

Preamble

This paper tackles the freedom of the press.

Considering the abuses and degenerations of the freedom of the press, there is evidence of a current trend towards the defence of restrictions on this freedom.

Since we believe the pathologies deriving from the exercise of the freedom of the press are the result of the underlying political, economic and ideological model, which is the only one profiting from those restrictions, we propose a distinct way which reinforces, even though just as a tendency, the journalists' rights, specially their independence from the powers.

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The freedom of the press

1. In addition to the obvious examples of suppression of the freedom of the press, easily detectable and therefore somehow of less interest, liberalism and nowadays neo-liberalism, in western societies, have found new ways of controlling the press, keeping its formal freedom.

The concept of “consent building” has been developed mainly as the result of valuable and successful experiences obtained during World War 1, specially in the United Kingdom and United States, reinforced by the behavioural psychology school, popular at the time. Theorisation and materialisation of mass manipulation by the political power, mainly through the media, have found in western societies all the suitable conditions for their development. From then on, “the propaganda industry” has increasingly risen and “improved”. The control exercised by the political power over public opinion, through the media, is nowadays an irrefutable reality. As Chomsky states, the logic is clear: propaganda, mainly by using the media, meets a democracy like the club meets dictatorships.

Along with the use of media by the political power, mainly to shape public opinion, a second reality has characterised the media in the modern western societies. Deriving from the economic and ideological model in force, the media began being coveted by economic power, simultaneously as a good business and as a means of control and pressure par excellence. On one hand, profitable investment in media attracted big economical groups, including multinationals, what has deeply changed the media, linking it to a logic of an unbridled competition in order to obtain immediate compensations. On the other hand, economical power began using mass media, from the local press to the international TV chains, as ideal tools to put pressure on and control, in different ways and with multiple purposes, the political power, and generally on everything and everyone. At the same time and inevitably, journalists have become employees who depend on those groups, being their independence increasingly an illusion.

2. These two realities, which nowadays intersect in sets of multi-faceted relations, have substantially changed the dialectic between powers and media, being the latter, to a certain extent, raised to the condition of power, in spite of being a power mainly used by other powers. In western democracies, the freedom of the press is therefore subverted in its essence. It is not attacked or restrained through the powers’ direct actions, but rather used by them, surreptitiously but efficiently, to serve the dominant ideological, political and economic interests.

That is, although the freedom of the press has been set by liberal movements, neo-liberalism has drastically subverted it. To say nowadays that the freedom of the press is a legacy of liberal ideology is pure hypocrisy. The press is simply a product of the society it is inserted in, being conditioned by and reflecting it. As a tool that potentiates the dissemination of ideas and facts, it is deeply dependent on social dynamics. And therefore the freedom of the press is also conditioned by this dynamics.

3. The freedom of the press, mainly in its facet of freedom of expression, has a “subjective basis”, as a space of individual decision and action, free from the state interference. In effect, the human being’s dignity is based on the principle set on article 1 of the Universal Declaration of Human Rights according to which all human beings are “endowed with reason and conscience”. Therefore it implies, first of all, the full freedom of expressing (or not) thoughts and conscience, namely through the press, and also the right to information. This is

the only way to guarantee the human being's dignity, each person's dignity, while endowed with reason and conscience, i.e., considering his/her fundamentals.

4. But the freedom of the press is not only essential to the human being's dignity.

Being to a great extent the result of the philosophical evolution that, as from Hegel, has begun to see man as a "whole" – not anymore as the Kantian "autonomous unit" –, and of the development of the democratic principle, specially in its participatory facet, there has been a compelling need for citizens to really be free to impart, seek and receive ideas and information. Furthermore this freedom began being understood, to a certain extent, as inherent in the freedom of thought and conscience and therefore in the freedom of expression, as their prerequisite. And it no doubt began being seen as a prerequisite for the exercise of citizenship, since the creation of public opinion largely depends on it, being decisive to the accomplishment of participatory democracy. Thus democratic societies should, on principle, have and encourage the utmost conditions so that the people may be fully and effectively informed about everything they are concerned with, namely about the exercise of powers.

Within this frame, the freedom of the press increasingly assumes a decisive social role, being inseparable from and essential to the other principles of the democratic rule of law, mainly the people's will and sovereignty and pluralism. None of those principles can be accomplished without a freedom of the press tending to be wide, effective and plural, free, as far as possible, from the powers' use. Therefore, as some authors emphasise, this freedom has become a cultural and social right, which is seen today as a democratic and functional right.

5. The freedom of the press, as it should be understood in an advanced democracy, is a compound of rights and freedoms. Among those rights and freedoms we highlight those which journalists are entitled to, namely:

- the freedom of expressing thoughts, without constraints or discriminations;
- the right to inform, i.e., to make information available to people, without constraints or discriminations;
- the right to get information, i.e., to seek and obtain information, without constraints or discriminations;
- the right to be informed, i.e., to receive information, to be adequately and truly informed, without constraints or discriminations;
- the right to participate in the editorial guidelines of the respective media;
- the right to have access to the information sources;
- the right to protection of independence;
- the right to protection of professional secrecy;
- the right to elect the editorial boards.

These rights and freedoms should assume, within legal and constitutional order, the nature of "fundamental rights" and therefore be protected at their essential core, either from the State or from the other powers.

6. Over the last years, however, there has been some reaction towards behaviours inherent in a press that depends on the market consumerism and power playing. Such reaction tends in general to defend the indirect enlargement of restrictions on the freedom of the press, through the intervention of criminal law.

Without forgetting the need for an effective protection of the personal legal assets against the abuses of the freedom of the press, which is not our concern here, we believe nevertheless that might not be the best way to follow. Besides we think that is, on principle, a way contrary to the evolution of the democratic rule of law. Curiously – or may be not – this

tendency coincides with the growing involvement of important people in criminal actions, deriving from the enlargement of criminal law to new areas.

In our opinion, we should criticise and change the model responsible for the pathology rather than restricting, directly or indirectly, the freedom of the press. Its abuses and degenerations, since they are perversions created by that underlying model, cannot be used to restrict it, turning it into a victim of that model, which without it would become more perverse.

Journalists, when exercising the freedom of the press, should have assured a clearly privileged legal and penal treatment. As a matter of fact, in a democratic rule of law, journalists, because they are entitled to rights within the freedom of the press, cannot be treated, regarding criminal law, on the same level as the other citizens. Otherwise this freedom will become hollow and a restraining sword will hang over journalists. And thus the democratic rule of law will be once more mined.

Furthermore to threaten journalists with criminal sanctions is an offence to the memory of thousands of citizens who gave their lives for the freedom of the press, and represents a lack of knowledge of the press history and of its contributions to society, in spite of all its constraints.

Thus, it seems that the current democratic rule of law should have a normative intervention either first at the institutional level or later through “complying legal standards”, so that there is a tendency to turn the freedom of the press effective, removing it from the subjugation to the multiple interests of the several powers. It is essential, namely (i) to guarantee the independence of the press from the economic and political power, (ii) to turn effective the so-called internal freedom of the press, and (iii) to achieve the plural and wide exercise of expression and information.

This is the biggest challenge and urgent need of our times concerning the freedom of the press. That and, after all, through the same ways, the creation of conditions and even the incentive to the healthy and effective exercise of the freedom of expression and of the right to information through the press, so that, without any inferiority prejudices, the citizens, on principle, be acquainted with the administration of the State, may control in a critical and active way the exercise of power, grasp every perspective on social and political realities, and be in condition to conscientiously participate in democratic life.

In our view, within a frame of an advanced democracy, this is the only way, even though just as a tendency, to obtain results that protect the freedom of the press, turn it effective and true and compatible with its principles. On the other hand, by enlarging the intervention of criminal law, regardless of the offence to the freedom of the press that way would imply, the only result would be the criminal convictions of journalists, and the maintenance of the pathology causes.

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