



Media and Governance

A Project of the Inter-American Dialogue

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Media and Governance: A Reform Agenda in Latin America and the Caribbean

A Project of the Inter-American Dialogue

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FOREWORD

Despite the emergence of democratic governments and impressive advances toward consolidation throughout the region, freedom of the press is still at great risk. The myriad and complex problems involved in protecting independent media point to the importance of developing effective and realistic proposals for serious media reform in Latin America.

While there are explicit challenges to press freedom in Latin America—most prominently, impunity for threats and violence against journalists—the priorities addressed in this report are more subtle yet equally critical to sustaining democratic practice and principles in the region.

In January 2008, the Inter-American Dialogue organized an intensive, full-day workshop to review a set of challenges facing the media in Latin America and the Caribbean and to begin to think about ways to enable the press to be a more positive force for democracy in the region. The conference was specifically concerned with four issues: government laws and regulations regarding the media, concentration of media ownership, indirect censorship, and the nexus of media responsibility and the quality of democracy.

While outright censorship is rare, what is more common in Latin America is for governments to invoke laws still on the books that are inconsistent with democratic norms and practice. Among those of greatest concern are insult, or *desacato*, laws, which make disrespect of public authorities a criminal offense, as well as criminal defamation laws. A similarly troubling quality of many legal systems in the region is a paucity of laws that guarantee access to public information, an essential element in a fully functioning democracy. Without the guarantee of transparent information, it is hard, if not impossible, to hold public officials accountable.

A second priority area is the concentration of media ownership. Huge media conglomerates often exercise unchecked power, which can smother the independent voices of economically weaker news sources—independent dailies or regional outlets—or those that hold nonconformist positions. It is valuable to review the public policy implications of such practices and evaluate how best to balance the important role of an open media market with the principles of diversity and pluralism.

Freedom of the press
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The politicization of government advertising decisions challenges media independence and diversity.

A third area of concern is the politicization of government advertising decisions, which can restrict access to the plurality and diversity of views that are essential to a democracy. Patterns of government advertising often reflect abuse and unfair allocation of funds. A number of governments also abuse their authority by employing tax, labor and other laws for political ends. The aim is often to harass critical media and try to instill conformity and obeisance.

The fourth priority area for media reform concerns the influence of the quality of journalism on democracy. The record of the press in covering governance crises in Latin America warrants careful examination. Many situations raise complex ethical dilemmas. Journalists' contribution to democracy should be judged by their performance in: providing full information to empower the citizenry; exposing corruption and ensuring honest government through active oversight; and creating an open forum for the exchange of diverse views among all levels of society.

We thank those listed at the end of this report for their intellectual contributions to its content. But this is not a consensus report, so the participants do not necessarily subscribe to the recommendations and certainly bear no responsibility for them. Still, we are grateful for their thoughtful interventions. We would also like to thank the authors of the papers commissioned as background for discussion at the workshop.

In particular, we would like to acknowledge the contributions of Dialogue program assistant Daphne Morrison, who deserves special mention for taking on the writing of this final report. We also thank Dialogue intern Thomas Perkowski for drafting an early version of it. We are grateful to Nina Agrawal for collaborating in the preparation of one of the background papers. We also appreciate the valuable contributions of Thayer Hardwick who helped organize the workshop.

We are grateful for the continuing support of the Ford Foundation, which made this initiative possible.

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Media and Governance: A Reform Agenda in Latin America and the Caribbean

Rapporteur's Report

INTRODUCTION

In 2001, the enactment of the Inter-American Democratic Charter reinforced a region-wide commitment to the idea of democracy, marking exceptional progress from the authoritarian regimes of the previous decades. The task now is to strengthen and consolidate the institutions and practices of democratic governance. Critical among these is the media.

The media's role in a democracy is complex and varied. At its best, the press acts as an additional check and balance on government, fosters an environment of accountability, provides a public forum for debate, and encourages an informed and educated citizenry. In this capacity the media both strengthens and benefits democracy. But if the media does not carry out these responsibilities, and instead acts a mouthpiece for a particular interest group—such as the government or large corporations—the media not only fails in its role to defend democratic governance, but can undermine it.

Newfound challenges have also emerged as a result of globalization and rapid advances in technology. Concentration of ownership, reduced circulation, declining quality, competition with new media outlets—to name a few—have created countervailing pressures that make it harder for the press to play its role, in a democratic context, effectively and responsibly. Democracy in Latin America has not been a panacea for all challenges facing the press, and obsolete laws and government pressure are ongoing concerns.

These new realities have highlighted serious dilemmas that frame today's debate: how much government regulation of the press, if any, is appropriate? Is there a role for the government in regulating monopolistic ownership trends? Or is any government regulation of the media an infringement on freedom of expression? Is it ever acceptable for the government to impose ethical or social standards on content? Or should the media

Is any government
regulation of the
press appropriate?

be self-regulating? Should there be guidelines regulating the use of government funds to purchase advertising in the media? Who should make decisions regarding the granting of media licenses and how should those decision makers be selected?

Against this backdrop, the Inter-American Dialogue, with the support of the Ford Foundation, convened a meeting to address media and governance in Latin America and the Caribbean. In January 2008, the Dialogue brought together some 40 journalists, editors, scholars, advocates, and government officials from more than 15 countries for a day-long conference in Washington, DC. The purpose of the event was to review challenges facing the media in Latin America and the Caribbean and to begin to think about ways to enable the press to be a more positive force for democracy in the region. The conference was specifically concerned with emerging challenges such as indirect censorship and the impact of technological advances and globalization on the media.

We would like to thank the individuals who contributed to the meeting either through their participation or by providing invaluable input into its design. In particular, we want to thank the authors who prepared the following background papers that provide a more extensive analysis of some of the issues addressed in this report.¹

“What Media Reform? The Nexus between the Quality of Journalism and the Quality of Democracy”

by John Dinges, Graduate School of Journalism,
Columbia University

“Concentration of Media Ownership in Latin America:
A Main Menace to the Freedom of Expression”

by Genaro Arriagada, Universidad de las Américas,
and Nina Agrawal

“Indirect Censorship, Public Advertising, and Diversity”

by Roberto Saba, Asociación por los Derechos Civiles

“For Freedom of the ‘Feral Beasts’”

by Eduardo Bertoni, Due Process of Law Foundation

¹ Please see Appendix I for excerpts from these papers, which are available in their entirety on the Inter-American Dialogue Website, www.thedialogue.org.

NEWFOUND CHALLENGES FACING THE MEDIA

Government Pressure and Legal Issues

Despite important advances, government threats to press freedom still exist, albeit in a less direct manner. In recent years, governments have attempted to restrict press freedom by various means, including through the manipulation of public advertising and the distribution of broadcast licenses. Similarly, obsolete legal restrictions—such as *desacato* (insult) and criminal and civil defamation laws—present persistent challenges for journalists, while the absence of other laws that would support a free press—like access to information and habeas data legislation—is increasingly problematic.

State Distribution of Public Funding and Resources

One of the most effective means for governments in Latin America and the Caribbean to place indirect restrictions on press freedom is through the placement of public advertising. Typically, governments purchase advertising space in media sources such as television and newspapers. This gives the state the opportunity to both communicate with citizens and funnel money into media outlets. Consequently, the allocation of public advertising can be a means of undue influence and a method to limit freedom of expression. Discretionary spending on public advertising is largely unregulated. Elected officials therefore have the ability to use public advertising as a tool to reward media that support their interests, or punish those that do not by withdrawing funding or refusing to purchase advertising space in certain media outlets.

This problem is particularly acute in rural and provincial areas, where media outlets depend heavily on public advertising money. Argentina's Supreme Court found the local government in Nequen Province guilty of withdrawing funding for the *Rio Negro Newspaper* following the publication of an article that was critical of the provincial governor. Although the allocation of public monies can be an antidote to decreasing plurality if used to prop-up smaller media groups, the manipulation and misuse of these funds can have the opposite effect. At its most extreme, the actions of elected

The allocation of public advertising can limit freedom of expression.

Content-based legal restrictions using vague language can be a guise for censorship.

officials can have a chilling effect on balanced and fair-minded coverage of the news by distributing and withholding public advertising funding based on content, effectively encouraging self-censorship. The dilemma remains—what can be done to balance these competing interests?

The state also has other, more subtle, means at its disposal to restrict press freedom. By controlling the distribution of public broadcast frequencies for television and radio, governments can restrict the entrance of new media into the market. Last year in Venezuela, the state's desire to control editorial content of the media led it to deny the renewal of *Radio Caracas Televisión (RCT)* network's broadcasting license, in spite of staunch public opposition. Another less obvious means to restrain press freedom is through the unequal distribution of supplies used by the media. For instance, the Argentine government has been criticized for providing subsidized paper to certain newspapers and not others.

Laws and Restrictions

Persistent legal restrictions to press freedom that survived after the transitions from authoritarian governments are ongoing challenges. A number of Latin American and Caribbean countries have not yet repealed or reformed obsolete *desacato* (insult) laws and legislation intended to protect privacy and honor. Expansive criminal and civil defamation laws—including libel and slander laws that define prohibited behavior broadly—also remain in force. Only thirteen years ago, the Supreme Court of Argentina convicted a journalist under libel law for having criticized in writing what he deemed the “negligent” actions of several judges during the Dirty War. While in the majority of cases these laws are examples of long-standing challenges faced by the media, Venezuela's 2003 “Law of Social Responsibility in Radio and Television” presents a recent example of content-based restrictions. This law stipulates that daytime television and radio content must be free from material deemed inappropriate for children. While similar laws exist in the United States and Europe, the provisions of this law are criticized for using overly broad and vague language as a guise for implementing government-sanctioned censorship.

Laws that restrict press freedom often contain ambiguous language regarding transgressions and punishments, allowing for arbitrary application. This in turn encourages self-censorship in order to avoid criminal proceedings that could lead to hefty fines, imprisonment, and/or the loss of employment.

While too much government intrusion can restrict press freedom, so too can the absence of good laws inhibit the press's role in supporting democracy. For example, the enactment of well crafted public access to information laws typically protects the rights of citizens to obtain information held by the state, albeit within certain parameters. In some countries in Latin America and the Caribbean, public access to information laws—if not wholly absent—often contain broad loopholes and fail to adhere to regional or international standards, such as those laid out in Article 13 of the American Convention on Human Rights (Pact of San José, Costa Rica), which has been interpreted as expressly granting citizens the right to access public information. In addition, existing laws protecting the rights of journalists have not accounted for recent technological advances, and may not address new media forms, such as blogs, that have become increasingly prevalent in recent years.

The politicization of the judiciary in much of Latin America and the Caribbean is another factor that has made it difficult for the media to fulfill its social obligation to support democracy. A 2007 study carried out by the Due Process of Law Foundation reveals the continued prevalence of political influence on the judicial branch in Central American governments. Among other problems, the study notes that the process by which high-level judges are appointed is both politicized and corrupt. Similarly, a parallel study performed by the *Latinobarómetro* in 2007 reveals very low levels of public trust in the judicial system. A politicized judiciary will often overlook or sanction the state's manipulation of existing legislation to limit press freedom. Typically, cases involving government encroachment on press freedom are decided against the press, if only because a politicized judiciary will almost always side in favor of the government. Notably, there are important exceptions. Argentina's 2007 Supreme Court ruling in favor of the media, mentioned above, is regarded as a watershed for press freedom cases.

A 2007 study found the process by which high-level judges are appointed is both politicized and corrupt.

With fewer media outlets there are fewer people deciding what news should be covered.

Concentration of Ownership

In Latin America and the Caribbean, family-run media oligopolies have a longstanding history, often nurtured under the auspices of authoritarian regimes. Consequently, market domination at the hands of a few is not a new phenomenon. The advent of both technological advances and globalization appears to have exacerbated the problem of concentrated media ownership. For example, a large newspaper mogul can buy into other types of media as they emerge—such as television and the Internet—with relative ease because the owner has a comparative advantage in capital and know-how.

In the age of increasingly global markets, a handful of multinational corporations have emerged as global media giants. As these firms compete with each other, they seek to expand their reach into new markets in order to increase their profitability and market share. At the local level, regional media companies have felt pressure from the encroaching multinationals. These smaller firms have also been enlarging their holdings in order to remain competitive and ward off possible takeovers by larger, integrated multimedia groups.

Reduced Pluralism

Preexisting oligopolies, bolstered by globalization and technological advances, have further consolidated media ownership. This in turn has decreased the number of competitors in the market. With fewer independent media outlets, there are fewer people deciding what news should be covered, and fewer voices being represented in the public sphere. In Guatemala, for example, one owner controls all four broadband (non-cable) television stations. Mexico's media market is dominated by a duopoly; two broadcasting companies—Televisa and TV Azteca—control 97 percent of the national television market. Ownership patterns are similar in Brazil, where the top two networks dominate 76 percent of market share. If left unchecked, concentrated ownership and media monopolies can result in lower quality journalism, including decreased accountability to the public, less coverage of local issues, and limitations on freedom of expression, because large media moguls dominate the market.

It is important to note that media concentration is not only driven by market forces, but also by public policy, or the lack of it. In certain countries in Latin America and the Caribbean, governments have been responsible for recent initiatives that have led to a reduction in media plurality. The most pertinent example is Venezuela, where the state, rather than the private sector, caused an increase in media concentration by not renewing the broadcasting license of a private media company and replacing it with one owned and operated by the state. In other cases, weak or poorly implemented antimonopoly laws fail to foster a plurality of news outlets, as intended. Yet, regardless of whether concentration is caused by the private or public sectors, the deleterious consequences for media plurality and democracy are of concern.

Less Diversity of Information

Second, there is a tendency among some media corporations to lower costs by standardizing coverage across outlets. This means cutting or reducing local coverage or programs in favor of national or sometimes international programming. While this response may increase profits in the short term, it diminishes the quality of information available to citizens. Homogeneity may be profitable for media companies, but it reduces plurality and citizens' access to disparate opinions, sources, and points of view, as well as information important to citizen decision-making at the local level—all essential components of a functioning democracy. Given that independent government agencies dedicated to media regulation—such as the Federal Communications Commission in the United States—do not exist in Latin America, a lack of regulatory control and active vigilance threaten the cultivation of diverse viewpoints.

Market Pressure and Private Sector Interests

Market Pressure

Participants agreed that the media industry is distinct from other private sector activity because of its value as a public good. With this in mind, private media entities are still beholden to market forces and concerns about profitability. Despite important gains as a result of free market economies in Latin America

Standardizing coverage across outlets may increase profits, but it reduces plurality of access to disparate opinions and sources.

Investigative journalism plays an especially crucial role in societies with weak institutions.

and the Caribbean, the invisible hand can be at odds with a high-quality, socially responsible and robust press. For example, increasing costs and high barriers to entry have prevented the emergence of new media outlets, or driven others out of business, thereby limiting pluralism and diversity in the market.

Alongside barriers to entry and growing costs, in much of Latin America and the Caribbean the quality and quantity of investigative reporting has substantially declined. Increasingly, quality television journalism is being replaced by other types of programs that get higher ratings, such as soap operas, reality shows, and entertainment news. Due to high costs, quality investigative journalism is often replaced with quickly-done sensationalist reporting. High quality reporting is at risk of being reduced to a market niche. This decline has consequences for democracy. The institutional mechanisms of accountability in Latin America—including the judiciary, congress, and offices within the executive—tend to be weak, and it has fallen to investigative journalism to play an especially crucial role, more so perhaps than in societies with stronger institutions. Consequently, the stakes are high in a region that is seeing a decline in high quality investigative reporting within established media.

Yet there are ways to offset this trend. In Chile, the newly inaugurated Center for Investigation and Information (CIPER) is an independent, nonpartisan institute that carries out rigorous investigative journalism, with the goals of training reporters in quality reporting and of publishing and broadcasting their work in the mainstream media. As a nonprofit, nonpartisan organization, CIPER is not beholden to any one entity or interest group and is financed by a number of different sources, including a national media company and international donors, as well as media outlets that purchase its investigative products.

While market pressure has undermined the media's ability to support democracy in much of Latin America and the Caribbean, several participants pointed out that the case of Brazil presents an exception to this trend. Granted, the Brazilian broadcast media has not been immune to market forces threatening the quality of journalism. Participants noted, however, that the Brazilian printed press is actually quite diverse, bucking regional trends. Unlike many other countries of the region,

Brazil supports more than one major national newspaper. In 2008, Brazilian newspaper *Folha de São Paulo* hired its tenth ombudsman, a position originally created in 1989 to enhance the quality of news coverage within the pages of São Paulo's largest daily newspaper. Some attribute Brazil's media pluralism to a greater focus on professionalization and to its reputation for quality investigative journalism. For example, the printed press was highly involved in President Collor's impeachment as a result of extensive investigative research and denunciation of corruption scandals. Others trace the legacy of a high quality press to the 1975 death of a Brazilian journalist at the hands of the state—a catalytic event that secured the media's role in helping to defeat the military dictatorship.

The Power of Private Sector Interests

Small market economies in Latin America and the Caribbean render media organizations dependent on limited sources of private advertising. Large domestic and multinational corporations and wealthy individuals can easily exploit this situation by choosing not to purchase advertising space or threatening to withdraw existing advertisements, in an attempt to influence editorial content and subject matter produced in print and electronic media. While this may be true elsewhere, and is part of the reality of doing business, it is a particular threat to the independence of small outlets in remote regions, where access to alternative sources of financing is limited or nonexistent. The negative impact of such private sector manipulation on free public debate is only compounded when governments adopt similar tactics in allocating public advertising monies.

Surprisingly, media owners themselves can threaten the integrity of a robust and objective press. Occasionally, media owners use their control of newspapers and television stations to distort objective news coverage and interfere with the independence of their editors and journalists, either to promote a political cause or protect their financial interests. In his background report for this meeting, Genaro Arriagada offers one example of many, the case of Ángel González, a Guatemalan television mogul. González reportedly offers free advertising for presidential candidates and reserves the best and most time for those that he favors. Conflicts of interest can also arise

The Brazilian printed press is actually quite diverse, bucking regional trends.

Government regulation is the most controversial topic regarding media reform in Latin America.

when media moguls with business interests in other sectors of the economy prevent journalists from engaging in investigative reporting about scandals that might jeopardize their economic interests. Such a breach of the wall between editorial decision-making and commercial interests is an offense against a fundamental principle of journalism—that reporters be independent of those they cover. Without independence from commercial interests, journalists lose their credibility and thus their ability to hold others accountable.

WHAT CAN BE DONE?

Government

Regulation

Government regulation is perhaps the most controversial topic regarding media reform in Latin America and the Caribbean. While it is universally accepted that extensive government censorship and interference is an objectionable practice of dictatorial governments, there is little consensus on what constitutes the appropriate level of government regulation of the media in a democracy. Despite these clear operational challenges, participants identified economic regulation as a critically important mechanism for protecting the diversity of views and media outlets.

Typically, two forms of regulation are disputed: content regulation and economic regulation. While few participants—if any—supported content regulation of the media, many supported economic oversight, such as antimonopoly laws or the prohibition of foreign ownership.

Supporters of limited economic regulation assert that regulatory legislation can be used to check media concentration and prevent the emergence of monopolies. In this case, the government would be acting to correct market distortions that have inhibited the emergence of a responsible press and to preserve a cornerstone of democracy and meaningful citizenship—a vigorous plurality of diverse voices. Additionally, in enacting legislation that promotes press diversity—such as promulgating anti-monopoly laws—the government acknowledges the special character of the media distinct from other enterprises. Government regulation of the media can also serve as a means

to protect journalists and members of the press from external pressures that threaten media integrity. Some participants in the workshop suggested that the regulatory structures of the United States and the European Union could serve as potential models for regulation in Latin America and the Caribbean. For example, the enactment of antimonopoly laws could challenge longstanding and entrenched family-run oligopolies and foster diversity.

Opponents of media regulation view government intervention with skepticism and favor market forces and the media's own initiatives at self-regulation. Some are concerned that laws regulating the media industry can be abused by government officials in an attempt to limit press freedom and impose forms of direct and indirect censorship. Accordingly, there is support for the idea that "the best media law is no media law," and therefore that deregulation of the media industry—rather than regulation—should be the main objective of media reform in Latin America and the Caribbean. While those who held this view made a compelling case, the reality is that the absence of economic regulation created serious concerns among most participants in the workshop.

Legal and Judicial Reform

In spite of conflicting opinions regarding regulation, the group agreed that certain reforms are needed in order to foster the development of a media that effectively supports democracy. In addition to anti-monopoly laws mentioned above, legislation could be passed that prevents government officials from manipulating the distribution of public advertising to influence content. A 2008 joint study carried out by the Open Society Justice Institute and *Asociación por los Derechos Civiles*, drafted a series of recommendations based on their investigation into the discretionary allocation of public advertising and broadcast licenses, among other forms of indirect censorship of the media. Recommendations include assuring that officials in charge of allocating media advertising funds are not political appointees, rather individuals hired on the basis of experience and capacity; refraining from using public funds to influence the electoral process; creating a venue for complaints, investigations and punishment; and publishing budgetary and spending patterns in a public venue, such as the Internet.

Some suggest that the regulatory structures of the US and EU could serve as potential models...while others say "the best media law is no media law."

Ownership is more concentrated in television than the printed press.

Beyond specific measures focused on media, there is ample room for broader institutional reform. In many countries of Latin America and the Caribbean, the judiciary is often subject to political interference. Governments might consider reforms that promote a more reliable and independent judiciary, one that would be able to interpret laws free from political pressure and the influence of elected officials. Such reforms would have an indirect yet positive effect on freedom of expression.

Furthermore, *desacato* laws should be categorically repealed. Civil and criminal defamation laws, including libel and slander, should be revised and modified to establish strict criteria—intent, actual malice, falsehood, and injuriousness—for a claim to be legitimate under the laws. Making these laws clear and concise in this way will help avoid interpreting the laws in favor of current or former government officials for political purposes. In 1995, the Supreme Court of Argentina convicted Eduardo Kimel under criminal libel law for criticizing in his book the actions of former judges during the country's Dirty War. Kimel accused several judges of negligence for dismissing a case involving the deaths of five clerics during the military dictatorship. The Inter-American Court of Human Rights made an historic pitch in favor of free speech—and against expansive criminal libel and slander laws—when they reversed Kimel's conviction in 2007.

Vague language can also be removed from laws that allow the state to regulate content and those that guarantee access to information. When possible, these laws should protect freedom of expression in general, rather than focusing solely on freedom of the press.

Concentration of Ownership

Concentration of ownership is different from the other challenges to the media because it is the area about which less is known and solutions are not apparent. A 2006 study on ownership concentration in Latin America by the *Instituto Prensa y Sociedad* (IPYS) was one of the first of its kind to shed light on this issue. For example, among other conclusions, the report finds that ownership is more concentrated in television than the printed press, and patterns differ across countries.

Another IPYS study titled *Comparative Law on Access to Media* reported that antimonopoly laws are prevalent in Latin

America but difficult to enforce. This is especially germane to Guatemala, where the national television market is almost exclusively dominated by one owner, who is a foreign citizen. Although technically illegal, this arrangement has not been challenged by the government. The IPYS report also concluded that in other cases, such as Argentina, antimonopoly laws are exclusive to localities, thereby permitting concentration across—but not within—regions. Intuitively, an important step in checking the concentration of media ownership involves reassessing and strengthening antimonopoly laws and their enforcement.

Still lacking is adequate research on ownership structures and the impact of different arrangements on media content and quality. In order to devise measures to counter the ill effects of concentration, there must be a better understanding of the extent of concentration in the region, the different kinds of ownerships structures that exist, and how different arrangements affect content and quality.

Yet diversity of ownership does not necessarily result in diversity of content. Significant strides must also be made to broaden access to the media among vulnerable and historically excluded sectors of society. The advent of new technologies opens new spaces in which marginalized voices can contribute to the public discourse. Deepening freedom of expression in this way is crucial to the enjoyment of full citizenship, and in turn, to democracy.

Media Industry

The media itself can adopt codes of ethics in order to improve its ability to serve democracy. By explicitly acknowledging its responsibility to the public, the press can raise journalistic standards and fulfill their societal role to support democratic governance. Participants argued that the media need to strengthen their credibility in the eyes of the public by reporting on socially important issues related to governance, education, health, and the economy. Media companies should make the investments necessary to support investigative journalism. Accuracy, precision, documentation, confirmation of sources, fairness, balance, integrity and a shared sense of accountability should be some important guiding principles.

New technologies open new spaces for marginalized voices to contribute to the public discourse.

Responsible journalism requires separating the business interests of a media company from the newsroom decisions.

The media industry is also encouraged to promote editorial independence. Separating the business interests of a media company from the newsroom decisions about what to cover increases the diversity of opinions and viewpoints represented in the public sphere. Perhaps more importantly, editorial independence also increases objective coverage, accuracy, and the quality of reporting—all of which support the emergence of a more responsible press.

Other Actors

Other actors have important roles to play to ensure that the media is supporting democracy in Latin America and the Caribbean. Non-governmental organizations—funded by philanthropic foundations, international organizations, government aid agencies, and corporate and individual donations—can promote the establishment of independent investigative centers in order to offset the market-induced decline in investigative journalism. Trans-national organizations of journalists and media owners, such as the Inter American Press Association, Reporters Without Borders, *Instituto Prensa y Sociedad* and the *Asociación Mundial de Radios Comunitarias*, play a vital role in encouraging hemispheric cooperation on a variety of issues, including the promotion of freedom of expression, the protection of journalists, and the establishment of uniform ethical codes and standards. Additionally, independent journalism reviews, such as the Columbia Journalism Review, as well as surveys on press freedom, such as Freedom House publications, can contribute to strengthening the quality of journalism by pointing out deficiencies, raising concerns, and pressuring both the media and government to support reporting that is beneficial to democracy.

CONCLUSION

Latin America and the Caribbean continue to face numerous challenges to ensuring that the media performs its proper role in a democracy. Current problems that threaten to thwart the emergence of a media that has both the ability and freedom to inform, act as a watchdog, and promote a pluralistic debate must be taken seriously. Media industry concentration and threats from the government and the private sector cause problems and pose challenges for media in the region to varying degrees, but they all have the potential to undermine the press's fundamental ability to support democratic governance.

Still, as the discussions at this meeting have illustrated, there is hope for the emergence of an increasingly vibrant and responsible press. And while greater cooperation and dialogue are needed among government officials, business leaders, the media, and the public, participants stressed that strides have been noteworthy and on balance the situation is certainly better.

This report demonstrates that further reform is needed to protect press freedom and thus foster a media that strengthens—rather than undermines—democratic institutions and values in Latin America and the Caribbean. Today, the region continues to be susceptible to the threats to democracy associated with weak institutions of accountability and a lack of balance and equilibrium among the three branches of government. This is why the media's role as an independent watchdog is so critical to our societies. By taking a more active role in democratic society, the media has the potential to act as a virtual fourth branch of government, providing an additional check and balance on executive power.

The media has the potential to provide a check on executive power.

The 'press' is given explicit protections in virtually all truly democratic constitutions.

APPENDIX I

Excerpt from:

“WHAT MEDIA REFORM? THE NEXUS BETWEEN THE QUALITY OF JOURNALISM AND THE QUALITY OF DEMOCRACY”

**by John Dinges, Graduate School Of Journalism,
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For purposes of this discussion, the point of departure is the almost universally held notion, traced to the Jeffersonian foundations of American democracy, that free society cannot exist without freedom of expression embodied in a free press. Latin Americans can attest that journalism and media certainly can exist and do exist in dictatorships and authoritarian regimes. But it is hard to imagine the coexistence in the same society of a restricted, controlled press and a free people.

For that reason, the “press” has been given special, explicit protections in virtually all truly democratic constitutions, in which the freedom of expression of citizens is inextricably tied to the right of news media to be free from government control. This protection is neither abstract nor absolute. It is a right that arises from the corresponding responsibility of the “press” to fulfill its indispensable role in the proper functioning of democratic society.

It follows that the most important criteria with which to judge the news media are those that measure how well the media provide the environment in which democracy and a self-ruling citizenry can flourish. Such an approach should allow for a fruitful conversation on common ground and common values among journalists, media owners, political leaders and ordinary citizens about media rights and responsibilities. It will also, it can be hoped, minimize the often excessive defensiveness on the part of the media in the face of criticism, and will provide a way for media outsiders to frame more positive and realistic criticisms that point toward viable solutions.

The battleground has changed

Among Latin American journalists, partisan side-taking and mixing of opinion and fact in reporting has always differed in important ways from the practice of their counterparts to the north. The democratic values criterion still can be applied—that is that free society cannot exist without freedom of expression embodied in free press. In the era of Latin American dictatorships, for example, the role of the news media can be measured by the extent to which they defended—or failed to defend—basic human rights and pushed—or failed to push—for the establishment of democratic rule. The record was mixed in each case, along with the degree of direct repression, economic pressures and other restrictions news organizations faced, but the difference was always clear between news media serving the interests of the dictatorships and those doing their utmost to prepare the ground for a return to democratic values. The role of the press could be judged on its most fundamental value: defense of freedom of expression and other rights.

In times of democracy, the news media's role, seen from the point of view of democracy, is different and more complex. Corruption by governments is more likely than repression; information becomes a flood rather than a stingy trickle; ordinary people need not only reliable information but a forum of exchange with their leaders and with each other in order to exercise their power as citizens. Journalism in freedom becomes more challenging and journalists are called to develop a different and more sophisticated reporter's toolkit. Above all, the times of democracy demand independent news organizations and watchdog journalism—credible investigative reporting to scrutinize the workings of government and private business. Citizens need complete, accurate, rigorously reported and analyzed information. And they demand to read and hear a diversity of voices on a much wider political, ethnic and social spectrum than had been allowed in the media in the past. In short, times of democracy such as the present demand greater emphasis on the social responsibility of the news media, even as rights of free expression are increasingly secured.

Yet, the bitter past struggles to win these rights may have had the effect of muddling the goal of achieving the higher quality journalism demanded by democracy. Focus continues

In times of democracy, the news media's role is more complex.

The bitter past struggles to win basic human rights may have muddled the goal of achieving higher quality journalism.

to be on resistance to regulation, censorship and government interference during a time in which those battles have by and large resulted in victory, rather than moving forward to reflecting on the particular social responsibilities of the media. This one-dimensional focus created an atmosphere of absolutism of another sort, in which media sought to expand their rights to write, say and show whatever they wanted, or whatever increased profits and audience. This attitude was carried over from the defensiveness vis-à-vis government in the past and was reinforced by legitimate resistance to all forms of media regulation except self-regulation. Moreover, in some countries attacks on journalists, even murders, most often carried out by non-governmental actors, underlined the need for continuing vigilance for the rights and protections of a free press.

Still, when citizens and civic groups began to clamor for the media to be more “responsible” some media establishments often reacted by going into a defensive crouch as if their constitutional rights were under attack. These general characterizations should not, however, diminish the real and intensive efforts of the past two decades to implement technical and professional improvements, to strengthen professional organizations and create new ones. Professional journalistic ethics became a major focus of these efforts. What has been missing until recently has been real conversation on the connection between media and democracy and the implications of that relationship for a reform movement in Latin American media.

Excerpt from:
**“CONCENTRATION OF MEDIA OWNERSHIP
IN LATIN AMERICA: A MAIN MENACE
TO THE FREEDOM OF EXPRESSION”**

**by Genaro Arriagada, Universidad de las Américas,
and Nina Agrawal**

Ten propositions for discussion

What has been laid out in this paper consists of a series of hypotheses, affirmations, and suggestions that are summarized in the following ten points.

First. Whether propelled by new technologies, markets, the search for economies of scale, advertising, the connection between media and political power, or for whatever other reason, there is a universal trend toward increasing concentration of ownership of the means of communication.

Second. The growing concentration in the ownership of the media in Latin America poses a serious threat to pluralism, freedom of expression, and democracy. When communication and information sources are concentrated in the hands of a few, huge private entities, the media can no longer carry out the tasks of providing comprehensive information, representing a wide public, or exercising oversight; this diminished role of the media debilitates democracy. Additionally, giant media conglomerates can wield excessive political influence, which is yet another threat to democracy.

Third. The central concept of what could be called the “official ideology” of the biggest media corporations in Latin America is erroneous: namely, the idea that the free functioning of the media market ensures freedom of expression, guarantees the greatest competition among editorially diverse media outlets, and grants individuals the real possibility of fulfilling their right to create new media outlets. On the contrary, as has been argued in this essay, the operation of such a market outside of any regulation is leading to a concentration in ownership that constitutes a principal threat to pluralism and the freedom of expression.

Fourth. Another argument sustained by the “official ideology”—the argument that new technologies, especially in the internet and telecommunications industries, will act as a democratizing force in the media—is also false. As we have noted, while the expansion of the media industry into new areas does offer a potentially democratizing force, the fact is that pluralism is not developing under the current system. Concentration of ownership is occurring in these new industries as they did with traditional media industries.

The four points discussed above represent a clear diagnosis-denunciation based on solid arguments and facts. Proposing solutions, however, is a more ambiguous process, and proposals must be taken with the caveat that they are by no means exhaustive. In spite of these difficulties, we offer a series of proposals in the remaining points.

The argument that new technologies will act as a democratizing force is false.

No regulation aimed at limiting concentration can interfere with the freedom of a media outlet to maintain the editorial position of its choosing.

Fifth. Academic centers, universities, parliaments, and civil society need to raise awareness about the concentration of media ownership and its implication for a free press and pluralism. This is a field in which existing scholarship is scarce, especially if one considers the gravity of the situation. On the other hand, highlighting the importance of these issues will not be an easy task, given that the bulk of major Latin American press institutions has decided that this is not a real problem, but rather an “obsession of the sixties” or a “socialist” cause. When the Organization of American States’ Inter-American Commission on Human Rights, the United States, and European Union give serious attention to this issue, Latin American leaders will be more likely to do so as well.

Sixth. Given that freedom of the press is a superior common good, which cannot simply be handed over to unregulated market forces or to the uncertain influences of technological advances, the question of regulation must be discussed and resolved. Regulations should endeavor to preserve the benefits of concentration—of which there are some—while reducing its negative impacts on pluralism and the freedom of expression. Specific policies the state could implement include limiting the number of stations per owner or intervening when one company’s market share becomes too large, as many European national laws stipulate. Where antimonopoly regulations are already in place, enforcing them more vigorously would encourage greater commercial competition, especially in the realm of broadcast television.¹ Also, a Latin America-wide set of minimum regulations, such as the EU’s Television without Frontiers directive, may be appropriate, given the increasingly international character of communications systems in Latin American countries.

Seventh. Related to the sixth point, but important enough to merit separate discussion, is the requirement that no regulation aimed at limiting concentration and its noxious effects can interfere with the freedom of a media outlet to maintain the editorial position of its choosing. A major bloc of principal media outlets will say that such a goal is impossible and that regulations are synonymous with restrictions on press freedom; they will contend that whosoever proposes to regulate, proposes to

¹ Sallie Hughes and Chappell Lawson, “The Barriers to Media Opening in Latin America,” *Political Communication*, 22.1 (2005): 18.

limit freedom of expression. Such an argument is a fallacious one, bolstered by narrow corporate interests. Let us be clear: it would be an extremely grave error to perceive our treatment of this matter as a possible attack on large media corporations.

Eighth. Regulatory agencies, big businesses, and media outlets alike must strive for greater transparency. The authors of the EU Issues paper recommended that the Council of Europe encourage the development of “an up-to-date collection and public access to economic information on providers and operators,” perhaps through the creation of an observatory focusing on media markets and concentration.² Such a database in the EU and in Latin America would provide a concrete basis upon which to determine the extent to which media pluralism is being endangered and would facilitate the enhancement of national regulatory systems. Powerful and important to the public at large as the media are, it is necessary to know who their owners are, what the hierarchy of their corporations is, in which other relevant enterprises they are involved, to what measure of accountability they are held, and what their net profit is. Transparency should also be increased in the realms of broadcast concessions. Investing the authority to award and revoke broadcast concessions to professionally qualified, non-partisan commissions would discourage collusion between the government and business, crony capitalism, and politically motivated retaliation against a media outlet.³

Ninth. Promoting public service broadcasting would revitalize pluralism in the media. Public service broadcasting can serve the needs of underrepresented populations and can especially foster cultural creativity where private large conglomerates might find doing so inconvenient from a profit-based perspective.⁴ British public policy has ensured that the BBC continued to exist; left to the market alone, the BBC would never have survived. Likewise, the European Commission encourages member states to promote public service broadcasting actively through legislative frameworks.⁵ In Chilean television,

It is necessary to know who media owners are, in which other enterprises they are involved, and what their net profit is.

² Information Society and Media Directorate-General of the European Commission, “Media Pluralism—What should be the European Union’s role?” (Issues paper for the Liverpool Audiovisual Conference, Liverpool, U.K., July 2005), 6.

³ Hughes and Lawson, 18.

⁴ http://www.opendemocracy.net/media-publicservice/article_70.jsp.

⁵ Info. Issues paper, 3-4; Kevin, Dierdre, et al, “On the Information of the

Left to the market alone, the BBC would never have survived.

the coexistence of privately and publicly (but not state) owned stations has proven to be a better system than one in which the stations are exclusively privately owned.

Tenth. To alleviate—or at least reduce—the pressure or discrimination created by commercial advertising and to prevent it from further contributing to the concentration of ownership, the best system, or perhaps the only one, is transparency. It would seem reasonable to obligate every public sector company, of all government departments and services, to make public—in its annual report and on its webpage—information about the media in which it advertises, at what price, and for what total amount of money. But if that is done with the State, some might inquire, what reason can there be not to do the same with the private sector, which in Latin America normally contracts between ten and twenty times more advertisements than the State? Others will say—with reason—that there are tens of thousands of private enterprises and such a rule would be impossible to enforce. Governments could get around that objection by limiting the rule to firms that are traded on the Stock Exchange, are owned by foreigners, administer pension funds, or spend a certain sum—specified by the law—on advertising.

citizen in the EU: obligations for the media and the institutions concerning the citizen's right to be fully and objectively informed" (Paper prepared on behalf of the European Parliament by the European Institute for the Media, Dusseldorf, 31 August 2004), <http://www.epra.org/content/english/press/papers/European%20Citizen%20Information%20Project%20Final%20REPORT.pdf>.

Excerpt from:
**“INDIRECT CENSORSHIP,
PUBLIC ADVERTISING AND DIVERSITY”**

by Roberto Saba,
Professor of Constitutional Law and Human Rights
at the University of Buenos Aires and the University of Palermo

**Indirect censorship and “new” ways of
threatening diversity of voices**

Fortunately, the work of activists in improving the situation of freedom of expression in the Americas has been relatively successful. Although the situation is far from ideal, direct threats and direct censorship have decreased. However, new threats rooted in government initiatives have begun to appear. These indirect threats are more subtle, but nevertheless highly efficient.

Governments make decisions and pursue actions that positively or negatively affect freedom of expression. The idea that a government should be neutral and absent in order to achieve greater respect for freedom of expression is a myth rooted in the concept that free speech can take place only if all obstacles originated in state action are removed. However, this idea of negative freedom, in Berlin’s words, is no longer accepted by most people¹. No right can be enjoyed, not even the most classic political and civil rights, without some level of state action.² In order to guarantee freedom of expression, a right often considered a precondition for democracy, states must take action to assure a diversity of voices in the media, and at the very least, state actors should be cautious not to prevent diversity by their actions and decisions. The state has two roles through which it can enhance or weaken the diversity of voices, thus negatively or positively affecting freedom of expression. On the one hand, it performs a regulatory function. On the other, it allocates resources. I would like to call attention to this second role and the possibility of enhancing diversity through the protection of freedom of expression.

¹ Isaiah Berlin, “Dos conceptos de libertad”, en Cuatro ensayos sobre la libertad, Alianza, Universidad, Madrid, 1988, pp. 187-243.

² Abramovich, Víctor y Courtis, Christian, “Hacia la exigibilidad de los derechos económicos sociales y culturales”, en Martín Abregú y Christian Courtis (comps.), La aplicación de los tratados sobre derechos humanos por los tribunales locales, CELS, 1997.

To guarantee
freedom of
expression states
must take action.

Censorship can take place not only through state action, but also through state omission.

Government allocation of resources can either foster or impede freedom of expression and freedom of information. Governments can choose to fund research, public museums, public media, scholarships, subsidies for filmmaking, and so on. All of these resources are limited, and in order to support these initiatives, governments must make hard choices based on constitutional mandates. For example, these resources cannot be denied to those opposing the government or who are critical of it, just because of their position or opinion. The principles behind the Joint Declaration mentioned above, the Court's Opinion CO-5 and the American Convention for human rights provide the legitimate justification necessary to guide these difficult decisions. The allocation of those resources should be grounded in the understanding that freedom of expression is necessary for a robust democracy and diverse public debate. Nobody has an unlimited right to receive those resources—which are indeed scarce—but no one can be deprived of them because of the content of her opinions. To deny these resources to a person because of the content of her thinking is a violation of freedom of expression. Moreover, three specific rights are being violated: the right of the person who is denied access to those resources and is being silenced, the right of freedom of expression of all others who are in a similar situation and who will suffer a chilling effect, and the right to know of the public, who is deprived the ability to access those silenced opinions. The American Convention for Human Rights refers to this form of indirect censorship in article 13.3. According to the notion of freedom of expression as a precondition of democracy, and different from what happens when we understand it only as an individual right, censorship can take place not only through state action (direct censorship), but also through indirect means and state omission. If the government does not establish limits to discretion in the allocation of those scarce resources and provides public officials with complete discretion to allocate them, then the government is affecting freedom of expression by not doing what it is supposed to do.³

³ Christian Courtis y Victor Abramovich, "Hacia la exigibilidad de los derechos económicos, sociales y culturales", en Martín Abregu y Christian Courtis (compiladores) "La aplicación de los derechos humanos por los tribunales locales", CELS, Editorial del Puerto, 1998.

Excerpt from:
“FOR FREEDOM OF THE ‘FERAL BEASTS’”

by **Eduardo Bertoni,**
Due Process of Law Foundation

Laws and administrative regulations on the control of media content and authorization for prior censorship in order to protect certain values

When Venezuela began to debate reform of its radio and television law, the government argued that the objective of the new legislation would be to protect minors and prevent racial hate speech and incitement to violence in the media. The name the final law took was the “Law of Social Responsibility in Radio and Television.”

The Venezuelan law raised a subject that has been almost forgotten in certain circles: the possibility of controlling certain messages based on content. This is possible but in a limited and exceptional way. For instance, the United States Supreme Court case law is comprehensive on this subject: the decisions are clear inasmuch as they call for a strict scrutiny of whether regulations restricting certain messages based on content are compatible with the First Amendment. Restrictions of time, place and manner are not considered incompatible with the First Amendment *per se*. Furthermore, there is constant debate in the United States over Federal Communications Commission (FCC) regulations. These administrative regulations are regularly questioned in court.

In Latin America both the American Convention on Human Rights (Article 13, paragraphs 4 and 5), and the International Convention on the Rights of the Child, serve as the legal foundation for certain regulations on media content. However, I maintain that these documents leave little room for possibilities. The Inter-American Court of Human Rights held that Article 13(4) of the American Convention “establishes an exception to prior censorship, since it allows it in the case of public entertainment, but only in order to regulate access for the moral protection of children and adolescents. In all other cases, any preventive measure implies the impairment of freedom of thought and expression.” Likewise, Article 13(5) considers

There is constant debate over Federal Communications Commission regulations, even in court.

Latin American
content regulations
are often used
to pressure the
independent press.

that hate speech shall be an offense punishable by law when it contains an incitement to “violence or to any other similar illegal action.”

In spite of the fact that international law is limited and cautious in its treatment of possible restrictions on freedom of expression, many of the administrative and legal regulations in Latin America are anachronistic, or their legal principles are vaguely and broadly defined. As a result, problems arise because there is no appropriate control for the weaknesses of the judicial powers in the region.

Other examples, in addition to the one mentioned above, also illustrate the problem. Article 29 of Colombian Law 182/95 establishes that: “Except where arranged in the Constitution and the law, the expression and broadcasting of advertising and program content on television is free and will not be subject to censorship or prior control. However, it can be classified and regulated by the National Television Commission, with the intention of promoting quality, guaranteeing the fulfillment of the aims and principles of the public television service, protecting the family and vulnerable groups, especially children and adolescents, and guaranteeing their harmonic and full development, and encouraging Colombian productions...”

Article 40 of the Peruvian Radio and Television law establishes limitations on the broadcasting of certain content during “family hours,” which last from 6AM to 10PM. Specifically, the law determines that programming broadcast during these hours should avoid violent, obscene, or “other” content that could affect the values of families, children, and adolescents. The law further determines that failure to comply constitutes a serious infringement. Note the room the government leaves itself for classifying “other” content.

In Argentina, the Radio Broadcasting Law stipulates that the content of radio programs should, among other vaguely defined objectives, “contribute to the strengthening of faith and hope in the Argentinean Nation” (Article 14). The law also stipulates that radio services should contribute to the cultural enrichment of the population, and that program content should, among other things, promote respect for state institutions and the preservation of Christian morality (Article 5). The law prohibits programs whose content threatens listeners’ health or physical safety (Article 16).

In conclusion, Latin American regulations on radio and television content, whether administrative or legal, should be revised because they are often used as mechanisms to put pressure on the independent press.

APPENDIX II

MEDIA AND GOVERNANCE: A REFORM AGENDA IN LATIN AMERICA

Inter-American Dialogue – Washington, DC

AGENDA

January 14–15, 2008

Monday, January 14

7:00 p.m. **Welcome Dinner** – Meiwah Restaurant – private balcony

Tuesday, January 15 – SEIU Conference Room, 1800 Massachusetts Avenue, NW

8:30 a.m. Continental Breakfast and Introductions

9:00 – 11:00 **Session I – Media Responsibility and
Quality of Democracy**

Lead-off discussant: John Dinges, Columbia University

Is it enough that the media are free for a democracy to function well, or are there specific ways of acting that help or harm democracy?

What is the responsibility of the state in protecting freedom of expression and ensuring that the news media act responsibly?

If journalism gets special protections because it has a democratic function, and we start measuring what kind of journalism serves democracy best and which kinds are harmful, what is the implication for the media organizations doing the latter? Do the media organizations that don't live up to their responsibility not deserve the protections?

11:00 – 1:00 **Session II – Concentration of Media Ownership**

Lead-off discussant: Genaro Arriagada, Universidad de las Americas

What tensions exist between government regulations of media ownership and press freedom?

What are the advantages and disadvantages to press freedom of laws that limit the number of stations per owner or intervene when one company's market share becomes too large?

How can transparency be increased—both on the part of government authorities and private sector interests—in awarding and revoking broadcast concessions?

1:00 – 2:00 **Lunch**

2:00 – 4:00 **Session III – Indirect Censorship: Government Advertising**

Lead-off discussant: Roberto Saba, Asociación por los Derechos Civiles

Is the use of public advertising to manipulate the press—by helping friends of the government and punishing its opponents—a problem in other Latin American countries, beside Argentina? How does it affect free speech in these countries?

What type of regulations might governments put in place regarding the allocation of public advertising? What criteria should governments use to make these decisions? What kind of controls should be put in place and who should oversee their implementation?

What are the advantages and pitfalls of requiring government departments and publicly traded companies to publicize on their websites information about the media in which they advertise and how much they pay?

4:00 – 5:30 **Session IV – Laws and Regulations Affecting the Media**

Lead-off discussant: Eduardo Bertoní, Due Process of Law Foundation

Are current regulations of radio and television content—for example in Colombia, Peru, Argentina, Venezuela—defensible or do they constitute censorship and impede pluralism?

What can be done to breach the divide that exists between—on the one hand—Latin American legislation, jurisprudence, and political culture and—on the other—the principles laid out in the decisions of inter-American system for the protection of human rights?

How might press freedom groups work to revitalize debate on free speech issues in general, and on the reform of criminal law in particular? Does the United States have a role to play?

5:30 – 6:00 **Concluding Thoughts**

6:00 p.m. **Close**

APPENDIX III

MEDIA AND GOVERNANCE: A REFORM AGENDA IN LATIN AMERICA

Inter-American Dialogue – Washington, DC
January 14–15, 2008

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