

# **The Media Politics of Latin America's Post Left Turn: Legal (Counter-)Reforms in Argentina and Ecuador**

## ***Abstract***

Latin America's 'left turn' has been characterized by ambitious reforms to reshuffle power relations in the region's historically elitist and commercially-driven media systems. Those radical media policies faced course reversals where right-shifting governments followed. This article explores the legacies of 'left turn' media policies by focusing on the counter-reforms to the media regulatory laws in Argentina and Ecuador. Through a process-tracing strategy the article shows that the counter-reforms implied an incomplete restoration of historical media policy patterns. While de-regulations reflected reinstated privileged state access of established interests, operating policy-feedback mechanisms preserved some regulations conferring rights and resources to incorporated stakeholders.

Keywords: MEDIA, GOVERNMENT, POST-LEFT TURN, POLICY LEGACIES, ARGENTINA, ECUADOR

## ***Introduction***

In the midst of so-called media wars, most of Latin America's recent left-turn government experiences, especially those exhibiting populist traits, attempted to radically reshuffle power relations in the media field. This media politics, generally deployed in polarizing contexts, was reflected both in unmediated governmental appeals to the public that questioned the legitimacy of established major media institutions, and in communication

policies that enhanced the role of the state, mobilized alternative actors and pushed ambitious agendas for regulatory reforms. In fact, legal regulatory reforms were sanctioned in Venezuela (2004), Argentina (2009), Bolivia (2011), Ecuador (2013) and Uruguay (2014) (Waisbord, 2013; Kitzberger, 2012; Mauersberger, 2016).

These legal reforms, framed by supporters as part of the struggles to democratize the elitist and commercially dominated media realm, were strongly contested by the mainstream media and opposition forces as authoritarian attempts to curtail freedom of expression and silence critics. Beyond controversies, however, the left turn's legal reforms broke Latin America's historical pattern of elite capture in media policy (Segura and Waisbord, 2016; Hughes and Prado, 2011; Guerrero, 2014). Firstly, they politicized an area that was formerly absent in public debate. Secondly, they incorporated previously marginalized stakeholders to media policy-making. And, thirdly, they increased state presence and market-alternative logics in the communications domain. Despite the internet and the new media, stakes remained high in policies touching upon the airwaves and 'old' media regulation. Over the period, broadcast and 'traditional' media were perceived by political elites as key players for governability and remained central in providing information to the region's mass publics (Hughes and Prado, 2011; Author, 2016).

As this 'Pink Tide' shows signs of exhaustion and there is a political tilt to the right, questions about the potential staying power of media reforms beyond the political contexts that originated them emerge. What will be the surviving legacies to those policies?

In order to evaluate those legacies, this article will focus on the cases of Argentina and Ecuador. These two cases best suit the research questions since both exhibit radical legal reforms in the media realm sanctioned in the context of polarized confrontations

with the established media during the *kirchnerista* and *correista* experiences respectively. In Argentina after the 2015 electoral defeat of Cristina Fernández de Kirchner's successor candidate, the centre-right coalition government headed by Mauricio Macri swiftly issued a series of Executive orders that modified the core media ownership restrictions of the 2009 Audio-visual Services Law. In Ecuador, Lenin Moreno, Rafael Correa's 2017 elected successor, broke with Correa and allied to *anticorreista* conservative forces. In 2018 the government pushed a legislative reform that substantially modified the controversial 2013 Organic Law of Communications. Of the other cases that shifted from left to right, only Uruguay is undergoing a similar counter-reform to its media law at the time of writing. Brazil's case lacked media reforms under the Workers' Party led administrations to be reversed, while in Bolivia the interim government that ousted Evo Morales in 2019 lacked legitimacy and political manoeuvring room to roll-back the reforms.

A process-tracing strategy is applied to reconstruct the counter-reform processes and to assess the causal mechanisms at play in policy change or persistence (Goertz and Mahoney, 2012). The country narratives of normative change are based on the analysis of legal and policy documents, legislative debate transcriptions, press coverage and off-the-record interviews with informants from the media policy communities of Argentina and Ecuador.<sup>1</sup>

Beyond path variations depending on political context, the article finds that there is a common element of restoration of Latin America's historical pattern of state capture, expressed in regained privileged access and policy influence by private commercial and

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<sup>1</sup> For fieldwork details and documentary references see appendix in:

<https://www.dropbox.com/s/eeiab2w13po32ce/Media%20and%20Counter%20Reforms%20in%20Argentina%20and%20Ecuador%20-%20Appendix.docx?dl=0>

corporate interests and in policy changes characterized by state presence and market-alternative logics retrenchment. However, it's an incomplete restoration since important regulations remained compared to the pre-reform status-quo. In particular, those that conferred resources to non-profit actors and reframed communication in terms of rights. To account for these legacies, the article traces two mechanisms of policy feedback that operated in each of the cases. The first involved the capacity of insider groups to mobilize defensively, the second mechanism is related to the cost of dismantling the policies given the increased standing of the normative principles of pluralism and diversity embedded in them.

An evaluation of the ambitious media reform initiatives mobilized in the context of Latin America's left turn appears as crucial for the understanding of the possibilities and constraints faced by media democratization agendas and of the sustainability of state-driven media reforms. In a wider perspective the article engages the emerging debate on what changed and what remained in terms of rights, redistribution and power democratisation as the Pink tide receded in a region plagued by institutional instability (see: Balán, and Montambeault, 2020; Niedzwiecki and Pribble, 2017; Levitsky and Murillo, 2009).

The following section reviews the literature on media regulation policy, especially in Latin America, and it assesses some contributions from the policy-feedback literature that could help to account for the analysed outcomes. The subsequent section presents the left turn media reform laws and reconstructs the respective counter-reform processes in Argentina and Ecuador. The last section discusses both cases comparatively, emphasizing the descriptive and explanatory findings.

### ***Theoretical considerations***

Media policies are, despite their technological constraints, essentially political. In this process, different actors seek to define structures and promote or inhibit certain media behaviours. Communication policies involve different areas. A central one is that of regulations, where public officials display little incentives to antagonize those who are considered to be powerful intermediaries or players in political communication. In contexts where media visibility constitutes a key resource for political-electoral careers, officials tend to seek *quid-pro-quo* relationships with the purported gatekeepers of access to larger audiences. This reputational power allows certain actors and interests to have privileged access, influence, or even capture capacity of media policy processes (Galperin, 2004; Freedman, 2008; Schiffrin, 2017).

Latin America's media systems are characterized by a predominance of private-commercial logics, lacking strong community and public media, and by the world's highest media property and audience concentration rates (Becerra and Mastrini, 2009). Policies were historically defined by colluded dominant private actors and political elites. Beginning in the 1980s, liberalization and transnationalization increased the relative weight of media corporations vis-a-vis governments. Thus, media policies have been increasingly characterized as processes of state capture by instrumentally oriented media elites. This media interest's increased leverage is also defined relationally against an erosion of the mass party's representative capacities in the aftermath of market reforms (Fox and Waibord, 2002; Hallin and Papathanassopoulos, 2002; Guerrero, 2014; Hughes and Prado, 2011; Roberts, 2012).

That pattern in communication policies was interrupted by some of the region's left-turn governments. In the context of a public confrontation with large national media groups, these governments promoted radical sectoral reforms, expanding the game to and forming reformist coalitions with previously excluded actors and demands. The policy

change processes (except Uruguay) occurred amid polarized public confrontation, using populist and anti-populist frames from government and media respectively (Mauersberger, 2016; Segura and Waisbord, 2016).

The replacing governments shared the mainstream media player's polarized antagonism towards the leftist populist reformers. Once in office they pursued agendas to roll-back the media reforms. Such a context of counter-reforms in communication policy raises new questions. To what extent have these changes implied a reversion and a return to the historical pattern of captured media policies? Are there legacies from the left-turn policy reforms that prevent a return to the previous status quo? To advance in this undertheorized scenario, incentives, resources and strategies of the political and sectoral interests involved must be considered.

While since the turn of the century broadcasting and print media have suffered in the region as part of the worldwide decline due to the digital shift, and while the open-fought wars may have eroded some of the trust in the established journalistic institutions, as the reformist Lefts lost office, the established media players controlling those outlets still retained the bulk of the respective markets. This resilience undoubtedly relates to long time processes of audience formation.

In the post-confrontation scenarios, 'normal politics' incentives that lead political players to seek *quid-pro-quo* relations with established media interests return, at least for those who play on the anti-populist side of the polarized scenario. This instrumental logic superimposes with a more or less conscious identification given the shared antagonism.

However, the counter-reforms were not only shaped by forces and mechanisms in the direction of a *statu-quo-ante* restoration. In fact, the two cases show that there was no complete policy reversal. What mechanisms enabled forces that operated in the opposite direction?

To account for the extent, scope and type of the counter-reform initiatives, attention should be paid to the nature of the post-reformist government, its path to power, its political position and identity vis-à-vis the former government, and socio-political relations of force. Communication policies cannot be mechanically reduced to industrial interests and their influence, state actor preferences are shaped and constrained by the relatively autonomous logics of politics.

In turn, to explain the results of counter-reforms, it also seems relevant to focus on the actors, interests and resources mobilized to block or limit the reversal of legal reforms. Alternative media and other subaltern reformist allies retained little capacity to exert pressure with their political allies out of government positions. However, the structural weakness of the reformist interests should not be a-priori considered as static or given. Therefore, to grasp the dynamics that may have played a role in providing the structurally weak interests some leverage, the literature on policy legacies, centred on the mechanisms by which past policies affect the political process, can be useful. As Pierson (1993) points out, public policies are not only outcomes of power relations between the actors, but also inputs, as they reconfigure political, social and economic conditions, create or strengthen the actors they endow with resources, and modify costs and benefits of political strategies.

Guided by this idea of policy legacies, Niedzwiecki and Pribble (2017) show that, in the field of social policy, the region's right turn has not, so far, implied a return to the neoliberal policies of the 1990s. One of the key factors is the support garnered by previous policies that makes their modification costlier.

Important policy feedback mechanisms stylized by the literature are based on the fact that welfare policies generate lock-in effects through mass publics. As mentioned, historical audience inertias seem to have operated for the old incumbents. The reformists'

intended goal to reform the media structure, audiences and the public sphere never materialized. Policy legacies of the present media reforms operated, however, at the level of resources and incentives that shaped the organization and mobilization of interests to block or resist counter-reformist attempts.

The literature on policy feedback allows to derive two useful explanatory arguments.

First, the nature of past policies affects the formation of organized groups and their ability to mobilize (Pierson, 1993). These mechanisms will help identify the forces that operate and explain the incomplete restoration in regulatory legislation. The new policies provide incentives for beneficiaries to mobilize, but may also motivate counter-mobilizations of those who are against them (Pierson, 1993). Interest groups directly influence policies. That has been the case in communication issues in Latin America. However, like Pierson points out, ‘policies also shape interest groups’ since their objectives and their responses, but also their configuration, is modified according to the policies (1993: 598). Thus, both the reforms and the counter-reforms influenced the strategies and configuration of the actors and the type of alliances that they articulated.

At the same time, as Pierson points out, policy feedbacks are more consequential in fields where interest groups are not well installed. This has a double dimension for this article. On one side, it points out the limitations that will be found in communication policies, with laws that go against the historical pattern of accommodation with the big private actors in Latin America. However, these actors were configured by public policies that historically benefited them. The first moment in which certain actors are granted an advantage is key because self-reinforcing logics tend to prevail (Pierson, 1993). On the other side, it indicates the opportunity to set up new interest groups in places that are not



yet structured, such as the non-profit media sector. This is in line with the possibility of policies to activate ‘latent groups’ through legal recognition and resource conferral.

Second, policies are motivated by ideas and normative standards that, in turn, increase their influence and legitimacy through legal sanctioning and policy implementation. That feedback may strengthen certain insiders and raise the removal costs of those policies. As Béland (2010: 580) points out: ‘Ideas and symbolic categories grounded in existing policy legacies can influence legislation outcomes while empowering [...] the actors who draw on these ideas and categories’. Such an ideational legacy has been present in the changing views of freedom of expression and state duties linked to its protection throughout the years of the media regulatory reforms. The shift reflected in the changing regional understandings of freedom of expression throughout the 2000s decade. If by the year 2000, threats to freedom of expression were associated with state interference as in the classic liberal view of individual autonomy, by 2010 jurisprudence within the Inter-American Human Rights Commission and Court (IAHRC) explicitly assimilated an interpretation of a ‘double dimension of freedom of expression’ that added the aim of ‘collective self-determination’. In that vein, states must positively generate conditions for a public, plural and open debate. This paradigm shift implies that private for-profit media are no longer sufficient to guarantee democratic communications and states acquire the duty to foster market alternative forms (Author, 2017). As the studied media reforms had these new understandings embedded, their wider legitimacy operated as a safeguard and aligned certain domestic actors and transnational networks in their defence.

Persistence in the legal texts does not imply that media policies cannot be dismantled in the implementation process. Inhibited in their ability to effect legal reversal, governments of the right-turn seeking policy retrenchment can appeal to mechanisms

such as policy drift (such as de-funding programs) or through the selective implementation of legal obligations (Niedzwiecki and Pribble, 2017; Levitsky and Murillo, 2009).

### ***Reforms and counter-reforms***

#### *Argentina*

Fearing governability problems, during his presidency, Néstor Kirchner (2003-2007) cultivated accommodation with the Clarín Group, given its dominant role in news media markets and opinion formation (Sivak, 2015). However, some social organizations perceived Kirchnerism's reformist policies in other areas, an opportunity for regulatory change in communications (Mauersberger, 2016). The Coalition for Democratic Broadcasting (CDR) was formed in 2004, made up of universities, social movements, alternative media, human rights organizations, which drafted 21 points to modify the broadcasting law sanctioned under the last military regime.

During Nestor Kirchner's term, the government did not attempt reforms while private broadcasters were benefited with an automatic renewal of their licenses. The accommodation with Clarín was further endorsed in 2007 by authorizing the merger between the two largest cable companies that resulted in Clarín controlling 51% of pay TV and 32% broadband markets respectively. These acquired positions added to its dominance in print, television and radio.

The political opportunity for regulatory change arrived during Cristina Fernández de Kirchner's first mandate (2007/2011). In 2008, a conflict with agricultural producers over a hike in export taxes evolved in massive oppositional mobilizations perceived by the government as a threat to its political survival. In this context, as Clarín Group's journalistic outlets modified their editorial line supporting protesters, the government

pointed to the Group as one of the main organizers of that opposition. Coincidentally, the Clarín Group intended to expand into telecommunications by acquiring Telecom, one of the country's two leading companies in fixed and mobile communications. Current regulations did not allow such mergers and the government did not favour the Group's claim (Sivak, 2015).

In the context of this clash the government made an opening towards the organizations of civil society that were demanding media regulatory reforms and drafted a bill on the 21 points proposed by the CDR. The initiative limited media property concentration and divided the broadcasting spectrum into thirds between state, commercial and non-profit media.

The Audio-visual Communication Services Law (LSCA) occupied a preponderant place in the political agenda. Different social and political organizations participated in regional forums, in which different amendments were made. In congress, committee hearings and floor debates were characterized by a wide debate with different stakeholders. During the voting instances in congress, massive street demonstrations took place. The participatory process was unparalleled in recent Argentine history and in the other regional left turn government led media reforms.

The law marked a historical break: the legal regulation was made in an (asymmetric) alliance with social organizations. The Coalition was tied to the human rights movement that had originated with the repressive experience of the last dictatorship (Author, 2017). That lineage explains the demand's compliance with international standards of freedom of expression. In that sense, the freedom of expression rapporteur of the UN and the Inter American Human Rights Commission dependent Rapporteur for freedom of expression (RFE-IAHRC) supported the bill and presented it as a model norm.

Their endorsement helped legitimating the reform. On October 10 2009 the LSCA was sanctioned by congress.

The legislation mainly addressed plurality and diversity through structural regulations aimed at reversing media ownership and audience concentration. Its main policy mechanisms were pay-tv subscriber caps, cross-ownership bans, limits to broadcast and cable television license numbers. In line with the text of the law, the government repealed the crimes of slander. The law additionally created the Federal Audiovisual Communication Services Authority (AFSCA) with a seven-member board, two representatives of the Executive, three corresponding to the three biggest parliamentary groups, and the other two to be appointed by a Federal Audio-visual Communication Council, made up, in turn, of provincial governments, media, universities, trade unions and ethnic minorities. Board members could only be dismissed by the Council itself.

The law garnered the opposition of the Clarín Group, who's assets largely exceeded the stipulated concentration limits, from other media groups, eventually forced to divest as well, and from a large sector of the political opposition.

With the support of parts of the opposition, which included the political force that would take office in 2015, the Clarín Group mobilized two strategies against the new regulation: public de-legitimization and judicial filing.

In institutional spots and through the headlines of its news outlets, the Group claimed that the LSCA did not attack its media properties, but democracy. On the judicial side, the Group obtained several injunctions that blocked the law's complete enforcement for four years. Clarín had questioned the constitutionality of the four articles of the law that would have forced it to divest from a number of its assets. After several rulings that favoured Clarín, the case reached the Supreme Court. In August 2013, the Court

summoned the parties to a public hearing. In an unprecedented televised event, the Group had to publicly defend its case against the law. In October, the Court declared the articles limiting media property as compatible with the constitutionally protected rights to freedom of expression.

Subsequently, the Group would be forced to divide its more profitable assets (broadband and pay-tv services) from its news media outlets that gave it a powerful position in the public sphere. Clarín presented a proposal to adapt, but it was swiftly rejected by the AFSCA who would assume the task to divide the conglomerate itself. A new judicial filing by the Group blocked the ruling and drove to a renewed impasse that lasted until the end of Cristina Kirchner's government. Beyond Clarín, regarding other media conglomerates the law's enforcement was selective and exhibited a trade-off with short-term governability considerations.

However, the LSCA's implementation concerned other aspects. Non-profit media were granted legal recognition and material support. FM radio licenses and digital television for non-profit media were assigned through public tender. A fund was additionally created to finance these alternative media. Several hundred authorizations to operate broadcasting were granted to universities and subnational state organizations and a Public Defender's Office was set up, among other actions (Becerra, 2015).

At the end of 2014, the government presented a telecommunications bill called Digital Argentina Act (DAA). In contrast to the LSCA, it did not stem from mobilized civil society demands. However, the government prioritized once again the Legislative to sanction communication policies. The law benefitted the telecommunications companies by admitting foreign ownership and allowed them to provide pay-television services, a market dominated by Clarín. However, the new regulation mandated providers to share

their physical networks, establishing concentration limits and created a new regulatory agency, providing more protection to small players.

Mauricio Macri's electoral triumph radically changed the scenario. The new government arose from a right-of-centre electoral alliance called 'Cambiamos' and was led by the PRO, mainly composed of cadres recruited from the corporate world, NGO's and pro-market think tanks (Vommaro and Morresi, 2015) mobilized against the statist policies of Kirchnerism. The kirchnerist confrontation with the established media was framed by Cambiamos' as an assault on independent journalism that should cease. However, no specific media policies were announced in advance.

Two weeks after taking office, Macri intervened via decree the two regulatory agencies created by the LSCA and the DAA and displaced their board members at least two years before their terms expired. A week later, on December 30, Macri issued Executive decree number 267/15 that modified the LSCA and DAA in their central core. The policy loosened restrictions on ownership concentration and entailed, in particular, that the Clarín Group would no longer be forced to divest.

The decrees re-established the pattern of closed door deals among the industry's few powerful players. Decree 267/15 dissolved the existing regulatory agencies and created a new one, the National Communications Entity (ENACOM), in whose board the plurality and independence from the Executive branch was reduced. The directory board kept seven members, but four were directly appointed by the Executive and the other three corresponded to the first three legislative minorities. However, the latter's mandate depends on the president's will, since he can remove them anytime without cause. The members immediately appointed by the Executive were reputed for their closeness to the big media. As proof, a former congresswoman who had been vocal in the defence of the

Clarín Group and a fervent opponent of the LSCA, was appointed, first, as one of the directors of ENACOM and, later, as president of the authority.

Several restrictions of the LSCA were relaxed or eliminated. The number of television and radio station licenses a group could hold was increased. The cap on cable television licenses was eliminated. Cross-media ownership restrictions between cable television and broadcast television operators were rendered ineffective. Certain must carry rules for cable providers were removed. Licenses were commodified by allowing private parties to freely buy and sell them. Simultaneously, all commercial audio-visual licenses were automatically renewed for ten years. Last but not least, cable providers were allowed to offer telecommunication and data services. However, the other way round, telephone companies were prevented from offering pay television.

The early decision of the new president, given it was tailored to the group's interests, reaffirmed pre-existing commitments or at least benevolence towards Clarín, and secondly with other private conglomerates. Decree 267 would be later validated in the Chamber of Deputies with votes of the ruling party and parts of the opposition.

These changes in behaviour of public official attests of a (re)turn in the direction of a more captured pattern of media policies. In this context and as a proof of its renewed instrumental power, the Clarín Group was authorized to merge its cable-tv and broadband service company, Cablevisión, with Telecom, the telecommunications company that Clarín was prevented from acquiring during kirchnerist administrations. It is the largest merger in the history of the sector in Latin America: its increase concentration in an unprecedented way, as it adds to the already dominant media conglomerate control over a third of mobile communications, 42% of fixed telephone market, more than half of the national broadband internet provision and 40% of pay television (Becerra, 2018).

As evidenced, the regulatory agenda was driven by the expectations of the national dominant player rather than by a planned policy agenda. The decree and the successive policy debate described affected the dispute over the convergent communication market. Other telecommunications transnational operators in the domestic market, Telefónica and América Móvil, demanded a more levelled playing field.

The coalition that had mobilized behind the LSCA naturally opposed Decree 267/15, but, with the *fait accompli*, its ability to mobilize was diminished. Tensions arose within the coalition after the LSCA was sanctioned. For once because of disagreements with the law's enforcement. However, and most relevantly, their immediate stakes regulated by the LSCA were left untouched. The counter-reforms left intact the articles concerning the rights of alternative actors and the allocation of resources. Spectrum reserves and funding for non-profit media are still on their feet. The government of Cambiemos not only left these dispositions in place, it never questioned the legitimacy of the normative principles that justify the legal provisions. Government officials repeatedly pay lip service to the notions of democratic freedom of expression, pluralism and diversity embedded in the LSCA, despite the fact they do not express the policy preferences of business and their core constituencies.

This gap is compensated by the resort to policy drift and selective policy implementation. There were several areas in which these mechanisms were at play. To cite two examples. Policy drift can be observed as the inflation-eroded funds for non-profit media were delivered with severe delays. Selective implementation is exemplified by the authorities ignoring the enforcement remaining must carry rules as Clarín's pay-television service removed a public children television station from its offer, and denies access to a licensed local community channel in its local service.



One of the few instances of resistance to the legal changes illustrates the point made above on the gap between rhetorical lip-service and policy. At the request of the Public Defender's Office, the IAHR Commission convened a public hearing in Washington in April 2016 asking the Argentinean government to account for the decrees that modified the LSCA. Questioned about the discretionary procedures by the civil society organizations, government officials replied presenting the decrees as transitory, promising to present a reform bill to be debated in Congress. During Marci's term, no bill was submitted to congress. The topic did not recur in the IAHR System agenda. The Argentine defensive alliance could not count on it. Decree 267 remained untouched, even after the first year of the successor centre-left Peronist government that took office in December 2019, with Kirchnerism as coalition partner.

### *Ecuador*

By 2007, Ecuador's small media market was dominated by the commercial sector, with virtually absent public media and a community sector limited by legal and operational obstacles. Because of its scale, the largest groups were controlled by non-media interests, especially financial ones. Six of the eight national broadcasters were owned by banks. Their ideological defence of the market model positioned them antagonistically to Correa's Citizen Revolution. The anti-neoliberal critique of the media that framed the reformist consensus was increased, in Ecuador, as a consequence of the public perception of an instrumental use by the controlling financial interests.

Unlike Argentina, Ecuador's relatively fragmented traditional media market players lack significant links to the converging communications sectors.

The presence in Quito of several international organizations –such as the International Centre for Higher Studies in Communications (CIESPAL)– promoting

communication rights and media democratization agendas, pushed initial articulations in the reform process.

Upon assuming the presidency in 2007, Correa called for a constitutional reform. There began his confrontation with the established media characterized as ‘de facto powers’, co-responsible, together with the *partidocracia* and the economic elites, for ‘the long neoliberal night’. Initially, the Constituent Assembly of 2008 provided a substantial participatory opening. Given the political opportunity, social organizations linked to reformist agendas gathered, despite tensions, around the ‘Communication Forum’. The advocacy effort paid off: the 2008 Constitution defined the state as guarantor of newly defined communication and information rights. It recognized public, private and community sectors as legitimate actors and demanded equal conditions of access to broadcast licenses. In addition to prohibiting ‘communicative monopolies’, it erected a specific restriction on media ownership by financial institutions. Finally, two transitional clauses mandated the sanctioning of an Organic Communication Law (LOC) (Author, 2017b).

However, re-elected under the new constitution, Correa did not await legal reform to redefine power relations in the media field. The constitutional ban obliged the first national bank’s owner to divest the second audience-richest free-to-air channel, while several large-audience outlets controlled by the country’s second bank were seized by the government after a fraudulent bankruptcy. Simultaneously, the government relaunched public radio, created the first national TV-station, acquired several newspapers and a news agency. Besides tensions, frequencies and material/technical assistance to fourteen indigenous nationalities were distributed.

The constitutionally mandated Law was sanctioned with a four-year delay, in 2013, due to heterogeneities in the governing coalition and the reform movement. Initially

the government party, Alianza País (AP), did not count on a legislative majority. In contrast to Argentina, the Executive presented its own draft drawn up behind closed doors. This move confused the reformist coalition. The inclusion of content regulations involving extra-judicial sanctions, plus other ambiguities alienated progressive allies. Simultaneously, structural diversification devices were resisted by AP members linked to local *caudillos* with media interests. In 2009, an attempt was made to break the deadlock by means of assenting to adjust the issues concerning freedom of expression to IAHR System standards. However, Correa spurned the agreement.

By 2011, Correa's decision to criminally sue a columnist and the editor of the newspaper *El Universo* because of an op-ed that called the president a 'dictator' responsible for 'crimes against humanity', made it clear that several *correístas* share heterodox beliefs around freedom of expression regulation.

The mainstream media framed the legal reform as part of the government's purpose to muzzle journalism. Correa contested this frame in his regular media interventions calling to put an end to the excesses, abuses and privileges of the press. This polarization between political and media elites narrowed the space for public debate and the mobilization of the reformist movement.

In 2013 Correa was re-elected in a landslide election. AP obtained 100 out of 137 seats in the National Assembly. The LOC was finally approved that year with 108 votes. On the one hand, the new regulatory framework granted legal sanctioning to the media rights and democratization agenda present in the 2008 Constitution. On the other, it contained controversial devices, reflecting concerns in Correa's entourage originated in the immediacy of the confrontation with the mainstream media.

To enact the constitutional mandate of equal spectrum allocation, the law established a partition in thirds for public/state, private-commercial and community

media respectively. Limits on license accumulation were intended to retrain ownership concentration. Affirmative action mechanisms (preferential credit, tax exemptions, technical training, advertising distribution) pointed to strengthen community and regional media. The law further mandated programming quotas in the languages of recognized indigenous and afro-descendent nationalities and to protect domestic Ecuadorian music and advertising industry.

These provisions aimed at changing the balance in the media-system ownership structure, limiting the commercial logic, and redressing the elitist bias of the media coexisted, however, with a series of controversial regulations. The scope of the law includes the printed press, broadcasting, subscription based audio-visual services and media organization's websites. All subjected to restrictions and obligations potentially compromising democratic freedom of expression. The law created two regulatory agencies, the Council for the Regulation and Development of Information and Communication (CORDICOM) and the Superintendence of Information and Communication (SUPERCOM), both strongly dependent on the Executive, with vaguely defined and partially overlapping jurisdictions and sanctioning powers on infractions on failures in quality, truth, context and sufficiency of published/aired content of public interest. The final draft further included the interdiction of an ill-defined action of 'media lynching'.

The law's ambivalence left the reformist movement in an awkward position. Although they defended the law's provisions regarding frequency redistribution and affirmative actions, the contested content regulations turned full endorsement, a burden. The RFE-IACHR and other international organizations issued critical documents demanding the amendment and adjustment of content regulations to international freedom of expression standards. However, Correa publicly disqualified these criticisms and

asserted his heterodox stance on freedom of expression as a problem of redressing the *abuses* of the Ecuadorian press elites, involved in seditious and praetorian behaviour (Author, 2017b).

Upon assuming the presidency in May 2017, Lenin Moreno promised a legal reform that would adapt the LOC to *international freedom of expression standards*. Shortly after taking office, he publicly received the main media executives, signalling the end of his predecessor's confrontation. The gesture, among others, marked the beginning of his government's break with Correa.

The counter-reformist process took place within a schismatic handing over in AP, in which Correa and his followers left the party and went to the opposition. Since the referendum in February 2018, which left Correa with no chance of re-election, the government leaned on the former opposition parties in the legislative –the Social-Christian Party (PSC) and Guillermo Lasso's party (CREO), mainly– while progressively replacing old guard AP cadres in government by members of the business elite and *anticorreistas*, especially from the indigenous movement and the Left, through which Moreno tried to maintain a progressive profile (Wolff, 2018; Ramírez, 2018b).

In this context, the LOC stood out as an emblem of *correísta* authoritarianism against which the new government sought to redefine itself politically. This frame was embedded in an anti-populist narrative –welcomed by the mainstream media– that related spending and corruption to the muzzling of the press (Labarthe and Saint-Upéry, 2017; Ramírez, 2018a).

But the counter-reformist promise was not only an opening towards the right and the commercial media. As seen, the uneasiness with heterodox content regulation formed a broader negative-consensus (including progressives) around the *coercive excesses* of

the LOC.<sup>2</sup> The *tout-court* defence of the law was limited to *correísta* hardliners who clung to deeming the law's content-control devices a necessary antidote against the abuses in media power.

To sustain the process, the government played on the constitutional status of the communications realm as requiring regulation through an *Organic Law*. On one side, it allowed to neutralize the demands from business sectors and the political right to repeal the complete law. On the other, the reference to the 2008 Constitution worked to retain support from progressive and indigenous-movement sectors. Moreno framed the reform initiative as a needed amendment to comply with international standards and therefore publicly invited the RFE-IAHRC and the UN rapporteur to monitor the process. Involving the rapporteurs, given their previous critical stances on the LOC, also served to raise the reform's public profile.

In a statement after an early country-visit, the RFE-IAHRC characterized Ecuador as in a 'transition from authoritarianism' and the LOC as a key-policy oriented 'to put the press under official control'. The statement welcomed the initiative to eliminate the ill-defined figures and the 'disproportionate sanctions regime'. It also called to uphold and improve the recognition of the community sector, the strengthening of public media and the restrictions to media ownership concentration. Throughout the following reform-stages, the rapporteur issued critiques, approvals and further recommendations to the draft.

The initial reformist focus on content control to redress authoritarian elements gave advantaged actors mobilizing demands to limit discretionary state power (Segura and Waisbord, 2016). Fundamedios, a NGO linked to the traditional press, shaped in the

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<sup>2</sup> Between 2013 and 2017, SUPERCOM processed 859 cases, of which 527 ended in sanctions.

heat of the confrontation with Correa and experienced in resorting to the IAHR System, led the offensive coalition (de la Torre and Ortiz, 2016). Under the banner of ‘truth, memory and reparation for the victims of freedom of expression’, the coalition managed to contain supporters of a complete repeal such as the conservative Newspapers Editors Association (AEDEP) and the National Union of Journalists (UNP).

Organizations linked to demands to curb market inequalities and concentration in the media realm, which had influenced the constitutional reform and (reluctantly) supported the LOC, remained on the defensive. While publicly adhering to the elimination of the contested content control devices, they mobilized to defend frequency redistribution and affirmative action mechanisms in the legislation.

In May 2018, the Executive submitted a bill to reform the LOC to the National Assembly. The proposal, focused on the parts concerning content regulation, eliminated the SUPERCOM, the figure of ‘media lynching’ and the definition of communication as a public service, among other changes.

The legislative process was characterized by a first phase of open and participative debate. Throughout the Committee hearings and the first floor debate, a large number of representatives from media, journalism, academia, officials, IO’s among other stakeholders exposed their demands and views. News coverage and a host of discussion forums sponsored by government and civil society amplified the debates. This mobilization of competing stakeholders resulted in a reform agenda that broadened beyond the Executive’s concerns with content regulation towards issues touching upon rights and resources in the media sphere.

After the first floor debate, a more controverted second phase characterized by a complex process of back and forth movements, driven by diverse pressures –ranging from backroom deals to street mobilizations- from the interests at stake, commenced. The

phase includes the eve of the legislative approval of the reform with the sole opposition of *Correísta* representatives in December 2018, a presidential partial veto including 26 amendments and, finally, a reversal, by a legislative supermajority, of several amendments in February 2019.

The outcome and instances of that process provide clues to the degrees of state retrenchment, policy (re)capture and/or policy legacies and defensive mobilizations.

Interested in showcasing the LOC's reform, the government pressured to avoid the delays implicated by the competing stakeholder requests. However, and despite its attempts to clear the way by promising a separate cultural promotion policy, it had to face definitions regarding sensitive distributive issues such as spectrum allocations, licenses, affirmative actions, interculturality and quota devices, among others.

During the phase of open public debate, broadcast spectrum reserves were maintained, while existing affirmative actions for non-commercial media and indigenous representation in governance bodies were expanded. It was from behind-the-scenes negotiations driving to last minute changes of the voted draft, that conflicts over issues of rights and resources in the media sphere surfaced.

Broadcast spectrum reserves for community media were rephrased so that they could obtain up to 34%, while public and private sector reserves were unified (66%) de-facto widening the room available for commercial media. Despite the public reactions by members of the defensive coalition, including the government-allied indigenous movement (CONAIE) rejecting the changes as due to pressures of the economic power groups, the innovation was upheld by both congress and the Executive, the latter adding that the public media should not exceed 10% of awarded frequencies, exacerbating the anger of the community media sector.



The legislative debate had reopened, in turn, controversies over past irregularities in frequency allocations, a constant in Ecuadorian history. In the context of accusations of irregular allocations benefitting certain commercial media interests, the Ecuadorian Association of Broadcasters (AER) insistently lobbied the assembly demanding an automatic renewal of expired frequencies. While initially neglected, the final draft contained a clause allowing a ‘once-only’ automatic renewal of all broadcasting licenses. However, constrained by the international rapporteurships and public criticisms, the president vetoed the clause and added tendering procedures for awarding frequencies to the bill.

In contrast, while upholding last minute reductions of cultural-industries protective and interculturality programming quotas, the Executive’s veto eliminated the specification of affirmative actions (tax exemptions, training, credit) defensively mobilizing the community media sector. In addition, alleging incompatibility with commitments with the Pacific Alliance and other trade agreements, the veto eliminated the ban on foreign participation in the advertising industry. This decision produced an unusual revolt of audio-visual producers. The sector mobilized in a sustained protest campaign and successfully exerted pressure on representatives.

Both the alternative media’s and audio-visual producers’ pressure on legislators resulted in a congressional super-majority were even right-wing congresspersons and the president’s party representatives aligned with Correístas to reject the presidential veto’s changes touching upon their positions.

In the end, the reformed LOC substantially modified content regulations and deontological aspects, almost eliminating the controverted non-judicial sanctions. The government celebrated the removal of a repressive framework as a recovery of the rule of law by removing the obstacles to freedom of expression.

But the reformist process spilled into other regulatory domains. During the reform, a government that shifted further to the right and that appointed a conservative radio-entrepreneur from Guayaquil and AER directive as new vice-president, became increasingly permeable to established business interests in the policy formation process.

At the same time, defensive interests mobilized with partial success in containing policy reversal. Normative standards scrutinized by IO's involved in the process were relatively effective in restraining policy setbacks.

### *Discussion*

Argentina and Ecuador followed divergent counter-reform paths. Argentina's government opted to issue decrees pointed specifically to remove ownership concentration rules aimed at unblocking the dominant actor's expansion strategies. Ecuador's government launched a parliamentary legal reform involving a high profile public debate that broadened the reform agenda beyond the Executive's original aim.

Differences in the context of emergence of both post left turn governments and in the nature of the laws explain the divergent counter-reform strategies. While in Argentina Cambiemos defeated Kirchnerism as an anti-populist and opposition option, the Ecuadorian transition occurred through a schism within the populist party. In this context, the heterodox content regulations of the LOC, widely questioned and identified by Correa's critics as emblems of his authoritarianism, motivated Moreno to seek a high profile reform to signalize his break and to reach out to new allies. By contrast, in Argentina, there was neither a need to demonstrate its differential identity from the former administration nor did the LSCA contain controversial devices regarding freedom of expression. In fact, the LSCA stemmed originally from a civil society initiative, evolved from a wide public and parliamentary debate, was endorsed by the international

rapporteurs and finally stood a constitutionality test in the Supreme Court. The preceding observations echo Pierson's (1993) claim about policy's characteristics having consequences for their own survival, since they not only provide incentives to those who defend them, but also eventually feed counter-mobilizations.

Beyond these divergent paths, both cases exhibit important common features. The most salient is a restoration, which implies a return to Latin America's historical pattern of elite-captured media policies. This restoration can be observed at two levels: in policy making style and in normative content.

Concerning policy making style, post-confrontation policy implies that the government-media relationship goes back to a logic of accommodation and the resurrection of former forms of captured policies. Despite the digital shift, old informal perceptions of traditional big media players as key factors for governability seem to be operating again. This logic operates not only with government actors, but with legislators as well, as both cases testify. In Ecuador a public legislative instance broadened interest access. However, it coexisted with instances of closed door definitions where access asymmetries favoured private commercial interests. In Argentina, counter-reform by decree took place without public scrutiny and only twenty days after taking office, which suggests that governmental motivation was limited to accommodate Clarín's corporate interest. While in Argentina policy capture responds to an instrumental demand of the dominant media conglomerate, Ecuador's more dispersed and fragmented media field implied that no particular media interest was targeted. The governmental aim was to accommodate the big media as a whole.

Concerning normative content, the resulting re-regulations tended to favour (certain) commercial media interests and implied a retrenchment of the state and of market-alternative logics from media regulation. Simultaneously, with counter-reforms,

regulatory agencies' design backslided towards increased governmental control. In Argentina, the 267 decree eased media conglomerate concentration and convergent markets expansion by relaxing ownership concentration clauses, changing cable-tv status from audio-visual to telecommunication service and by commodifying audio-visual licenses. In Ecuador, while content regulation was the counter-reform's core and concentration rules were not touched (since none of the player's stakes or ambitions conflicted with them), the final outcome enlarged spectrum for the private commercial sector and weakened affirmative actions for market alternative media.

However, restoration was incomplete. Despite the counter-reforms, important changes remained compared to the pre-reform status-quo. In fact, only 7 out of 166 articles in the LSCA were modified by decree. Out of 119 articles of the LOC, 64 suffered changes and 15 were eliminated. The reforms were not simply abolished, attesting the existence of a tacit recognition of a need of democratic regulation in the media sphere. More concretely, legalization of non-profit or community broadcasters, an expanded role of the state as public broadcaster, spectrum reserves, relatively more diverse political representation in regulatory agencies, less discretionary license allocation mechanisms, affirmative actions, quota policies, production protective devices and an audience ombudsman constitute the main policy legacies.

In sum, while there is a return to the old pattern of accommodation with the established media sector, there is no complete restoration since the interests incorporated by the reform partially maintained their positions. What factors account for these outcomes? Beyond the fact that none of the post-left-turn governments possessed clear cut and disciplined legislative majorities that could have aligned behind a complete repeal agenda of leftist media reforms, the reconstruction of both counter-reform processes identified several policy feedback mechanisms playing a relevant explanatory role.

The first mechanism concerns Pierson's (1993) classical claim that policies shape interest groups by distributing resources or spoils that motivate beneficiaries to mobilize in favour of their maintenance and expansion. Along Ecuador's prolonged legislative debate the alternative media representatives mobilised defensively and an unexpected collective action by the protected audio-visual sector managed to keep the legal prerogatives they had conquered with the LOC. In Argentina, the Macri government avoided touching the rights and resources conveyed to the non-profit sector in the legal text, seemingly anticipating the media movement's collective action potential exhibited during the reform period. However, beyond the survival of the legal text, the government resorted to policy drift (such as budget underspending) and selective implementation (such as not enforcing must-carry rules for cable-tv providers) to dismantle policy.

A second mechanism focuses on the legacies derived from the ideas embedded in policies. These ideas can have the effect of empowering actors who draw on them while they might raise the cost of the dismantling of the policies grounded on such principles (Béland, 2010). Such an ideational legacy seems to have been present in the cases considered. The legal reforms of the left turn mobilised and reflected a shift in the regional understanding of freedom of expression and the corresponding regulatory duties of the state to guarantee it. The change constituted a modest ideological victory of the need for pluralism and diversity of actors.

The legitimacy and constraining role of the prevailing ideas on freedom of expression can be seen in the role played by the RFE-IAHRC in both processes. In Ecuador, the public interventions of the rapporteur helped the defensive interests gain access and public standing and raised the cost for decision makers of ignoring their demands. In Argentina, the clue to the existence of the normative constraint can be detected at the level of governmental rhetoric. In April 2016, a coalition of civil society

questioned the decrees at the IAHR Commission yearly sessions. Since then the government responded promising to promote a new open regulatory debate based on the principles of pluralism and voice diversity. Government officials have repeatedly paid lip service to the updated principles of freedom of expression, a commitment that has not translated into positive policy improvements during its term.

In sum, the legacies that limited restoration are related to policy feedback mechanisms that operated through the formation or mobilization of interest groups and through the persistence of normative principles embedded and brought to the fore by media regulatory reforms. However, media policies are intended to affect mass publics or audiences. What does the fact of the absence of policy feedback mechanisms that operate through the mass public tell about the presently studied policies? In neither case were there observable sustained mobilizations beyond the actors already directly involved in the issues. Following the literature on policy legacies, influential policies providing incentives at the level of mass publics, create lock-in effects in ways that inhibit exiting a policy path (Pierson, 1993; Béland, 2010). For sure, it is doubtful that audience habits produce commitments as strong as those described for welfare politics. Time, lacking and inconsistent implementation, cultural inertias<sup>3</sup> and established media resistance might account for the limited entrenchment of these policies to defy historical legacies.

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<sup>3</sup> Pierson (1993) holds that policies adopted at formative moments tend to be more consequential. The historical institutional approach in comparative media system studies has shown that media systems structures are sticky and long term historical processes (Hallin and Mancini 2004).

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