on legislation sanctioned by General Videla in 1981 (the *Código Aduanero*), one of many dictatorship-era laws that have not been repealed since 1983 (Mendelevich 2008: 135), and a fact not publicised by the government. In contrast, one of the prime arguments of the government when it came to media reform was that the existing legislation, the *Ley de Radiofusión*, was sanctioned in 1980 during the dictatorship. It would appear that invoking the need to repeal legislation dating from the dictatorship is as much a case of political expediency as a genuine desire to shed Argentina of its authoritarian legacies.

Unresolved tensions: Grupo Clarín and the dictatorship

The discourse which links Grupo Clarín with the dictatorship can also be seen in three further examples, the cumulatively bitter nature of this political conflict with the government creating ‘a zero-sum game’ between the opposing sides (Tenembaum 2010: 279). The first concerns football, Argentina’s great national passion. Since 1991, the rights to broadcast Premier Division matches had been held by Televisión Satelital Codificada (TSC), a cable channel jointly owned by Grupo Clarín and Torneos y Competencias (TyC). In the midst of a near financial collapse of the league in 2009, the Fernández government bought the rights to show all Premier matches, which would be broadcast free-to-air on

terrestrial television. This ensuing programme, 'Fútbol Para Todos' has been described as 'football populism' (Zuñino 2010: 308), welcomed by many but at a questionable financial cost (*La Nación* 2009a). When the deal with the Argentine Football Association was announced, President Fernández proclaimed that 'I don't want a society of kidnapped people, kidnapped images nor kidnapped goals' (*Perfil* 2009). To make the 'unfortunate comparison' (Quiroga 2010: 132) between the broadcasting rights of football matches (which under the TSC arrangement could only be seen on cable television) and the horrors of the dictatorship was at best clumsy, at worst tasteless and crass.

The second example concerns the legal case was brought in 2002 against Ernestina Noble de Herrera, the main shareholder of Grupo Clarín, by the Abuelas de Plaza del Mayo (APM), an NGO which aims to discover the whereabouts of the children of those who were kidnapped or had disappeared during the last dictatorship. In 1976 Noble de Herrera had adopted two babies, Marcela and Felipe, whom the Abuelas claimed were in fact children whose parents had been killed by the regime (APM 2008). In November 2009, the Fernández administration sanctioned a new law which made giving DNA samples in such cases compulsory; the Noble de Herrera case remains unresolved, however. Critics of the new law argued it threatened personal liberties, and was an attempt to undermine Grupo Clarín (*La Nación* 2009b).

Thirdly, and most recently, the government released an official report on Papel Prensa which claims to give irrefutable evidence that shares in the printing press were acquired by *Clarín*, *La Nación* and *La Razon* newspapers through extortionate means during the dictatorship (MECON 2010). The government, which has a minority stake in the company, argues newsprint is in the national interest and must be available to all (Presidencia de la Nación Argentina 2010), but the implications of this could be a potentially dangerous shift from regulating broadcasting to regulating print media.

Conflict as a form of government?

Arguably, the discourse that forges links between Grupo Clarín and the dictatorship is a specifically Argentine manifestation of a broader regional trend highlighted by Dinatale and Gallo in a recent volume. They have argued that several presidents in Latin America, including Chavez, Correa, Evo Morales and Christina Fernández, are using the private media as an enemy against which to strengthen their own standing with the electorate (2010). In Argentina, placing people into ‘friends’ and ‘enemies’ categories has been one of defining features of the Kirchners’ presidencies (Interview 2010c). In some ways, this vision is part of a far longer tradition of political dichotomy in the country. The commentator and journalist Pablo Mendelevich’s recent book on Argentina, entitled *El país de las antimonias* (2008), attempts to challenge the reductionism in Argentina’s political history which has pitted Unitarian against Federalist, Perónist against anti-Perónist, the people against the oligarchy. The ‘quintessence of irreducible antagonism’ in Argentina is that which exists between the capital’s two leading football teams, River Plate and Boca Juniors (Mendelevich 2008: 15), and it is perhaps no surprise that some Argentines have described the government’s conflict with Grupo Clarín in such terms (Interview 2010e).

While the rural crisis appears to be the catalyst which led to President Fernández’s decision to ‘assume the political cost’ of taking on the powerful interests of Grupo Clarín, (Interview 2010i), it must be appreciated that there was already in place a strong civil society lobby which sought to reform the media. This lobby, the *Coalición por una Radiodifusión Democrática* (CRD), was formed in 2004 and its membership included communication studies departments in universities, trades unions, human rights organisations, and community radio groups. Its founding document, *21 Points for Democratic Broadcasting*, laid out the key principles needed for reforming broadcasting regulation. This included the right of citizens to ‘receive and diffuse information, opinions and ideas’, the notion that state broadcasting must be based on principles of public service (and not the ideals of the government), the promotion of not-for-profit media and the need for limitation on ownership (CRD 2010). These *21 Points* would provide the basis for the future *ley de medios* (Interview 2010h) but it seems unlikely that the CRD would

have succeeded in its goal of reforming broadcasting legislation without the desire within elements of the Fernández administration to weaken Grupo Clarín. As such, critics have described the government interest in media reform as an act of political opportunism (Interview 2010c). Yet whether such opportunism negates the democratic worth of the proposed reforms can only really be seen in the light of the legislation itself. This will be the subject of the following chapter.

CHAPTER 3

The audiovisual communications law

AS THE TWIN NARRATIVES of civil society pressure for media reform and a political power struggle between the Kirchners and Grupo Clarín became interwoven, changes to broadcasting regulation became a matter of urgency for the government within the context of the congressional changes wrought by the June elections: when the new deputies took their seats in December, opposition parties would be strengthened. The resulting legislation, *Ley 26.522 Servicios de Comunicación Audiovisual*, was eventually sanctioned on 10 October 2009. After outlining its legislative passage, this chapter will discuss in detail three substantive aspects of the law most germane to the discussion of democracy and the media in Argentina. Firstly, it will describe articles concerned with limiting ownership in the media market: as chapter two explained, concentration in this area can have detrimental effects on the quality of democratic debate in a society. Secondly, it will look at the new regulatory bodies that have been created by the legislation and, thirdly, it will address provisions with the law related to public service broadcasting.

These three examples demonstrate that the *ley de medios* is fundamentally concerned with implementing structural changes to the media landscape, rather than the control of content. As highlighted earlier, this is a key distinction in terms of broadcasting regulation (Goldberg *et al.* 1998: 16), and moreover distinguishes the Argentine case from what has happened in Venezuela. It would be inaccurate to state that the *ley de medios* has no bearing on content. For example, certain articles make requirements for quotas of nationally produced material that must be broadcast, (LSCA 2009: Arts. 65 and 67). These types of articles are not unusual for broadcasting legislation, and indeed the supporting notes point to similar requirements in French law (LSCA 2009: notes to Art. 67). Yet in

general terms, the *ley de medios* should not be cast in the same category as Venezuela's *ley resorte*, which explicitly allows for arbitrary censorship by placing legal restraints on the type of political content that can broadcast. Argentina's legislation tackles vital structural problems, which have the potential to enhance, rather than decrease, freedom of expression.

From draft bill to sanctioned legislation

The first public announcement of President Fernández's intention to push for new legislation to reform broadcasting regulation occurred during the official opening of the new parliamentary year on 1 March 2009. Significantly, media reform was the only concrete bill mentioned during the presidential address, which covered in more general terms the need for greater government intervention in the context of the global financial crisis (*Clarín* 2009a). It immediately attracted criticism from opposition politicians, which was sarcastically rejected by the President as a part of the 'I Oppose Everything Movement': the rejection of government policy regardless of content. (*Clarín* 2009c)

When the draft bill was presented around two weeks later, President Fernández claimed that 'this is not Christina's bill, nor the government's, nor of a party, but a proposal we put to the consideration of all Argentines' (*Clarín* 2009e). It is difficult to believe that this was said with complete honesty. Symbolically, the bill was presented at the Teatro Argentino in La Plata, where Christina had launched both her senatorial and presidential campaigns. Moreover, *Clarín* highlighted that party political 'music and iconography' was used during the presentation of the bill, and that afterwards a group of activists from the Peronist Youth chanted anti-*Clarín* slogans (*Clarín* 2009e). Of course, the newspaper had its own motivations for highlighting these aspects of the launch, but it should be noted that the Konrad Adenauer Foundation turned down a government request for information on European public service broadcasting, perceiving that the bill was party political in nature, and that any involvement would compromise the foundation's apolitical ideals (Interview 2010c). On the other hand, *Clarín* failed to report the inclusive nature of a speech made by Gabriel Mariotti, the then COMFER *interventor*, in which he praised the efforts of

past legislators in their efforts to reform broadcasting legislation, singling out the Radical senator Ricardo Lafferiere (*Página 12* 2009b).

After the launch of the draft bill, there was a period of public consultation before the formal presentation of an amended bill in parliament on 27 August 2009. This included 24 public forums in various cities across the country, 80 meetings, and the submission by members of the public of around 15,000 opinions and suggestions (*Página 12* 2009d). As CELS, the human rights organisation, has noted, these resulted in some 200 contributions being made to the text of the legislation (2010: 300). Frank La Rue, UN Special Rapporteur for Freedom of Expression, specifically praised the government for ‘having consulted with the people’ (TELAM 2009). Graciela Peñafort, legal director for the new regulatory body AFSCA, argues that the consultative nature of the bill means that the resulting legislation should be considered as ‘a collective construction’, not simply the work of the government (Interview 2010i).

The parliamentary debate that followed saw a number of modifications which ‘in most cases improved the government bill’ (CELS 2010: 300). These included important changes to the regulatory bodies created by the law, as will be explained in the third section of this chapter. In order to garner the support of left-wing parties, the government introduced clauses that forbade telephone companies from entering the audiovisual market and offering ‘Triple Play’ packages (the joint provision of telephone, satellite television and internet services), arguing that these would have enabled new opportunities for monopolisation (CELS 2010: 301). Comparing these procedures with the broadcasting legislation situation in Venezuela, Eduardo Bertoni, the former Special Rapporteur for Freedom of Expression at the OAS, made an important point with regard to this question of parliamentary debate. As he explained, ‘the government [in Argentina] sent the draft to the Congress, first to the lower house. The lower house started discussing it. *Discussing it*. This is a simple word, but if you think about discussion of the law in Venezuela, you are thinking about a different country, not Venezuela’ (Interview 2010d).

Several legal injunctions have since been brought against the *ley de medios* which fell into broadly two categories: those which questioned the legality of the law in its entirety, on the basis of alleged parliamentary irregularities, and those which challenged specific articles (such as Article 161: see section two of this chapter). Martín Becerra, an expert witness during the senatorial hearings, agreed that the parliamentary procedure ‘was not the best’, but in this regard ‘the law is not an exception’ (Interview 2010b). Similarly, Bertoni has queried why this specific law rather than countless others was being challenged on issues of procedure (Interview 2010d). At the time of writing, some of these injunctions remain unresolved.

De-concentrating the Argentine media market

Arguably the most important articles in the *ley de medios* are those that address questions of concentration of media ownership by seeking to increase the range of providers in the market. Firstly, the law distinguishes between three types of media providers: state, private for-profit and private non-profit (such as community radio stations) (LSCA 2009: Art. 21), and legally guarantees access to the radio-electrical spectrum for the latter group. This tripartite distinction is justified by supporting evidence from international norms and comparative national legislation, including Britain and France. For example, the notes to Article 21 refer to the joint meeting of the OAS and UN on freedom of expression held in 2007, which proclaimed that ‘different types of broadcasters — commercial, public service and community — should be able to operate on, and have equitable access to, all available distribution platforms. Specific measures to promote diversity may include reservation of adequate frequencies for different types of broadcasters’ (LSCA 2009: notes to Art. 21). Curran has argued that ensuring media pluralism cannot simply be equated with ensuring competition — more fundamentally, it concerns making the ability to take part in that competition open to all (2002: 237). That is why this part of the *ley de medios* is so significant in terms of broadening the range of voices in the democratic debate. One of Argentina’s leading human rights organisations (CELS) has remarked that the law enables ‘historically excluded sectors’ to add their voice to this debate (2010: 307).

Certain articles attempt to reduce the problems of concentration of ownership that have characterised Argentina and Latin America since the early 1990s. Article 45 states that ‘in order to guarantee the principles of diversity, plurality and respect for the local culture, limitations are established on the concentration of licences’. For Martín Becerra, this is one of the most significant aspects of the new legislation (Interview 2010b). If a company holds a licence for a satellite television provider, such as *Cablevisión*, it is illegal to hold any other type of audiovisual media licence, for example, those of the actual channels that are broadcast through that provider (LSCA 2009: Art. 45.1.a). The implications of this for Grupo Clarín were explained in an internal email to staff working for its subsidiary company Artear, warning that if Grupo Clarín retained *Cablevisión*, it would have to sell off its television channels, such as *Todos Noticias* and *Canal 13*, and vice-versa (De Elía 2009). The legislation therefore breaks the vertical integration between distribution and production. An investigative journalist for ‘Telenoche’, the leading daily news programme broadcast on *Canal 13*, believes this to be the ‘only thing’ positive about the law, even though it puts his job at risk (Interview 2010e).

Secondly, the law sets limits on the number of each different type of media outlet any one company can own, such as radio stations or cable television channels, and also distinguishes between national and local broadcasting. At the national level, that law states that a single company cannot provide ‘services to more than thirty-five per cent (35%) of the country’s population or subscribers ... as the case may be’ (LSCA 2009: Art. 45.1.c). Given their size, multimedia conglomerates such as Grupo Clarín will be forced to sell off a number of radio stations and local television stations, with a time limit of one year being set within which companies must comply with the legislation (LSCA 2009: Art. 161). This article, known as the ‘disinvestment clause’ has been amongst the most controversial of all. Grupo Clarín has brought a legal challenge to the Supreme Court that argues Article 161 contradicts the right to property, and the case currently limits the full implementation of the legislation (*Página 12* 2010a). Market fundamentalists have long dismissed the argument that citizens can claim a right to a share of the media market (for example, by regulating ownership) as ‘a particularly egregious example of demanding a right to the

labour of others', arguing that the right of access to the media should not be considered a basic necessity on the order of food or shelter (1990: 81),

Yet according to a senior official in the new regulatory body, this tension between freedom of expression and property rights is a false one (Interview 2010i). Freedom of expression, as explained in Chapter 1, is one of the defining features of a liberal democracy, but is undermined by a concentration of ownership in the media market — one of the hallmarks of the previous regulatory environment in Argentina. Government regulation that takes steps to address questions of plurality and diversity should be welcomed, and on this issue, the *ley de medios* seems to meet the earlier calls of academics such as Tännsjö (1985) and Keane (1990; 1991) for a fairer media system. It also meets international standards, and indeed Frank La Rue has stated publicly, as reported by the national news agency TELAM, that 'Argentina is setting a precedent ... and I believe it is an example not only for Latin America but for the whole world' (2009). Critically though, whether or not the legislation is applied in a democratic, transparent and fair manner depends on the regulatory bodies which will implement the law. These are the subject of the following section.

Regulatory bodies

In a comparative study of media regulation, Goldberg *et al.* have noted a tendency towards the creation of specialist regulatory agencies (1998: 310), and in the Argentine case, several new bodies are being created under the *ley de medios*, of which two deserve particular attention. The most important of these is the Federal Authority of Audiovisual Communication Services (AFSCA), the body responsible for applying and enforcing the law (LSCA 2009: Art. 12). The second is the Federal Council for Audiovisual Communication (CFCA), an advisory body comprised of a wide range of representatives from local government, private and non-profit media, unions, university broadcasters, and indigenous groups amongst others (LSCA: Art. 16). In terms of management, AFSCA will have a seven-member board of directors. Two directors, including the chairman, are nominated by the executive; two are chosen from candidates nominated by CFCA;

and three are proposed by the Bicameral Committee on the Promotion and Monitoring of Audiovisual Communication. The Bicameral Committee, comprised of deputies and senators, makes its three proposals based on the political composition of Congress: one by the majority or first minority party (or bloc), one by the second minority, and one by the third minority (LSCA 2009: Art. 14).

It would be hyperbolic to say that AFSCA is ‘probably the most advanced body in the world’, as its director of legal affairs does (Interview 2010i). Nonetheless, it is a highly significant improvement to the old regulatory body COMFER, which had given the executive absolute discretion in broadcasting matters with ‘no parliamentary control and no degree of participation from different sectors of society’ (ADC 2009: 2). The 2008 report of the Special Rapporteur for Freedom of Expression at the OAS argues that ‘it is fundamental that the bodies with oversight or regulatory authority over the communications media be independent of the executive branch’ (2009: 217). Given the composition of its board of directors, AFSCA cannot be classed as truly autonomous, but it is important to note that a number of modifications were made during the legislative passage that have improved its independence through the plurality its members. In the draft bill, AFSCA was to have only five directors, of whom two would be appointed by the executive and three chosen by the Bicameral Commission on the terms outlined above: as one of these would be selected from the majority party in Parliament, it would effectively give a majority to the executive (ADC 2009: 4). Increasing the number of directors to seven, by bringing in the two directors proposed by the Federal Council, is an important step in diluting government influence over AFSCA. It is also important to note the AFSCA directors will serve for four-year periods that will not coincide with those of the presidential mandate (LSCA 2009: Art. 14), which had been a concern of the ADC (2009: 4).

Despite these normative advances, serious political challenges remain for creation of a genuinely plural regulatory body, best highlighted by the ongoing difficulties in filling AFSCA’s board of directors. Opposition parties currently refuse to recognise the composition of the Bicameral Commission, because the Commission was formed shortly before the change of deputies in December 2009 (six months after the June elections) and

hence have not nominated their candidates for AFSCA (CELS 2010: 312). This has left the board with only five members, whose appointments have not remained unchallenged. Both opposition politicians and NGOs contested the executive's nomination to the AFSCA board of Jorge Capitanich, the governor of Chaco Province, considering that his current role would prevent Capitanich from devoting the time and energy required to be a director of AFSCA (CELS 2010: 311). However, Capitanich remains in place, with the executive stating that the concerns 'lacked sufficient merit' (ibid.). The Federal Council, for its part, was criticised for a lack of consultation when appointing its two nominated directors (*Clarín* 2009k).

It is certainly arguable that the board of AFSCA, lacking almost a third of its members, has questionable legitimacy. Yet one must not lose sight of the improvement from COMFER. Argentina now has a regulatory body which, in theory, represents the views of not just the executive, but opposition parties and sectors of wider society. While not perfect, in terms of promoting democratic pluralism within the regulatory framework this is a significant step forward. Graciela Peñafort, AFSCA's director of legal affairs, has criticised the opposition parties of failing in their political responsibility by not nominating members to the board (Interview 2010i), and it is possible to sympathise with her frustration. Reporting on the *ley de medios*, CELS states that opposition parties have used 'all possible resources to erode the validity of the new norm' (2010: 309). The democratic credibility of AFSCA would be strengthened if opposition politicians nominated members to its board. If fearful of government tendencies, the best place to moderate these would be by working within the new framework. In sharp contrast, this is not a matter of choice in Venezuela: there is no parliamentary opposition to speak of, and the regulatory body CONATEL is controlled solely by the executive.

Public service broadcasting

Beyond tackling media concentration and the formation of new regulatory bodies, the *ley de medios* also attempts to find an answer to the question of public service broadcasting in Argentina. Article 119 creates the aforementioned RTA SE, a new body 'responsible

for managing, operating and developing audio and television broadcasting services owned by the national State' (LSCA 2009: Art. 119). In academic literature public service broadcasting is often considered to be a defence against 'the twin threats of totalitarian propaganda and the crass commercialisation of market-driven programming' (Keane 1992: 116). A range of approaches to public broadcasting exists, from the politically independent professional model of the British Broadcasting Corporation to the more corporatist model found in Germany and the Netherlands (Hallin and Mancini 2004: 31), but the critical feature is that in each case they seek to represent all sectors of society in the name of democratic pluralism, regardless of the political inclinations of the current executive.

Although Article 121, part b) states that one of the objectives of RTA SE will be to 'respect and promote political, religious, social, cultural, linguistic and ethnic plurality' (LSCA 2009: Art. 121), scepticism is widespread that it will truly achieve this goal. In Latin America, there is little tradition of public broadcasting based on such principles: government broadcasting is usually the only alternative to private media (Waisbord 2000a: 60). Given that most Latin American countries have experience of authoritarian governments using state media as vehicles for propaganda, or of periods in which censorship was the only real way in which the state made its presence felt in the media (Fox 1988: 15), it is perhaps understandable there is wariness about the idea of public service broadcasting. Regionally, as Bertoni puts it, 'understanding that a public service media is not a governmental branch for communication is very difficult' (Interview 2010d). While culture secretary and former head of COMFER Julio Bárbaro claims that public television existed until Alfonsín's presidency (Interview 2010a), in reality public broadcasting in Argentina has usually promoted the ideals of the government of the day.

By the 1990s, Latin American public television was in a 'desolate' state, suffering from both a lack of credibility and infrastructural problems (Fuenzalida 2009: 11). However, one national example stands out as a notable exception to this pessimistic picture. From 1992 onwards, *Televisión Nacional de Chile* (TVN) has been reformed to such an extent that it is now institutionalised as a public entity autonomous from the government (Tironi and Sunkel 2000: 186), and perhaps more importantly it is considered credible

and politically neutral by the Chilean public (Fuenzalida 2009: 15–16). Interestingly, while making comparisons with a range of national case studies, such as the Australian Broadcasting Company and RTVE, Spain’s public broadcaster, the notes to Article 119 of the LSCA clearly state the intention to use the Chilean model as a basis for the structural organisation of RTA SE (LSCA 2009: note to Art. 119). Like AFSCA, the RTA SE board will have seven members, who will have been selected in virtually the same way (LSCA 2009: Art. 132). The current chairman, Tristan Bauer, is a noted Argentine television and film director, who was also instrumental in creating *Canal Encuentro*, a cable channel funded by the Ministry of Education which produces cultural and educational programmes (*La Nación* 24/10/07). Significantly, unlike the pro-government news coverage provided by the state *Canal 7*, *Canal Encuentro* is generally considered to be non-partisan: a channel in which you can see ‘the spirit of public television’ (Interview 2010d). If Bauer can bring such qualities to the newly created RTA SE it will be an advance in the nature of Argentine public broadcasting.

Nevertheless, concerns have already been raised about the political nature of other appointments to the RTA SE board. On 30 June the executive appointed the former Cordoba deputy and agronomic engineer Alberto Cantero Gutierrez to the board of directors, on account of his ‘scientific, academic and parliamentary’ experience (Clarín 2010a). *Clarín* claimed the appointment was a reward for Gutierrez’s loyalty to the Kirchners, given he chaired the congressional Agriculture Committee during the countryside crisis in 2009 and supported Resolution 125 (ibid). What seems more important is that Article 131 of the LSCA clearly states that members of RTA SE’s board of directors ‘shall be highly qualified professionals in matters of communication and shall have a well-established democratic background’ (LSCA 2009: Art. 131). Gutierrez’s career as an agronomic engineer would not appear to qualify him for a role in the management of a public broadcasting body. It is a clear example of divergence from the legislation as written and its implementation. In theory, the creation of RTA SE is an important step forward in institutionalising democratic pluralism within Argentina’s state-funded media, but unless a non-partisan culture is allowed to develop within the organisation, it is difficult to be entirely optimistic that it will follow TVN Chile in becoming a successful model for public



broadcasting in Latin America. Recently, debates over exactly how apolitical TVN is have emerged in the wake of Sebastian Piñera's election to the presidency (*La Tercera* 2010), but nonetheless it is still the best regional model to which Argentina can aspire.

CONCLUSIONS

Current concerns and long-term benefits

The purpose of this investigation has been two-fold: to analyse the veracity of claims that the *ley de medios* 'democratises' the media landscape in Argentina, and to see if the law should be compared with media reform elsewhere in Latin America. Before drawing any conclusions on the nature of Argentina's *ley de medios*, it is important to recall some of the key features of the media system that existed in the country prior to the new legislation. Concentration of media ownership was amongst the highest in Latin America; regulation was conducted by a body directly and solely answerable to the executive; and state-owned television had a long tradition of promoting the views of the government, rather than representing all voices in society. The new law, whose content is largely based on the principles developed by the civil society campaign of the *Coalición por una Radiodifusión Democrática*, has the potential, as demonstrated, to improve all three of these features. It has embraced the principle that in a democratic society, the right to freedom of expression means more than just the freedom to express one's views and opinions without fear of repression. The right also 'requires that a special effort be made to provide access to public debate under equal conditions and without any type of discrimination ... [and] assumes special conditions of inclusion to allow all sectors of society to exercise this right effectively' (IACHR 2009: 188).

Of course, it is highly probable that the passing of the *ley de medios* would not have occurred had the Fernández administration not been in the midst of a political power struggle with Grupo Clarín, the leading media conglomerate in Argentina. Yet this raises questions over intentions and outcomes. In the black-and-white political worldview of the Kirchners, Grupo Clarín had clearly fallen into the enemy category after the *crisis del campo*. Although the Kirchners have arguably used the *ley de medios* as a weapon in the

ensuing conflict, this does not de-legitimise the potential benefits that have come from the new legislation. As Martín Becerra argues, rather than ‘looking at the present in absolute terms’, what is important is that, long after the Kirchners have left office, the legislation will be in place and will have transformed the media for the better in Argentina (Interview 2010b). Nonetheless, the political environment has undoubtedly been detrimental to the quality of debate over media reform in Argentina, where polemical soundbites have been preferred to profound discussion.

To argue that the law is an improvement in terms of the media’s democratic nature is not to claim it is free from weaknesses. Luis Lozano of CELS, one of the organisations comprising the *Coalición*, has admitted it could certainly be improved upon, by ensuring, for example, that the board of AFSCA is made up of independent, non-political appointees (Interview 2010h): a measure that would have avoided some of its current membership problems. In this regard, the Kirchners did not heed the advice of Chile’s National Television Council president, which the *ley de medios* seeks in part to emulate: legislate as if you will always be in opposition (*Clarín* 2009h). In terms of public service broadcasting, the *ley de medios* will not mean that state television and radio will be instilled overnight with a spirit of pluralism and editorial independence, but its existence at least creates the legislative framework on which such a political culture may develop. But most significantly, in terms of the democratic credentials of the relationship between the state and the media, the *ley de medios* has been a missed opportunity for establishing legal norms to limit the creeping growth of government advertising that has been a feature of both Kirchner administrations (O’Donnell 2007). This trend is far more of a concern to freedom of expression than legitimate efforts to de-concentrate media ownership.

The regional context: Hitler in the pampas?

Nonetheless, Argentina’s *ley de medios* is an important advance, and efforts to compare it with the worrying attacks on the media in Venezuela are questionable. As one should remain sceptical of umbrella terms like ‘the new left’ when used to describe a disparate range of political ideologies, it is important to be as aware of the differences between

trends in broadcasting regulation as the similarities. Not only is the actual legislation in Argentina of a type different to Venezuela's, based as it is on structural and not content regulation, but the institutional framework in which that legislation was debated and implemented is utterly distinct. Opposition claims in Argentina that a kind of Venezuelisation of the media landscape will occur may be successful as a scaremongering tactic, but as this dissertation has argued, they are fundamentally flawed. An editorial in *Página 12* made a humorous but perceptive comment when the bill for the *ley de medios* was presented in August 2009. Referring to the adage that as any debate progresses, the probability of Hitler being mentioned increases, it remarked that 'in these pampas, Hitler is usually substituted for Hugo Chávez' (*Página 12* 2009c).

Moreover, the renewed interest in the role of Latin American media and its articulation with state regulation requires a greater introspection on the part of media owners and journalists. Eduardo Bertoni has suggested the need for 'reflection' on their part to better understand why we are witnessing increased regulation — or, in the case of Venezuela, censorship (Interview 2010d). Crucially, those involved in commercial media must be able to distinguish between valid criticisms of current media ethics and practices, and attacks on freedom of expression (Interview 2010j). One leading regional body, the Inter-American Press Association, currently seems incapable of doing so, casting damning resolutions on Argentina, Venezuela and Ecuador, for example (IAPA 2010). In this context, more research is needed to explore how media responsibility, both in Latin America and beyond, could 'involve a shift away from regulation as narrowly conceived in the minds and practices of parliaments and councils towards a more ethically oriented and reflexive profession' (Silverstone 2007: 171).

An unfinished debate

Huge challenges remain for broadcasting in Argentina. Ongoing court cases over the *ley de medios* mean its full implementation is not guaranteed. Technological progress ensures that regulation will require continual analysis. For example, plans for a digital switchover have run alongside the debate over the *ley de medios*, but there is surprisingly

little mention of it in the law itself (see LSCA 2009: Arts. 92–3). For its supporters, digitalisation offers new possibilities to ‘advance greater pluralism and cultural diversity’ in both the public and commercial sectors (Bauer 2010: 13), and the government has already distributed millions of set-top boxes to those on state benefits, enabling them to receive *Canal 7* and for the first time *Canal Encuentro*, the educational channel created by Tristan Bauer (*Perfil* 2010a). While AFSCA is legally-bound to report on technological developments twice a year (LSCA 2009: Art. 45), the failure to incorporate the latest mobile phone technology and new media forms such as YouTube into the legislation means that, for some critics, the *ley de medios* is already antiquated, and has created a new normative framework that ‘fails to represent reality’ (Interview 2010j). How the latest technologies will enhance or impinge on the promotion of freedom of expression remains to be seen. The *ley de medios* is a grand step in the right direction towards democratic pluralism and equality within the media, but many further steps will be needed to keep pace with change.

The only observation that can be made with any certainty is that the sanctioning of the *ley de medios* has raised as many questions as the answers it has produced on the tensions between freedom of expression and state regulation in a democratic society. That the debate on such issues continues is no bad thing. As John Keane has wisely argued, a society ‘which contains no controversies over freedom of expression and representation, is a society that is surely dying, or dead’ (Keane 1991: 191).

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- 2010f Interview with Ariel Duboscq, researcher and radio journalist, Economic Sciences Faculty, *Universidad de Buenos Aires*. Held on 5 July 2010.
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