

# Regulatory Reform in the Broadcasting Industries of Brazil and Argentina in the 1990s

By Hernan Galperin

*Regulatory reform has changed the organization of the broadcasting industry in Brazil and Argentina in the past decade. Although responding to a similar set of pressures, the pace, instruments, and character of reforms have been different in the 2 countries, resulting in media markets of diverse natures. This study argues that these different policy outcomes in the reform of broadcasting regulation in Brazil and Argentina reflect variations in three factors: the nature of the political system, the structure of the existing broadcasting industry, and the ideological legacy in the regulation of communication industries. The case of regulatory reform in the broadcasting industry illustrates different policy patterns in the restructuring of state-industry relations in communications and information technology industries in the 2 neighboring countries.*

Among the sweeping changes in the structure and regulation of Latin American industries in the 1990s, those in communication industries have been some of the most dramatic. In less than a decade, the landscape has shifted from closed markets in which a few providers, either state-owned or tightly controlled by governments, operated with limited (e.g., TV broadcasting) or no competition (e.g., telecommunications), to a relatively open, internationalized, competitive market structure.

The broadcasting industries of Argentina and Brazil bear witness to these transformations. A decade ago, both were characterized by an oligopolistic market structure with tight state control on the number of channels. Licenses were scarce and frequently allocated in return for political favors (Fox, 1988). Content regulations were loosely enforced in exchange for broadcasters' support for the existing political regime. A nationalist orientation pervaded industry regulation, reflected in national programming quotas and the prohibition on foreign ownership of

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media firms. Today, the picture is radically different. New channels have mushroomed, particularly in the pay-TV segment, while economic criteria increasingly drive new license allocations. Content regulation has waned and, although market concentration remains high in certain subsectors, new entrants are challenging the dominant position of established broadcasters. In brief, the nationalist model of TV has given way to a competitive, internationalized market environment. The broadcasting system of yesterday, a tripartite entente among the political (and military) elite, a handful of broadcasters, and national advertisers, has been eroded by technological, political, and economic transformations, and a new equilibrium between the different industry segments and the state is currently in the making.

Within this context, this study focuses on the reforms to the rules of the game in the broadcasting industry in Brazil and Argentina in the past decade. These reforms have been typically described as part of a larger policy trend toward market liberalization and privatization that swept Latin America in the 1990s, overhauling its entire economic and social structure (e.g., de Lima, 1998). Although I do not challenge this large brush-stroke characterization, I contend that it is overly simplistic and falls short in at least two respects. First, it fails to provide an understanding of the reaccommodation of state-industry relations peculiar to the broadcasting sector. Second, it also fails to account for the different ways in which Brazil and Argentina have responded to a similar set of problems, and the different policy instruments through which regulatory reform has been implemented in the two countries.

The two main arguments of this study stem from this critique. The first is that regulatory reform in the broadcasting industry of Brazil and Argentina in the past decade is best described not as straightforward deregulation, but rather as a rearrangement of state-industry relations in the context of market-oriented state reform programs. Needless to say, this rearrangement has included numerous elements of what is generally characterized as deregulation (i.e., separation of regulation and operation, privatization, etc.). However, it also has included increased public oversight over certain commercial practices, and over subsectors of the industry that lacked regulation a decade or so ago.

The second argument is that, though facing a similar set of pressures to reform the rules of the game in the broadcasting sector and in the context of similar market-oriented state reform programs, Brazil and Argentina have implemented reforms differently and at diverging paces. Whereas Argentina largely has dismantled the regulatory regime of yesterday in a rapid, executive-driven process, Brazil has engaged in a gradual process of not simply dismantling but rather renewing state regulatory capabilities through the modernization of the legal framework and the creation of an independent regulatory body for the most dynamic segments of the industry. I contend that these different policy outcomes in the reform of broadcasting regulation reflect variations in three institutional factors: the nature of the political system, the structure of the industry, and the ideological legacy in the regulation of communication industries. These factors, I will argue, account for the differences in the implementation of broadcasting reform and in the organization and dynamics of the new broadcasting industry that is emerging from these transformations.

The paper presents a theoretical discussion of alternative frameworks for comparative policy analysis and introduces the institutional perspective that guides the present study; reviews and compares changes in the organization and regulation of the broadcasting industry in Argentina and Brazil; and discusses the validity of the analysis for other case studies and the theoretical implications of the findings for communication policy research.

### **Explaining Choices in Communications Policy**

Communication scholars have long attempted to identify the factors that explain outcomes in broadcasting and telecommunications policy (Dutton, 1992). These efforts have resulted in a number of models that attempt to map the process of decision-making and explain outcomes by identifying the nature of the interests at stake, the strength of the players involved, and the rules governing the policy-making game (e.g., Krasnow & Longley, 1973). These models have been applied to a number of case studies in the U.S. context, from telecommunications reform (Brock, 1994) to the transition to digital TV (Dupagne, 1998). The problem with the use of such models in comparative policy studies is that they tend to be static across place and time. In other words, most of these models are country-specific, taking for granted a certain basic political structure (e.g., a democratic political system with effective separation of powers), and the stability of social actors and institutions (i.e., political parties, the electoral system, regulatory bodies, etc.) across time.

A number of comparative policy scholars have recently attempted to move beyond static models, recognizing that "the rules governing political conflict differ across political systems, over time, and within different institutional settings" (Dutton, 1992, p. 309). The approach taken is based on the so-called "new institutionalism" perspective, a loosely used label that refers to a broad range of studies bound together by their emphasis on institutional factors to explain policy choices and economic outcomes across nations (North, 1990; Steinmo, Thelen, & Longstreth, 1992). Whereas alternative policy approaches stress cultural factors (Derthick & Quirk, 1985), interest group pressure (Hills, 1986), or the aggregation of choices by self-interested individuals (Moe, 1997), institutional analysis focuses on the organizations and rules (formal and informal) that structure the relations between social actors and the state and that define policy-making procedures in different polities (Hall, 1986; March & Olsen, 1984).

This perspective overcomes country specificity by focusing on the character of institutions that govern policy formation and the representation of interests, internalizing cross-country differences as variables that induce particular kinds of industry behavior and "stack the deck" in favor of certain policy choices (Noll & Rosenbluth, 1995). It also improves on static models by focusing on processes of "institutional path dependency" (Zysman, 1994), whereby feedback mechanisms reinforce existing policy paths and preclude once-possible policy alternatives (Krasner, 1989). Institutional analysis has been used to explain cross-country variations across a broad range of issues, from environmental (Vogel, 1986) to macroeconomic policy (Hall, 1986; Gourevitch, 1986). In the communications field, it

has recently been applied to a variety of topics, from privatization of PTT operators (Levy & Spiller, 1996) to pricing in telecommunications services (Cherry, 1999) to regulation of pay-TV services (Cowie & Marsden, 1999).

Despite the consistency in the general approach, there is no agreement in the new institutionalism literature in terms of a definitive list of factors that would explain policy outcomes across nations and issues. This study builds on Vogel's work on regulatory reform in telecommunications and financial services in the UK and Japan (Vogel, 1996). Vogel defines regulatory regimes as historically specific configurations of policies and institutions that structure the relationship between social interests, the state, and economic actors (1996, p. 21). As such, they encompass both ideas and institutions. Ideas refer to beliefs about the proper scope, goals, and instruments of government intervention in any given sector and generally fall along the lines of broad social doctrines such as liberalism or nationalism. They constrain policy choices by defining the understanding of the issues at stake and the parameters of legitimate state action. The institutions of a regulatory regime are the "rules of the game" that govern policy making and structure the relation between the state and social actors. They comprise both formal arrangements (e.g., the electoral system, decision-making procedures, the division of responsibilities between different state actors) as well as more informal—and thus more difficult to grasp—but equally well-established policy patterns that affect industry behavior (e.g., the allocation of broadcasting licenses in exchange for political favors). The ideas and institutions of a regulatory regime are tightly intertwined. Although ideas set the policy agenda, institutions constrain their implementation by defining the policy instruments available, as well as the social, political, and economic cost of the alternative policy choices.

From this framework I derive the three factors used in this study to account for the different paths taken to reform the broadcasting industry in Brazil and Argentina in the past decade. The first factor, the nature of the political system, refers to the organization of the electoral system and the distribution of endowments between the executive, the legislative, and the judiciary. The second factor, the industry structure, refers to the organization of the different interest groups within the broadcasting sector. The third factor, the ideological legacy, refers to the dominant ideas about the proper role of the state in the regulation and promotion of communication and information technology industries. It is important to note that these factors are intended to account not for the sources of pressure to implement broadcasting reform, but rather for the different way in which Brazil and Argentina have responded to such pressures. Direct international pressure for opening market entry, the development of new transmission technologies that undermined the existing regulatory structure, and the fiscal needs of reform-minded policy makers have been among the major sources of pressure for reforming broadcasting regulation in both countries (Fox, 1988; de Lima, 1998). As we shall see, though, such forces have been, by and large, common to Brazil and Argentina, as well as other Latin American countries engaged in large-scale state reform programs during the 1990s (e.g., Mexico). What this study sets out to explain is why policy makers in these two countries, faced with a similar set of problems, have chosen to enact reforms of different nature and at different paces. For example,

why were similar pressures by foreign firms and governments to relax ownership restrictions in the broadcasting sector successful in Argentina but unsuccessful in Brazil? As we shall see, the answer lies in the nature of the political system, the organization of industrial interests, and the ideological “lenses” through which policy makers in Brazil and Argentina have perceived and responded to these pressures for reform. The first necessary step in the analysis is a brief outline of the changes in the regulation of the broadcasting industry in Argentina and Brazil in the past decade, presented in the next section.

### **Broadcasting Reform in Brazil and Argentina in the 1990s**

The structure of the TV industry in Brazil and Argentina before the sweeping changes of the 1990s could be described as a tripartite entente among the political (and military) elite, a handful of broadcasters with close ties to this elite, and large, national advertisers. In both countries, the regulatory regimes had a strong nationalistic orientation, implemented through pervasive limits on foreign investments as well as domestic programming quotas. Licensing followed strict political criteria, while public interest requirements were loosely enforced, in return for which broadcasters guaranteed governments favorable news coverage and broad political support (Fox, 1988, Landi, 1987). Cross-ownership limitations and restrictions on the functioning of broadcasting networks were also characteristic, as a way for the state to keep the power of media corporations at bay. The state typically provided most of the funding for the development of the necessary infrastructure through investments by the military or the state-owned telecommunications operator (César Ramos, 1997).

By the mid-1980s, a number of factors would bring into question the regime described above, generating pressures for revamping the rules of the game within the broadcasting industry. In broad terms, these factors can be grouped into (a) technological changes and (b) political-economic changes. Innovations in the processing and transmission of electronic media created pressures for opening or expanding new markets (i.e., cable and satellite-to-home TV), questioning the well-established distribution of economic and political resources among the old entente. These innovations would also transform the underlying infrastructure of the broadcasting industry, rendering several regulatory instruments (e.g., programming quotas, restrictions on the functioning of networks) either too costly to enforce or simply obsolete.<sup>1</sup> Democratization and the implementation of state reform programs were also important sources of pressure for reform in the broadcasting industry (Murillo, 1998). New coalitions of interests were formed, and these coalitions (in which international actors played a critical role) were eager to level the playing field and transform the existing political allegiances. Reform-minded policy makers regarded broadcasting less as an instrument for political mobilization than as a possible source of new fiscal revenues through privatization

<sup>1</sup> This process is certainly not unique to the cases of Brazil or Argentina. Noam (1996) provides a good analysis in a larger context.

and liberalization of market entry. In short, by the end of the 1980s the combination of technological and political-economic changes had brought into question the status quo in the broadcasting industries of Argentina and Brazil. However, each country has responded in unique ways to this common set of pressures.

### *The Argentine Route to Reform*

Argentina's broadcasting industry was on the verge of collapse when the country regained democracy in 1983. Public ownership of commercial stations had left the system in virtual bankruptcy,<sup>2</sup> and regulation was exercised by three different agencies—the Comité Federal de Radiodifusión (Federal Broadcasting Committee) or COMFER, the Secretaría de Comunicaciones (Secretary of Communications), and the Secretaría de Información Pública (Secretary of Public Information)—with overlapping mandates, dated legislation, and scarce resources (Landi, 1987). The system was crying out for reform, but disagreements over the direction of such reforms and more pressing concerns pushed the issue onto the back burner for a number of years. Despite failed attempts at revising the 1980 Broadcasting Law sanctioned by the military regime, the only significant reform enacted during President Alfonsín's tenure (1983–1989) was a presidential decree (No. 1613/86) liberalizing satellite transmissions. This decision allowed for a large increase in the number of channels available. First, cable operators were able to downlink regional and international cable networks.<sup>3</sup> Second, the economies of scale created by satellite delivery of programming permitted the creation of several local segmented channels.<sup>4</sup> Seemingly a minor event, the end of state monopoly in satellite transmissions in 1986 was the first step towards a new industry structure. Not until 1989, however, with the sweeping changes brought about by President Menem's election, would the broadcasting industry undergo substantial transformations.

Three elements define the character of broadcasting reform in Argentina since 1989: liberalization of market entry, the loosening of ownership and content regulations, and the lack of public accountability in the reform process. The most important changes were introduced by the Law of State Reform (23.696/89), an all-encompassing law passed in 1989 that overhauled state-industry relations across the economy. With one eye on curbing public deficit and the other on gaining the support of established media corporations, this law thoroughly transformed the structure of ownership in the broadcasting sector. First, it mandated the privatization of all commercial stations under state control, carried out shortly after the bill was passed. Second, it eliminated a number of ownership restrictions, most notably lifting the ban on newspaper publishers from entry into broadcasting (a restriction long questioned, and often violated, by the publishers). The signing of an invest-

<sup>2</sup> As in most Latin American countries, the TV industry of Argentina emerged following the American model of commercial broadcasting (Fox, 1988). However, in 1973 the recently elected Peronist government, informed by a strong nationalistic ideology, proceeded to nationalize the three main private networks and their affiliated programmers (Noguer, 1985).

<sup>3</sup> The first two international cable networks offered were ESPN and CNN in March 1989.

<sup>4</sup> The first of which was Premier, launched by cable operator VCC in 1987.

ment treaty with the United States in 1994 lifted the ban on foreign ownership of media companies, bringing an end to over 4 decades of nationalism in broadcasting policy.

Content regulations were loosened through a number of steps. Presidential decree 1771/91, issued in 1991, lifted the ban on the formation of national broadcasting networks, although restricting network time to 50% of affiliates' programming. The same decree also eliminated two restrictions that were long questioned, and frequently violated, by broadcasters: the 12-minute per hour cap on advertising and the ban on product placement during regular programming. The national programming quota was reduced from 50% to 40%, though the decree introduced a new in-house production requirement of 5% to 10% of total programming (depending on the total broadcasting time of the station) and extended the 40% domestic quota to cable-TV and DBS operators. Regulations on advertising were further loosened by Ministerial Resolution 1226/93, which lifted the ban on foreign-produced spots.

The abundance of presidential decrees and ministerial resolutions highlights the way in which regulatory reform has proceeded in Argentina. Apart from the privatizations, none of the major reforms were introduced through congressional legislation.<sup>5</sup> Lack of transparency in communication policy is also illustrated by the negligible role that the judiciary has had in the restructuring of the industry. In essence, regulatory reform in Argentina has been controlled tightly by the old entente, whose distinct objectives coalesced under a common reform plan. As part of a large state reform program, the Menem administration (re)privatized the major TV networks and loosened ownership restrictions, aiming at curbing public deficit (to which most publicly owned commercial stations contributed) and at gaining political support from the established media organizations. These media organizations, on their part, were eager to develop new businesses and alliances under a relaxed regulatory environment. Regulatory reform in Argentina thereby proceeded through the dismantling, by presidential decree, of a legal apparatus that no longer served the old coalition of interests. Few attempts were made to modernize the legislation and adapt state regulatory capabilities to the competitive environment of the new industry structure. The nature of policy making in Argentina made such a reform path more attractive (and feasible) than a lengthy, uncertain battle to push new broadcasting legislation through the Argentine Congress.

At first sight, the Argentine broadcasting industry today bears only a slight resemblance to that of a decade or so ago. All but one TV network are now in private hands, owned by diversified multimedia corporations of which the most important are Grupo Clarín—the third largest in Latin America after Organizações Globo from Brazil and Grupo Televisa from Mexico—and CEI, an investment group headed by Citibank and other investment funds. Cable-TV offers a wide

<sup>5</sup> It is interesting to note that after over 15 years of democratic government in Argentina, and despite many failed attempts (see Alborno, Mastrini, & Mestman, 1996), the Argentine Congress has not been able to enact new legislation for the broadcasting sector. The only law passed since 1983 that indirectly bears on the broadcasting industry is the new film funding law passed in 1994.

variety of local, regional, and international programming to over 50% of households in Argentina, by far the highest penetration rate in Latin America. Government intervention in the industry is minimal, and the country is one of the few to welcome foreign investments in the broadcasting sector without limitations.

Despite these changes in the organization of the industry, however, there is evidence that many of the old dynamics in state-industry relations have changed little in the new market environment. Industry developments have far outpaced institutional reform, resulting in a de facto deregulation by lack of regulation. This is best exemplified by the cable-TV sector. Despite being the most mature in Latin America, the cable industry operates under minimal rules because it is defined as a “complementary service” in the outdated 1980 Broadcasting Law. There are no program access obligations, no ownership limitations, and no form of price regulation, even though most cable operators enjoy a de facto monopoly in their serviced areas (Schmucler & Terrero, 1996). In addition, licensing decisions, regulatory agency staffing, and other key instruments of media policy remain centralized under the executive. Such presidential discretion inevitably reproduces political clientelism in communication policy making. Despite the recent restructuring of regulatory bodies with the creation of the Comisión Nacional de Comunicaciones (CNC, or National Communications Commission) in 1996—which fused part of the COMFER, the telecommunications, and the postal regulatory agencies—lack of funding, dated legislation, and political pressure render its role almost purely administrative. In sum, a hybrid system in which a new industry develops under the patterns of the old regulatory regime best characterizes the recent changes in the broadcasting industry of Argentina.

#### *The Brazilian Route to Reform*

In comparison to Argentina, the pace of change in the broadcasting industry in Brazil has been much slower, largely because of the complexity of institutional mechanisms through which regulatory reform has been implemented. Rather than simply dismantling outdated rules that no longer served industry or government interests, policy makers in Brazil opted for renewing state regulatory capacities. New legislation has been enacted and an independent regulator has been established in the most dynamic industry segments. However, much like Argentina, the legacy of the ideas and patterns of the old regime remains strong, constraining the pace and scope of broadcasting reform.

Unlike Argentina's, the history of the Brazilian terrestrial broadcasting industry is characterized by remarkable stability in terms of both market structure and regulation, and little has changed in the past decade. Although a new Telecommunications Law was passed in 1997, encompassing cable-TV, MMDS, and DBS services (as well as telecommunications), terrestrial TV was excluded from its scope of application and thus remains under the outdated Brazilian Telecommunications Code of 1962. The only significant change to terrestrial broadcasting has been in the licensing procedures. The new Brazilian constitution, sanctioned in 1988 after over 2 decades of military rule, attempted to limit political clientelism by requiring parliamentary approval of licenses granted by the executive. In addition, in 1995 President Cardoso passed a decree (1720/95) that mandated auctions for all new

broadcasting licenses. Although these changes have made the allocation of broadcasting licenses less politically tainted, there is evidence that political clientelism was still at work in the distribution of the first cable-TV licenses in 1989 (see Motter, 1994) and of several TV relay stations in 1996 (see Costa & Brener, 1997). The 1988 constitution also attempted to create transparency in communications policy making by creating an independent advisory organ to the congress (called Social Communication Council), composed of industry, labor, and civil society representatives. However, over 10 years has passed since the sanctioning of the new constitution, and this organ has yet to be established. These examples highlight the difficulties in breaking the old patterns of communications policy making, particularly in the more mature terrestrial broadcasting sector.

On the other hand, the more dynamic pay-TV segment (i.e., cable-TV, MMDS, and DBS) offers a very different picture. These technologies had a late start in Brazil because of the development of a modern telecommunications infrastructure in the late 1960s and a legislation that, unlike Argentina's, did not prohibit the formation of national broadcasting networks. This allowed terrestrial networks to reach almost the entire Brazilian territory, thereby preempting the establishment of the community antennas that served as a basis for cable-TV systems in most other Latin American countries (César Ramos, 1997). Multichannel TV is being deployed en masse only today in Brazil, and its organization signals a departure from the institutional patterns of the old TV regime. The cable-TV sector is a case in point.

Until 1991, the nascent Brazilian cable industry functioned along the lines of the old regulatory model. The first licenses, issued in 1989, were distributed to politically connected entrepreneurs. This procedure was soon questioned by several civil society and industry organizations, which called for regulatory transparency and open competition for licenses in the burgeoning cable-TV market. A 3-year debate ensued in which the national and local governments, congress, industry, academics, and civil society organizations participated. The Cable Law was finally passed in 1995. This law represents a break with the old regulatory dynamics in several ways. First, it aims at nurturing competition between service providers rather than at protecting existing providers from competition.<sup>6</sup> Second, the Cable Law delegates substantial powers to local franchising authorities, and, third, the very openness of the debate that preceded the passing of the bill set an important new precedent for communications policy making in Brazil (Aufderheide, 1997).

Two other elements illustrate the new patterns of communications regulation in the Brazilian case. The first was the establishment of the Agência Nacional de Telecomunicações (National Telecommunications Agency, or ANATEL), the regulatory organ created by the Telecommunications Law of 1997 to oversee the telecommunications and pay-TV industries (as noted, terrestrial broadcasting was

<sup>6</sup> For example, it sets ownership limitations (a cap of seven licenses in areas with over 700,000 inhabitants), forbids legal monopolies in cable-TV licensing, and encourages the entry of new market actors through a bidding system that favors companies without interests in other media industries. The law also imposes several access obligations, such as must-carry of local broadcasters, set-aside educational channels, and leased access up to 30% of carriage capacity.

excluded from its jurisdiction). ANATEL represents a radical change in the regulation of communication industries in Brazil. Modeled after the FCC, it has a nonhierarchical link with the executive and is financially independent and administratively autonomous (in other words, its decisions cannot be overturned by presidential or ministerial decrees). In addition, its administrative procedures must be made public, and all decisions must be subject to public consultation before enforced. A second element worth noting is the increasingly important role of the courts in communications policy making, the most visible example being the numerous legal battles over the allocation of new cable-TV licenses since 1995 (Possebon, 2000). Though slowing the pace of industry rollout, judiciary review of license allocations are another sign of increased transparency and decentralization in Brazilian communication policy making.

Summing up, the development of the pay-TV industry in Brazil signals a departure from the regulatory patterns of yesterday toward a new regime characterized by economic rather political criteria in license allocations, judiciary review of administrative procedures, private infrastructure investments, and increased transparency in communications policy making. However, the balance of reforms so far reveals that old organizations and habits die hard. For example, despite an attempt to create new market actors in the broadcasting industry, penetration of multichannel technologies is still low and has not yet challenged the dominance that TV Globo has enjoyed for over 2 decades.<sup>7</sup> In addition, traditional market actors have secured a leading position in the rapidly expanding pay-TV segment. According to a recent study, the Globo group and its partners control over 50% of the pay-TV business in Brazil.<sup>8</sup> These figures illustrate the leverage that established media corporations have had in gaining advantages in the new sectors, made possible by the lack of cross-ownership limitations in the new legal framework (de Lima, 1998). Though less so than in the case of Argentina, the inertia of existing organizational patterns still constrains the reconfiguration of the Brazilian media industry.

### **A Comparative Analysis**

Brazil and Argentina have responded differently to similar pressures to revamp the rules of the game in the broadcasting industry. The path to reform in Argentina can be fairly characterized as “liberalization by decree.” Brazil, on the other hand, has attempted to reregulate, rather than simply deregulate, its media markets. In this section, I argue that these different policy outcomes reflect variations in three factors: the nature of the political system, the structure of the broadcasting industry, and the ideological legacy in the regulation of communication and information technology industries.

<sup>7</sup> Recent studies estimate a 3 million pay-TV customer base (see Possebon, 2000), which represents a mere 6% penetration rate.

<sup>8</sup> Source: Possebon, 2000.

### *The Political System*

The nature of the political system within which reforms are introduced is arguably the single most important determinant of the direction and outcome of regulatory reforms. Empirical studies of reforms in the telecommunications industry by Noll and Rosenbluth (1995) and Levy and Spiller (1996) provide evidence of the importance of the electoral system and the distribution of endowments among the executive, the legislative, and the judiciary in defining the pace and character of market-based reforms. The present study corroborates these findings. Argentine politics have historically been characterized by a strong executive, even in times of formal democratic rule (Murillo, 1998). Congressional bargaining is often secondary to the behind-closed-doors political compromises struck between the executive, industrial organizations, union leaders, and party bureaucrats, a dynamic nurtured by a two-party system that went unchallenged until recently. Lack of an independent judiciary also has contributed to the centralization of power within the executive, in particular, after President Menem succeeded in nominating a sympathetic Supreme Court shortly after his inauguration in 1989. Policy making in Argentina in the 1990s was best characterized as a *delegative democracy*, a term coined by O'Donnel (1994) to describe democratic regimes where the executive, led by a charismatic, paternalistic figure, dictates policies with few checks from courts or negotiation with congress, and with weak civil society organizations.

As a result, it is hardly surprising that broadcasting reform in this country has been initiated and controlled by the executive, sanctioned mainly through presidential or ministerial decrees. This centralized policy-making procedure has favored, by and large, the established players in the industry, who have found it easier to influence a few sympathetic, key decision makers in the executive than to play the more complex game of congressional lobbying. This reflects a well-established finding in public policy literature: The more centralized the decision-making process, the better narrow, established interests (as opposed to new, diffused interests) fare (see Noll, 1986; Stigler, 1971). A good example of such dynamics came in 1995, when parliamentary debate over a new broadcasting law prompted a fierce battle over cross-services between telecommunications and cable-TV operators, who successfully pressured the executive to threaten a veto, eventually killing the proposed bill (Albornoz et al., 1996).

The character of policy making in Brazil differs in three respects. First, the legislature plays a much larger role. Brazil had a tradition of executive-driven government comparable to that of Argentina until 1988, when the new constitution significantly increased the role of Congress and local governments, particularly in communications policy. (Among other things, it established congressional jurisdiction over broadcasting licensing.) Second, the fragility of political parties in Brazil gives elected officials considerable autonomy, thereby requiring constant (and often intricate) negotiations between the executive and congressmen to advance legislation. This contrasts with Argentina, where representatives almost always vote along party lines. Third, a more independent judiciary has served not to initiate, as in the U.S., but at least to bring administrative transparency to the reform process.

Given the more decentralized character of policy formation in Brazil and the various veto points involved, the pace of broadcasting reform has been slower.

On the other hand, such decentralization has allowed a significant degree of state autonomy vis-à-vis established interest groups, as well as the incorporation of new, more diffused interests (e.g., new market entrants and civil society organizations). This autonomy is reflected in the creation of an independent regulatory body (ANATEL); in procompetitive cable legislation that includes several public interest safeguards, for example, educational and public channels; and in the role played by civil society organization, such as the National Forum for the Democratization of Communications, in the reform debates (see Aufderheide, 1997). In summary, a stronger congress, more independent courts, and a volatile party system explain why broadcasting reform in Brazil has resulted in significant reregulation, as opposed to the “liberalization by decree” route taken by its southern neighbor.

### *Industry Structure*

Public policy scholars have long established that the restructuring of state-industry relations is more problematic in the more mature sectors (see Ogus, 1994). In other words, the larger the economic interests at stake, the closer the informal ties between industry and political elites, the more established the organizational patterns, the harder regulatory reform becomes.<sup>9</sup> Broadcasting reform in Argentina and Brazil offers a paradigmatic example of this well-established finding. The Brazilian cable-TV industry was in its infancy when pressures for broadcasting reform gained political momentum in the mid-1990s. As a result, relatively few established interests and institutional patterns had to be factored into the drafting of the Cable Law. The case of Argentina is the exact opposite. When reforms were started in 1989, the cable-TV industry was well developed, with two powerful industry associations (later consolidated into one, the Asociación Argentina de Televisión por Cable, or Argentine Cable-TV Association, in 1992) and close ties to the political elite. Having grown rapidly during the 1980s under minimal regulations, cable operators represent a powerful interest group. As such, they have so far managed to prevent policy makers from rewriting the 1980 Broadcasting Law, which, as noted, places cable operators under minimal obligations.

The case of terrestrial TV is the flip side of the same coin. In Brazil, where a handful of market players with strong political ties and significant economic interests have long existed (in particular, TV Globo, well known for its capacity to follow the changing political winds), the rules of the game have remained virtually unchanged for the past 3 decades. In Argentina, on the contrary, where interest groups in the sector were weak, primarily because the main commercial networks were nationalized in 1973 and kept under state control until 1989, broadcasting reform not only encountered little opposition but was actually endorsed by most industry actors.<sup>10</sup> In short, large economic interests, entrenched state-industry ties, and established organizational practices have rendered reforms more

<sup>9</sup> This is often referred to as regulatory “capture,” a situation in which the regulator, through the years, evolves into an advocate of the very interests it was designed to control (see Noll, 1986).

<sup>10</sup> The only exception being the broadcasting workers’ unions, which opposed the privatization of the stations in 1989 and proposed a coadministration plan that was ultimately rejected by the Menem administration.

problematic in the more mature segments of the industry. Variations in the structure of the broadcasting industry between Brazil and Argentina are reflected in the pace and scope of reforms in the different industry segments.

### *Ideological Orientation*

National differences in regulatory paradigms have been found to affect policy outcomes in a number of sectors (Hart, 1992; Vogel, 1986). These paradigms, or regime orientation, shape policy makers' beliefs about the proper scope, goals, and instruments of government intervention in any given sector. Undoubtedly, one of the more striking changes in Argentina and Brazil in the 1990s has taken place in the orientation of public policy. This change reflects a larger international reformulation of macroeconomic policies, away from the welfare state paradigm fashioned in the interwar years toward what is loosely called the neoliberal approach: open markets, minimal government regulations, and tight fiscal and monetary policies (Gourevitch, 1986). Among the main tenets of the new orientation is the opening of markets to foreign investors and competitors, an approach particularly alien to communication industries, as these were considered "strategic" in the old regulatory regime and thus kept under a firm protectionist shelter.

The Argentine government lifted all restrictions to foreign ownership of media industries in 1994. All that remains today of the old nationalist orientation are quotas for national programming, which are practically meaningless given Argentina's audiovisual production capacity. The picture in Brazil is quite different. Because of the size of its internal market and the strength of domestic market actors, protectionism was more deeply ingrained into the regulatory structure. From tighter limitations to foreign investments in media industries to the bellicose information technology policy of the 1970s, the legacy in Brazil was of deep-seated protectionism, which the recent ideological turn has only partially twisted.

The 1995 Cable Law is a good example of the compromises being struck in Brazil between the nationalist legacy and the new policy orientation: It limits foreign ownership to 49% of any given cable operator, a compromise common to other countries that have strong protectionist traditions, such as Mexico, and enforces a number of national programming quotas. Another example can be found in the telecommunications industry, where a similar cap on foreign ownership was established in the opening of the mobile telephony market in 1995. In sum, a stronger legacy of nationalism in Brazil has resulted in a more cautious opening of media markets to foreign investors in comparison to Argentina, where, after decades of protectionism, limitations to foreign investors were lifted without ruffling many feathers.<sup>11</sup>

### **Conclusion**

In the mid-1980s, the transition to democracy, the development of new media markets, and a new macroeconomic policy orientation created strong pressures to change the existing rules of the game in the broadcasting industries of Brazil and

<sup>11</sup> However, lack of restrictions to international investors in the recent privatization of Telebrás (the former PTT operator) suggests that nationalism may be waning in Brazil as well.

Argentina. State reform programs demanded tight public spending and new sources of fiscal revenue. New investors demanded fair and stable rules of the game, namely, that regulation be exercised nonarbitrarily and on economic rather than political criteria. Democratic politics demanded independent, diversified media outlets. Despite this common set of pressures to reform the old broadcasting regime, different institutional and ideological constraints have channeled reforms in Brazil and Argentina through different paths. Whereas Argentina emphasized short-term generation of public revenues through privatizations and the dismantling of existing regulations, Brazil prioritized procompetitive reregulation through a slow modernization of the regulatory framework.

The findings in this study raise two basic questions, one empirical, the other theoretical. First, are these differences in the implementation of broadcasting reform anecdotal, or, rather, are they representative of larger differences between Brazil and Argentina in the policy patterns for restructuring communication markets? Institutional analysis would predict that in the presence of a similar set of constraints and incentives, policy outcomes in related industries should conform to a common pattern. Recent studies of telecommunications reform in Brazil and Argentina reveal that this is in fact the case (Murillo, 1998; Herrera, 1998). Both countries have completely overhauled their telecommunications markets in the past decade, but, while in Argentina the new operators were guaranteed monopoly rights for almost a decade (thus inflating the selling price of the PTT operator to allow for a larger repurchase of short-term foreign debt), in Brazil competition between the new operators was introduced from the very start. Furthermore, in Argentina the regulatory agency, the Comisión Nacional de Telecomunicaciones (National Telecommunications Commission, or CNT), was created only after the privatization of the PTT operator, and it was established as an organ of the executive, whereas the opening of telecommunications markets in Brazil was preceded by a new telecommunications law and the establishment of an independent regulator, the already cited ANATEL. These differences in the implementation of telecommunications reform substantiate the findings of this study as conforming to a larger policy pattern in the restructuring of state-industry relations across communication industries. However, more extensive studies contrasting telecommunications and broadcasting reforms within and across nations are still lacking in the comparative communications policy literature.<sup>12</sup>

The second question concerns the theoretical contribution of this study to the communication policy literature. As noted, policy scholars have typically attempted to explain outcomes by looking at processes of policy formation at a specific point in time and space. The findings in this study warn against the use of such static models by stressing the path-dependent character of policy change, as well as the need for rooting the analysis within nation-specific settings. In other words, there is both a historical and an institutional logic to policy outcomes that static models fail to grasp. The path-dependent character of policy change is well illustrated in the resilience of old decision-making patterns (e.g., political clientelism in Argentina, nationalism in Brazil), which have yielded different “blends” of broadcasting reform across Latin American nations. Dynamic models of policy forma-

<sup>12</sup> Goldberg, Prosser, & Verhulst (1998) provide a useful contribution in this direction.

tion are needed in order to identify longitudinal policy patterns within nations. Comparative inquiry cutting across nations and industries (e.g., communications, energy, and transportation) is also needed to validate our findings and refine our models.

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