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To cite this article: Manuel Alejandro Guerrero (2010) Broadcasting and democracy in Mexico: From corporatist subordination to State capture, *Policy and Society*, 29:1, 23-35, DOI: [10.1016/j.polsoc.2009.11.003](https://doi.org/10.1016/j.polsoc.2009.11.003)

To link to this article: <https://doi.org/10.1016/j.polsoc.2009.11.003>



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Published online: 03 Mar 2017.



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# Broadcasting and democracy in Mexico: From corporatist subordination to State capture

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## Abstract

The purpose of this article is twofold: on the one hand, it proposes a model to understand the relation between the media and politics in Mexico after the transition, which transformed from a relation dominated by a centralized political power into another dominated, this time, by strong broadcasting networks over a fragmented political landscape. On the other hand, additionally to what has been discussed in recent literature, it offers some evidence to consider that under conditions of fragmentation of power it is also possible to capture the State by strong and organized economic actors.

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For decades, the relation between the media and the public power in Mexico was defined on the basis of an exchange of the corporate type where the regime offered benefits and protection to the media's economic interests in return for political endorsement (Arredondo & Sánchez Ruiz, 1987; Carreño, 2007; Trejo Delarbre, 1994). In this relation, the legislation was used as one of the main mechanisms to secure the economic and technological development of the media, which in turn used their information policy and their news programs to legitimize not only the system but specially the presidential figure (Guerrero, 2009). This relation ceased to work due to the emergence of a more competitive media landscape (in 1993 public television was privatized) amidst an economic crisis and growing political plurality with the rise of the opposition to power in the 1990s. It was then that the electronic media began to be more open and to enjoy a greater autonomy and freedom in deciding their content.

The landscape had changed and so had the nature of its relation with the public power. But in what way? This article lays out a model to better understand the relation between the media and the political power in the first decade of the transition after almost 71 years of predominance of a dominant party. Contrary to what may be expected after the alternation of power for almost a decade, the relation between the media and the political power has not become more transparent, well-balanced, or professional. The reason for this being that the model of relation between the media and the political power has shifted from a relation of "Centralized Media-Power," where the rules of the game and the regulatory initiatives were put forward by the federal government, to a relation of "Fragmented Media-Power," with different plays and actors using different rules resulting in a situation whereby large media networks, with a good organization and a clear-cut purpose of interest, are presented with opportunities to capture the State for their own gain. The capture of the State in conditions of fragmented power makes for an argument that provides evidence which is different from the one yielded by current studies, which maintain that such a capture may be easier in conditions of centralized power (Omelyanchuk, 2001).

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The first part of this article analyzes literature regarding the capture of the State. The second part explains the variables of the Mexican case and presents the most revealing cases of this capture, both in regulating and preventing an opening of the market to new competitors.

### 1. State capture and the Mexican case

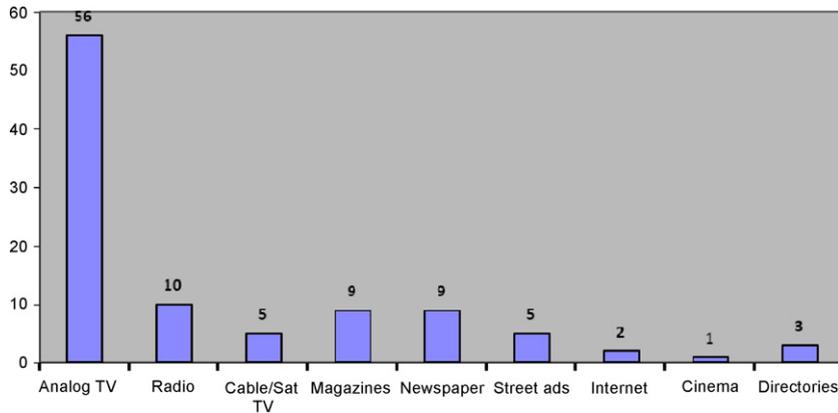
Since the late 1990s, a new line of research inquiry on development and economic studies have emphasized a situation in which, under certain circumstances, private interests gain control over public regulatory and policy areas in order to maximize their own interests at the cost of potential great losses for the rest of the society. For instance, the World Bank has conducted a large number of studies to assess the negative impacts of what has been defined as “State capture” on competition, open markets, and distribution of wealth in different countries (EBRD, 2000; World Bank, 2000a, 2000b). In his study on post-communist countries transitions, Hellman (1998) explains how the partial economic reforms in these countries have created strong market distortions that not only concentrate gains in a handful of actors, but also generate incentives for them to block all measures to eliminate such distortions. While attempting to provide with a model for explaining the reasons that enable State capture in transition societies, Omelyanchuk (2001) emphasizes two crucial aspects as independent variables: a high economic and political power concentration and an underdeveloped civil society. He says that “the higher the degree of economic power concentration, the higher the degree of capabilities to carry out State capture [sic]” and “the more concentrated the political power, the higher the probability that the State capture will be successfully carried out by the powerful economic actors [sic]” (pp. 13–14). As for the civil society, he observes that its low level of development “results in the lack of organization of the interest groups, thus disabling them from performing their function [effective oversight of public officials]. In this condition, collusion of private interests with public officials remains unchecked” (p. 14).

As for measuring the “level of development” of civil society, Omelyanchuk (2001) refers to the convenience of using proxies like: the degree of civil liberties and freedom of the press (p. 16). However, since he supports his argument using Beyme’s work (1985) in relation to how the degree of civil society’s level of organization and participation may impose a constraint on the malfunctioning of the State (Beyme, 1985: 11–12, cited in Omelyanchuk, 2001: 14), I think it is also important to consider the level of participation and internal and external levels of civic efficacy. In the case of Mexico, there is already a very large number of studies that measure in several ways the “level of development” of civil society in relation to the degree of existence of modern democratic values and practices.<sup>1</sup> The conclusion of most of the literature on Mexico’s civil society’s democratic values and practices is that, though participation and trust in political figures are relatively low (see *Latinobarómetro*, 2008), the trends observed in the last decade, specifically in terms of voting participation and trust in political institutions, are showing a slow, if constant, path towards democratic consolidation, at least in electoral behavior (Ai Camp, 1996; Bruhn & Greene, 2007; Dominguez & Lawson, 2003; Moreno, 2007). Therefore, it is possible to argue that in terms of its “level of development,” Mexican civil society, though still “weak” (Escalante, 1991) as compared to the levels of participation and interest organization in consolidated democracies (*World Values Survey*, 2009), it is slowly “strengthening.”

As for the other variable – high concentration of economic and political power–, it is necessary to evaluate its two components separately. According to a survey on “Governance and Entrepreneurial Development” (CEESP, 2005), firms in Mexico identify private and public monopolies as the largest obstacles to business development. Moreover, Matsuda and Senderowitsch sustain that,

A particular feature of Mexico’s economic structure that limits its competitiveness is the degree of market concentration in key economic sectors and the existence of public and private monopolies, especially in utilities. The reforms introduced during the 1990s aimed at raising fiscal revenue, promoting economic efficiency, broadening stock ownership, attracting foreign capital, providing more opportunities to introduce competition and strengthening the regulatory framework in the case of natural monopolies. However, in some cases the reforms led to increased market concentration and failed to enhance the competitiveness of the economy as a whole. In some cases, privatization meant a mere change of ownership, replacing public monopolies with private

<sup>1</sup> Some of the most recent studies related with democratic values, practices and participation are: Castaños (2006), De la Peña (2006), Bruhn and Greene (2007), Castañeda and Morales (2007), Moreno (2007), Eisenstadt (2007), Klesner (2007), and Lawson (2007).



Source: "Inversión en medios 09", *Merca 2.0* (84), April 2009, pp.42-45

Graphic 1. Advertising investment (%) in Mexico 2008. Source: "Inversión en medios 09", *Merca 2.0* (84), April 2009, pp. 42–45.

ones, without an effective regulatory framework in place and strong regulatory agencies that could enforce more competitive conditions (Matsuda & Senderowitsch, 2007, p. 37).

A key feature stressed by the authors above is that privatizations did not end with market concentration, but only meant a mere "change of ownership" which has not brought about an impact either in efficiency or competitiveness in certain economic sectors, leaving intact the trend of concentration that, as Gordon (1997) noted, has defined the Mexican economy before the political transition started. There are few sectors where this is truer than in broadcasting.

In Mexico there are two kinds of licenses for operating broadcasting stations, "concessions" (awarded to commercial broadcasters) and "permissions" (awarded to public and cultural broadcasters) and commercial stations outnumber public and cultural stations by almost 4 to 1. According to the data provided by the Secretariat of Communications and Transport the two largest private TV networks, Televisa and TV Azteca, concentrate almost 95 percent of all the frequencies in Mexico, whereas only four radio networks have 48 percent of the concessions in Mexico.<sup>2</sup> If one considers that 75 percent of Mexican households have access only to analog TV frequencies (Sosa Plata, 2009), and that analog TV and radio receive the largest amount of advertising investment (Graphic 1), then it is obvious that the broadcasting market is not only highly concentrated, but that its largest networks are also relevant actors in Mexican public life.

And finally, how about political power concentration? Omelyanchuk (2001) says that "the more concentrated the political power, the higher the probability that State capture will be successfully carried out by the economic actors [sic]" (p. 13). His affirmation is supported by Bruszt's findings (2000 and 2001 as cited in Omelyanchuk, 2001: pp. 13–14) that "the more dispersed the political power, the more difficult to capture the State [sic]". But, is "concentration of power" the natural opposite condition to "dispersion of power?" And, is it the only one which facilitates State capture? The Mexican case may prove otherwise.

To start with, for Bruszt (2001) dispersion of power is understood in the same fashion that the divided power condition above has been defined here, i.e. one in which a horizontal and vertical accountability as well as effective mechanisms of checks and balances prevail. In Mexico, though there is currently a high economic concentration, especially in broadcasting, what is found at the political level is fragmentation instead of concentration. Nevertheless, State capture still occurs. Why? And what does "fragmentation" mean here?

To reach a better understanding of this argument, it is essential to briefly discuss some crucial aspects which characterized political life in Mexico following the 2000 election. Adam Przeworski has pointed out that "the establishment of democracy is a process of institutionalization of the uncertainty" (Przeworski, 1994: p. 96). In this sense, no force by itself has the capacity to intervene in the political process to always tilt the results in its favor, nor

<sup>2</sup> Televisa has 225 concessions and 32 other stations serve as repeaters of their programming in different states; TV Azteca has 180 concessions (data consulted at: <http://dgppt.sct.gob.mx/index.php?id=464> in May 2009).

can anybody have the results guaranteed *a priori*. In democracy, then, what must be agreed on are the rules of the game, not the results of the interaction between the actors, as those are invariably fortuitous and changing over time.

In Mexico the political transition has not been founded on a new political pact for creating a more accountable, transparent, and responsible institutional framework only on a pact over electoral competition and a competitive access to power. Thus, paradoxically, many of the new actors who have accessed to power through elections and other democratic means, once in power, in many spheres they have discovered that they have no incentives to change the old rules of the game in relation to crucial aspects of the exercise of power, like the rule of law, accountability and responsibility. So, it is precisely the institutionalization of uncertainty in the daily “exercise of power” what many of Mexico’s political actors are not willing to accept. The argument beneath is that in a political transition from authoritarian, or Communist rule, the political power does not necessarily move in a continuum from “Centralization” to “Division” (checks and balances, accountability and the like), but that as the key figure that used to concentrate power fades away (due to a variety of reasons: arrival of opposition, disappearance of ruling party, death of the leader, etc.), other actors may claim, or simply take, power in different spaces and at different levels. If no new rules for exercising power are defined – new constitutions or simply a new pact, in the sense of O’Donnell and Schmitter (1986) – chances are that the old rules of the game, although they may be losing their legitimacy, can still be applied by new actors, but not necessarily with the same efficacy as before. The outcome, in this case, may be “Fragmentation.”

An increased competition for access to power has allowed a large variety of new actors to have access to it in a context where they have been the leading beneficiaries of a system where power, although no longer concentrated, has kept alive not only clientelistic relations but also many of the informal rules contained in the political game of the old regime.<sup>3</sup> The lack of clarity in the laws, the many legal loopholes, the lack of consistency in administering justice, the booties that shape the expanses of power and administration – specially in the states, localities, municipalities, unions, and in the parties themselves – and the blanket thrown by the federalist speech or union autonomy as a way to escape national scrutiny when handling resources and when mobilizing and forming groups that will cater to the needs of the new powerful, have provided a significant series of stimuli to keep old forms in the exercise of power.

The political controls that were previously concentrated have been handed down to actors in different spheres (political bosses, governors, popular representatives, union leaders, as well as political organizations and associations). This can be easily exemplified by the capacity for mobilization observed in organized groups – *formal* (peasant leagues, unions, truck driver unions, etc.) and *informal* (street vendors associations, groups of individuals that settle in or occupy areas, apartment buildings, and land, freedom movements, autonomists, and the like) – in favor of the private interests of individual politicians, instead of carrying out this type of mobilizations “in favor of the system” as a whole, as has been the case in the past. Such fragmentation implies that even within the ranks of the party, the leadership of those who occupy senior positions is not necessarily acknowledged, or else that their legitimacy is the subject of constant negotiations with other groups. When I say different rules of the game, I mean that the institutional and formal channels are not necessarily the usual means to solve disputes and conflicts among the political actors. Occasionally it is advisable to expect solutions that are on the fringes of the law based on previous political negotiations.

Therefore, if the post-revolutionary regime had for many decades the capacity to make centralized decisions over who got what and for how long, after the first alternation some powerful actors became capable of deciding – in a decentralized manner – who the winners are and for how long they will remain in their “fiefdoms” and spaces of power. This is the faculty which these groups and actors have been reluctant to give up without putting up a fight and it is from these positions of power that negotiations have been orchestrated from various rules of the political game. This is about a system where the political power became fragmented as negotiations have been concluded by applying different rules in each space of power.

So, along with the emergence of various actors observing different rules, different types of relations between them and the media sprang up depending on the region and the type of media. The media make for great vehicles for

<sup>3</sup> Richard Zinder shows how the neoliberal policies in the coffee agro-export sector brought about, on the one hand, the withdrawal of the federal government, and on the other hand, the filling of these regional power vacuums by state governments in an attempt to create new strategies to capture revenue and resources for their own private political projects (Zinder, 1999; see also: Fox, 1994).

propaganda (governmental advertising) and are key factors during electoral times. It is here that gigantic and well-organized media networks become powerful in light of a fragmented political landscape.

Regardless of what party is in power, political actors have often tried to use advertising expenditure as their frontline mechanism to establish clientelistic relations with the media, a practice for which the old official party took a lot of flack from the sitting parties (Arriaga, 1980; Bohmann, 1997). Given the fact that there is no law regulating this type of expenditure – except during election periods – there is no reliable data regarding the handling of advertising by governors and town mayors.<sup>4</sup> Nevertheless, the figures of the federal government are telling as they clearly show that even though the percentage of participation of public advertising diminishes in terms of total advertising in the media, the opposite is true with governmental advertising. For instance, in 2001 the public advertising investment was \$ 2800 Million Pesos of which \$ 721 Million Pesos belonged to the federal government only; from 2004 to 2009, while the average of public investment on advertising has averaged \$ 2400 Million Pesos, the federal government investment has increased from \$ 1135 Million Pesos in 2005 to \$ 1600 Million Pesos in 2007, and to an estimated \$ 1875 Million Pesos in 2009, according to the Federal Budget (AMAP, 2009).

Moreover, if only the first two-and-a-half years of President Felipe Calderón’s administration are factored in, “from 2007 to March 2009, official spending on advertising shot up by 228.57%” (Islas Reyes, 2009) when compared to the same period of his predecessor. And even though this spending from the federal government accounts for only a fraction of the total spending on advertising, it is important to emphasize that the first government of the alternation did not make substantial changes in the practices of the PRI regime as far as advertising spending. As a matter of fact, the old practices were maintained. But advertising? What for?

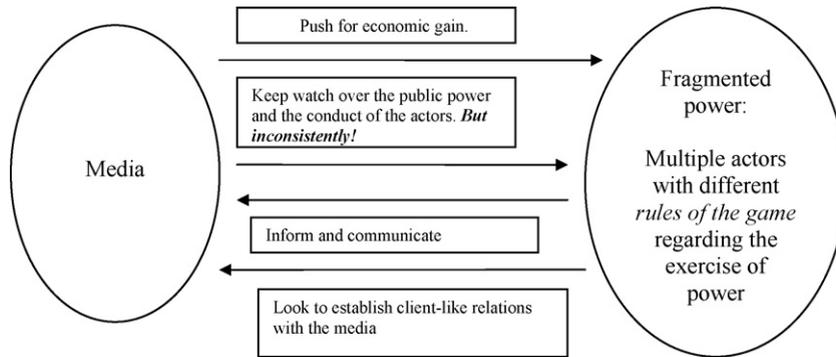
The will of the government to maintain close ties with the media is no longer aimed at controlling them, as it was the case in the past, but at boosting their chances of a more favorable coverage – or less unfavorable, depending on the case – and to “appear on the screen.” In a context where the disappearance of centralism has meant a major concentration in the private spheres of the political actors and where accountability has been very low, they have been aiming at securing the best coverage possible. To that end, the budget earmarked for advertising *has turned into* an effective instrument – dependent, as it is, on the region and the kind of media.

Hypothetically, it can be suggested that the effectiveness in budget allocation with the aim to achieve a better advertising coverage can be higher in any of the following three situations: (a) provided that the percentage of public advertising has been a strong component of the station’s total revenue; (b) provided that the political analysis has given a boost to the weight of the actors on the interests of the media; and (c) provided that the actor paying for the advertising has not fallen into disgrace in the eyes of politicians that are either more prominent or have paid more. Should these reasons be true, this would explain why – the constant spending on advertising, notwithstanding – politicians do not always get positive coverage in the media. For the latter, this relation has brought about some consequences as, for starters, it has begun to affect their surveillance capabilities on public power: this means that, depending on the three situations above, *there have been times when* the media has been more effective in its role of guardian of the public power.

As a result, television in Mexico in particular – although it could also be the case of the most influential radio broadcasting groups – has taken on huge symbolic power in the eyes of a multiplicity of fragmented political actors.<sup>5</sup> In an environment where loyalties and traditional channels of access ceased to function, the enormous symbolic power of television has rested on its capacity to get the political power *to exist* beyond its immediate environment and *to be reckoned with* thanks to an unending coverage. The transition and the loss of relative power in the presidency in the presence of other political actors have succeeded in making trajectories and political careers independent from the decisions of a concentrated power, and each actor within his own sphere of power – states, regions, organizations – must have bent over backwards to “obtain screen” all by himself. Political actors that *need* the media to transcend their private spheres of power – to make themselves known elsewhere and boost their presence before other potential rivals.

<sup>4</sup> In the State of Mexico, one of Mexico’s most important entities, it has been reckoned that in the first four years of his administration Enrique Peña Nieto has spent on the dissemination of his image and government programs “at least \$ 668,120,645.00 pesos (US\$57 million) as part of the so-called Public Communication and Information Enhancement, an amount that is eight times the resources allocated this year for Civil Protection (even when the floods call for a larger investment), one fourth of the expenditure on social development or the procurement of justice, and only 200 million short of the budget for social reintegration” (Mendoza, 2009).

<sup>5</sup> For example, the two main private television networks, Televisa and TV Azteca, have secured 23.16% of the total of the federal government spending on advertising (Islas Reyes, 2009).



Graphic 2. Current relation between the media and the public power in Mexico “Media-Fragmented Power Relation”.

We should consider here the percentage of public spending allocated to radio and television during an election period. According to the Federal Electoral Institute (IFE, 2007), the parties earmarked 25% of their budget to political advertising on radio and television in 1994. However, after the electoral reform released the advertising budget in 1997, the parties’ spending budget has been as follows: 55% in 1997; 58% in 2000 55% in 2003; and 69% in 2006.

In this environment, the power of television has been greater given the fact that, in economic terms, its interests have been very clear and concrete: maintain a high profitability as business. In contrast, the interests of the fragmented political class have been diverse and, more often than not, in opposition. Hence, the media – appearing as a unified or glutinous group before the television networks – have stood a better chance to see their economic interests favored in the presence of political actors in a scenario of fragmented power. Graphic 2 illustrates this “media-fragmented power” relation.<sup>6</sup>

Now let me explain how this relation between highly concentrated economic power and fragmented political power has favored State capture regarding broadcasting regulation and public policy.

## 2. State capture in Mexico: three cases

As it has been suggested, one of the aspects of the old relation between the electronic media and the regime was the capacity of the broadcasters to negotiate their economic interests to their advantage by securing benefits for the development of the commercial broadcasting model in return for providing political endorsement and lending legitimacy to the regime. It is argued here that the alternation failed to re-define the relation with the media in democratic terms. Instead, it created conditions that advance the capture of the State on the part of large broadcasters. Be it out of sheer inability or because of a deliberate strategy, the alternation governments have given up on re-defining with clarity what the role of the State should be in matters of radio and television. It might seem that one has gone from a relation where broadcasters and government bargain over clear-cut interests for mutual gain – although with no gain for democracy – to one where the government has surrendered all the ground and the initiative in favor of well-organized and powerful groups that have made good use of it.

Actually, in light of this scenario and having well-defined interests, the pressure applied by the radio broadcasters has become more effective. In contrast to what was true during the PRI administrations when the government took the initiative to push through reform bills in the sector, it is the large corporations now that have taken the initiative and, to a large extent, subsequently accomplished their objectives without having to offer anything in return. This time, in view of an absent State, the new relation does not work in favor of democracy either.

<sup>6</sup> After analyzing the structure of the media in the West, Dan Hallin and Paolo Mancini put forward three ideal media system models in their work *Comparing Media Systems* (2004): the “polarized pluralist,” near the Mediterranean world, which combines a weak press circulation, a strong parallelism between the media and the public powers, a weak professionalization, and a significant level of regulatory intervention by the State. Then, there is the “democratic corporatist,” which is close to the model observed in countries of Northern Europe like Germany, Switzerland, Belgium, or The Netherlands, with a strong press circulation, little-politicized presentation of information, high professionalism and a strong regulatory intervention from the State. Finally, the third model is the “liberal,” close to the Anglo-Saxon world, with a mid-level circulation, a press with a decreasing trend toward politicization, a highly self-regulated journalistic professionalism, and a dominance of the market over public intervention mechanisms. Evidently, neither the case of non-democratic countries nor the case of new democracies is being considered within these ideal types, so the relation models are still to be defined (Guerrero, Aburto, & Luengas, in press).

Three momentous events in particular will help to illustrate this argument: (1) The publication of the new Rules from the Federal Law for Radio and Television and a Presidential Decree, both from October 2002; (2) the violent takeover of the broadcasting facilities of TV CNI Channel 40 by TV Azteca in December of 2004, without the latter being penalized by the authorities; and (3) the way in which a series of reforms to the federal laws for radio, television, and telecommunications – known as the “Ley Televisa” or Televisa Law – were enacted between December of 2005 and April of 2006. In Mexico, the negotiations between the organized economic sectors and the public authority have shared, in general terms, a historic characteristic – before and after the alternation: the secret (Puga, 1993). It was not until the first visible consequences of these agreements emerged in the form of guidelines, tax exemptions, preferential rules, tax credits, or tax reliefs, that part of the content of the negotiations between the top layers of the economic and political spheres “turns public.” Thus, obtaining substantive evidence of the *negotiation process itself* becomes an extremely difficult task with the search yielding only bits of information which are, at best, circumstantial.

In the three events that are discussed below the outcomes are evident: new regulations in two of the cases and the non-application of the law in light of an obvious breach in the other case. However, there is also evidence – which is the true matter of analysis here – that these new rules adopted in the law did not originate in the analysis by either the government or the parties, but instead were designed and turned over to the public authorities by the broadcasters, only to be approved without further ado. This last evidence comes both from some research done by press reporters and from leaks which were ultimately acknowledged by the political actors who, at the time, approved these legal reforms as if they had been “public projects” for the benefit of society as a whole. All three cases attest to the initiative of the broadcasters and the passive acceptance by a State held captive by radio broadcasting.

### 2.1. *The new law of radio broadcasting and the presidential decree of October 10, 2002: capture of the State in regulation*

On October 10, 2002, *the Official Gazette of the Federation* published two very important amendments to radio broadcasting legislation in Mexico: a new presidential decree in substitution of the one issued on July 1 of 1969 pursuant fiscal times, as well as new rules in the Federal Law for Radio and Television, which replaced the one of 1973.<sup>7</sup> The most notable change in the presence of the regulations above was the reduction in the payment of “fiscal time” – which had been in existence since 1969 – to the State by the broadcasters.

The presidential decree of July of 1969 stipulated that the broadcasters must make available 12.5% of the daily broadcasting time to the State, as partial payment for the use of federal concessions, which translated into 3 h for each of the stations of radio and television. The decree stipulated that such amount of time was not cumulative nor could it be deferred and that it was enough for the broadcasters to “make available” such amount of time to the State, whether the latter used it or not. It should be added that there was no fixed hour to broadcast the messages of this “fiscal time” and that the unused time would be returned to the broadcasters “for its own gain and so as not to interrupt the broadcasting service.”

At the time, this decree gave rise to lengthy negotiations between the broadcasters and the regime and, although in the end there was no intention therein of compromising the profitability of the commercial broadcasting, to many broadcasters the 12.5% tax illustrated the dominance of the State over them.<sup>8</sup> Hence, the new presidential decree of October, 2002 significantly curtailed the amount of time of such tax, a move that was interpreted as a situation that would bring about advantages to the messages broadcast during those “fiscal times” as it guaranteed a larger audience while at the same time freeing the broadcasters from “the vestiges of authoritarianism.”

<sup>7</sup> *Official Gazette of the Federation*, “Rules from the Federal Law of Radio and Television, in matters related to concessions, permits, and content of radio and television broadcasts,” October 10, 2002.

<sup>8</sup> If it is true that the government of President Díaz Ordaz (1964–1970) eventually levied this tax on broadcasters “for using federal concessions” in 1969, a move that has been interpreted as an example of authoritarianism on the media, it is also true that the Mexican State never had the capacity to produce contents that would cover its daily 3-h quota of broadcast. For instance, in its “Annual Report,” the General Direction for Radio Broadcasting showed that, of the nearly 1100 h of broadcast which corresponded to the fiscal time in (Televisa’s) Channel 2, only 121 h and 54 min had been broadcast (DGRTC, 1979: pp. 56–59). The existence of this tax is another example of how governmental initiative worked as far as radio broadcasting: It would impose certain conditions which were at times too harsh to meet. However, in general terms their sole purpose was to warn and turn radio broadcasters away from reasonable limits on the contents, given that these prerogatives of the State were not fully exercised. Let’s not forget that most of the content sent by the government to the stations was aired between 24:00 and 05:59, the hours with the lowest rating and the lowest loss for radio broadcasters (Guerrero, 2009, especially chapter two).

The decree of October 10, 2002, stipulates in its article 1 that the radio and television broadcasters may pay now the relevant tax with 35 and 18 min of air time, respectively, “for the broadcasting of recorded materials from the *Federal Executive Branch* [divided into clips] with duration of between twenty to thirty seconds.” It is important here to note the italicized words because the Federal Executive Branch does not, of course, include other powers, or others segments of government. Besides, it is worth noting that the 3-h time which the State presumably received as payment for this tax (12.5%) was reduced to only 18 min in television, that is 1.25% in terms of daily broadcasting time. Even though the State never had enough capacity to cover all 3 h with its own production, the justification to shorten the fiscal time was not only because now the supposition was that there would be production for such short time, but because, unlike in the past, the contents of the government would now have fixed airing times: they would be broadcast only between 6:00 and 24:00 h. This suggested the possibility – although it is merely a possibility – that the contents may be broadcast in times with certain rating, although broadcasting on prime time was certainly not to be expected.

Presumably, the other advantage of this decree is that the federal government, by being able to broadcast their announcements at better airing times, would save on many resources that were previously utilized to guarantee the broadcasting of its content in times of high viewership because the space was generally paid in order to “guarantee” the broadcasting of a message at 20:00. However, the federal government spending on publicity continued to grow in the following years, rising from \$778 Million Pesos in 2002 to \$1,534.4 Million Pesos in 2003, so the savings approach did not provide a valid argument either (AMAP, 2007). Thus, the 10% reduction in the old fiscal time did not bring along the alleged advantages, attract larger audiences to governmental advertising contents, or reduce federal government spending on television and radio.

It goes without saying that the criticism directed at the content of what was known as “Decretazo” (the Big Degree) was swift with most of it immediately making its way from journalists and academicians to the written press. Between October 11 and 17, the seven most prominent papers within the national press dedicated at least one front page and five detailed editorials on average to the subject.<sup>9</sup> More specifically, the center-left newspaper *La Jornada* approached the theme in their editorial columns of October 12 and 17. Despite these critiques, both the CIRT and the Secretary of Governance came out in defense of the measures and their resulting disadvantages (Dávalos, 2002). But, where did these initiatives come from? The key is in a column of the newspaper *El Heraldo de México* written by the journalist Joaquín López Dóriga, an anchorman at Televisa’s main news program “El Noticiero” (“The News”). On October 11, 2002, he wrote: “When I first became aware of the project put together by Bernardo Gómez, Chairman of the Chamber for the Radio and Television Industry [and Televisa’s Executive Vice President], it struck me as a daunting – albeit not impossible – task. I watched him operate on all fronts until 4:30 am, Thursday, when the agreement was finalized: the reform to the regulations and the repeal of the 12.5%, moves that signaled the closing of a long, infamous era in telecommunications and the opening of a more promising one” (López Dóriga, 2002). This information validated what appeared to be mere speculation in the written press: the reform project had emanated from Televisa (Villamil, 2002).

Beyond any advantages the broadcasters derived from the 12.5% reduction, the enactment of these laws prompted this special Televisa-led interest group to deftly maneuver to advance their interests in two other aspects: advertising and renewal of concessions. As far as advertising goes, this group of broadcasters managed to pull those programs aired between 24:00 h and 05:59 h in the early morning off the time authorized to air advertising – 18% of total broadcasting time for television and 40% of such time for radio. Article 46 of the law allows them to broadcast product-selling programs – or telemarketing – uninterruptedly. This is not considered to be advertising time. By the same token, along with the issuance of the law and the new decree, the federal government stipulated in article 6 transitory of the law that “the concessions” expiring before January 1, 2004, may file for concession renewal for terms shorter than those set in these law.” More than a thousand concessions were renewed.

## 2.2. The violent takeover of CNI Channel 40 by TV Azteca: State capture in the application of the law

CNI – a News and Information Corporation – began operations in 1995, two years after securing a concession to broadcast on the UHF band (Ultra High Frequency).<sup>10</sup> In 1998 CNI embarked on a strategic alliance with TV Azteca

<sup>9</sup> To this criticism should be added the editorial of October 12 in *UnomásUno*, the editorial on *Excelsior*’s front page October 14, the editorial on *El Financiero* on the same day, as well as criticism from various pundits and columnists who often deal with the topic in the press.

<sup>10</sup> The owner of the concession was the company “Televisora del Valle de México.” Its major stockholder, Javier Moreno, ran that concession through CNI Channel 40.

that would enable TV Azteca to broadcast some of its contents on CNI Channel 40. The alliance would also leave TV Azteca in charge of the commercialization and would afford it the option to buy stock from Televisora del Valle de México for up to 51%. In 2000, Javier Moreno Valle chose to end such alliance on the argument that TV Azteca had not totally fulfilled his obligations under the contract. A long trial ensued in which the International Court of Paris was involved. The court ruled in favor of TV Azteca in December 2002. The enforcement of the ruling only required that a “writ of execution” be carried out in Mexican courts.

However, TV Azteca did not wait and decided to take the law into its own hands by having a commando of 30 armed, hooded men forcibly take the CNI’s transmission antenna compound at Cerro del Chiquihuite, on the eastern fringes of Mexico City, in the early hours of December 27. Their objective was to end CNI’s transmissions and re-establish their own signal. For ten days, CNI Channel 40 broadcast the full signal of TV Azteca’s Channel 13 in the face of contradictions and irresponsiveness from public authorities. At 10:00 o’clock that night, as the Attorney General’s Office (PGR) reported that an investigation of the “facts that allegedly took place in the facilities located at the Cerro del Chiquihuite,” was under way, the Secretariat of Communications and Transport was making public its stance on the incident with the statement “we have nothing to say” (Olivares, 2002). On January 6, CNI’s news director, Ciro Gómez-Leyva, ran an open letter in all national newspapers addressed “To President Fox,” calling for “any authority” to make a pronouncement with regard to what was going on with the channel. Even senators from various parties were voicing their concerns about the lack of authority from the government in this matter (Becerril, 2003).

The next day, Channel 13’s main news program, *Hechos*, pointed out that the litigation with CNI Canal 40 was “between private individuals” and that, as such, it must be resolved without the intervention of the government. This position was also maintained by the Secretary of Communications and Transport (Islas Reyes, 2003), for whom it “is not an urgent issue” (Venegas, Aranda, & Méndez, 2003). Moreover, even President Vicente Fox, during the inauguration of a new press conference room in Los Pinos – the president’s official residence – responded to CNI’s information Deputy Director’s question about the actions his government was considering in the face of the usurpation of a radio broadcasting signal: “Why me?” (Venegas et al., 2003), a phrase that, although it conveyed the government’s renunciation to enforcing the law and to its legal faculties in this specific case, it eventually exemplified the vacuum of government authority in the realm of public life. On January 10, *La Jornada* put out an editorial note entitled “Canal 40: error e injusticia” (Channel 40: error & injustice) declaring that:

In first place, as a party foreign to this conflict and this judicial dispute, it is clear that the *takeover* of CNI’s facilities in the Cerro del Chiquihuite committed by Ricardo Salinas Pliego’s company was an arbitrary act, an affront to freedom of expression, and a threat to society in general. The appropriation of Channel 40’s signal and its transmission infrastructure may constitute a felony which the federal government has so far failed to address with the determination that events of that magnitude call for, especially so when the frequency operated by Channel 40 belongs to the nation and the facilities at Chiquihuite are a strategic center for the communications of the country. That an armed commando may be able to seize disputed property, without any judicial resolution whatsoever, and without the relevant authority acting out its duties – both legal and moral – to revert that situation, means that the law of the jungle prevails in the country and that the government has given up on its obligation to preserve the rule of law (Editorial, 2003).

Almost 15 days after the violent takeover and in spite of an investigation being conducted at the PGR for the crime of “plunder and the results thereof” against TV Azteca (inquiry 126/FESP/2003), the Secretary of Governance finally announced that the provision of article 104-bis of the Federal Law for Radio and Television would be applied and that the Channel and its broadcast would be “guaranteed” (Méndez, 2003). In this regard, we should note that this article was designed for the government to take over the facilities of a station that has been broadcasting without a license and for all the equipment and material of a pirate station to be confiscated. Based on this, the government seized the facilities of CNI Channel 40 and simply brought down TV Azteca’s signal, without TV Azteca’s being penalized (couldn’t have under article 104-bis), or brought charges against for plunder with the PGR.<sup>11</sup>

<sup>11</sup> For Javier Lozano, former Under Secretary of Transport and researcher from the Institute for the Right to Telecommunications, the problem was clear: “As the people from TV Azteca trespassed on the property at Cerro Chiquihuite, then let the relevant authority – the PGR – investigate, clarify, order the evacuation from the property, and punish the perpetrators” (Islas Reyes, 2003). It was the last week of January when the facilities were finally returned to CNI Channel 40, enabling it to resume its broadcasts until a strike in 2005 put an end to the channel. Soon after, the channel changed hands to TV Azteca, which began to air *Proyecto 40, Por un México Libre* (Project 40, For a free Mexico).

Here the government's inability to initiate adequate legal action and penalize illegal acts as stipulated by the laws becomes evident. The government chose instead to use an article from the Federal Law for Radio and Television that would allow them to intervene in the conflict without hurting the interests of TV Azteca. Thus, through omissions and negligence, the decisions of the government were instrumental in helping to take off the air a third – albeit small – TV option (on average, CNI had a 4-point rating in Mexico City) that was outside the duopoly and demonstrated the good judgment of the public authority by applying the law to one of the largest television networks.

### 2.3. Reforms to the Broadcasting Law of 2006: State capture in regulation

In October of 2000, president-elect Vicente Fox was a special guest at the National Week of Radio and Television, an event organized by the CIRT. At the time, the president of the chamber, Joaquín Vargas, had his brother Adrián read on his behalf a speech in which he explained two issues: that the media law of 1960 should be amended on the grounds that it was obsolete, and that no reform would be acceptable without the participation of the broadcasters (Garduño, 2000). The president-elect then replied: “It is our duty to defend and promote freedom of expression; the government of the Republic shall resort to dialogue to reach consensus. The changes will come about with the support of the CIRT, and of the users” (Garduño, 2000).

The need to amend the Law of 1960 had become obvious due to technological progress and to some changes brewing in radio broadcasting markets. Various western countries saw the passage of new radio broadcasting and telecommunication laws in the 90s. Mexico was lagging behind. Over the last fifteen years, several reform initiatives (bills) put forward by different parties had begun to appear. All of them were already positioned within the different committees of congress ready to be analyzed. Nevertheless, since none enjoyed the consensus needed, they were all “congeladas” – a term in Mexican legalese that translates as frozen – in the committees.

It is in this scenario that a deputy from the PRI, Miguel Lucero Palma – incidentally, a concessionaire radio broadcaster in the State of Chihuahua – proposed a new reform Bill to the radio broadcasting committees in November of 2005. Only ten days later, on December 1st, he had it voted on in the plenary meeting of the Chamber of Representatives.<sup>12</sup> On that day, without further discussion or debate, the Chamber of Deputies passed the Bill in only 7 min on a vote of 327 representatives from all sections. For the reform to be consolidated only the approval of the Senate was missing. Vote was immediately turned over to the Senate on the expectation of a favorable vote.

However, both the approval process among the representatives of the lower house and the contents of the new regulations stirred controversy and a number of senators voted in favor of revising its content “in the utmost detail” before casting their vote (Teherán, 2005a). The secrecy employed when working on the Bill approved by the deputies led to the declaration by Rep. Lucero Palma in an interview that: “Yes. We have finalized the minute of reforms quickly – it took only two or three months. It was done in secrecy in the eyes of some but, there it is at last.” (Ballinas, 2006). On December 2, Javier Lozano, investigator at IDET, and Gabriel Sosa Plata, a professor from Universidad Autónoma Metropolitana were amazed not only at such a quick enactment of a reform on a topic that already had initiatives, but also at the content of the articles which, in their view, “just prioritizes the spirit of profit” of broadcasting (Herrera et al., 2005).

While the purpose of this article is not to give a detail account of the contents of the reform, it is indeed necessary to give a general account of the criticism to which such reform was subjected. In general, the most pointed criticism was that the reform ultimately strengthened the large corporations – especially the TV networks – by restraining competition conditions, by guaranteeing a privileged use of radio-electrical spots to offer telecommunication services without resorting to public bidding, and by leaving public radio broadcasting out of the debate.<sup>13</sup> On December 6, some scholars like Beatriz Solís and Javier Sosa from the Universidad Autónoma Metropolitana pointed out in press interviews that article 28 of the reform afforded advantages to large TV networks by providing new telecommunication services without the need to hold a public bidding and that it did not stop the conflict of interests when electing commissioners from the sector's regulatory agency (Teherán, 2005b). *Proceso* magazine's

<sup>12</sup> United Committees for Communications and for Radio, Television, and Filmmaking. *Decree bill to reform, add, and revoke various regulations contained in the Federal Law of Telecommunications and the Federal Law of Radio and Television*, brought before the plenary meeting of the Chamber of Representatives on December 1, 2005.

<sup>13</sup> A large number of texts that make a detailed analysis of the articles of the Broadcasting Law can be found at the web page of the Mexican Association for the Right to Information (AMEDI): [www.amedi.org.mx](http://www.amedi.org.mx).

edition of December 11 entitled “Ley Televisa: todo para ellos” (Televisa Law: all for them) (Proceso, 2005) featured an article written by Fátima Fernández Chrietlieb, research professor at Universidad Nacional Autónoma de México (UNAM), about the advantages this reform brought to TV networks to the detriment of the competition and warned that its “fast-track” passage in the Senate should be avoided (Fernández Chrietlieb, 2005). Plus, on January 1, the journalist Marco Levario declared in an editorial that the reform looked more like a “Business Plan for Televisa” than a Bill (Levario, 2006). From that time, this Bill has been known as the “Televisa Law” in public debate.

In the face of this criticism and through the Commission for Communications and Transport, the Senate of the Republic organized four debate forums – on February 8, 15, 22 and 28, of 2006 – with scholars, academicians, representatives from the media and NGOs to discuss the contents of these reforms. On the table were the following topics: the role of the regulatory agency; technological convergence; the procedure to grant concessions; the constraints on the concentration; Telecommunications Registrar Office and transparency; and electoral advertising. Fifty-three participants attended the forums, of which forty-one put forward arguments against diverse regulations and twelve were in favor of the regulations being approved without any changes. It should be noted that in the forum of February 22, representatives from the Federal Commission for Competence (Cofeco), the Federal Telecommunications Commission (Cofetel) as well as the Federal Electoral Institute (IFE) agreed that the Bill, as it was, did not benefit the competition, but rather the concentration of private television.<sup>14</sup>

Nevertheless, on March 30th the Senate approved the Bill with 81 votes in favor, 40 votes against, and 4 abstentions, in spite of all the recommendations and observations made by academics, NGO representatives, some public officials and other experts during the public hearings. According to Solís, from December 1st, 2005, to May 19th, 2006, 1625 articles and editorials were published in the national press, from which 59 percent were against the Bill, 34 were neutral and only 7 percent were openly favorable (Solís, 2006). Apparently, at the same time, both Televisa and TV Azteca pressed very strongly in favor of a quick approval in the Senate “without changing even a comma” – a phrase that became famous – from the original Bill.<sup>15</sup> One year later, Senator Santiago Creel, who at the time of the voting was the Secretary of Governance (the equivalent of the Minister of the Interior) frankly declared that the “Televisa Law” was approved “under strong pressure from the networks” (Ballinas, 2007).

### 3. Final remarks

This article proposes a model to understand the relation between the media and the political authority in Mexico after the transition and, at the same time, offers some evidence to consider that under conditions of fragmentation of power it is also possible to capture the State by strong and organized economic actors (centralized economic power) in a context in which civil society seems to be relatively less strong and participant than in most consolidated democracies. Mexico offers a good example for further studying State capture conditions and in this regard some interesting new questions arise for comparing different cases in search of a model: Have the different types of political transitions played a role in these outcomes? Should the pre-transition relationship between the media (or another economic actor) and the political power be considered in order to understand the post-transition forms of State capture? And how different is State capture in policy/law application from law making?

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<sup>14</sup> The whole transcripts of these sessions can be downloaded from the Diary of Debates of the Senate from: <http://www.senado.gob.mx/diario.php?ver=busqueda> (LIX Legislative Period, Year 3).

<sup>15</sup> The journalist Jenaro Villamil affirms that the phrase “without changing even a comma” was apparently said by Televisa’s vice-president, Bernardo Gómez, during a meeting with Josefina Vázquez, who was campaign’s coordinator of PAN’s presidential candidate Felipe Calderón (current president of México, Villamil, 2006).



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