

FROM FREEDOM OF EXPRESSION TO THE RIGHT TO COMMUNICATION: Scope and boundaries

Marcelino Bisbal

Freedom, Sancho, is one of the most precious gifts that heaven has bestowed upon men; no treasures that the earth holds buried or the sea conceals can compare with it; for freedom, as for honour, life may and should be ventured; and on the other hand, captivity is the greatest evil that can fall to the lot of man.

Miguel de Cervantes

We must defend freedom of expression as strongly as we must defend freedom of reception, which is just as important as the former.

Antonio Pasquali

Information is a fundamental component of democracy and constitutes a human right, of a primordial nature insofar as the right to information enhances and allows the exercise of other rights.

UNESCO, 1978, as paraphrased by Javier Darío Restrepo

Necessary preamble, or let us find a starting point

Freedom of expression is an instrumental good that must aim at searching for truth, as it implies the right to express oneself and disseminate information, ideas, and opinions in the same way that it also has to do with the right to receive and seek information. Furthermore, as pointed out by jurist Héctor Faúndez, it should be a tool for citizen participation in the

political process and in the strengthening of democracy. In this regard, it is one of the most important political rights among those pertaining to humankind.

Both democratic governments and authoritarian or totalitarian regimes have given great importance to the issue of the media; but each form of government views it from its own perspective and political makeup. What we must be clear about is that it is the media and its news professionals that make evident, sometimes better than others, the shortcomings and the quality of their management in playing their public role. The nature and function of the media, as representatives of what has come to be called the Fourth Estate, is to control and influence political life and life in society, issuing opinions that are sometimes critical, others interested, and even manipulated. All this has been done – and continues to be done – by our mass media. English sociologist John B. Thompson, citing such thinkers as Jeremy Bentham, James Mill, and especially John Stuart Mill, would tell us that these intellectuals:

They saw the free expression of opinions through the bodies of an independent press as one of the primary means whereby varied views could be expressed, and educated public opinion formed, and abuses of state power by corrupt governments could be brought to light. A free and independent press would play the role of a critical watchdog; it would not only articulate a diversity of opinions and thereby enrich the sphere of knowledge and debate, but also expose and criticize the activities of those who rule and the principles on which their decisions are based. ¹

Every May 3, World Press Freedom Day is celebrated almost everywhere in the world, as declared in 1993 by the United Nations General Assembly² in the awareness that “the establishment, maintenance and fostering of an independent, pluralistic and free press is essential to the development and maintenance of democracy in a nation, and for economic development”³. It is said that it is a guarantee of health for a democratic country that communications can develop without pressure and without political, economic, and legal

¹ Thompson, John (1998). *Los medios y la modernidad. Una teoría de los medios de comunicación*. Barcelona: Ediciones Paidós, p. 306. Translated into English from Spanish source.

² United Nations (1993). *General Assembly Forty-eighth session*. Retrieved from https://www.un.org/ga/search/view_doc.asp?symbol=A/48/624

³ United Nations Educational, Scientific and Cultural Organization (1991). Windhoek Declaration for the Development of a Free, Independent and Pluralistic Press. Retrieved from: <https://www.ilfaronline.it/wp-content/uploads/2020/05/dichiarazione-di-Windhoek.pdf>

interference from those in power, furthermore, without the media being subjected to the control of the reason of the State.

Democracy is intrinsic to the existence of media free and independent from governmental power. Pluralism and diversity of opinions and ideological beliefs are fundamental for the existence of a democratic system and for its proper functioning. In this sense, there is a connection between freedom of expression and democracy, since the exercise of true freedom of expression is only possible within the framework of a democratic society. Therefore, the Inter-American Court of Human Rights (IACHR) expresses, as quoted by Héctor Faúndez, that:

In this regard, the Inter-American Commission on Human Rights [referring to the Declaration of Principles on Freedom of Expression, approved by the Commission during its 108th session, held in Washington, D.C., October 2-20, 2000] has pointed out that the consolidation and development of democracy depend on freedom of expression and that this is an indispensable requirement for the very existence of a democratic society.⁴

In short, Faúndez himself summarizes this principle by saying that "it can be said that freedom of expression, insofar as it allows control over the functioning of other political institutions, is a guarantee of democracy; but at the same time, it is also a form of exercising democracy and is an inherent element of it".⁵ This idea was confirmed by the Organization of American States (OAS) General Assembly at its fourth plenary session in June 2003, when it stated in writing that:

[...] access to public information is a requisite for the very functioning of democracy, greater transparency, and good governance and that, in a representative and participatory democratic system, the citizenry exercises its constitutional rights, *inter alia*, the rights to political participation, the vote, education, and association, by means of broad freedom of expression and free access to information;⁶

Similarly, the widely known report of the MacBride Commission for the United Nations Educational, Scientific and Cultural Organization (UNESCO): *Many Voices, One World* points

⁴ Faúndez L., Héctor (2007): La libertad de expresión como herramienta del proceso político. *Boletín de Derechos Humanos*, 4(2), 65.

⁵ *Ibidem.*, p. 75

⁶ Resolution adopted at the Fourth Plenary Session of the OAS General Assembly, June 2003, in Santiago, Chile.

out the inextricable relationship between freedom of expression and democracy when it asserts that:

Freedom of expression is a vital aspect of the democratic process, guaranteed by the Universal Declaration of Human Rights and by the various international instruments adopted to ensure respect for human rights and fundamental freedoms. It follows from these guarantees that the public in all countries has the inalienable right to receive news, information, and ideas, without interference and regardless of frontiers, and that this right is an integral part of the democratic process.⁷

The idea of freedom of expression and information is part of the so-called liberal rights, that is, the set of civil and political rights promoted by the French Revolution. Based upon them, on December 10, 1948, the General Assembly of the United Nations approved the Universal Declaration of Human Rights. This document contains 30 articles in which Human Rights are reflected, as well as explicitly recognizing that “Freedom of information is a fundamental human right and is the touchstone of all the freedoms to which the United Nations is consecrated”. Article 19 of the Declaration clearly expresses the right to freedom of expression and opinion, which encompasses the right to freedom of information.

However, the other point to bear in mind is that, if we read this document carefully, we will see that freedom of expression is an all-encompassing right, that is, it is a preferential right that enables all other human rights. This means that, if this right cannot be exercised, it becomes impossible for us to freely exercise and express the absence or violation of the rest of human rights. In short, let us say then that freedom of expression is not a right like the others: It is an instrumental right, whereby other rights are exercised.

In a research work titled *El derecho a la vida privada y libertad de información: un conflicto de derechos* ([*The right to privacy and freedom of information: A conflict of rights*] 1977),

⁷ Regarding this, see MacBride, Sean *et al.* (1980). *Un solo mundo, voces múltiples. Comunicación e información en nuestro tiempo*. Chapter 10 (Part 3): Defectos de la circulación de la información, and Chapter 13: Imágenes del mundo, §5: Violaciones a los derechos humanos (Part 3). Translated into English from Spanish source.

Eduardo Novoa Monreal, a specialist on the subject,⁸ tracing a historical progression from the specific rights listed in Article 19 of the Universal Declaration through a UNESCO report in 1976, reflects:

As long as interpersonal communication was the only form of human communication, the right to freedom of opinion was the only right to communicate. Later, with the invention of the printing press, the right of expression was added; and later still, as the mass media developed, the right to seek, receive, and impart information became the primary concern.⁹

Historical background of freedom of expression

The historical journey of the term freedom of expression has some precedent worth underscoring. The much-quoted trilogy of the French Revolution (1789) is always mentioned: "liberty, equality, fraternity". Based upon it, the Declaration of the Rights of Man and of the Citizen was issued. Its Article 11 definitively states that "The free communication of thoughts and of opinions is one of the most precious rights of man: any citizen thus may speak, write, print freely, except to respond to the abuse of this liberty, in the cases determined by the law".

This was the beginning of a historic project on the idea and reality of freedom of expression as a fundamental human right. Seventy-two years ago – on December 10, 1948 – the countries gathered within the nascent United Nations (UN) issued the Universal Declaration of Human Rights. This Declaration contains, as we have already noted, 30 rights and freedoms that embrace all persons. In the same way, the General Assembly of the United Nations proclaims:

[...] a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and

⁸ This research was turned into a book in 1979 and published by Siglo Veintiuno Editores under the title: *El derecho a la vida privada y libertad de información: un conflicto de derechos*. Mexico: Siglo XXI Editores.

⁹ *Ibidem.*, p. 142

effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.¹⁰

Article 19 defines the right to freedom of expression under the following principles: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”. This liberal principle will be assumed, almost universally, by the majority of democratic nations and will be reflected in their respective constitutional texts without major changes in wording.

In the same way, successive declarations adopted by different organizations, both in Latin America and in the rest of the world, enshrine both the idea and the defense of freedom of expression in documents and in various international agreements. All these invoke the need for freedom of the press, which will later become freedom of expression, not to be restricted in any way.

From the principles established by the French Revolution in 1789 and subsequently the Universal Declaration of 1948, some concepts are derived regarding the fundamental principle of freedom of expression and opinion, namely "freedom of information", "free flow of information", "balanced flow of information", "free access to the media", and others that speak of the relevance of the concept.¹¹ Likewise, there is the "other right" that has to do with the idea that information is a human right of great transcendence from which the right to communication stems. In this regard, Colombian journalist and writer Javier Darío Restrepo notes very aptly that:

We are talking about a right that is the basis of all other human rights and freedoms. It is not a product of democracy but an indispensable condition for democracy to exist; it is the starting point for civilization to exist. The very right to inform loses its meaning if

¹⁰ United Nations (1948). *Universal Declaration of Human Rights*. Retrieved from <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

¹¹ *Op. cit.* MacBride, Sean *et al* (1980), Chapter 10 (Part 3)

it is not directed towards the objective of materializing the right of people to be informed [...]. That is why the right to information is considered the foundation of democracy.¹²

A quick review of some declarations and speeches, agreements, and resolutions issued by different international and Latin American organizations, laws and reports of varied ideological standpoints will give us an idea of the significance of this principle of freedom of expression, as well as that of the right to information. Likewise, we will also see how the spirit that was present in 1789 in Paris (French Revolution) and then in 1948 in the United Nations has become unanimously prevailing in the constitutional texts of most democratic countries.

Thereby, we have:

–Expert Damián Loreti¹³ lists a whole series of international agreements, resolutions, declarations, and instruments issued by different regional and international organizations in which the right to freedom of expression is recognized as a principle:

- American Declaration on the Rights and Duties of Man and the American Convention on Human Rights;
- Universal Declaration of Human Rights;
- UNESCO General Assembly Resolution 59 (I);
- International Covenant on Civil and Political Rights;
- American Convention on Human Rights Article 13;
- IACHR Declaration of Principles of Freedom of Expression of the (See Appendix I);
- A whole set of opinions issued by the IACHR on particular cases, in which the importance of the right to freedom of expression, the idea of pluralism, the

¹² Restrepo, Javier D. (1996). El poder de los que reciben, en Rey, Germán & Darío, Javier D. (1996). *Desde las dos orillas*. Bogota: Ministerio de Comunicaciones de la República de Colombia, p. 162, 163.

¹³ Loreti, Damián (2007). Principios que garanticen una ley de radiodifusión compatible con los estándares de derechos humanos que protegen la libertad de expresión. *Boletín de Derechos Humanos*, 4(2), 155 et. seq.

need for information, and ultimately the right to communication are established.

–It is also important to emphasize what was set forth by the IACHR's Committee on Freedom of the Press and Information. The concept of the Inter-American Press Association (IAPA) regarding freedom of expression is based on the Chapultepec Declaration, issued by the Hemispheric Conference on Freedom of Expression held in Mexico City on March 11, 1994 (see Appendix II).

–Within the Catholic Church, the encyclical letter *Pacem in Terris* (1963) during the papacy of John XXIII is worth mentioning. This document declares that “[...] man has a natural right to be respected. He has a right to his good name. He has a right to freedom in investigating the truth, and—within the limits of the moral order and the common good—to freedom of speech and publication, and to freedom to pursue whatever profession he may choose. He has the right, also, to be accurately informed about public events”.¹⁴

–Another document that should be highlighted is that issued in November 1950, in Rome, by the Council of Europe, which approved the European Convention on Human Rights, subsequently augmented. Article 10 thereof proclaims the guarantee of freedom of expression and opinion as follows:¹⁵

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of

¹⁴ Catholic Church. (1963). *Peace on earth: Encyclical letter of Pope John XXIII, 'Pacem in terris', 1963*. Retrieved from http://www.vatican.va/content/john-xxiii/en/encyclicals/documents/hf_j-xxiii_enc_11041963_pacem.html

¹⁵ European Union (1950, 1952, 1963, 1983, 1984, 2000, 2002, 2013). *European Convention on Human Rights*. Retrieved from https://www.echr.coe.int/documents/convention_eng.pdf

others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary..

Summarizing this section:

1. In all international declarations, resolutions, statutes, and instruments issued or enacted over time by different bodies, we find the idea that respect for freedom of expression is a fundamental human right and that it is an indispensable prerequisite for having a free and pluralistic public opinion;

2. States that enshrine this right in their constitutional texts undertake to respect it in principle. However, we can find evidence that shows us that what is declared is one thing and what is enforced in the political exercise, that is, in the way it is put into practice, is quite another;

3. Another idea that is unequivocally expressed is that freedom of expression and respect for it is a guarantee of democracy. Compliance with this right defines the quality of democracy. Because it is clearly stated that "there is no democracy without public debate and there is no public debate without freedom of expression, freedom of the media, and freedom of information". This is what Omar Rincón poses when, quoting Roberto Gargarella, he states that "in a democratic community, there are few rights as important as that of free expression and that is why it deserves special protection";¹⁶

4. In all the texts reviewed, we find the proposition that freedom of expression is an institutional and preferential guarantee among Human Rights. Freedom of expression is a comprehensive right that encompasses all other rights and is a necessary condition for determining whether other human rights are respected or violated;

¹⁶ Rincón, Omar (2014, May 26, 27). El modelo liberal: independencia del gobierno y auto-regulación. Working paper presented at the *Conversación Internacional Subregional Andina: La libertad de expresión y el derecho a la comunicación e información en América*. Santiago, Chile.

5. Freedom of expression is not only a right but also a legal, sociological, philosophical, and even political concept;

6. There is extensive literature on this subject. Diverse theories outline and develop the concept¹⁷. In this regard, this excerpt from of Héctor Faúndez is important, as he points out:

There is no doubt that, in guaranteeing freedom of expression, each constitutional text may be inspired by one of the theories set forth above, conferring an absolute or relative character on the right in question and setting out its own criteria for resolving, on the basis of that theory, the conflicts arising between freedom of expression, on the one hand, and other rights or interests equally worthy of legal protection, on the other. Nevertheless, what we are interested in emphasizing here is the theory that has inspired the international agreements that enshrine freedom of expression and that, consequently, the States party to those treaties have made law of their lands and undertaken to respect. In our opinion, in these agreements, freedom of expression is viewed in a dual perspective, as an end in itself and as a means to other ends.¹⁸

7. Finally, the notion that the category of freedom of expression also implies that we think of the right to communication and information. In this sense, the idea of freedom of expression should be expanded to include the right to information and the right to communication. Because information and communication are human rights of a preeminent order and must be guaranteed, not only by States, but also by media companies themselves.

In this regard, the Code of Journalistic Ethics approved by UNESCO in November 1983, specifies this approach in the following terms:

“People and individuals have the right to acquire an objective picture of reality by means of accurate and comprehensive information as well as to express themselves freely through the various media of culture and communication”.¹⁹

Novoa Monreal himself, reflecting on the UNESCO report 1976, clarified this idea by stating that:

[...] the notion of the right to communication is closely related to the sphere of social and cultural values, and as a plurality of values is recognized and promoted, it is inevitable that diverse points of view will emerge.²⁰

¹⁷ Faúndez L., Héctor (2007). *Op. cit.*, p. 25-83.

¹⁸ *Ibidem.*, p. 83-83

¹⁹ Restrepo, Javier D. (1996). *Op. cit.*, p. 166

²⁰ Quoted in *op. cit.*, Novoa M., Eduardo (1979). p. 140

Freedom of expression and the shaping of public space

Today no one disputes, at least not a representative section of the population, that the conversation and discussion on democracy in a country is the conversation and discussion on freedom of expression. As we noted above, there is a close relationship between democracy and freedom of expression. A true democracy is required in the sense that it implies the free and autonomous development of citizenship, the creation of public spaces in accordance with the interests of citizens and the real possibility – without restriction from a government in State functions or economic interests – of exercising the rights of humankind for the full exercise of freedom of expression. This means that the right to freedom of expression enables the exercise of other Human Rights because information – today, in this culturally globalized world – has become the pole around which a large part of public life and therefore of present-day citizenry is organized. Let us say it conclusively: The discussion on the media, on freedom of expression, and the right to information necessarily becomes a debate on democracy. Colombian Germán Rey so aptly expressed it in his address at the IV Meeting of Communication of the CPAL ([Coordination of the Communication Sector for the Conference of Jesuit Provincials in Latin America], Bogota 2009) when he said that:

Communication is central to a redesign of democratic life. To think of democracy today is to speak of high quality and low quality democracies, of strengthened democracies versus fragile democracies; and their strength or weakness has much to do with the communicative possibilities of society, of citizens, with the actual procedures of expression within society.²¹

In these times, so-called *massmediation* mechanisms (newspapers, magazines, radio and TV stations, websites, blogs..., the Internet in general and the whole array of apps or platforms stemming from the network of networks) have become spaces for the exercise of public and institutional communication, for the development of a free and citizen public opinion, in

²¹ Rey, Germán (2009). ¿Hacia dónde va la comunicación en América Latina y el Caribe? Inauguration address delivered at the IV Encuentro de Comunicación de la CPAL. Coordinación del Sector Comunicación. Transcript published by *Comunicación* (2010), 149(1).

short, for creating and reclaiming a public space where society in general – and not only specific political or economic powers – can make themselves politically visible.

What do we understand by public space in this context of *massmediation*? We turn to J. Habermas for help, as he helps define the concept in connection with the construction of public opinion. Habermas tells us that the presence of a public space is represented as the place of emergence of public opinion and that this is the axis of social cohesion, in the exercise of political and individual freedoms and in the construction and legitimization or delegitimization of politics.²² From this point of view, the idea of the necessary democracy²³ becomes definitely essential for the exercise of public opinion for the materialization of a real and true public space:

By public space, we mean a realm of our social life, in which something like public opinion can be built. Entry is fundamentally open to all citizens. For every conversation in which private individuals meet as a public, a portion of public space is constituted [...]. Citizens behave as a public when they meet and come together freely, without pressure, and with the guarantee of being able to freely express and publish their opinion, on opportunities to act according to general interests. In the cases of a broad public, this communication requires accurate means of transfer and influence: Newspapers and magazines, radio and television are today such means of public space.²⁴

It is therefore evident that, in today's societies, the privileged space for the exercise of that public opinion and for the use and consumption of a cultural form is the one formed around the mass media, these becoming spaces from which we reflect upon society. Such is the centrality acquired today by the media and the new forms of technological intervention on communications, that we are required to think about the ways in which the processes of *massmediation* of life are influencing the making of different layers. A research conducted

²² Boladeras i C., Margarita (2001). "La opinión pública en Habermas". *Anàlisi*, 26, 51-70.

²³ When we refer to the idea of a "necessary democracy", we mean what José Luis Dáder noted in his essay "La democracia débil ante el populismo de la privacidad: terror panóptico y secreto administrativo frente al periodismo de rastreo informativo en España". *Op. cit.*, Boladeras i C., Margarita (2001), p 145-168. The author claims that "Ideal democracy, as understood in Enlightenment thought and in its gradual development throughout the 19th century, is based on the principle of the people's sovereignty, expressed in a public opinion permanently addressing matters of socio-political impact on institutional and collective repercussions" (p. 147).

²⁴ Habermas, J. (1973). "Öffentlichkeit (ein Lexikonartikel) 1964"; "Die Geschichte von den zwei Revolutionen (H. Arendt)". *Kultur und Kritik*. Quoted in *op. cit.*, Boladeras i C., Margarita (2001). p. 53.

by us in 2000 ²⁵ already showed how this *massmediation* is taking place and how to strategically devise, based upon it, the makeup of society in its current form and also to think about the impact of communication on the shaping or reshaping of democracy in its current expression. The findings we made, still relevant, showed the following:

- The private management of cultural goods consumption produced by the cultural industry has become the equivalent of the cultural consumption of urban populations. Questions: How does this trend affect the spaces of cultured or scholarly and local or popular production, and what happens in the mass media realm?
- Schooling and income levels determine the supply for the cultured or scholarly (such as visiting libraries, bookstores, attending museums or galleries, congresses, conferences, or classical music shows), which remains inelastic and restricted. These reasons, in turn, emphasize the strong asymmetry of consumption in the various cultural fields. These variables also condition the use of "intermediate mass media" (books, press or magazines, cinema in theaters or on videocassette / CD / DVD, records, or video games). It is very clear: The higher the educational level and the greater the purchasing power, the greater the consumption of these goods.
- On the other hand, the real giants are the electronic broadcast media (broadcast TV and radio), since they reach larger sections of the public without generating discrimination among their audiences.
- The other aspect to consider is that of the new spaces of local-popular cultural production. As Carlos Catalán states, we are witnessing a "medialization of the popular", which implies a transformation not only of genres, but also of their forms and contents.
- Sections of the population are increasingly turning to the media to understand and see the world. It is the mass media that allow an overwhelming number of viewers accessing everyday history. Reality has become medialized. Today, we live in a globalized space, which we have probably never shared in our own domestic territories. The "other" that each of us is in the domestic space is decentered in the globalized space where we tend to "resemble" each other more.
- Big media are breaking the intrinsic link that existed between territory and culture. This allows the creation of common spaces, in which the identities of different stakeholders intersect, in different times and places and in different socioeconomic contexts.
- New universes of intercultural relations are thus materializing, shaping imagery and setting behavioral patterns.

²⁵ In this regard, see our research on Venezuelans' cultural consumption, *El consumo cultural del venezolano: una cartografía de las transformaciones*, published and edited by Centro Gumilla and Consejo Nacional de la Cultura (CONAC). Caracas.

Therefore, an overview of today's society is necessarily based on the media and the cultural industries contained in it. Today, the media constitute the core of the society we are witnessing. We are more spectators than actors in a society where information has become a "strategic good", a "use value" for the production, reproduction and perpetuation of society itself. Communication, in its broadest sense and as many scholars on the subject have already noted, has moved from having a merely formal status to becoming a link of social integration of the present and the raw material required for any productive activity and human existence.

Media culture²⁶ has become a new project of social structuring, that is to say, we have found that, through the media, new forms of social relations have been constructed. The media are the public square of the "here and now", a virtual yet actual square, a square where our existence is being reflected and from where citizens different from those we knew are being formed: Media citizens and media civil society. There is even talk of a new form of power in which the media and its professionals become active agents of power and citizens mere receivers of information and spectators of the political game. We see then that the roles have been reversed: The power of the people, of the citizenry, has been transferred to the media, even the power of parties and of government acts has also been supplanted by these new protagonists who, from being bridges and messengers, have become the leading actors of the new and old stages.

The activity of the media, both traditional and the so-called new media, has become one of the most dynamic parts of the cultural industry and, furthermore, a key factor in structuring of social and political life. The confirmation of this fundamental social fact is more than enough reason to place the field of journalism in a prominent position within critical reflection.

²⁶ Hereinafter, we will use the term "media culture" to refer not only to the culture of the so-called mainstream media (press, radio, TV), but also to the cultural forms introduced by the presence and use of the so-called new media (including websites, blogs, video sharing platforms, digital apps, social media...).

The methodical observation of the journalistic endeavor shows us a complex and contradictory social phenomenon. On the one hand, we see how the journalistic field represents one of the core components of the process of social reproduction, while at the same time the effects of its way of functioning generate one of the greatest social pathologies affecting democratic life.²⁷

This situation leads us to ask ourselves: Where is journalism in all this process? Are media workers committed to their professional spirit and call, but also to the media and interests that they serve? Media professionals are indebted to their society and to the citizens within it. They are committed to themselves and to the role of mirroring reality; but they are also political actors in the complex system of conflicts... Such a difficult task for the news professional!

Being a journalist means not giving in to the agendas and objectives of the media apparatus (profit and interests), but also they should not be tempted by the motives of groups and organizations within the institutionalized political power. The news professional, as a communicating actor between reality and the public, engages as a witness in the selection, organization, evaluation, and construction, by means of the – written, advertising, audiovisual, and now digital – account of the same reality. They are mediators who must propose their communicational production with the greatest honesty and ethics possible for them to offer from their professional skills and competencies. The critical vision that must be taken regarding the media and its professionals today is even more complex when citizens now feel, as they voice it, that journalists are seizing the ground relinquished by politicians. Mass communication in general and journalism in particular have become a very active knowledge and activity in the unfolding of social events.

²⁷ Zeller, Carlos (2001). “Los medios y la formación de la voz en una sociedad democrática”, *Anàlisi*, 26, 123-124.

Let us return to the relationship between freedom of expression and public space. As we claimed above, the so-called public space is redefined by the media system and – thereby – the modern cultural industries. Moreover, the mass media appear as agents reordering not only the public space or realm, but also the concept of the public. If in the mass society, existing a century before the media society, public space was directly related to political communication. Today, it is the media restructuring political discourse. As we can notice, the outlook has changed in a decisive way.

Moreover, what about the public realm? Where is it then? In the media, no longer in the traditional political space, not even in the State, the public has been reworked. The idea that the public realm is the place where issues are made visible is still valid; but today the media apparatus makes the public realm perceptible, makes it transparent, for better or for worse. This is a reality. This is the thesis of Niklas Luhmann and Gianni Vattimo, when they describe today's society as one of generalized communication, the media society. Martín-Barbero speaks of a "metamorphosis of the public in the information age".²⁸

From the field of communication, the public calls us to the concept of public opinion, one that means:

[...] different things depending on whether it is considered as a critical realm regarding the normatively bargained public notoriety of exercising political and social power, or as a receptive realm regarding public notoriety, **representatively** or manipulatively disclosed, of persons and institutions, consumer goods, and programs [emphasis added].²⁹

Therefore, we will have various versions of the idea of public opinion depending on the interests of the author who defines it:

Public opinion would no longer be that concept inherited from the Enlightenment, a normative concept of an opinion (ideally) formed with reason. Rather, it designates the segmented mass of particular opinions in which divided and even conflicting interests are expressed. It is inferred that the public character of opinion, that is, its

²⁸ Martín-Barbero, Jesús (2001). Reconfiguraciones comunicativas de lo público. *Anàlisi*, 26, 84.

²⁹ Habermas, Jürgen (1962). *Historia y crítica de la opinión pública. La transformación estructural de la vida pública*. Colección GG Mass Media. Barcelona: Editorial Gustavo Gili. p. 261.

institutionalized representation in the press and parliament, can no longer be identified as before with something like a general will worthy of the name (Jean-Marc Ferry).

Public opinion is the thematic structure of public communication [...] Public opinion is therefore not a collection of individual opinions in the sense of customs, memories, psychic structures, etc., but above that, a special kind of public communication (Niklas Luhmann).

An array of psychosocial processes comprising attitudes, verbalizations, and even manifest behaviors, based on history, traditions, and modes of socialization of a given society, in a political and economic system, which, referring to the public space, assume as basic mechanisms of activation current issues of general or public interest, marked at certain times by the interaction within social groups and being under the influence of the mass media that will usually set their agenda of interest. This array of processes will be determined by elements of reason and feeling or emotion, and will sometimes manifest itself in conflicts or consensus, and may eventually have direct or indirect consequences, in the short or long term, for the political and economic system (Iván Abreu Sojo).

What these three concepts have in common is the reaffirmation of the communicational phenomenon from the mass media realm. This means that it is the media, as we have noted throughout this essay, that articulate freedom of expression and, consequently, public opinion in the present. In other words, public opinion is reshaped, as is the right to freedom of expression, based on the mediation introduced by media intervention. In this sense, and as a synthesis of the above, freedom of expression is an institutional guarantee of a free public opinion. This means that:

[...] the core concept for understanding freedom of expression (in a broad sense) as a guarantee of political pluralism, inherent to democracy, is that of public opinion. As Bustos Pueche states, freedom of expression is recognized as having an institutional dimension.³⁰

The same author infers the idea of the relationship between what he names free public opinion and freedom of expression from Manuel Javier Callejo's approach:

[...] insofar as it (freedom of expression as an institutional dimension) contributes decisively to the shaping of public opinion, the factual presupposition of democracy: Only citizens who are well-informed about things that concern public life are in a position to form an opinion about public affairs, their rulers, the issues of society, an opinion that will enable them to participate in a thoughtful and balanced manner in matters of general concern and, particularly, to choose their rulers more wisely.³¹

³⁰ Climent G., Jorge (2017). Opinión pública y libertad de expresión. *Iuris Tantum Revista Boliviana de Derecho*, 23. Retrieved from <https://dialnet.unirioja.es/servlet/articulo?codigo=5776253>

³¹ Quoted in *ibidem*.

Freedom of expression in the information age or the challenge of a new communication ecosystem

In barely 25 years, there has been a communications revolution. We are in the presence of a type of society that has nothing to do with the one witnessed by the birth of mass media. We are now talking about a communication ecosystem resulting from a technological environment that has become as strategic as the biological ecosystem. If the latter is of vital importance for the preservation of the planet and life on it, the new ecosystem arising from technical inventions, as a component aspect of human existence, is becoming so natural because the new information and communication technologies (ICTs) are already part of our lives, our mobility, and our cognition, insofar as knowledge production.

Now in everyday language and speech terms such as cyber surfer, cybercitizen, cyber politics, cyber activism, digital portals or digital native media and news aggregators, as well as the increase in the emergence, expansion and use of social media (Twitter, Facebook, WhatsApp, YouTube, Instagram, Uber...) are easily understood because they are part not only of the environment, but also of ourselves. What has happened in all these years is nothing but the triumph of instrumental reason, that is, technology has become so necessary that it imposes itself as an inalienable good. It has even made humankind more tool-oriented.

Therefore, we now speak of digital communication to refer to new media as they entail new ways of producing information and new ways of consuming it on the part of perceivers / consumers / audiences / *prosumers* (producer-consumers). This form of communication and knowledge has invaded the whole world. For this reason, today we speak of a media and digital village, recreating the approach once made by Canadian Marshall McLuhan with the term "global village". It is arguably far-fetched to say that what has happened is that we are witnessing a "Copernican revolution", one that has altered our daily lives, triggered profound changes in the processes of production and distribution of material goods, also transformed

the organization of lore and knowledge. This has brought about disruptions in the labor world ... in short, it has revolutionized social life as a whole.

Researcher Antonio Pasquali, in his book *La comunicación mundo. Releer un mundo transfigurado por las comunicaciones* ([*World communication. Rereading a world transfigured by communications*] 2012), so optimistically defines for us the changes that are taking place, have taken place, and will take place in the near future in the field of communications. He tells us:

Slowly but unstoppably, although it may not seem so, humanity has been dismantling one after another its monopolies and centers of power, replacing vertical and unidirectional center-periphery vectors with horizontal and grid systems. Radio and television, empire of the one-way message with no reply, instrument-king of media, advertising, and political imperialism, so dear to dictators and autocrats of all stripes, is yielding more and more ground every day to the democratic web and the new telephony, whereby, for the first time, we are all emitters, subjects of a genuine peer-to-peer dialogue. The production and distribution of energy, until now hyper-concentrated in huge hydroelectric, oil, and nuclear power plants, has begun its metamorphosis towards a new world more similar to the Internet, in which millions of mini-producers of clean energy will feed their surplus production into the world power grid.³²

Whether we like it or not, that is the reality we are living. It seems that there will be no turning back. It is a communications age in which the modalities of communication acquire another meaning quite different from those produced by the mainstream media (press, radio, and especially television). Thereby, ICTs generate a globalization of cultures and communications. They beget a way of "being in the world", as Jesús Martín-Barbero would say, very different or quite different from the one to which we were accustomed by industrial society. Today, traditional media, the Internet as the network of networks, and telecommunications become producers and conduits of globalization from the convergence generated among these three sectors.

This concept has become evident in the current media and much more in the so-called digital media, that is, an increasingly necessary link has been formed between the language of the

³² Pasquali, Antonio (2012). *La comunicación mundo. Releer un mundo transfigurado por las comunicaciones*. Salamanca: Comunicación Social Ediciones y Publicaciones, p. 114.

mainstream media and especially the audiovisual, predominant not only because of the cultural action of most of the public but also because of the determining presence of the image as a technological device with the language that has been implemented from computing and telecommunications. What we mean is that convergence is between not only equipment or infrastructure for the circulation of discourse and messages, but also between languages and, of course, between perceptions and sensibilities. Notwithstanding, convergence is also a cultural and transmedia process associated with the recent boost of the globalization process.

However, despite the 'over-determination' of the new ICTs, citizens in general are still attached to the mainstream media in order get news. For example, in a society such as that of the United States, we find that:

Despite competition from new media, traditional media audiences remain significant, even if not as large as in the past. Readers of the print edition of *The New York Times* and viewers of late-night network television programs far outnumber those who access popular political news websites (*Wired Staff*, 2017). Cable and network television news remain the primary sources of political information for people over thirty (Mitchell & Holcomb, 2016). As a result, new media rely on their classical counterparts to gain legitimacy and popularize their content.³³

This reality is equally true in the present Venezuelan context. Although there has been a migratory process in the consumption of content of all kinds, it is also true that traditional media still have specific weight in recording news information.

Towards late March 2019, the public opinion research firm Delphos conducted a poll to find out on which media Venezuelans learn get news regarding the country. The results showed that 58.2 % of those surveyed get news from television; from radio, only 5.3 %; from the press, only 1.6 %. This is the case of mainstream media. Regarding new media, we find that

³³ Owen, Diana (2018). El papel de los nuevos medios en la política. *La era de la perplejidad. Repensar el mundo que conocíamos*. Barcelona: Penguin Random House Grupo Editorial. Retrieved from <https://www.bbvaopenmind.com/libros/la-era-de-la-perplejidad>. Translated into English from Spanish source.

9.1 % turn to different news websites; 7.7 %, get news from Facebook; 5.3 %, from Twitter; 4.5 %, from WhatsApp; 1.3 %, from Instagram and 5.3 %, from friends and family.

As it can be noticed, among the youngest respondents (age 18-34), even though TV is the preferred means of getting news, the use of social media such as Facebook and WhatsApp shows significant percentages: 21.6 % and 15.7 % respectively. In addition, regarding searches on news websites, the percentage of use is 22.2 %, almost equal to news searches on Facebook.

Social tiers A, B, and C (high, upper middle and middle socioeconomic classes) lean more towards using news websites: 10.2 % and 11.6 % respectively. Undoubtedly, the reason for this is that they have the technology to be online since, in lower tiers D and E (lower middle and lower socioeconomic classes), the possibility of having equipment decreases and searching is mostly done either at the workplace or in a cybercafé.

What is evident from the study is that TV, as one of the traditional media, concentrates the public (not only in terms of gender, but also by age and social class) as a means of information: A total 58.2%. This fact is not exclusive to our country. In contexts different from ours, such as that of the U.S., preference for such mainstream media as broadcast and pay TV continues to be the main source of information, especially for people over 30. While it is true that the U.S. is a hyper-technified society, unlike our Latin American countries, different specialized sources, such as the Pew Research Center ³⁴, reveal that social media are the second source of news, specifically for 38 % of the population.


That is, despite competition from new digital media, traditional media audiences, especially for TV, remain significant. However, another source – Digital News Report – also provides us with the following:

³⁴ Grieco, Elizabeth (2017). *More Americans are turning to multiple social media sites for news*. Retrieved from <https://www.pewresearch.org/fact-tank/2017/11/02/more-americans-are-turning-to-multiple-social-media-sites-for-news/>

[...] since 2015, news via mainstream media was beginning to lose ground to online video and new visual formats, especially among those under 35, and this underscored the increasing role played by Facebook in finding, discussing, and sharing information.³⁵

Another important fact to bear in mind is the frequency of digital media use among the demographic under 30. We have mentioned above that, in our context among those under 30 and in all social tiers, TV continues to be preferential. It is also true that traditional media are gradually losing ground to online and social media, where the use of Facebook is increasingly prominent.

The table below is proof of our above statements and speaks for itself.



**ESTUDIO NACIONAL VENEZUELA
DEL 15/03 AL 28/03/19**

¿Por qué medio se entera usted principalmente de las noticias del país?

Medio	Total	Sexo		Grupos de edad				Nivel socioeconómico			
		Masculino	Femenino	18-24	25-34	35-49	50 y +	A-B	C	D	E
TV	58,2	59,1	57,5	45,6	58,4	61,3	66,2	58,7	57,4	58,2	59,8
Radio	7,0	6,5	7,5	5,5	3,7	8,0	10,2	7,2	4,7	7,0	10,9
Periódico en papel	1,6	1,8	1,3	1,3	0,8	0,8	3,3	0,0	2,1	1,3	2,5
Noticieros en la WEB	9,1	10,0	8,2	10,9	11,3	7,6	7,2	10,2	11,6	7,7	9,1
Twitter	5,3	4,9	5,7	7,0	7,3	4,1	3,4	4,1	7,6	5,1	2,7
Facebook	7,7	7,0	8,4	12,5	9,1	7,5	2,3	12,0	5,2	8,1	8,2
Whatsapp	4,5	4,4	4,6	9,9	5,8	2,8	0,5	2,3	5,3	5,3	2,0
Instagram	1,3	1,3	1,3	1,9	1,3	1,2	0,9	0,3	1,9	1,4	0,3
Por amigos o familiares	5,3	5,0	5,5	5,4	2,3	6,7	6,0	5,2	4,2	5,9	4,5
Total	100,0	100,0	100,0	100,0	100,0	100,0	100,0	100,0	100,0	100,0	100,0

These opinion studies reveal that the frequency of digital communication use, especially the use and consumption of content through social media, is increasing. Another study, conducted locally by the opinion research firm More Consulting, aimed at ascertaining the way Venezuelans get news on political facts, confirms this trend. 33.9 % of those surveyed stated that they got news on politics from TV, 2.6 % from print media, and 5.6 % from the radio. In other words, 42.1% get news on political events in the country through the

³⁵ Mentioned by Fernández-García, Nuria (2017). Fake news: una oportunidad para la alfabetización mediática. *Nueva Sociedad*, 269(3). Retrieved from <https://nuso.org/articulo/fake-news-una-oportunidad-para-la-alfabetizacion-mediatica>

traditional media and especially TV. In contrast, 15.1 % said they learned about politics through websites and 23.9 % get news on the country's political situation from social media (10.3 % on Instagram, 9.6 % on Facebook, 5.2 % on WhatsApp, 7.4 % on Twitter, and barely 1 % on Telegram). The same respondents were inquired on their use of social media to get news regarding national political events. The answers were: Very frequently, 34.4 %; somewhat frequently, 17.2 %; sporadically, 17.8 %; almost never, 9 %; and "I never use social media to get informed about politics", 20.9 %.

These findings being true, it is evident that digital or virtual communication is gaining ground, especially among the new generations. Journalist Boris Muñoz expresses it very appropriately when he puts forward the idea of "the world as will and representation":

[...] things reach a point of concern when, as in *The Matrix*, virtual reality begins to permeate everything, contaminating even the bodies in charge of watching over the truth.³⁶

In a condensed glimpse at the developments that have taken place in the world of communications, a number of questions arise: Is the idea of freedom of expression, as it has been theorized to date, still valid in the digital age? Will it be necessary to introduce changes in constitutional texts, in the declarations of international, hemispheric organizations, etc., in view of the presence of the ICTs? Will the experiences acquired in discussions and approaches to the right to freedom of expression continue to be relevant? Is it valid to assimilate the same criteria applied to mainstream media for the new media? In this context of information society or digital society, how do the right to communication and the right to information fit in? The question posed by Eduardo Bertoni is also relevant in this section of the essay: "Is internet access a human right in itself or is it an enabler of other rights?"³⁷

³⁶ Muñoz, Boris (2007). *Despachos del imperio*, Colección Actualidad. Caracas: Editorial Random House Mondadori, p. 461.

³⁷ Bertoni, Eduardo (2017). OC-5/85: su vigencia en la era digital. *Libertad de expresión: a 30 años de la opinión consultiva sobre la colegiación obligatoria de periodistas*. Bogota: Fundación para la Libertad de Prensa, Open Society Foundations, Inter-American Commission on Human Rights, Office of the Special Rapporteur for Freedom of Expression, Trust for the Americas, p. 33 *et seq.*

We do not have clear and precise answers in this regard. The debate is open. There are optimistic positions and positions that are not so. The few documents that, up to now, have been issued by different international bodies with regard to the right to freedom of expression on the Internet suggest that “the application of the same principles governing freedom of expression in the traditional media”. Thus, the third item on the agenda of the UN Human Rights Council 20th session on the promotion, protection, and enjoyment of Human Rights on the Internet, in June 2012, established: ³⁸

Noting that the exercise of human rights, in particular the right to freedom of expression, on the Internet is an issue of increasing interest and importance as the rapid pace of technological development enables individuals all over the world to use new information and communications technologies,

Taking note of the reports of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, submitted to the Human Rights Council at its seventeenth session, and to the General Assembly at its sixty-sixth session, on freedom of expression on the Internet,

1. Affirms that the same rights that people have offline must also be protected online, in particular freedom of expression, which is applicable regardless of frontiers and through any media of one’s choice, in accordance with articles 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights;
2. Recognizes the global and open nature of the Internet as a driving force in accelerating progress towards development in its various forms;
3. Calls upon all States to promote and facilitate access to the Internet and international cooperation aimed at the development of media and information and communications facilities in all countries;
4. Encourages special procedures to take these issues into account within their existing mandates, as applicable;
5. Decides to continue its consideration of the promotion, protection and enjoyment of human rights, including the right to freedom of expression, on the Internet and in other technologies, as well as of how the Internet can be an important tool for development and for exercising human rights, in accordance with its programme of work.

³⁸ United Nations (2012). *Human Rights Council Twentieth session Agenda item 3 Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development*. Retrieved from <https://undocs.org/A/HRC/20/L.13>

Prior to this statement by the UN Human Rights Council, in June 2011, another international meeting was held with the participation of the special rapporteurs on freedom of expression from the UN, the IACHR-OAS, and the African Commission on Human and Peoples' Rights, who signed the Joint Declaration on Freedom of Expression and the Internet. This document established the principles applicable to freedom of expression in the online world³⁹. Therefore:

General Principles

- a. Freedom of expression applies to the Internet, as it does to all means of communication. Restrictions on freedom of expression on the Internet are only acceptable if they comply with established international standards, including that they are provided for by law, and that they are necessary to protect an interest which is recognised under international law (the 'three-part' test).
- b. When assessing the proportionality of a restriction on freedom of expression on the Internet, the impact of that restriction on the ability of the Internet to deliver positive freedom of expression outcomes must be weighed against its benefits in terms of protecting other interests.
- c. **Approaches to regulation developed for other means of communication – such as telephony or broadcasting – cannot simply be transferred to the Internet but, rather, need to be specifically designed for it** [emphasis added].
- d. Greater attention should be given to developing alternative, tailored approaches, which are adapted to the unique characteristics of the Internet, for responding to illegal content, while recognising that no special content restrictions should be established for material disseminated over the Internet.
- e. Self-regulation can be an effective tool in redressing harmful speech, and should be promoted.
- f. Awareness raising and educational efforts to promote the ability of everyone to engage in autonomous, self-driven and responsible use of the Internet should be fostered ('Internet literacy').

We have emphasized point c of this statement: “Approaches to regulation developed for other means of communication – such as telephony or broadcasting – cannot simply be transferred to the Internet but, rather, need to be specifically designed for it”. This is an aspect that is still awaiting an in-depth and detailed conceptualization and investigation. In this regard, we endorse the approach by Antonio Pasquali, who tells us that technological

³⁹ Organization for Security and Co-operation in Europe *et al.* (2011). *Joint Declaration on Freedom of Expression and the Internet*. Retrieved from <https://www.osce.org/files/f/documents/e/9/78309.pdf>

determinants, as we addressed them above in this section, add much complexity to the millenary notion of free will, in particular the concept of freedom of expression as a universal human right, and, according to the researcher's criteria, cause hermeneutic confusion and theoretical and practical inaccuracies. He states:

[...] the new technological determinants that add one more complexity to the millenary and elusive notion of Freedom, is the one that best shows to what extent the nineteenth-century meanings of "freedom of expression" need to be rethought because of their inadequacy to express today the "over-determination" of the new sciences and technologies [...] thereby, we can affirm that the new technological-communicational determinants with their precise codes – but multipliers of expressive possibilities in our relational behavior – constitute an over-determination that simultaneously increases the margin of freedom and power of our communicational behaviors. It is by adopting the rigorous Boolean mathematical logic governing the use of the binary digit code in computing that we have been able to access the immeasurable freedom of being all emitters on the Internet, which obviously makes it necessary to rethink today nineteenth-century freedom of expression in order to revamp it and relocate it in the most complex context of new determinants.⁴⁰

All this discussion has to do with the issue of the market and the concentration of communications, the monopoly imposed by large media corporations, both in traditional and new media, and the phenomenon of multimedia conglomerates (marketing convergence between traditional and new media), State intervention, political regulation mechanisms (radical and mild, depending on the political system), self-regulation, deregulation... This issue had already been raised in the 1970s and late 1980s. We refer again to the MacBride Report for UNESCO. This was never politically enforced and it simply remained a well-meaning expository writing as an attempt at bringing order to the communication society that was beginning to take shape at that time.

No one puts into question the benefits of these new ICTs. They have become inescapable in these times. There is no activity in our lives that is not mediated by these technologies – at work, at home, in the educational field, in the mainstream media... in short, profound economic, social, and cultural changes have been taking place. We have entered a change of era. As Manuel Castells tells us, these changes affect human beings in their notion of

⁴⁰ Pasquali, Antonio (2012). *Op. cit.*, p. 58

themselves, of their daily lives, of their own lives, of space and time and, in short, of reality itself. A question then arises: Will there be another way of managing this new field of global communications, outside the market and the commoditization that the contents and broadcasting services offered by these technologies and the apps we are offered by them, or is it possible to develop a management model of socially responsible liberal rationality? This is what Josep María Carbonell suggests when he states that it is a matter of establishing "a model that puts the social dimension of communication before business interests, always within a framework of freedom of expression. It is a model that does not want to leave such an important value as communication to the free market".⁴¹

From our perspective, we believe that there is a legal vacuum in this matter. The new media are communication platforms very different from the mass media. These new media display what has become known as digital convergence. With the emergence and accelerated expansion of these new media, the consideration between culture and communication, between homogenization of cultural expressions and significance of culture, is once again under discussion; but it also calls into question the classical consideration of the concept of freedom of expression. What is happening is that the new technology has given way to new communicative and informational uses and practices (think of e-mail and text messaging, which have revitalized the epistolary genre and the need that has arisen to communicate) that were not formalized, much less dictated by the technology itself. However, in what concerns us, which has to do with the field of freedom of expression and the right to communication and information, this digital communicative ecosystem has been gaining more and more ground in the social world and has opened up new forms of citizen participation. It has even generated customized channels of participation in the public and political realms. The best example is the smartphone. By means of it, citizens have managed to have at their fingertips and enjoy sound, text, and image.

The emergence of new media has made the political media system more complex. Traditional media, consisting of pre-internet mass media such as newspapers, radio and television news, coexist with new media that are the offspring of technological

⁴¹ Carbonell, José M. (2012). *El futuro de la comunicación. Redes, medios y poder*. Gijón: Editorial VOC, p. 64.

innovation. While classic media preserve relatively stable formats, the list of new media, which includes websites, blogs, video-sharing platforms, digital apps, and social media, is continually expanding in innovative ways. Mass media designed to disseminate general interest news to a large audience have been joined by custom-tailored sources that selectively disseminate news to a limited number of users (Stroud, 2011). The new media can deliver information directly to individuals without the intervention of editorial and institutional gatekeepers intrinsic to classical forms of communication. Thereby, new media have introduced a higher level of instability and unpredictability in the political communication process.⁴²

Let us now revisit our previous question: Is it possible to apply the paradigm of freedom of expression to an array of media that allow the direct participation of users, who in turn are producers of content and information on different topics? What many IT law scholars, such as Rodrigo Moya García, a researcher at the University of Chile Center for IT Law Studies (Centro de Estudios de Derecho Informático de la Universidad de Chile), argue is that:

The Net is a channel through which opinions are voiced, ideas are expressed, information is provided and communication takes place. The Internet, thanks to its free and decentralized structure, has made the exercise of freedom of expression easier; but, on the other hand, this same openness has allowed and encouraged the development of actions unlawful and harmful for the population, so that for some the need to regulate and establish controlling authorities in this field arises. On the other hand, there are those who argue that the achievements in terms of freedom of expression made by and thanks to the Internet are so many that this conquest cannot be sacrificed just under the pretext of preventing the perpetration of unlawful acts on the Internet.⁴³

The debate is open. There is no clarity on the matter. It is not enough to say that what must be done is to apply the provisions in Universal Declaration of Human Rights Article 19. The issue is complex because of what involves and entails the global communications system that the Internet and all the apps based on it are. Once again, the question floats: How to ensure that harmful content disseminated by means of the mediation of the Net does not affect other individuals and countries, or incite hatred, discrimination, incitement, segregation,

⁴² Owen, Diana (2018). *Op. cit.* Translated into English from Spanish source.

⁴³ Moya García, Rodrigo (2003). La libertad de Expresión en la Red Internet. *Revista Chilena de Derecho Informático*, 2, 8. Quoted by Bernal R., Edwin (2015). La libertad de expresión en internet. *Misión Jurídica. Revista de Derecho y Ciencias Sociales*. Retrieved from <https://www.revistamisionjuridica.com/la-libertad-de-expresion-en-la-internet>

committing crimes in general? How to implement regulatory mechanisms that are not censorship? How do we understand the self-regulation of the Internet?

Therefore, once again researcher and communications scholar Antonio Pasquali comes to our aid, as he pointed out, during a lengthy interview with journalist León Hernández in the book *Pasquali. El último libro, la última entrevista y el último banquete* (*Pasquali. The last book, the last interview, and the last feast*), as follows: ⁴⁴

Question

Do you think that, with these new technologies – which allow people to broadcast and receive information, and communicate with each other, no longer from a colonial point of view or from a station but horizontally – this has translated into a greater democratization of communications or is there still somehow an imposed order, or a cultural way imposed by a hegemonic interest?

Both survive. Now, let's tell things from one another, I have been telling anyone who will listen to me that the Internet is not just another gadget. The Internet has come to change our existence by giving us back our ability to broadcast, to emit messages. We have lived for fifty, seventy, eighty years in the reign of radio and television, which were two conduit models with practically no feedback.

They only worked in one direction: A transmitter, broadcasting on a channel "x", a messenger for an instinct mass of listeners. The Internet has given me back the ability to launch a newspaper over the Net, theoretically aimed at the whole world. So when someone says to me: "But you have been talking for decades about a communication that would not communicate, and the Internet does not affect you?" – I haven't. I and others spoke of an "uncommunicating communication", when we lived under the rule of radio and television. Yes, for decades, I was blacklisted by all commercial broadcast TV stations in the country; I am never interviewed. We have given back to humankind the ability to broadcast; but here happens what always happens, so I am going to go back for a moment to a philosophical definition of "freedom", trying to make myself understood. One of my favorite philosophers, Nicolai Hartmann⁴⁵, who lived in our time, wrote in German, but he is from Latvian descent. Well, he conceives of what he calls the 'real world factory' as consisting of a physical foundation, upon which there is a biological substratum, on which there are psychological and spiritual strata; and at the top is the human being.

Now, what happens? It happens that the physical is subject to all the physical laws, the biological, the same; but the one at the top is subject to all physical, biological, psychological, and spiritual laws; and yet he is the freest entity in Nature: The human

⁴⁴ Interviewed by Hernández, León (2019). *Pasquali. El último libro, la última entrevista y el último banquete*, Colección Baciuelmo. Caracas: ABediciones de la UCAB, p. 58-60, 61.

⁴⁵ Nicolai Hartmann (1882-1950).

being. We are the freest, because we are subject to the greatest number of laws. What an apparent paradox, right? We can free ourselves from many of them with our wits! We fly; nature did not make us fit to fly, but we fly. We are attacked by infinite causes, biological, chemical, but medicine has progressed so much that it has succeeded in overcoming many diseases, and so on.

Good. Every time a new area of freedom opens up, the thugs sneak in, yes, right there. Exactly as it happens in an American Wild West movie: There are very honest people who go towards freedom on a wagon train, as we have all seen in the movies, but suddenly a gangster, a thief, comes along and wants to take advantage of that freedom for his misdeeds, right?

I think that mythologeme, if Nature gives me a chance, I will end up writing a long essay about it. That is, the mythology of the 'far west', as an interpretative key to our time. New freedoms open up to them and to us all the time, but the enemies of freedom sneak in. That is to say, we can broadcast information, but here comes an author of fake news, here comes a communications scoundrel putting in hoaxes, or inaccurate facts, slander, whatever.

Conclusion: Just like in the Wild West, every new freedom needs a sheriff, yes, every new freedom needs a sheriff. Humanity has been progressing this way; it finds a new freedom, it has to bring a law to protect the whole humankind from the abuses of that freedom, always.

And we have to acknowledge that the free world of the Internet is being harassed today by all kinds of thugs, starting with many governments that spy on it, don't they? There is a reason why the U.S. NSA, the National Security Agency, has the most powerful computer in the world, 32 petaflops per second, which means a memory for three hundred quadrillion operations per second, which can record the content of all communications in the world, because we are watched at every moment.

On the other hand, there are those who have been striving to create a two-speed Internet. One lined with Facebook and Twitter advertising, for the poor; and another without advertising for the rich; and it is already moving forward.

When I work long hours at the computer, every couple of hours, I disconnect for ten minutes and play one of those games, Tetris, any game, to free my mind; and all the games offered to me by Microsoft say at the bottom: "If you want these new ones without advertising, pay this much a month". In other words, I have to pay not to get advertising! That invasion is terrible.

The other day – and I beg listeners to forgive me for the banality of this anecdote – it happened to me that a couch just like the one I have downstairs appeared onscreen and I stopped for a few seconds to look at that couch just like mine. Well, after 24 hours, I got a letter from an English couch manufacturer, telling me that I had shown interest in their couch and they were telling me the price and stuff, for having looked at a couch on the screen for about eight seconds. There was someone who picked this up, who tipped the maker of the couch over there and sent me an ad. That's the world we live in, harassed from everywhere.

So, a sheriff, well, that's a colossal issue. I want a sheriff, but I don't want an American, Russian, or Chinese sheriff, okay? We are globalized; we are going to globalize the laws. There is already an International Criminal Court, yes, an International Criminal Court, we are going to create a clean, plural, and honest international body to govern the Internet world! To define fake news; to impose penalties, because I do not want to be punished by an American, Russian, or Chinese law.

Question

I already commented on this a little bit, professor, but I would like you to go a little more deeply into what is your personal concept of what "freedom" means.

In my time, we used to say that this was the 'thirty-two thousand quarter-question' (laughs). I got my doctorate following a thesis on the concept of freedom by Renouvier⁴⁶ and Bergson⁴⁷, which I also released in Spanish locally through Central University of Venezuela's EBUC publishing house. Don't ask me for a definition of freedom, because there are fourteen thousand and none, right? Freedom is on the one hand the absence of determinations; but Hartmann warns that freedom is not the absence of determinations, we are under the rule of determinations; but, at the same time, we are free.

Freedom has, and this is important to point out, boundaries. Notice, during his life, 'mega galactic Chávez', communicated freely to the country; but he monopolized the freedom of all the others, yours, mine, of all of us here. Only he spoke. There is a verse by renowned poet Rafael Cadenas, the winner of so many awards, which says, in [late leftist president] Chavez's own words: "When I talk, let no one interrupt me" (he laughs).

And I tell Rafael: "How wonderful is to be a poet!", as he encapsulated in eight words what I had to write a book to say it myself: "When I talk, nobody interrupts me". That is to say, Chávez and Maduro, and all the hegemonies of communication, are hoarders of other people's freedom.

That is why freedom and pluralism, in the communicational field, go hand in hand. Where there is loss of pluralism, there is loss of freedom.

We can mention, only for indicative purposes, some issues and areas to research, explore, and clarify regarding the Internet and its connection with freedom of expression as a human right:

– The issue of Net neutrality and neutrality in search engines for different content

It is said that the neutrality of the medium, in this case the neutrality of the Net, must be guaranteed. However, some questions arise: Who determines this neutrality? What does this neutrality consist of? Who should guarantee this neutrality? Because the Internet is not

⁴⁶ Charles Renouvier (1815-1903).

⁴⁷ Henri Bergson (1859-1927).

only a technology, it is also a "social apparatus". In this sense, although it is true that the Internet has enabled the release of content like no other media, it is also true that a large part of the content circulating on the Net is produced, controlled and distributed by large communication conglomerates - large communication groups producing and distributing content of all kinds, much of it in synergy with the mainstream media. Such liberating process introduced by this new communication technology has caused a multimedia and global business concentration, as pointed out by researcher Josep María Carbonell.⁴⁸

The above author, by referring to one of the American researchers – Ben H. Bagdikian – the one who has most studied concentration processes in the media and communications sector, contributes these facts:

In 2000 [Ben H. Bagdikian] published a reprint of his most important book, published in 1983, *The Media Monopoly*; and, in the foreword of the new edition, he added an update on concentration processes in the United States. He plainly states that the large media corporations have influenced and succeeded in "writing audiovisual laws" in favor of their interests and against those of the public. Laws that have favored concentration processes. In the first edition, he found that the 25,000 mass media in the U.S. (17,000 newspapers, 11,000 magazines, 9,000 radio stations, 1,000 TV stations, 2,500 book publishers, 7 movie studios) were controlled by 50 corporations, which constituted the Private Ministry of Information and Culture. In the 2000 edition, these 50 corporations were diluted into 6 [sic].⁴⁹

It is evident that the Internet has mobilized citizens in many communicational, social, and political respects. There has been an explosion of virtual communities that enhance citizen participation. The Internet has decentralized the processes of emission and reception of messages; but it has also generated business and marketing formulas for the dissemination and distribution of contents.

In an interview with Armand Mattelart for the newspaper *Le Monde* in March 2001, upon the publication of his book *Historia de la sociedad de la información* (Spanish version of *The*

⁴⁸ Regarding this, see Carbonell, José M. (2012). *Op. cit.*

⁴⁹ *Ibidem.*, p. 48.

Information Society: An Introduction), the researcher answers two questions that have to do with the above proposition.⁵⁰

Question: Is this a new manifestation of the neoliberal globalization of the world?

Armand Mattelart: The ideology of the Information Society is none other than that of the market. It is in synergy with the assumptions of neoliberal reconstruction of the world. It is precisely this that some governments, starting with the French government, and civil society networks throughout the world are trying to stand up to.

Question: What do you advocate to get out of what you call "informational Neo-Darwinism"?

Armand Mattelart: We gain back the new technologies by building an alternative to the Information Society. If there is any truth in the notion of the Information Society, it is that more and more crevasses of everyday and institutional life are penetrated by information technologies and, consequently, that more and more sectors will be forced to think about it, either to join in or to raise the question of another option. However, today, those who dare to speak of alternatives are immediately labeled as technophobes. There is no reflection on the essential question, namely: Is it possible to propose social projects and other forms of ownership of these technologies that permeate society in the face of a project that increasingly resembles a techno utopia, a techno market determinism?

In this context, what García Canclini notes is true: "[D]igital technologies, associated with socioeconomic and cultural globalization, foster certainties of what we gain: More information and diversified entertainment, spaces for debate and participation, access to goods, messages, and services not available in our own nation"⁵¹. However, it is also evident that we cannot lose sight of how fascinated by them we are, as well as the medialization and the deep changes they bring about, not only in our ways of communicating, but also in the so-called "worlds of life". In this sense, without taking a technophobic stance, let us bear in mind what Martín-Barbero warned in this regard: "Let no one be confused: Technologies are

⁵⁰ Mattelart, Armand (2002). *Historia de la sociedad de la información*, Colección Paidós Comunicación 132. Barcelona: Editorial Paidós, p. 168, 169.

⁵¹ García C., Néstor (2019). *Ciudadanos reemplazados por algoritmos*. Buenos Aires: Centro Maria Sibylla Merian de Estudios Latinoamericanos Avanzados en Humanidades y Ciencias Sociales (CALAS), p. 11. Retrieved from <http://www.editorial.ucr.ac.cr/ciencias-sociales/item/2535-ciudadanos-reemplazados-por-algoritmos.html>

not neutral since, more than ever, they are today vortices of condensation and interaction of social mediations, symbolic conflicts, and economic and political interests".⁵²

– The issue of truthfulness and accuracy of the information circulating on the Internet and social media

This issue has to do with what today is called fake news. When Donald Trump was running for president in the U.S. elections 2016, the term began to become popular. This was mainly because of the fact that Trump, on the one hand, began to use it repeatedly in the face of the criticism made against him as a candidate. When he was elected as president on November 8, 2016, he continued to use it in the face of the unfavorable comments made regarding his style of governing and his constant outrages and eccentricities. In Donald Trump's recent campaign for re-election, according to an investigation research conducted by Stephanie Sugars using a US Press Freedom Tracker database, " Trump has used the phrase 'fake news' nearly 900 times in tweets aimed to denigrate the media, insult particular news outlets, discredit supposed leaks and leakers, and allege falsehoods."⁵³

Since 2016, there has been a boom in fake news worldwide. Some flagship cases – the referendum on Catalonia in September 2016, the referendum on Brexit in the U.K., the election of Jair Bolsonaro as president of Brazil – attest to this, along with a large amount of empirical data collected by various institutions such as that recently released by the Massachusetts Institute of Technology (MIT) Initiative on Digital Economy. This study analyzed, between 2006 and 2017, 126.000 news threads on Twitter, published over 4.5 million times by about three million people.⁵⁴ The conclusion we can draw from all these references – and from others we can find – is that fake news goes faster than real news. It is what is now called the 'virality' of fake news, usually attention grabbing or scandalous.

⁵² Martín-Barbero, Jesús (2001). *Op. cit.*, p. 79

⁵³ Quoted by Mackintosh, Eliza (2020, October 25). No matter who wins the US election, the world's 'fake news' problem is here to stay. *CNN*. Retrieved from <https://edition.cnn.com/2020/10/25/world/trump-fake-news-legacy-intl/index.html>

⁵⁴ Quoted in Rodríguez C, Pablo (2019, February 25). Algoritmos a la caza de fake news. *Telos*. Retrieved from <https://telos.fundaciontelefonica.com/la-cofa/algoritmos-a-la-caza-de-fake-news>

The term fake news⁵⁵ is popularized by the astounding advance of the Internet and its derivatives in the form of social media: Facebook, Twitter, YouTube, Snapchat, Instagram, MySpace, WhatsApp, Telegram, and those that may originate from new technical modes of processing and distributing information flows. “These developments are creating a new technical scenario in which information and symbolic content can be converted quickly, and with relative ease, into different forms. They offer the possibility of much greater flexibility in both the handling and transmission of information.”⁵⁶

The question then arises: What to do in the face of a scenario that calls into question the issue of truth and veracity of information and that risks stripping of all content the notions of information and communication as public goods and even the role of mainstream and new media? The legal perspective raises the question of whether a sitting government in state functions has the power to regulate or ban fake news. This becomes even more complicated when we notice that false information or fake news comes from the government itself or from non-government stakeholder. Catalina Botero very clearly points out that:

[...] from a legal perspective, there is a radical difference: While the dissemination of false information by government officials is prohibited by international law (at least by Inter-American law), the dissemination of false news by private individuals is, in principle, protected by freedom of expression.⁵⁷

Similarly, let us look at what sociologist Manuel Castells has to say about freedom of expression and the Internet:

The Internet is fundamentally a social space, increasingly widespread and diversified, based on mobile Internet access technologies. Therefore, **the preservation of freedom of expression and communication on the Internet is the main issue of freedom of expression in our world** [emphasis added].⁵⁸

⁵⁵ As defined in the Cambridge Dictionary, “false stories that appear to be news, spread on the internet or using other media, usually created to influence political views or as a joke”. Fake News (n.d.). In *Cambridge Dictionary*. Retrieved May 4, 2021 from <https://dictionary.cambridge.org/dictionary/english/fake-news>

⁵⁶ Thompson, John (1998): *Op. cit.*, p. 23. Translated into English from Spanish source.

⁵⁷ Botero M., Catalina (2017). La regulación estatal de las llamadas “noticias falsas” desde la perspectiva del derecho a la libertad de expresión, in FLIP, Open Society Foundations, IACHR-SRFE, and Trust for the Americas. *Op. cit.*

⁵⁸ Castells, Manuel (2005, January 29). Innovación, Libertad y Poder en La Era de la Información, presented at the 5th World Social Forum. Porto Alegre. Retrieved from <http://www.cic.unb.br/~rezende/trabs/castells-VFSM.html>. Quoted by Bernal R., Edwin (2015). *Op. cit.*

It is easy to say: “Let’s regulate all information that is false or that misinforms the public”. The consequences would be worse than the measure, since we would enter into what Umberto Eco calls a censorship regime. Catalina Botero herself notes, following the arguments put forward by the IACHR in 1985, that: “[a] system that controls the right of expression in the name of a supposed guarantee of the correctness and truthfulness of the information that society receives can be the source of great abuse and, ultimately, violates the right to information that this same society has”. However, despite this principled statement, there is a legal vacuum regarding the responsibility of social media in the transmission of information that is false or that breeds hatred or incites acts of generalized violence.

The information flowing through the traditional or mass media is equated with that transmitted by the new media. There are substantial differences and these have to do with the emitter and its identity. The questions stemming from these differences are: Who is responsible for the information or communication that circulates through mainstream media and who is responsible for what is disseminated through Internet-based apps? In the latter case, is the responsibility for the information flowing from these apps the responsibility of the user or of the platform (company) that enables the transmission? Manuel Castells and other theorists of the Information Society support the proposal that the Internet is a free and autonomous informational and communicational instrument or technology. Notwithstanding, once again the question arises and it has to do with the ethical sense and responsibility of those who make use of the free circulation of content facilitated by the Internet and the apps supported by it. This is the dilemma to be resolved.

The above dilemma is by no means resolved. For example, in the United States, of a liberal persuasion, we are presented with an outlook of total deregulation in the field of electronic communications. Europeans, on the other hand, are more emphatic on the issue of regulation vs. deregulation. Therefore, we can read:

The first steps on the road to regulation took place in December 2016. At that time, the European Commission, along with Facebook, Microsoft, Twitter, and YouTube, signed a code of conduct, which binds these companies to block and delete xenophobic, racist, and sexist content. It also requires them to act within 24 hours of posting. The objective is to counter hate speech on the Internet, which has been very present in recent years, since the refugee crisis and terrorist attacks in Europe began.⁵⁹

These are just a few considerations on the subject of freedom of expression and the Internet. It is a subject to continue to reflect on and research. It is by no means closed and we will have to further think about it because of the significance and importance that this medium has acquired in today's society and will continue to do so in the future, as it has been demonstrated throughout the COVID-19 pandemic. In this regard, let us look at what the CEO of private Spanish communications corporation Telefónica stated:

When the real world has had to close, the virtual world has opened its doors. These weeks have witnessed the explosion of digital activity, in mature sectors, such as e-commerce, and in others that have been more low-profile so far, such as telemedicine or digital education. It is no longer a question of technological supply but of rapid adoption by and intense demand from society and companies. In the last few weeks, we have witnessed a decade in the evolution of digitalization indicators, in remote working or webcast management.

This turnaround may be the catalyst that was missing to take a big leap forward in digitization and to drive a sustainable, people-focused digital transition. We are probably ready and willing to make a better future emerge from this crisis. We all have the opportunity to make it happen and, from our sector, we are proud to know that telecommunications will undoubtedly be part of it. Because what goes through our networks are not voice minutes or data volumes. **What goes through our networks is life itself** [emphasis added].⁶⁰

Other issues that will have to be rethought in the relationship between freedom of expression and the right to communication, within this environment of a new communication ecosystem that goes beyond the analog media, are such issues as truth (in a way we referred to it above), public and private matters, objectivity in information, intimacy and privacy, the notion of limit... even the very idea of democracy and the notion of the

⁵⁹ Vuarambon, Nicole (n.d.). El paradigma de las redes sociales: Entre la libertad de expresión y la censura. *Demo Amlat-Transparencia Electoral*. Retrieved from <https://www.demoamlat.com/el-paradigma-de-las-redes-sociales-entre-la-libertad-de-expresion-y-la-censura>

⁶⁰ Álvarez-Pallete, José M. (2020, April 21). Saldremos juntos y saldremos conectados, *Telos*. Retrieved from <https://telos.fundaciontelefonica.com/telos-113-covid-19-sostenibilidad-saldremos-juntos-y-saldremos-conectados>

nation state. There is also everything related to big data.⁶¹ This term refers to the presence and capture of massive data in the digital age. Linked to this theme is the whole set of data – the so-called algorithms – collected on individuals or citizens within the global economy distinctive of today's world.

Let us return to the concept of freedom of expression, the right to communication, and its issues. In this regard, we have outlined an agenda of sorts for reflection. We would like to reaffirm, by way of closing, some issues that stand out and should be the core of analysis on the subject, namely:

1. We are guided by a liberal concept of freedom of expression. This concept involves issues such as self-regulation, individual freedom and freedom of initiative, free market, ethical sense and responsibility in the processes of information production and dissemination, democratic sense of political and social life.
2. When thinking about freedom of expression and the right to communication, we are guided by the guidelines developed by the OAS through its Office of the Special Rapporteur for Freedom of Expression (SRFE). Of all that we have reviewed, systematized, and considered, the OAS is one of the organizations that has best elaborated on this concept, to the extent that media business organizations follow its guidelines and have adopted the Chapultepec Declaration as their guide. This Declaration was adopted by the Hemispheric Conference on Freedom of Expression held in Mexico City on March 11, 1994.
3. The presence of a democratic system will depend on the existence of a solid and robust freedom of expression. Democracy is inherent to freedom of expression, as an individual and collective right.
4. Colombian researcher and journalist Javier Darío Restrepo⁶² contributes some ideas and remarks on the subject that we feel it is important to underscore:

⁶¹ In this regard, the PowerData website reads: "Big Data is a term that describes the sheer volume of data, both structured and unstructured, that floods businesses every day; but it's not the amount of data that's important. What matters with Big Data is what organizations do with the data. Big Data can be analyzed for insights that lead to better decisions and strategic business moves." Available at <https://www.powerdata.es/big-data>

⁶² Rincón, Omar (2014, May 26, 27). *Op. cit.*

- Criticizing the government and its officials is the central meaning of freedom of expression.
- Freedom of expression defines the quality of a democratic system: "Freedom of expression is the field where democracy is being played".
- In a democratic society, there are few rights as important as that of free expression.
- Freedom of expression is not absolute. In the event of abuses of this right, the media and news professionals must be held accountable in court.
- Freedom of expression should be a citizen issue and not only that of journalists and mass media.
- Freedom of expression is a public good.
- Freedom of expression must enable a public, robust, and completely open debate of ideas.
- Freedom of expression, as a fundamental human right, is one thing, and journalistic quality is quite another.

To close these remarks, let us say that democracy and democratic life can in no way avoid the idea and reality of freedom of expression and the right to communication. Both ideas, that of democracy and that of freedom of expression, are inextricably joined.

References

- Álvarez-Pallete, José M. (2020, April 21). Saldremos juntos y saldremos conectados, *Telos*. Retrieved from <https://telos.fundaciontelefonica.com/telos-113-covid-19-sostenibilidad-saldremos-juntos-y-saldremos-conectados>
- Bernal R., Edwin (2015). La libertad de expresión en internet. *Misión Jurídica. Revista de Derecho y Ciencias Sociales*. Retrieved from <https://www.revistamisionjuridica.com/la-libertad-de-expresion-en-la-internet>
- Bertoni, Eduardo (2017). OC-5/85: su vigencia en la era digital. *Libertad de expresión: a 30 años de la opinión consultiva sobre la colegiación obligatoria de periodistas*. Bogota: Fundación para la Libertad de Prensa, Open Society Foundations, Inter-American Commission on Human Rights, Office of the Special Rapporteur for Freedom of Expression, Trust for the Americas.
- Big Data (n.d.). Power Data. Retrieved from <https://www.powerdata.es/big-data>
- Bisbal, Marcelino *et al* (1998). El consumo cultural del venezolano: una cartografía de las transformaciones. Bisbal, Marcelino y Aguirre, Jesús M. (Comp.). *Encrucijadas de la comunicación en Venezuela*. Caracas: Centro Gumilla and Consejo Nacional de la Cultura.
- Boladeras i C., Margarita (2001). “La opinión pública en Habermas”. *Anàlisi*, 26.
- Botero M., Catalina (2017). La regulación estatal de las llamadas ‘noticias falsas’ desde la perspectiva del derecho a la libertad de expresión. *Libertad de expresión: a 30 años de la opinión consultiva sobre la colegiación obligatoria de periodistas*. Bogota: Fundación para la Libertad de Prensa, Open Society Foundations, Inter-American Commission on Human Rights, Office of the Special Rapporteur for Freedom of Expression, Trust for the Americas.
- Carbonell, José M. (2012). *El futuro de la comunicación. Redes, medios y poder*. Gijón: Editorial VOC.
- Catholic Church. (1963). *Peace on earth: Encyclical letter of Pope John XXIII, 'Pacem in terris', 1963*. Retrieved from http://www.vatican.va/content/john-xxiii/en/encyclicals/documents/hf_j-xxiii_enc_11041963_pacem.html
- Climent G., Jorge (2017). Opinión pública y libertad de expresión. *Iuris Tantum Revista Boliviana de Derecho*, 23. Retrieved from <https://dialnet.unirioja.es/servlet/articulo?codigo=5776253>
- European Union (1950, 1952, 1963, 1983, 1984, 2000, 2002, 2013). *European Convention on Human Rights*. Retrieved from https://www.echr.coe.int/documents/convention_eng.pdf
- Fake News (n.d.). In *Cambridge Dictionary*. Retrieved May 4, 2021 from <https://dictionary.cambridge.org/dictionary/english/fake-news>
- Faúndez L., Héctor (2007): La libertad de expresión como herramienta del proceso político. *Boletín de Derechos Humanos*, 4(2).

- Fernández-García, Nuria (2017). Fake news: una oportunidad para la alfabetización mediática. *Nueva Sociedad*, 269(3). Retrieved from <https://nuso.org/articulo/fake-news-una-oportunidad-para-la-alfabetizacion-mediatica>
- García C., Néstor (2019). *Ciudadanos reemplazados por algoritmos*. Buenos Aires: Centro María Sibylla Merian de Estudios Latinoamericanos Avanzados en Humanidades y Ciencias Sociales (CALAS). Retrieved from <http://www.editorial.ucr.ac.cr/ciencias-sociales/item/2535-ciudadanos-reemplazados-por-algoritmos.html>
- Grieco, Elizabeth (2017). *More Americans are turning to multiple social media sites for news*. Retrieved from <https://www.pewresearch.org/fact-tank/2017/11/02/more-americans-are-turning-to-multiple-social-media-sites-for-news/>
- Habermas, Jürgen (1962). *Historia y crítica de la opinión pública. La transformación estructural de la vida pública*. Colección GG Mass Media. Barcelona: Editorial Gustavo Gili.
- Hernández, León (2019). *Pasquali. El último libro, la última entrevista y el último banquete*, Colección Baciuelmo. Caracas: ABediciones de la UCAB.
- Loreti, Damián (2007). Principios que garanticen una ley de radiodifusión compatible con los estándares de derechos humanos que protegen la libertad de expresión. *Boletín de Derechos Humanos*, 4(2).
- MacBride, Sean y otros (1980). *Un solo mundo, voces múltiples. Comunicación e información en nuestro tiempo*. Fondo de Cultura Económica, México and UNESCO, Paris.
- Mackintosh, Eliza (2020, October 25). No importa quién gane las elecciones estadounidenses, el problema de las ‘noticias falsas’ en el mundo llegó para quedarse. *CNN en Español*. Retrieved from <https://cnnespanol.cnn.com/2020/10/25/analisis-no-importa-quien-gane-las-elecciones-estadounidenses-el-problema-de-las-noticias-falsas-en-el-mundo-llego-para-quedarse>
- Martín-Barbero, Jesús (2001). Reconfiguraciones comunicativas de lo público”. *Anàlisi*, 26.
- Mattelart, Armand (2002). *Historia de la sociedad de la información*, Colección Paidós Comunicación 132. Barcelona: Editorial Paidós.
- Muñoz, Boris (2007). *Despachos del imperio*, Colección Actualidad. Caracas: Editorial Random House Mondadori.
- Novoa M., Eduardo (1979). : *El derecho a la vida privada y libertad de información: un conflicto de derechos*. Mexico: Siglo XXI Editores.
- Organization of American States (1994). *Chapultepec Declaration*. Retrieved from <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=60&IID=1>
-
- (2000). *Declaration of Principles on Freedom of Expression*. Retrieved from <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=26&IID=1>

- Organization for Security and Co-operation in Europe *et al.* (2011). *Joint Declaration on Freedom of Expression and the Internet*. Retrieved from <https://www.osce.org/files/f/documents/e/9/78309.pdf>
- Owen, Diana (2018). El papel de los nuevos medios en la política. *La era de la perplejidad. Repensar el mundo que conocíamos*. Barcelona: Penguin Random House Grupo Editorial. Retrieved from <https://www.bbvaopenmind.com/libros/la-era-de-la-perplejidad>
- Pasquali, Antonio (2012). *La comunicación mundo. Releer un mundo transfigurado por las comunicaciones*. Salamanca: Comunicación Social Ediciones y Publicaciones.
- Restrepo, Javier D. (1996). El poder de los que reciben, en Rey, Germán & Darío, Javier D. (1996). *Desde las dos orillas*. Bogota: Ministerio de Comunicaciones de la República de Colombia.
- Rey, Germán (2009). ¿Hacia dónde va la comunicación en América Latina y el Caribe? Inauguration address delivered at the IV Encuentro de Comunicación de la CPAL. Coordinación del Sector Comunicación. *Comunicación* (2010), 149(1).
- Rincón, Omar (2014, May 26, 27). El modelo liberal: independencia del gobierno y auto-regulación. Working paper presented at the *Conversación Internacional Subregional Andina: La libertad de expresión y el derecho a la comunicación e información en América*. Santiago, Chile.
- Rodríguez C, Pablo (2019, February 25). Algoritmos a la caza de fake news. *Telos*. Retrieved from <https://telos.fundaciontelefonica.com/la-cofa/algoritmos-a-la-caza-de-fake-news>
- Thompson, John (1998). *Los medios y la modernidad. Una teoría de los medios de comunicación*. Barcelona: Ediciones Paidós.
- United Nations (1948). *Universal Declaration of Human Rights*. Retrieved from <https://www.un.org/en/about-us/universal-declaration-of-human-rights>
- _____ (1993). *General Assembly Forty-eighth session*. Retrieved from https://www.un.org/ga/search/view_doc.asp?symbol=A/48/624
- _____ (2012). *Human Rights Council Twentieth session Agenda item 3 Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development*. Retrieved from <https://undocs.org/A/HRC/20/L.13>
- United Nations Educational, Scientific and Cultural Organization (1991). *Windhoek Declaration for the Development of a Free, Independent and Pluralistic Press*. Retrieved from: <https://www.ilfaroonline.it/wp-content/uploads/2020/05/dichiarazione-di-Windhoek.pdf>
- Vuarambon, Nicole (n.d.). El paradigma de las redes sociales: Entre la libertad de expresión y la censura. *Demo Amlat-Transparencia Electoral*. Retrieved from <https://www.demoamlat.com/el-paradigma-de-las-redes-sociales-entre-la-libertad-de-expresion-y-la-censura>
- Zeller, Carlos (2001). “Los medios y la formación de la voz en una sociedad democrática”, *Anàlisi*, 26.

APPENDIX I

DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION APPROVED BY THE COUNCIL IN THE YEAR 2000

1. Freedom of expression in all its forms and manifestations is a fundamental and inalienable right of all individuals. Additionally, it is an indispensable requirement for the very existence of a democratic society.

2. Every person has the right to seek, receive and impart information and opinions freely under terms set forth in Article 13 of the American Convention on Human Rights. All people should be afforded equal opportunities to receive, seek and impart information by any means of communication without any discrimination for reasons of race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition.

3. Every person has the right to access to information about himself or herself or his/her assets expeditiously and not onerously, whether it be contained in databases or public or private registries, and if necessary to update it, correct it and/or amend it.

4. Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.

5. Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.

6. Every person has the right to communicate his/her views by any means and in any form. Compulsory membership or the requirements of a university degree for the practice of journalism constitute unlawful restrictions of freedom of expression. Journalistic activities must be guided by ethical conduct, which should in no case be imposed by the State.

7. Prior conditioning of expressions, such as truthfulness, timeliness or impartiality is incompatible with the right to freedom of expression recognized in international instruments.

8. Every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential.

9. The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.

10. Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.

11. Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as "desacato laws," restrict freedom of expression and the right to information.

12. Monopolies or oligopolies in the ownership and control of the communication media must be subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people's right to information. In no case should such laws apply exclusively to the media. The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals.

13. The exercise of power and the use of public funds by the state, the granting of customs duty privileges, the arbitrary and discriminatory placement of official advertising and government loans; the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law. The means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.

APPENDIX II

CHAPULTEPEC DECLARATION

Adopted by the Hemisphere Conference on Free Speech Mexico City March 11, 1994

A free press enables societies to resolve their conflicts, promote their well-being and protect their liberty. No law or act of government may limit freedom of expression or of the press, whatever the medium. Because we are fully conscious of this reality and accept it with the deepest conviction, and because of our firm commitment to freedom, we sign this declaration, whose principles follow.

1. No people or society can be free without freedom of expression and of the press. The exercise of this freedom is not something authorities grant, it is an inalienable right of the people.
2. Every person has the right to seek and receive information, express opinions and disseminate them freely. No one may restrict or deny these rights.
3. The authorities must be compelled by law to make available in a timely and reasonable manner the information generated by the public sector. No journalist may be forced to reveal his or her sources of information.
4. Freedom of expression and of the press are severely limited by murder, terrorism, kidnapping, intimidation, the unjust imprisonment of journalists, the destruction of facilities, violence of any kind and impunity for perpetrators. Such acts must be investigated promptly and punished harshly.
5. Prior censorship, restrictions on the circulation of the media or dissemination of their reports, forced publication of information, the imposition of obstacles to the free flow of news, and restrictions on the activities and movements of journalists directly contradict freedom of the press.
6. The media and journalists should neither be discriminated against nor favored because of what they write or say.
7. Tariff and exchange policies, licenses for the importation of paper or news-gathering equipment, the assigning of radio and television frequencies and the granting or withdrawal of government advertising may not be used to reward or punish the media or individual journalists.
8. The membership of journalists in guilds, their affiliation to professional and trade associations and the affiliation of the media with business groups must be strictly voluntary.
9. The credibility of the press is linked to its commitment to truth, to the pursuit of accuracy, fairness and objectivity and to the clear distinction between news and advertising. The attainment of these goals and the respect for ethical and professional values may not be imposed. These are the exclusive responsibility of journalists and the media. In a free society, it is public opinion that rewards or punishes.

10. No news medium nor journalist may be punished for publishing the truth or criticizing or denouncing the government.

The struggle for freedom of expression and of the press is not a one-day task; it is an ongoing commitment. It is fundamental to the survival of democracy and civilization in our hemisphere. Not only is this freedom a bulwark and an antidote against every abuse of authority, it is society's lifeblood. Defending it day upon day is honoring our history and controlling our destiny. To these principles we are committed.