Revisiting the freedom of the press in the brazilian constituents of 1967 and 1988

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What is democracy?

What is democracy? It is with this critical-reflective instigation that this section begins, which has to go through some historic and constitutional moments in Brazil in order to satisfactorily examine the way in which freedom of the press was shown in the 1967 constituent until it reached the political-institutional guise used in neocontemporary days.

It goes back to what was researched at the beginning, to what is considered democracy. So, get to know her under a political scrutiny.

It is true that in democracies the people seem to do what they want; but political freedom does not consist in doing what you want. In a State, that is, in a society where there are laws, freedom can only consist in being able to do what one ought to want and in not being forced to do what one has no right to want. One should keep in mind what independence is and what freedom is. Liberty is the right to do whatever the laws permit; and if a citizen could do what they forbid, he would no longer have freedom, because the others would also have this power. (MONTESQUIEU, 2002, p. 166, emphasis added.)

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It is abstracted from the reading that freedom merges with democracy insofar as the former is a right and the latter a guarantee. See, right, because everyone should be free (adjusted to the law) in a democracy; guarantee, because the democratic structure, in a system of government, covers freedom in such a way that this cannot be dissociated from that under penalty of denaturing the system.

However, in the relationship between freedom and democracy, the law, the laws, all of these functioning as control mechanisms, after all, by giving infinity to human-social institutes or institutions, one may be promoting chaos in societies . Thus, freedom in democracy is governed by laws, by law. And, as the politician and philosopher stated above , if the citizen were allowed to do what the laws do not allow, it would no longer be possible to speak of freedom. Clearly, freedom has limits.

Continuing, it is necessary to reflect on the limits to freedom and the way in which these are placed in society in order to have a sample framework able to better reflect on whether the limits to freedom (read, for the moment, freedom of the press) are legitimate and democratic. In view of this, let us better understand the history of freedom of the press in Brazil under the historical-constitutional scrutiny.

The 1967 Constitution of the Federative Republic of Brazil, granted in clear continuation of the anti-democratic regime that had been installed in 1946. No such changes were seen to further protect/guarantee press freedom (art. 150).

From reading the constitutional text, it is noted that little is innovated, continuing to allow censorship of shows and public entertainment, as well as publications that are contrary to good customs and morals are not tolerated.

Once again in history, it is clearly seen that freedom of the press has been placed in obscure vain or in concepts that are too open (that is, good customs, morals), which generates social insecurity.

Nebulously, the Institutional Act appears, now, that of n. 5, of December 13, 1968 (article 2). Passages of the Act that demonstrate a profound change in the security of the freedoms of Brazilian citizens, marking a regression not seen before in previous constitutions, except that of monarchical times and the concentration of state power in the hands of a single person, in a clear absolutist character (e.g.: Letter Police of 1824).

Overall, freedom of the press was at its worst historical moment, because of the combination of limitations, suspensions, sanctions, etc. capable of being practiced by the head of the Executive Power to concentrate all the powers of the State, no space was made possible for the full freedom of the citizen, much less for the freedom of the press.

Not being little, it is the turn of the Constitutional Amendment n. 1, of 1969, which amended the text of the current Constitution in order to adapt it to the new commandments of the constitutional acts until then inserted at the national level.

Having gone through injurious political, institutional and social crises for Brazilian citizens and freedom of the press, the skies of the Republic began to gain sunshine, and in 1985 Constitutional Amendment n. 26, which convened a new National Constituent Assembly that would re-discuss the national scenario for redemocratization.

It is in this scenario that the Constitution of the Federative Republic of Brazil, of October 5, 1988, appears, bringing to all the most celebrated human postulates, including great protection of freedom of the press.

Henceforth, freedom (of thought, expression, ideology, assembly) becomes free from prohibition or any biased ways to bar it (censorship or license). One sees the rise of freedom of the press as an essential institute for democracy, because, see, public debate is considered important from this moment on (MEYER-PFLUG, 2009).

The passages of Title II (fundamental rights and guarantees), Chapter I (individual and collective rights and duties) and Chapter V (social communication) were reviewed. In these, it is very clear that the 1988 Constitution redemocratized Brazil with its enactment, being full of elementary human and democratic postulates, where human dignity and freedom are found, which legitimize freedom of the press.

There is ample protection given to freedom of the press, with a separate chapter dedicated to the matter, which did not occur in any of the previous constitutions. Said provision of the media in Brazil grants legal, political and social value of extreme value to citizens.

It is necessary to recognize that only thought in an externalized form has value for the Law, as it is subject to understanding and accountability, if it claims acts that are not in line with other democratic values. The terminology “freedom of expression” is a genre for freedom of thought, idea, thought, opinion, conviction, sensation, feeling, intellectual, artistic, scientific and communication activity (SILVA, 2006; BASTOS, 2001; MEYER-PFLUG, 2009) .

Democracy affected by this relationship of freedom for all and regulated by law is not compatible with the denial of freedom in any of its species.

The lack of freedom of expression (opinion, information) and freedom of communication (press, radio, film, public opinion)

makes it impossible to develop plurality, preliminary formation of political will, publicity of political life and equal opportunities, the that does not make political life effective and denies the country's free and open development process (HESSE, 1998).

In short, they cover freedom of expression (read, for the moment, freedom of the press), the promotion of personal rationalization; the discovery of the truth when exposing and publicly discussing ideas, a requirement of the democratic regime itself and, finally, is associated with the stability of human life and communities.

The historical-constitutional sample framework related to freedom of the press, which began with the Political Constitution of the Empire of Brazil in 1824 and ended in the Constitution of the Federative Republic of Brazil in 1988, demonstrated how much freedom of the press has suffered throughout history to become reaffirm in the current constitutional order, having relied on governmental acts of different suppressive strains that weakened the press sector. Nowadays, freedom of the press has been firmly guaranteed since 1988, remaining at the forefront of the reconfiguration of national democracy.

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