

THE DEVELOPMENT OF THE MEDIA AND THE PUBLIC SPHERE IN MEXICO

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ABSTRACT. *This article reviews the development of the Mexican media, both broadcast and print, through an analysis of their current legal framework, culture, ownership structure and common practices. It is based on archival research, interviews and a review of the available literature. Its analytical framework is based on concepts of the theory of deliberative democracy developed by contemporary philosophers such as Jürgen Habermas, James Bohman, Jane Mansbridge and Joshua Cohen. Within this framework, it argues that the major obstacles to democracy in Mexico, which include social and economic inequalities, patronage and a weak rule of law, also constitute obstacles to the deliberative development of the Mexican media.*

KEY WORDS: *Mexican media, deliberative democracy, public sphere, democracy in Mexico.*

RESUMEN. *El presente artículo es un estudio del desarrollo deliberativo de los medios de comunicación mexicanos, tanto electrónicos como impresos, a través del análisis de su marco jurídico vigente, cultura profesional y su estructura de propiedad. Esta investigación se basa en la recopilación y análisis de archivos, la realización de entrevistas y la revisión del estado de la cuestión sobre el objeto de estudio. Su marco analítico se basa en conceptos específicos de la teoría de la democracia deliberativa desarrollada por los filósofos políticos Jürgen Habermas, James Bohman, Jane Mansbridge y Joshua Cohen. Dentro de este marco, su argumento es que los obstáculos mayores para la democracia en México, que incluyen las desigualdades sociales y económicas, la cultura clientelar y la debilidad del estado de derecho, constituyen también obstáculos para el desarrollo deliberativo de los medios de comunicación mexicanos.*

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PALABRAS CLAVE: *Medios de comunicación mexicanos, democracia deliberativa, esfera pública, democracia en México.*

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I. INTRODUCTION

This article evaluates the actual and potential contribution of the Mexican media to the development of a public sphere based on core concepts and definitions of deliberation provided by Habermas, Bohman, Mansbridge and Cohen. It explores the extent to which the three elements of the “ideal deliberative procedure” (ideal speech situation, discourse ethics and fair preference aggregation) are fulfilled in the Mexican public sphere and assesses the quality of “civic dialogue.” The element of “fair preference aggregation” will be considered indirectly, according to the degree in which the Mexican media order the electoral institutional system toward this fairness. The article ends by judging the extent to which structural deficiencies in Mexico have deterred the deliberative development of its media by encouraging a culture of patronage, allowing the persistence of bias in favor of politically and economically powerful interests, and hindering the rule of law.

Ideally, the media should encourage diversity, access for civil society, a more public service approach to content, civic journalism, a balanced coverage of the perspectives of civil society and the promotion of reasoned debates within and between civil society and public authorities. This would encourage civic dialogue, support the elements of the “ideal deliberative procedure” (the ideal speech situation and discourse ethics) in the Mexican public sphere and contribute indirectly to fair preference aggregation in the Mexican electoral system. Through a review of literature, the analysis of the legal framework, a case study of the debate on the reform to this framework, interviews and archival research, this article examines the current structure and culture of

the Mexican media and evaluates to what extent it contributes to developing a deliberative public sphere in Mexico.

According to the contributions of Habermas, Bohman, Mansbridge and Cohen to the theory of deliberative democracy, the deliberative quality of decision and opinion-making processes depends on fulfilling the counterfactual assumptions of communication (the "ideal speech situation"), implementing "discourse ethics," and fairly gathering preferences in case rational consensus is impossible to achieve in these processes. Cohen¹ and Habermas² have established that the "ideal deliberative procedure" should be bound only by "assumptions of communication" (the "ideal speech situation") and rules of argumentation ("discourse ethics"), and that the outcome should be "free and reasoned agreement among equals."

An "ideal speech situation" as defined by Bohman is an "ideal situation of communicative equality among deliberators" in which all speakers enjoy equal opportunity to speak, to initiate any type of utterance or interaction, and to adopt any role in the communication or dialogue.³ This implies that the exchange of arguments (deliberative communication among speakers) should be *free, equal, plural* and *inclusive* and that in principle, any deliberation can be considered procedurally democratic, fair and legitimate if it fulfills these "counterfactual assumptions" or "principles" in the deliberative communication among speakers.

However, fulfilling the conditions for an "ideal speech situation" is not enough to achieve an "ideal deliberative procedure." We also need to conform to "discourse ethics" in the exchange of arguments among deliberators. These are defined by Habermas as "communicative conditions of argumentation that make impartial judgment possible."⁴ This means that deliberators should (a) justify proposals and positions by means of arguments, (b) duly respect the different arguments given in the deliberation, (c) be open to the participation of other deliberators, (d) authentically mean what they say in the deliberation (be truthful), (e) frame arguments in terms of the common good, and (f) aim to eventually achieve rational consensus, even if they end their deliberations through majority rule.⁵ Turning to the realm of representative democracy, Mansbridge describes "civic dialogue" as the "pre-deliberative

¹ Joshua Cohen, *Deliberative Democracy*, in *DELIBERATION, PARTICIPATION AND DEMOCRACY. CAN THE PEOPLE GOVERN?* 219-236 (Shawn W. Rosenberg ed., Palgrave Macmillan, 2007).

² See JÜRGEN HABERMAS, *BETWEEN FACTS AND NORMS: CONTRIBUTIONS TO A DISCOURSE THEORY OF LAW AND DEMOCRACY* 304-308 (Cambridge: Polity Press, 1996); Joshua Cohen, *Deliberation and Democratic Legitimacy*, in *DEMOCRACY AND DIFFERENCE. CONTESTING THE BOUNDARIES OF THE POLITICA* 72-75 (Seyla Benhabib ed., Princeton University Press, 1996).

³ See JAMES BOHMAN, *PUBLIC DELIBERATION, PLURALISM, COMPLEXITY AND DEMOCRACY* 120 (Cambridge, Massachusetts: MIT Press, 1996).

⁴ Habermas, *supra* note 2, at 230.

⁵ JURG STEINER *ET AL.*, *DELIBERATIVE POLITICS IN ACTION: ANALYZING PARLIAMENTARY DISCOURSE* 1-42 (Cambridge University Press, 2004).

act of sharing information about perspectives,” and defines the “fair preference aggregation” as a “regulative criterion that prescribes equal power for each participant in decision-making processes.”⁶

II. IMPORTANCE OF THE MEDIA IN DEVELOPING A DELIBERATIVE CULTURE IN THE PUBLIC SPHERE

The media is perhaps the most important space in which communicative interaction among citizens can take place, and where citizens can influence each other to develop reasoned opinions on public affairs. As Daniel C. Hallin argues, if we find a tradition of advocacy reporting, the instrumentalization of privately owned media or the politicization of public broadcasting in a given political community, the transition to democracy in this community becomes difficult to achieve.⁷ The democratic nature of a political community depends on the way opinions about public affairs are shaped and formed in the public sphere. So in order to assess the deliberative quality of the Mexican public sphere, it is important to consider the fairness of the processes by which Mexican citizens arrive at an opinion on public issues and through which those opinions are taken into account in decision-making processes. The first aspect is related to fulfilling the “ideal speech situation” (communicative equality) and exercising “discourse ethics” in the public sphere, while the second is related to the rule of law to achieve fair preference aggregation through the Mexican electoral system.

In this regard, important aspects of the democratic transition in Mexico are restrictions on freedom of speech in the Mexican media, the prevailing culture, the kind of partisan journalism that has been practiced, and the limited degree of citizens’ access to public information and opportunities to have their voices heard.

If democracy is conceived as a forum rather than a market, the analysis of the public sphere becomes indispensable to understand the deliberative content and potential of a particular political regime, because it is precisely there, in the public sphere, where citizens form their public opinion and can fully exercise their freedom and equality to influence the outcome of the decision-making processes carried out in representative political institutions. At the same time, fair preference aggregation in voting is meaningless if citizens are unable to exercise civil liberties such as freedom of speech and freedom of association, and thereby form independent opinions which inform their

⁶ Jane Mansbridge, *Deliberative Democracy or Democratic Deliberation?*, in *DELIBERATION, PARTICIPATION AND DEMOCRACY. CAN THE PEOPLE GOVERN?* 254-263 (Shawn W. Rosenberg ed., Palgrave Macmillan, 2007).

⁷ See Daniel C. Hallin & Papathanossopoulos Stylianos, *Political Clientelism and the Media: Southern Europe and Latin America in Comparative Perspective*, 24 *MEDIA, CULTURE AND SOCIETY* 3-5 (2002).

vote. The democratic quality of the renewal of positions in formal political institutions resides not only in the transparency of the electoral process (the fair preference aggregation), but also in the real exercise of the procedural and substantive values of deliberative democracy (fulfilling the ideal speech situation and exercising discourse ethics) in the public sphere. If the process through which opinions on public issues are formed is manipulated, exclusive, biased and lacking in transparency, a political system will be imbued with an undemocratic character since the actions of a small number of people will unduly influence citizens' attitude toward specific policies or laws.

In order to improve the deliberative quality of the Mexican public sphere, various conditions are necessary: a) citizens' willingness to participate in this sphere, b) sufficient political awareness among citizens to influence opinion-making processes, c) a reasonable degree of equality in terms of resources and opportunities of access to means of social communication, d) the development of civic journalism, e) the dissemination of trustworthy information in the media. It is also essential to consider the social and economic forces that decide the kind of information to be disseminated by the media since this power can substantially influence citizens' opinions about public affairs and push decision-making processes in representative political institutions in particular directions for reasons of electoral advantage.

In order to further Mexico's transition to democracy, it is therefore necessary to promote the development and transformation of its public sphere. This requires reforming the legal framework in which the media operate, as well as its ownership and journalistic culture. There is also the need to foster a public service approach in using the media and restrain the market approach, which has had negative consequences in the process of transforming Mexico's political regime.

Among the negative consequences of an excessive market approach to the Mexican media we find: a) a deepening of inequalities in resources, opportunities and capabilities among Mexicans as regards political participation through the media, b) an alienation of civil society from politics, c) conflicting interests between the owners of the media and the community as a whole and d) broadcasting of programs that do not contribute to citizens' deliberative culture, but disseminate social values that are destructive to democracy.

Although the Mexican Constitution has established principles to enable the federal government to guide the use of the media in the interest of the entire community, secondary law does not establish the rules, institutions and methods through which these principles are to be implemented. As a result, secondary law does not promote a deliberative approach to democracy in the media. On the other hand, Mexico needs to promote more diversity and competition within commercial broadcasting media to limit the power of the business elite that controls them. More powers and rights need to be granted to cultural broadcasting media, especially the right to find sponsors that en-

able them to produce high quality programs that enhance the political culture of Mexicans and allow them to contribute effectively to the opinion-making process of the public sphere.⁸

Historically speaking, the owners of the media and the members of the post-revolutionary regime created a system of mutual favors in order to preserve their privileges. This system is an obstacle to the development of a deliberative public sphere. Mexico's post-revolutionary political regime encouraged an oligarchic ownership of broadcasting media, whose extreme profit-oriented logic discouraged civic journalism and encouraged low quality journalism. In practical terms, the logic of broadcasting media owners was contrary to the logic of public service set forth in the Constitution for the use of this kind of media. Unfortunately, this system of mutual privileges has undermined the balance, diversity and plurality of broadcasting media and has made Mexico's transition to democracy even more difficult to achieve.⁹

III. DEBATE IN THE PUBLIC SPHERE AND THE MEDIA IN MEXICO

In order to assess the contribution of the media to the deliberative quality of the Mexican public sphere, I explore two arguments: the first is a theoretical and normative argument on the conditions, principles and characteristics of the media that contribute to the deliberative development of the public sphere, regardless of its context; and the second is an argument on the specific conditions and factors Mexico needs to develop suitable media for its transition to democracy.

In the first debate, Hughes and Lawson affirm that pluralism and diversity in the ownership of the media contribute to democratic transitions,¹⁰ while McCleneghan and Ragland insist that these principles should not be restricted to commercial broadcasting media, but should also apply to public service and community broadcasting media.¹¹ These scholars implicitly seek to improve communicative equality (the "ideal speech situation") in the public sphere as a means to further democracy.

Parkinson argues that political debate in the media is commonly misinformed and based on "rickety opinions"; that the media focus on the "horse race" of electoral politics rather than on issues, institutions and ideas; and

⁸ See Ernesto Villanueva, *Public Media: Approximations for a Normative Model for Mexico*, 4 COMPARATIVE MEDIA LAW JOURNAL 134 (2004).

⁹ See Hallin & Stylianios, *supra* note 7, at 181.

¹⁰ See Sallie Hughes & Chappell Lawson, *Propaganda and Crony Capitalism: Partisan Bias in Mexican Television News*, 39 (3) LATIN AMERICAN RESEARCH REVIEW 83-85 (2004).

¹¹ See J. Sean Mceneghan & Ruth Ann Ragland, *Municipal Elections and Community Media*, 39 THE SOCIAL SCIENCE JOURNAL 207-208 (2002).

that powerful interests can dominate or distort the agenda of the media.¹² He implicitly criticizes the lack of discourse ethics in the media to achieve the common good. Staats argues for the independence and autonomy of the media, not only from political authorities, but especially from corporate power, which exercises news censorship through advertising, especially in countries where there is a market approach to ownership.¹³ In order to avoid a situation in which the public media can be used as a political instrument for partisan propaganda, some models of social representation, especially in Europe, have emerged for governing broadcasting boards.¹⁴ Again, such measures arguably seek to enhance communicative equality among citizens through the media.

In the United States, the influence of corporate companies in news reporting is decisive, especially if advertising is the main source of revenue for this kind of media. To reduce this, Villanueva has proposed the power of corporate companies be limited by encouraging commercial and non-commercial media to obtain alternative sources of funding.¹⁵

The transformation of journalistic culture has been proposed as an indispensable condition to promote democracy and develop a deliberative public sphere. Parkinson advocates “civic oriented journalism,”¹⁶ which entails various practices in the media, such as creating deliberative spaces to promote debate on public issues, discussing thematic news and disseminating cultural programs that provide high quality information on public issues.¹⁷ Civic journalism promotes the deliberative quality of the public sphere by encouraging a common good approach, the authenticity and the objective of rational consensus (exercising discourse ethics) in public opinion-making processes.

Civic engagement and participation in communicative interaction have been discussed as independent variables in academic literature and as important factors for the democratic transformation of the public sphere since they constitute conditions for different voices of society be heard and taken into account in the public-opinion making process.¹⁸ In other words, these values are indispensable for enhancing communicative equality (the “ideal speech situation”) among citizens in the public sphere. Jerit, Barabas and Bolsen have

¹² See John Parkinson, *Rickety Bridges: Using the Media in Deliberative Democracy*, 36 (1) BRITISH JOURNAL OF POLITICAL SCIENCE 176 (2002).

¹³ See Joseph L. Staats, *Habermas and Democratic Theory: The Threat to Democracy of Unchecked Corporate Power*, 57 (4) POLITICAL RESEARCH QUARTERLY 590 (2004).

¹⁴ See Paul Linnarz, *Freedom of the Press Experienced – The Model of the German Bundespresse-konferenz e. V as an Opportunity for Latin America*, 4 COMPARATIVE MEDIA LAW JOURNAL 54 (2004).

¹⁵ See Villanueva, *supra* note 8, at 134.

¹⁶ See Parkinson, *supra* note 12, at 179.

¹⁷ See David D. Kurpius & Andrew Mendelson, *A Case Study of Deliberative Democracy on Television: Civic Dialogue on C – SPAN Call in Shows*, 79 (3) JOURNALISM AND MASS COMMUNICATION QUARTERLY 588 (2002).

¹⁸ See Peter Dahlgren, *In Search of the Talkative Public: Media, Deliberative Democracy and Civic Culture*, 9 (3) THE PUBLIC 20-22 (2002).

argued that when there is an adequate information environment, citizens enjoy more opportunities to learn about politics, thus enhancing their political knowledge; but this environment depends heavily on media coverage, which determines the kind of issues that are given prominence in the public sphere.¹⁹

Staats argues that public opinion is authentic if citizens can both express and receive opinions in the public sphere, if they are able to respond to the comments or opinions of others and if they find outlets for effective action. He contrasts this with a “pathological” condition of public opinion in the public sphere in which not every citizen can express his or her views on public affairs, citizens are prevented from responding to opinions or criticism for whatever reason, and the media are controlled and infiltrated by agents in favor of the governing regime.²⁰ Staats implicitly argues that this pathological condition exists when there is insufficient communicative equality in the public sphere for citizens to express their opinions.

Dahlgren argues that the easy access to means of social communication by different groups of civil society under a suitable legal framework, and the creation of social spaces for public discussion constitute appropriate means to overcome the pathological condition of public opinion in the public sphere.²¹ In other words, he promotes measures that enhance communicative equality among citizens so that public opinion may become truly democratic.

Beyond this, the debate on the media and the public sphere extends to the question of whether it should be approached as a market governed by the laws of supply and demand, or as a public service working for the general interest of society. For example, Keane assesses the benefits and disadvantages of the market approach to the media and compares it with the public service approach aimed at developing a truly democratic public sphere.²² Hughes and Lawson argue that the market approach, which does have some positive features, should be limited through the implementation of public service obligations placed upon the owners of commercial media in order to moderate the owners’ extreme profit mentality.²³ Such public service obligations are implicitly aimed at promoting communicative equality in the public sphere so that governments are subjected to democratic control.

Against this background, the empirical debate on the media and Mexico’s transition to democracy has identified a range of factors that have variously promoted and prevented the development of Mexico’s public sphere. According to Wallis, one positive factor that helped Mexico’s transition to democracy was its economic liberalization, which led to the privatization of

¹⁹ See Jennifer Jerit, Jason Barabas & Toby Bolsen, *Citizens, Knowledge, and the Information Environment*, 50 (2) AMERICAN JOURNAL OF POLITICAL SCIENCE 266 (2006).

²⁰ See Staats, *supra* note 13, at 586.

²¹ See Dahlgren, *supra* note 18, at 12.

²² See JOHN KEANE, *THE MEDIA AND DEMOCRACY*, 116-121 (Cambridge: Polity Press, 1991).

²³ See Sallie Hughes & Chappel Lawson, *The Barriers to Media Opening in Latin America*, 22 POLITICAL COMMUNICATION 18 (2005).

a second national television broadcasting company, an action that brought competition into this area, which had been monopolized by the corporate power of Televisa (*Televisión Via Satélite*, S.A.).²⁴ Wallis argues that the new competition for audience preferences between the two national television broadcasting companies encouraged them to improve their news reporting style and provide more diversity and pluralism in their content. Nevertheless, they did not substantially improve the quality of information since most of their news remained episodic, focused on the immediate events of the day rather than on an in-depth analysis of the background.²⁵

Hughes and Lawson argue that an important factor that has undermined freedom in Mexico's public sphere, especially recently, has been violence against journalists. According to these authors, these repressive measures have not been exercised exclusively by political authorities, but especially by powerful social and economic forces seeking to protect privileges threatened by the dissemination of information.²⁶ They also argue that this violence has proliferated because of the weakness of the rule of law, which allows crimes against free press to go unpunished.²⁷ Addressing a related issue, Azurmendi called for the decriminalization of challenges to honor, personal and family privacy, and individual image, since their status as crimes has "chilled assertive journalism" and discouraged journalists from disclosing information on corruption, particularly in States where the level of transparency is low and access to public information is constantly made difficult by local authorities.²⁸ The enforcement of the law for these offences has served more to intimidate journalists than for any higher public purpose.

On a similar issue, Ventura considers the protection and confidentiality of journalists' sources essential for the protection of access to public information in Mexico, especially when the lack of transparency in some federal agencies hinders such access.²⁹ He argues that journalist-source confidentiality is not fully acknowledged or protected in the Mexican legal and judicial system in relation, for example, to uncovering corruption in public affairs, which constitutes an obstacle to free journalism.³⁰ In fact, crimes against the free journalism have become an effective means to curtail freedom of speech and promote self-censorship.³¹ Fear has spread among journalists over reprisals

²⁴ See Darrin Wallis, *The Media and Democratic Change in Mexico*, 57 (1) PARLIAMENTARY AFFAIRS 120 (2004).

²⁵ See *id.*

²⁶ See Hughes & Lawson, *supra* note 23, at 11.

²⁷ See *id.* at 17.

²⁸ See Ana Azurmendi, *The Decriminalization of Interferences in the Rights to Honour, Personal and Family Privacy, and one's own image*, 8 COMPARATIVE MEDIA LAW JOURNAL 3-29 (2006).

²⁹ See Adrián Ventura, *Professional Secrecy in Journalism is Essential to Freedom*, 4 COMPARATIVE MEDIA LAW JOURNAL 113-128 (2004).

³⁰ See *id.* at 119.

³¹ See Patricia Muñoz Ríos, *Falta la protección a periodistas en México*, LA JORNADA, October

for making public information regarding the collusion of public authorities and prominent figures in drug trafficking, for example, which has effectively silenced them in recent times.³² Such crimes are a serious threat to the development of a deliberative public sphere in Mexico, probably more than the low level of transparency and limited access to public information in certain federal agencies, since they constitute a worse deterrent for free journalism.³³ These crimes completely undermine the “ideal speech situation” in the public sphere, and facilitate the re-emergence of authoritarianism in Mexico.

More broadly, Villanueva argues that adequate access to public information is an essential condition for Mexico’s transition to democracy, the accountability of its political system and the prospects for alternation in power.³⁴ Hughes and Lawson argue that the legal framework in Mexico must ensure transparency, even-handedness in granting broadcasting concessions and impartiality in legal supervision of these concessions.³⁵ All these proposals, aimed at enhancing communicative equality among citizens in the public sphere through the media, reflect the shortcomings of the present situation in Mexico in this regard.

IV. CONSTITUTIONAL AND LEGAL FRAMEWORK

Article 25 of the Mexican Constitution stipulates the principle of the country’s general interest in economic activities and confers the management of national development to the Mexican State. This is mandated to support a democratic regime and allows the Mexican State to regulate the media in the general interest of Mexico.³⁶ Although Article 25 implicitly grants public authorities the power to guide media activity to benefit the country’s democratic development, these constitutional powers are not exercised to a significant extent.

The Constitution also guarantees political parties permanent access to the media for purposes of electoral campaigns.³⁷ This measure secures a thresh-

25, 2011, available at <http://www.jornada.unam.mx/2011/10/25/politica/013n1pol> (last accessed 14 January 2012).

³² See AFP, “*Serreportero en Ciudad Juárez*”, (June 22, 2011), available at: <http://noticias.univision.com/mexico/noticias/article/2011-06-22/ser-reportero-en-ciudad-juarez#ax221jTlok3cJ> (last accessed 14 January 2012).

³³ See Bianca Calderón & Fernando Herrera, *Mexico Ranked Number Fifth most Dangerous Country for Journalists*, Project Censored’s Media Freedom International, November 25, 2011, available at <http://www.mediafreedominternational.org/2011/11/21/mexico-ranked-number-fifth-most-dangerous-country-for-journalists/> (last accessed 14 January 2012).

³⁴ See Ernesto Villanueva, *The Right of Access to Information and Citizenship Organisation in Mexico*, 1 COMPARATIVE MEDIA LAW JOURNAL 12 (2003).

³⁵ See Hughes & Lawson, *supra* note 23, at 18.

³⁶ Constitución Política de los Estados Unidos Mexicanos [Const.], as amended, Article 25, Diario Oficial de la Federación [D.O.], 5 de febrero de 1917 (Mex.).

³⁷ See *id.* Article 41, III.

old of communicative equality among political parties in the media. Federal electoral law (*Código Federal de Instituciones y Procedimientos Electorales*) regulates political parties' access to the media and establishes principles for broadcasting political propaganda during and outside electoral campaigns. At the same time, the law grants the Federal Electoral Institute (IFE)³⁸ the power to dictate guidelines for radio and television news programs as regards reporting on candidates and parties during electoral campaigns. This is intended to guarantee political parties equality and fairness during the media coverage of electoral campaigns: "There has been a tendency in the national media to give equal treatment to political parties. IFE has monitored equal treatment in the media for each political party. At a local level, the media tend to be more partial. At a national level, the media have treated political parties on more equal terms."³⁹

Another relevant legal regulation for the development of a deliberative public sphere in Mexico is the *Ley de Imprenta* or Press Act. The goal of this law is to define the limitations on the freedom of the press in keeping with the principles of the Constitution. While this law requires respect for the honor and constitutional attributes of public authorities, it distinguishes between the concept of "harsh criticism" and offences to these ethical values. Therefore, severe scrutiny and criticism of public actions are not considered an offence if based on facts and rational grounds. In this way, it guarantees a fair degree of freedom of speech in order to subject the actions and statements of public authorities to criticism.⁴⁰ In this respect, it encourages the use of discourse ethics in Mexico's public sphere.

On the other hand, the debate surrounding the role of criminal law in the democratic development of the media in Mexico deals mainly with two aspects: a) the rules that punish abuses of freedom of speech (such as calumny and defamation) committed by journalists and b) the rules that punish crimes against free journalism. Not long ago, a serious political debate took place in Mexico about the decriminalization of offences to public image, such as slander, calumny and defamation, in an attempt to encourage free, serious and professional journalism. As a result of this debate, the Mexican Congress approved a legal reform in which the jurisdiction for these offences moved from criminal courts to civil courts.⁴¹

The administrative law regulating broadcasting media falls under two overlapping federal administrative regulations, the Federal Radio and Television Act and the Federal Telecommunications Act. The second regulations

³⁸ Instituto Federal Electoral [I.F.E.] [Federal Electoral Institute]. Hereinafter IFE.

³⁹ Interview with Lorenzo Córdova Vianello in Mexico City (March 29, 2006).

⁴⁰ See *Ley de Imprenta* [L.I.] [Press Act] Article 6, *Diario Oficial de la Federación* [D.O.], 12 de abril de 1917 (Mex.).

⁴¹ A. Torre & A. Zárate, *Aprueba Senado despenalizar el delito de calumnia*, *EL UNIVERSAL*, March 6, 2007, available at: <http://www.eluniversal.com.mx/notas/410689.html> (last accessed 10 June 2009).

are more comprehensive and regulate not only broadcasting media, including the Internet, but also the long distance communication industry, which comprises both the fixed line and mobile telephone industries.⁴²

The Federal Radio and Television Act classifies the kinds of broadcasting licenses and concessions that can be granted.⁴³ It also sets forth the obligations placed upon owners of these concessions and licenses.⁴⁴ Neither this Act nor the Federal Telecommunications Act imposes any public service obligations on the owners of commercial broadcasting concessions, either to promote the participation of civil society in public debate, or to compel that presidential debates be broadcast during election campaigns as a public service.⁴⁵

One core feature of the Radio and Television Act is that the owners of commercial concessions are given the right to carry advertising while other kinds of concessions and licenses (official and cultural stations and training schools) are prohibited from doing so.⁴⁶ This prohibition reinforces the oligarchic structure and ownership of the Mexican broadcasting media as it discourages diversity and plurality and hinders the development of alternative media capable of producing programs conducive to the cultural and deliberative development of Mexico:

The State media are prohibited from commercially developing of their services, as only the branches of the media which are explicitly profit-oriented can do so, despite the fact that the State sector budget of State media is limited in order to support the existence of the latter. The private media do not want to share the advertising market with other media, which is an unacceptable position for us as lawmakers in the Mexican Congress. They do not want any kind of competition or obstacle that prevents them from making the greatest profit possible.⁴⁷

The exclusive nature of this right opens the door to the development of an extreme profit mentality, since the commercial broadcasting media tend to focus more on audience size than on their contribution to country's cultural and deliberative development. It is also the main reason for broadcasting media (especially *Televisa* and *TV Azteca*) owners' reluctance to opening up to competition and diversity, since it goes directly against their interests.⁴⁸

⁴² See Ley Federal de Telecomunicaciones [L.F.T.] [Federal Telecommunications Act], as amended [D.O.] 17 de abril de 2012 (Mex.).

⁴³ See Ley Federal de Radio y Televisión [L.F.R.T.] [Federal Radio and Television Act], as amended, Article 13 [D.O.] 9 de abril de 2012 (Mex.).

⁴⁴ See *id.* Article 17.

⁴⁵ See *id.* Article 21.

⁴⁶ See Claudia Salazar, '*Piden al Senado corregir la minuta por beneficiar sólo a televisoras*', REFORMA, February 14, 2006, available at: <http://busquedas.gruporeforma.com/reforma/Documentos/DocumentoImpresa.aspx?DocId=> (last accessed 10 May 2007).

⁴⁷ Interview with Felipe de Jesús Vicencio, Senator, in Mexico City (June 10, 2006).

⁴⁸ See Gazcón, V., *Eduardo Pérez Motta dijo que una mayor competencia en el mercado de TV abi-*

In the debate about the appropriate legal framework for the broadcasting media which took place in late 2005 and early 2006, members of the Mexican Congress from different political parties, as well as representative members of Mexican civil society, complained that the proposed reforms to the Radio and Television and Telecommunications Acts would favor the concentration of the radio, telecommunications and television industry in the hands of a few: "As long as this bill fails to recognize the role of State media and non-profit media, democracy is weakened because Mexico loses the opportunity of consolidating a State media system that creates a balance, so that these media become the arm of the State, and create a State telecommunications policy."⁴⁹

Senator Felipe de Jesús Vicencio deemed that this bill failed to promote plurality and diversity within the broadcasting media. He also stated that the bill was intended to weaken the role of State and non-profit media as balanced and complementary sources with the potential to increase the number of voices in Mexico's public sphere:

State and non-profit media are very important in reshaping the public sphere (*espacio público*). [They are] crucial factors for democratic deliberation, since they are decisive factors in the public sphere in which these democratic deliberations take place. That is why I believe this bill falls short of guaranteeing that all the elements necessary for the development of democracy in the public sphere will be fulfilled.⁵⁰

Vicencio's main complaint concerned the fact that the new legal framework would enable the existing commercial radio and television broadcasting companies to expand into the telecommunications industry, without having to enter a bidding process under which they would be forced to compete with other companies for new concessions. By following a simple procedure before the corresponding authorities, existing commercial radio and television broadcasting companies would be allowed to obtain concessions in the telecommunications industry:

The business approach prevailed in this bill, and even in this respect this bill represented a setback since it does not allow telecommunications businesses to take up wavelengths not used by the existing radio and television industry, nor does it allow the reverse effect or inverse capability by which telecommunications concession owners can be granted radio or television concessions. This entire situation reveals who the intellectual authors of this bill are because not even the plan for industrial expansion is equal, since it favors just one sector of the industry, just those in the radio and television sector.⁵¹

erta en el país sería benéfico para los usuarios y anunciantes, REFORMA, December 12, 2006, available at: <http://busquedas.gruporeforma.com/reforma/Documentos/DocumentoImpresa.aspx?DocId=> (last accessed 20 May 2007).

⁴⁹ See Vicencio (Interview), *supra* note 47.

⁵⁰ *Id.*

⁵¹ *Id.*

The existing commercial radio and television broadcasting companies take their commercial concessions to mean that the concessions also include the possibility of using spare bandwidth to offer telecommunications services. The companies claim they have the legal right to the bandwidth spectrum itself, not the particular kind of services they are licensed to exploit. The opponents of the bill argued that their legal right resided in the kinds of services that they could offer, and did not extend to providing services other than radio and television broadcasting. Any spare bandwidth which had not been used by a broadcasting company, they reasoned, should be returned to the Mexican State so that it could be distributed fairly, favoring plurality and competition in telecommunications.⁵²

In addition, the bill did not consider for granting commercial radio and television broadcasting concessions the programming offered by the applicant or the diversity of the programming secured overall, as part of its criteria for this aim, but only the amount of money that could be raised by granting concessions. This further encouraged the dominant broadcasting companies to invest more resources in the telecommunications industry:

This bill explicitly refers to the media as an industry, rather than a public service. It does not consider their activity an activity in the public interest (in that they offer information and stand as a means of communication in society). The authors of this bill are trying to enforce the maxim that the best industrial policy is the one that does not exist and allows maximum freedom among competitors in this industry.⁵³

Senator Vicencio regretted that the bill approached television and radio broadcasting purely as a market, and that the Mexican State refrained from regulating this activity in public interest and in pursuit of the common good. He also believed that with this bill the Mexican State was renouncing its constitutional responsibility to guide radio and television broadcasting toward advancing Mexico's democratic development.⁵⁴

In Mexico, collusion between broadcast media owners and public authorities and the culture of patronage derived from it constitute the main obstacles to attaining communicative equality among the plural and diverse voices in Mexico's public sphere. This bill reflected these obstacles, and set out to close rather than open communicative spaces to Mexico's civil society and public service broadcasting.

⁵² See A. Cruz Martínez, *La Ley Televisa bloquea desarrollo de radios comunitarias, según expertos*, LA JORNADA, May 17, 2007, available at: <http://www.jornada.unam.mx/2007/05/17/index.php?section=politica&article=008n1pol> (last accessed 17 May 2007).

⁵³ See Vicencio (Interview), *supra* note 47.

⁵⁴ *Id.*

V. JOURNALISTIC CULTURE AND THE EMERGENCE OF A DELIBERATIVE PUBLIC SPHERE IN MEXICO

The evolution of the media and journalism in Mexico during the 20th century took place within the context of a post-revolutionary authoritarian regime, which deliberately restricted the emergence of free media so it could keep hold of its power. The regime used an effective mixture of blunt and subtle tactics to prevent autonomous, critical and independent media that could have fostered a deliberative public sphere in Mexico from developing.

The general strategy used by the post-revolutionary regime to prevent the emergence of this kind of media in Mexico can be summarized in one word: patronage. Co-optation through patronage covered both owners and journalists, making the media part of the rent-seeking system of this regime. This strategy effectively prevented the media from challenging the regime by implementing a system of privileges and rewards to sympathetic owners and journalists.⁵⁵

Lawson summarizes this privilege and reward system with the following examples. For instance, the regime granted to sympathetic owners of broadcasting media: a) concessions, b) subsidized contributions, c) government advertising, d) protection from further competition, and e) expanded business opportunities. With all these enticements, the regime effectively discouraged any defiance from these owners.⁵⁶ Similarly, the regime gave sympathetic owners of the press: a) tax breaks, b) subsidized utilities, c) free service from its news agency, d) bulk purchasing, e) below market rate loans and f) cheap newsprint. If these enticements were not enough to discourage them from criticizing the regime, this regime still had recourse to tougher methods such as tax audits, threats, harassment and violent retaliation. In fact, these methods became more common as the press became more assertive and less corrupt.⁵⁷

The authoritarian post-revolutionary regime not only colluded with private media owners, but also corrupted, blackmailed and repressed journalists in order to prevent the rise of a professional culture that could have harmed its legitimacy.⁵⁸ At the same time, journalists were deliberately kept dependent to facilitate co-optation, and if they wanted to improve their living standards, opportunities and career development, they had to accept the unwritten rules of the regime.⁵⁹ If journalists did try to follow an independent and critical editorial line despite all the tactics used to absorb them into the patronage system of the post-revolutionary regime, the regime could employ repressive

⁵⁵ See CHAPPELL LAWSON, *BUILDING THE FOURTH ESTATE: DEMOCRATIZATION AND THE RISE OF A FREE PRESS IN MEXICO* 26 (Berkeley: University of California Press, 2002).

⁵⁶ *Id.* at 28.

⁵⁷ See *id.* at 32.

⁵⁸ See *id.* at 34-37.

⁵⁹ See *id.*

measures, which ranged from ostracism to murder. The Mexican establishment was not interested in providing reliable political information that could help people understand core public issues, as this could reflect badly on the nature of the regime.⁶⁰

The post-revolutionary regime permanently monitored the media to prevent the dissemination of any information that could dramatically turn public opinion against it. This monitoring comprehended various tactics, such as ensuring the right spin on political coverage, discouraging the propagation of alternative political viewpoints or reporting official responses to events without any background or orienting context.⁶¹

However, despite all the means at the regime's disposal to co-opt and repress owners and journalists and to control, monitor and manipulate information, in the mid-1970s, Mexico saw the emergence of independent, autonomous and free journalism, which began to challenge the regime in the public sphere.⁶² Perhaps the most important reason for the transformation of journalistic culture in Mexico was that some journalists began to focus more on civil society activities than on the official elite discourse of the post-revolutionary regime to report more accurately on Mexican civic, social and political reality. This transformation meant that alternative views could be heard in Mexico's public sphere and the regime's control over the public agenda was challenged.⁶³

Another important reason for the emergence of free journalism was the slow but sure process of opening the press and radio broadcasting to competition in the mid-1970s, which encouraged the creation of professional journalistic standards to attract the greatest possible readership or audience, and obtain more substantial revenues from advertising. This new situation implied that Mexico had already established an audience and readership base, which could provide financial viability to professional and independent journalism. At the same time and as a consequence of increasing competition, upcoming newspapers' desire to attract the greatest number of readers by enhancing their credibility, which also incited the transformation in the journalistic culture of the entire press, as old newspapers tried to challenge the new independent journalism by improving their own journalistic standards.⁶⁴

⁶⁰ See *id.* at 50-52. Chappell H. Lawson summarized the touchy issues for the former post-revolutionary regime: a) economic mismanagement, b) official corruption, c) collusion with drug trafficking, d) electoral fraud, e) opposition protests, f) political repression and g) Mexican military.

⁶¹ See *id.* at 40-45.

⁶² See PHILIP GEORGE, *THE PRESIDENCY IN MEXICAN POLITICS* 89 (London: McMillan Academic and Professional Ltd, 1992).

⁶³ See NEEDLER, MARTIN C., *MEXICAN POLITICS: THE CONTAINMENT OF CONFLICT* 56 (Westport: Praeger Publications, 1995).

⁶⁴ See Lawson, *supra* note 55, at 80-92.

Another factor that encouraged competition within the press was the fact that after the presidential term of Carlos Salinas de Gortari, journalists stopped receiving payments from government agencies securing favorable coverage.⁶⁵ This forced them to look for other sources of funding and, since independent journalism was increasingly enjoying financial viability because of both its readership and advertising revenues, journalists increasingly became more critical, independent and autonomous of the regime, as well as more willing to challenge its dominance in the public sphere.⁶⁶ We could argue that this new situation encouraged journalists to apply some elements of discourse ethics in the public sphere, such as critical thinking with a view to the common good. In the long term, the regime's enticements or tactics to buy off journalists were becoming increasingly less relevant to their career prospects. Rather, it was more important for them to have credibility if they were to achieve their professional goals.⁶⁷

Competition encouraged not only the development of credibility in newspapers and journalists, but also their assertiveness, independence, commitment to public service, civic approach, plurality and diversity. In summary, it encouraged a journalistic culture that was more in accordance with the deliberative development of the public sphere.⁶⁸ At the same time, the improved level of information enhanced the deliberative quality of the opinion-making process in Mexico since newspapers started to cover issues that were awkward for the regime but important in terms of general interest for the country. This improved the quality of discourse ethics practiced in the public sphere.

This new situation also promoted diversity and a plurality of perspectives in the media, enhancing communicative equality, and little by little rendered the regime's strategy of patronage based on rewards and punishments less effective.⁶⁹

In this context, the defeat of the post-revolutionary regime in 2000 transformed the environment in which the media operated. The new regime does not employ the tactics of the previous regime as it is in its best interest not to be identified with it; the new regime is committed, in principle, to a different logic: the logic of free vote through informed public opinion. Nevertheless, the post-revolutionary regime bequeathed to the new one a media set-up that still poses some challenges to Mexico's democratization process, like a legal framework that favors the concentration of broadcasting media ownership and a journalistic culture that still resorts to corrupt practices to manipulate

⁶⁵ See *id.* at 76.

⁶⁶ See *id.* at 89.

⁶⁷ See *id.* at 80.

⁶⁸ See *id.* at 89-90.

⁶⁹ See *id.*

the opinion-making process in the public sphere, especially at local levels of government.⁷⁰

The media have put obstacles in the way of the release of reliable information, and there are sometimes problems of manipulation, ethical problems. There is still complicity between the government and private interests. The press has improved although we still have these kinds of problems. The media have their own agenda, they have their own ways of understanding reality, [and] they give priority to what they consider most important according to their agenda.⁷¹

VI. DEVELOPMENT OF THE BROADCAST MEDIA

The concentration of broadcasting media ownership has roots that date back to the presidential term of Miguel Alemán Valdés when the first commercial television concessions were granted. The first commercial concession, XHTV Channel 4, was granted in 1950 to Rómulo O'Farill, a close associate of President Alemán; the second, XEW TV, Channel 2, was granted to Emilio Azcárraga Vidaurreta; and the third to Guillermo González Camarena, an engineer and inventor who had developed color TV technology and started the first experimental broadcasting in 1946.⁷² These entrepreneurs eventually became a close-knit team that exercised control over the emergent industry, and merged in 1955 to form the company *Telesistema Mexicano*, in which Azcárraga, O'Farill and González Camarena officially held 45, 35 and 20 percent of the shares, respectively. González Camarena later sold his shares to Emilio Azcárraga Vidaurreta.⁷³

In 1968, the *Fomento de Televisión*, S.A. company, which was associated with *Televisión Independiente de México*, part of the Alfa Group, was granted the concession for Channel 8; and the *Corporación Mexicana de Radio y Televisión*, owned by Francisco Aguirre Jiménez, also the owner of *Organización Radio Centro*, was granted the concession of Channel 13 XHDF.⁷⁴

In 1972, Channel 8 merged with *Telesistema Mexicano* to form a new company *Televisión Vía Satélite* S.A. (*TELEVISA*), with *Telesistema Mexicano* holding 75 percent of the shares and *Televisión Independiente de México* the other 25 percent. In 1982, the Alfa Group sold its shares to *Telesistema Mexicano*, leaving the ownership of Channel 8 and of *TELEVISA* in its hands.⁷⁵

⁷⁰ See Hughes and Lawson, 'Propaganda and Crony Capitalism: Partisan Bias in Mexican Television News' 88-95.

⁷¹ Interview with Ernesto Villanueva, in Mexico City (March 24, 2006).

⁷² See F. Mejía Barquera, *Cronología e historia mínima de la televisión mexicana. Apuntes para una historia de la televisión mexicana*, available at: http://www.video.com.mx/articulos/historia_de_la_television.htm (last accessed 10 May 2007).

⁷³ See *id.*

⁷⁴ See *id.*

⁷⁵ See *id.*

The history of Channel 13 XHDF evolved quite differently because the federal government expropriated this channel in 1972, and in 1983 it joined Channel 8 from Monterrey, Channel 2 from Chihuahua and Channel 11 from Ciudad Juárez to form the *Productora Nacional de Radio y Televisión (PRON-ARTE)* network. Along with *Televisión de la República Mexicana (TRM)* and Channel 22 from Mexico City, this network went on to form a state-owned group called *IMEVISION (Instituto Mexicano de Televisión)*.⁷⁶ However, as part of the process of economic liberalization carried out by President Carlos Salinas de Gortari between 1988 and 1994, *IMEVISION* was privatized and sold to Ricardo Salinas Pliego, the owner of the Salinas Group, who transformed it into *TV Azteca*, with two national channels: Seven and Thirteen.

As this record shows, television broadcasting was dominated by powerful State and a small number of corporate interests. However, there are now four hundred and sixty-eight local television channels in Mexico. States like Sonora, Coahuila, Chihuahua and Tamaulipas have more than thirty local channels, which speaks volumes for the level of initiative shown by local communities keen on opening spaces for communicative interaction. Most of these channels are commercial concessions with a local scope.⁷⁷ Apart from these local television channels, there are some two hundred cable companies that broadcast multiple closed circuit channels from different parts of the world, especially from the United States of America. Together, these cable companies form an association called *CANITEC*, which claims to reach 10 million households in Mexico and handle 500,000 internet subscriptions.⁷⁸

These cable companies broadcast the main cultural and civic channels of Mexico such as *TV UNAM*, the *Judicial Channel*, the *Congress Channel*, and *Channel 40*, as well as international news channels such as *CNN*, *CNN en Español*, *Fox News*, *BBC*, *RAI*, *TV5Monde*, *Antena 3*, *DW*, *CBS*, and *ABC*, from which Mexicans have access to international perspectives. By instruction of the IFE, these channels are shut down three days before federal elections take place, in order to guarantee equal coverage among political parties, as well as the fairness of the process.

The *Congress Channel*, founded in 2001, is only broadcast via cable, although there has been a recent initiative to broadcast it via national networks. It represents a new stage in the development of a deliberative public sphere in Mexico, since it is solely dedicated to broadcasting the deliberations of the Mexican Congress and to producing programs with high civic, cultural and political content, as well as news programs. It has its shortcomings in its

⁷⁶ See *id.*

⁷⁷ See Cámara Nacional de la Industria de la Radio y la Televisión, Dirección de Información e Investigación, http://www.cirt.com.mx/estaciones_concesionadas_asc.html (last accessed 14 January 2012).

⁷⁸ See CANITEC [Cámara Nacional de la Industria de Telecomunicaciones por Cable], <http://www.canitec.org> (last accessed 14 January 2012).

limited audience and inexperience in designing programs with civil society participation, but these problems can be overcome.⁷⁹

The Federal Judicial Power has also acquired its own channel to broadcast Supreme Court deliberations and provide cultural programs related to the law, although again only on cable. This channel also constitutes a space for a deliberative public sphere, since experts are constantly discussing ideal laws that would secure the common good and enhance the general interest of the country. However, sometimes the debates are quite technical and do not encourage contributions from non-legal experts.⁸⁰

After the 2006 elections, *Televisa* and *TV Azteca* changed their programming to promote civic dialogue, discussion and better knowledge of public issues in Mexico. For example, *TV Azteca* released programs like *En Contexto*, *Entre 3*, *La Entrevista con Sarmiento*, *Frente a Frente* and *Animal Nocturno* while *Televisa* released programs like *Alebríjes: Aguila ó Sol*, *Punto de Partida*, *Tercer Grado*, *Contrapunto* and *Notifíero*.

En Contexto and *La Entrevista con Sarmiento* feature interviews and civic dialogue with key figures from social, political, cultural and economic movements in Mexico. *Entre 3* offers information and analysis, along with plural and open discussions about relevant Mexican public issues. *Frente a Frente* has guest speakers answering questions from members of the public, enhancing discursive interactivity and plurality. All these programs are broadcast on Channel Thirteen of *TV Azteca*, aired every weekday at midnight.⁸¹

Alebríje: Aguila ó Sol is an educational program, in which three host journalists provide comments and opinions on recent economic issues. *Punto de Partida* offers political analysis through interviews and in-depth reports, although from a limited range of contributors.⁸² *Contrapunto* claimed to be the only purely deliberative program from *Televisa*, since it was focused on discursive interactions between social leaders, political actors and analysts, who discuss proposals and weigh their positions. It was led by four recognized intellectual leaders of Mexico. Along with *Tercer Grado* and *Notifíero*, these programs were broadcast on Channel 2 of *Televisa*, on weekdays at 11:30 pm.⁸³

Televisa and *TV Azteca* are competing in this area with Channel 40 and Milenio Televisión, which are the main television channels entirely dedicated to civic journalism in Mexico, and have attracted a number of experienced journalists and scholars to participate in their programs. Channel 40's and

⁷⁹ See *Bienvenido al Canal del Congreso. La visión del diálogo*, <http://www.canaldelcongreso.gob.mx/nuevaimagen/home.php> (last accessed 14 January 2012).

⁸⁰ See Suprema Corte de Justicia de la Nación, *Canal Judicial*, <http://www2.scjn.gob.mx/red/canaljudicial/> (last accessed, 14 January 2012).

⁸¹ See *Programación Azteca 13*, <http://www.tvazteca.com.mx/programacion/13.shtml> (last accessed 17 May 2007).

⁸² See *Esmas. Noticias*, <http://www2.esmas.com/noticirostelevisa/index.php> (last accessed 12 August 2008).

⁸³ See *Canal de las Estrellas*, <http://www.esmas.com/canal2> (last accessed 17 May 2007).

Milenio Televisión's contributions to enhancing the informational environment in Mexico and increasing Mexican people's opportunities to learn about politics has been very positive in recent times.⁸⁴ Channel 40 reinforces an interactive approach to the news, constantly inviting individuals with varying perspectives to comment on current issues, and allowing them enough time to develop arguments at length. This channel also features programs completely devoted to debates, analyses and extensive reports, which provide Mexican people with better opportunities to understand public issues and develop an informed point of view. On the other hand, Milenio Televisión is a television channel fully dedicated to news broadcasts in which we also find analyses, interviews, discussions, debates, chronicles, reports, insightful guests and comments.

Despite the concentration of Mexican television ownership at a national level, there have been recent initiatives at local levels and through cable TV that have enhanced communicative equality and discourse ethics in the Mexican public sphere.

Radio broadcasting in Mexico has also recently experienced noticeable progress in freedom of speech, political analysis, diversity, pluralism and critical approaches to information. Popular journalists such as Carmen Aristegui, Ricardo Rocha, Oscar Mario Beteta, Eduardo Ruiz Healy, Pedro Ferriz de Con, and Ciro Gómez Leyva enjoy a more interactive and discursive space within radio broadcasting than on television broadcasting, since they constantly receive input from the public, carry out interviews and provide political analyses at the same time. There is very strong competition between radio news programs, which has encouraged journalists to develop new methods to attract an audience.

Nevertheless, all these journalists and radio news programs were preceded by an iconic figure in critical radio broadcasting in Mexico, José Gutiérrez Vivó, a journalist who started the *Monitor* radio news program in 1974, precisely at the peak of the repressive power of the post-revolutionary regime, and who since then has fought to open radio broadcasting to the different voices and expressions of civil society, and used discursive methods to analyze the news.⁸⁵

⁸⁴ See *Proyecto 40*, <http://www.proyecto40.com> (last accessed 14 January 2012) and *Milenio Televisión*, available at: <http://www.milenio.com/mileniotv> (last accessed 14 January 2012).

⁸⁵ On May 24, 2008, Radio Monitor, the company owned by José Gutiérrez Vivó, stopped its broadcast due to a worker strike, as the company was unable to pay workers several fortnights worth of wages owed to them. The problem started when Radio Centro (the company that bought the services of Radio Monitor) did not fulfil its agreement to settle its legal conflict with Radio Monitor through an international referee, and did not acknowledge the conflict resolution pronounced by this referee, which compelled Radio Centro to pay 21 million dollars to Radio Monitor. Due to this lack of payment, Gutiérrez Vivó, in turn, could not pay his workers and providers their corresponding wages and the compensations due. See Redacción, "Regresa el periodista José Gutiérrez Vivó" (March 11, 2011), available at: <http://eleconomista.com.mx/sociedad/2011/03/21/regresa-periodista-jose-gutierrez-vivo>.

Monitor was once a very prestigious and influential radio program in Mexico because it would interview leading figures from social, economic and political spheres, giving listeners access to plural perspectives about Mexico. Although its collaborators and analysts may have had a common profile and ideology, this was somehow compensated by the fact that the program was open to the contribution of a variety of guests and the public.

Mexico is experiencing a wave of fascination for radio news programs, with the most prestigious press and television journalists constantly looking for a space on radio to present their own style and contribution to information analysis.⁸⁶ *Grupo Fórmula*, *Grupo Imagen*, *Grupo Radio Centro*, *Televisa Radio*, *Grupo MVS*, *Grupo Radio Difusoras Capital*, *NRM Comunicaciones* are some of the national radio broadcasting companies competing strongly in this industry.

In terms of newspapers, Mexico now enjoys more diversity, plurality, quality, independence and autonomy than during the post-revolutionary era, thanks to the effort of journalists who have struggled to develop their professional culture and their approach to journalism. Newspapers like *El Financiero*, *La Jornada* and *Reforma* or weekly journals like *Proceso* have become very influential in Mexico's public sphere thanks to the quality of information and the analysis given on economic, political, cultural and social issues.

For example, *Reforma* is a relatively recent (1993) national newspaper that focuses more on releasing privileged information on official corruption and involvement in drug trafficking, as well as providing detailed information about political and economic events in Mexico, although its degree of analysis may not be as in-depth as that of *El Financiero* or as detailed as that of *La Jornada*. This newspaper is supposed to be on the right of the ideological spectrum, although sometimes it provides lengthy comments and editorials from left-wing sympathizers.⁸⁷

Soledad Loaeza, a leading scholar from *El Colegio de México*, considers that *Reforma* focuses on sensationalism and scandal rather than on the analysis of Mexico's social, economic and political reality:

Political issues are replaced by a culture of complaints. The press is full of this culture of complaints instead of a culture of information. The same happens in the case of television and radio. The media in Mexico believe that their obligation is to make claims and they do not distinguish the difference between complaint and information. Complaints are a product of information, but it is not the role of the press to judge those suspected of a crime, but to inform; I think they are confused.⁸⁸

There are other national newspapers, such as *Excélsior*, *Milenio*, *Diario Monitor*, *Rumbo*, *El Economista*, *El Universal*, *Unomásuno*, *La Prensa*, which benefit pro-

⁸⁶ See *Grupo Fórmula*, <http://www.radioformula.com.mx> (last accessed 14 January 2012).

⁸⁷ See *Reforma*, <http://www.reforma.com> (last accessed 14 January 2012).

⁸⁸ Interview with Soledad Loaeza in Mexico City (May 19, 2006).

fessionally from the strong competition between them in order to gain the greatest readership possible. Although each possesses its own position within the ideological spectrum, all of them have developed better political and economic analyses of Mexico and have released crucial information on public issues that has enriched the informational environment of Mexico's public sphere.

Although they have their own agendas, sometimes seem to be biased or have their journalists co-opted by authorities at certain times, the quality of information has improved as well as their analyses of issues. There has certainly been a positive evolution in their use of freedom of speech, which has contributed to the development of an improved informational environment, and furthered the democratic transition in Mexico.

In addition to national newspapers, which are distributed in Mexico City and other major cities in the country, there are several local newspapers, which are as important on a local level. Although it is difficult to give an exact number of local newspapers in Mexico, the *Asociación Mexicana de Editores de Periódicos* reports there are at least 100, covering more than 200 cities.⁸⁹ Newspapers like *Siglo 21* or *El Norte* provide input to public debate by releasing crucial information on public issues and enhancing a rational critical perspective.⁹⁰

However, local newspapers have suffered much more violence than national ones from criminal organizations hostile to the exposure of their activities. Even directors of local newspapers have been victims of terrible violence in an effort to curtail investigative reporting and freedom of speech. Kidnappings, murders and threats are the principal tools criminal organizations use in order to suppress freedom of speech on specific issues locally: "At the presentation of its annual report yesterday in Brussels, the International Federation of Journalists considered Mexico the most dangerous country in Latin America for those journalists who deal professionally with issues related to crime and corruption."⁹¹

For example, in Nuevo Laredo, Tamaulipas, violence against independent journalism has been very effective in silencing information related to the activities of drug trafficking mafia, so much so that despite the fact that violence has increased, it has not been recently reported in local newspapers. Criminal organizations have become the greatest challenge to freedom of speech in

⁸⁹ See Asociación Mexicana de Editores de Periódicos, <http://www.amed.com.mx/historia.php> (accessed 14 January 2012).

⁹⁰ See Felipe Cobián, *Carcomido por adeudos mercantiles, bancarios y fiscales*, "Siglo 21" agoniza por desviaciones financieras de su dueño, PROCESO, August 10, 1997. See also El Norte.com, <http://www.elnorte.com> (last accessed 12 August, 2008).

⁹¹ Gabriel León Zaragoza, *México, país más peligroso de AL para informar sobre crimen y corrupción*, LA JORNADA, January 3, 2007, available at: <http://www.jornada.unam.mx/2007/01/03/index.php?section=politica&article=005n1pol> (last accessed 24 May 2009).

Mexico, since their threats are effectively silencing information about their activities and the involvement of public authorities:

2007 has been marked by the murder of Amado Ramírez, a correspondent of Televisa in Acapulco for fourteen years and a presenter of the *Al Tanto* radio program in the port city of Guerrero. This murder has all the hallmarks of an intimidating and silencing message of the worst possible kind that could be given to the Mexican press: death as the supreme form of censorship. The consequences of this crime are evident: the radio station Radiorama Acapulco decided to suspend its broadcasting of *Al Tanto*.⁹²

In this way, local newspapers exemplify how the culture of impunity undermines the conditions of communicative equality among Mexicans and the practice of discourse ethics in the public sphere, since they are ruthlessly silenced if they dare release information about the causes, origins, activities and agents of drug trafficking in Mexico.

Finally, there has been growing use of the Internet as a source of disseminating information. It is not hindered by constraints of time and space. However, its disadvantage is that not every person, especially in poorer countries, has access to it, since it supposes a threshold of resources and education to research information. Nevertheless, the deliberative development of Mexico's public sphere has been encouraged through the Internet because it has posed better opportunities to exercise the right to reply or to enhance discursive interaction among journalists, public authorities and the Mexican people. Besides, the Internet also offers the opportunity to create virtual forums through which citizens can participate, give input to public debates and influence their fellow citizens to take a certain stance on public affairs.⁹³

The Internet also offers access to alternative points of view to those of the traditional media and is a space for virtually every possible position in public affairs. Nevertheless, its biggest shortcoming stems from the lack of time and resources Mexicans have to research these alternative points of view. What is clear is that every day, the Internet is becoming a more relevant means of social communication that influences a large sector of Mexican civil society, particularly the middle class youth, who are the most assiduous users of the Internet in Mexico.

According to one internal study carried out by the PAN [National Action Party] during the 2006 federal elections, middle class youth overwhelmingly prefer obtaining their political information from the web rather than from watching television or listening to the radio. They are also fonder of research-

⁹² Pablo Cabañas Díaz, *Impunes, los 31 asesinatos contra los periodistas*, FORUM EN LÍNEA, May, 2007, <http://forumenlinea.com/articulos/articulo04.html> (last accessed 17 May 2007).

⁹³ Interview with Felipe González Lugo in Mexico City (December 13, 2005). For example, the National Action Party (PAN) possesses various virtual forums in which their members can participate, exchange ideas and dialogue about political issues.

ing independent and alternative information on the web than of visiting the traditional media websites.⁹⁴

The Internet offers extraordinary opportunities to create a deliberative opinion-making process in Mexico, since it offers to citizens the space to express themselves on public issues and share their thoughts with other people, via email or by creating virtual forums or blogs. The Internet is evolving into the leading means of social communication for deliberative democracy due to its interactivity and the virtually infinite space it offers for all possible perspectives in politics, thus facilitating an ideal deliberative space for Mexican citizens and the formation of a deliberative opinion-making process in Mexico's public sphere.

In short, the Internet primarily enhances communicative equality (the ideal speech situation) among Mexicans, and can also encourage the use of discourse ethics in Mexico's public sphere, since the positions circulated online can be better subjected to public reason through this enhancement of communicative equality that the Internet facilitates.

VII. CONCLUSIONS

Mexico's structural conditions (social, economic and cultural) have encouraged a culture of patronage and clientelism within the Mexican media, which along with the weakness of the rule of law, has hindered any significant contribution to the deliberative development of Mexico's public sphere. Especially during the post-revolutionary era, the government openly exercised patronage over media owners and journalists to receive favorable coverage and established a culture of *cacicazgo* within the media, which undermined freedom of speech, favored censorship, manipulated public opinion and encouraged impunity for violations of constitutional rights. In brief, it weakened the rule of law and obstructed the democratic nature of these media. However, significant changes have taken place, and we can clearly distinguish two current opposing tendencies in the Mexican media.

On the one hand, there is a positive tendency in which the media, especially radio broadcasting and the press, have improved the quality of their political reporting and analyses, although they are still at the early stages of acquiring better deliberative practices. There is more evidence of civic journalism within the broadcast media, even from *Televisa* and *TV Azteca*, and more diversity, quality, professional culture and public service orientation in newspapers. Furthermore, the new regime at the federal level does not employ—at least not at the same extent—the subtle methods that the post-revolutionary regime used to control the media. These are all positive factors that contribute to the deliberative development of Mexico's public sphere.

⁹⁴ Interview with Federico Doring in Mexico City (February 14, 2006).

These factors all enrich the “ideal speech situation” in Mexico’s public sphere, better dispose Mexican media and citizens to justify their participation in this sphere with reference to the common good (better “discourse ethics”), and contribute to fair preference aggregations within citizens’ decision-making processes (elections) since voters can be better informed than they were before. All these factors reflect the improved deliberative quality of the Mexican media.

On the other hand, the opposite tendency in the Mexican media consists of the wave of violence against assertive journalists who have denounced the activities of criminal organizations and the involvement of some public authorities. This tendency is especially encouraged by the weakness of the rule of law in Mexico that leaves these crimes unpunished. Obviously, this impunity undermines the “ideal speech situation” in the Mexican public sphere because the voice of criticism is increasingly being silenced arbitrarily. This is a great challenge even for the Mexican State, since criminal organizations are threatening every person who interferes in its activities, no matter his or her position in government or within the media. The State needs to design and implement measures to enforce the rule of law and punish crimes against journalists effectively.

Another challenge for the deliberative development of the Mexican media is the oligopoly in television broadcasting, in which competition, diversity and plurality should be encouraged, as well as the access of representative groups of civil society to its ownership, in order to open television broadcasting to the many voices of civil society. This oligopoly is a direct result of the culture of patronage over broadcasting media that has been promoted since the birth of the post-revolutionary regime in an effort to better control the information released. Unless this oligopoly is effectively overcome, an ideal speech situation cannot be fully realized within Mexico’s public sphere and discourse ethics cannot be completely encouraged within it.

In summary, both challenges substantively undermine the deliberative quality of the Mexican media. However, the Internet in Mexico has become an extraordinary tool that offers people many opportunities to obtain plural and diverse information and that allows alternative perspectives in the public sphere to be heard. The Internet is especially relevant for enhancing the informational environment and increasing opportunities for people to learn about public issues. Moreover, it has the potential to become the most suitable means of social communication for discursive interaction among citizens, which is indispensable for the deliberative development of Mexico’s public sphere.

As we can observe, the Mexican media have experienced a mixed evolution in the extent to which they promote deliberative democracy in the public sphere. The positive tendency of the media offers opportunities to foster civic dialogue, the “ideal speech situation,” “discourse ethics” and fair preference aggregation (indirectly for the political institutional system) within Mexico’s

public sphere. Furthermore, it offers opportunities to improve the quality of discourse ethics and public reasoning, which constitute the essence of deliberative democracy.

On the other hand, the negative tendency observed in some media (violence against journalists, weak rule of law to protect them, oligopolies, limited access for civil society) discourages all the aforementioned elements of an “ideal deliberative procedure” for Mexico’s public sphere.

There are two possible solutions to this negative tendency in the Mexican media. The first concerns the enforcement of the rule of law to diminish the silencing power of organized crime over the Mexican media, a very complex task. This cannot be accomplished simply by introducing harsher punishments for organized criminals since it involves multiple aspects extending across the economy, the financial world, public administration and national and international security. The second concerns the implementation of public policies that encourage competition within the broadcasting media, allow advertising in non-commercial media and establish democratic criteria for granting concessions. All these measures could discourage the culture of patronage within these media, which unfortunately has discouraged communicative equality among Mexicans in the public sphere and has favored conditions for manipulating public opinion.

Given all the previous arguments, it is difficult to define extent to which the Mexican media promote the development of deliberative democracy in the public sphere. These media have certainly evolved positively from a closed and authoritarian environment to a more open and democratic one, but there are still many challenges and regressive practices that must be overcome if they are truly to encourage democratic deliberations in the public sphere. As the Mexican media are on their way to enhance the “ideal speech situation” and “discourse ethics” in the public sphere (and thus on their way to also enhance fairer preference aggregation within electoral decision-making processes), we can argue that their deliberative quality, though uneven, is better than minimal, though not enough to promote let alone guarantee “ideal deliberative procedures” consistently in the Mexican public sphere.