**FREEDOM OF EXPRESSION, COMMUNICATIVE EQUALITY AND MASS MEDIA**

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To try to deny the citizen this freedom [of the pen], means withholding from the ruler all the knowledge of those matters which, if he knew about them, he would himself rectify, so that he is thereby put in a self-stultifying position (Immanuel Kant - “On The Common Saying – 'This may be true in Theory, but it Does Not Apply in Practice'”. In: *Kant Political Writings*).

**Introduction**

In an unprecedented decision, the Brazilian Justice has convicted a broadcast corporation and one of its most important journalists for hate speech against atheists. Bandeirantes TV, one of the four big media corporations in the country, presents a daily show in which the reporters follow the police while they chase and arrest supposed criminals. José Luiz Datena, the host of such program, is responsible for analyzing and commenting on the images. Both were convicted for the program aired on July 2010 in which Datena blamed the atheist conviction of a person for the crime he was being accused of. According to Datena, the problem with that allegedly criminal was the absence of god in his heart: “Atheists have no limits, that’s why we see crimes like these. Atheists kill and commit other atrocities. They think they are their own God”.

After a protest from the Brazilian Atheist Association, the Brazilian Court sentenced Bandeirantes TV and Datena to promote, during the same TV show, discussions about freedom of consciousness and religious diversity. In case of noncompliance, they should pay 5 thousand dollars of daily fines.

The São Paulo’s Press Association published a note reacting to the conviction stating that “one cannot think of democracy in Brazil without fighting for the rights enshrined in the United Nations’ Charter of Human Rights, which protects the human right of freedom of expression *and therefore the right of communication*”.

And it continues: “When a journalist or a TV station is prevented from the right to free speech, we disrespect democracy and the democratic state of law. This is not a discussion about freedom of consciousness or religious diversity; more important is the question of *freedom of expression and the essential and legitimate right of communication*”.

Then it finishes bringing up the natural law argument: “We couldn’t go without a retaliation note because the constitutional defense of one of the most important principles of *natural law*, that is the right to freedom of expression, is comparable to a defense of life and of the *natural freedom of human beings*”.

Therefore, the São Paulo’s Press Association sustains that a Court infringes human rights whenever it condemns journalists and broadcasters for their activities. It conceives free speech as a natural law (as life!), which does not require a further reason to be justified – and once again identifies institutions as human right’s bearers.

**I**

It is almost a truism to affirm the importance of a free press[[2]](#footnote-2) for the politics of freedom of expression. In contemporary societies the public sphere is increasingly mediatized, and the mass media play a central role in every part of people’s lives. Of course the mass media operate not only as neutral transmission channels, but rather according to the external and internal constrains that shape the content and the form in which information goes public. To a significant extent, the media frames the content and the form of what counts as “reality”[[3]](#footnote-3). From a certain point of view, we live in a time of infinite possibilities for communication. The development of IT technologies, the acceptance of pluralism and the spread of deliberative democratic practices has, so it seems, made it easier than ever to establish communication both widely and effectively.

Yet some theoretically accepted concepts and legally enforced norms regarding freedom of expression tend to restrict rather than to support a just society. I refer here to contemporary discussions and to norms that tend to assimilate media freedom to a general concept of liberty that is the hallmark of most of liberal societies and repudiates restrictions or obligations for the mass media. A view, such as the one espoused by the São Paulo’s Press Association, which assigns media and other corporations the same rights that are assigned to individuals.

Based on the premise that democracy is characterized solely by a compromise among competing interests, this perspective assumes that the purpose of democratic institutions is to guarantee equal consideration to the interest of each individual; i.e. democracy requires that individual, private free speech is protected against any external control. Following this argument, one’s basic communicative obligation is to abstain to impede others’ self-expression: that is, communication is achieved once a self-regulated *marketplace of ideas* is protected from the collectivity.

In opposition to that line of thought, I would like to argue that protections to media freedom cannot be justified by analogy to individual rights freedom of expression. Among other reasons, as I have suggested in the beginning, the exercise of press freedom is not an innocuous right. Following O’Neill’s argument[[4]](#footnote-4), I defend that media freedom is better justified by appealing to the requirements of democratic communication[[5]](#footnote-5). This perspective puts in the forefront of the debate a discussion about the regulation of free speech, from the restrictions on the so called hate speech to the legislation regarding the ownership and control of the media.

This paper addresses the normative issue of freedom of expression within the landscape of democratic societies where the mediated form of communication appears as a central feature. On what follows I intend to discuss the implications of such perspective, as well as what justifies moving away from dominant views about the relation between democracy and free speech. I present three different alternatives to the idea that freedom of expression is only guaranteed when to the collectivity is denied any interference on individual free speech. First of all, I bring an account of free speech based on the idea that freedom of expression is justified by the requirements of individual autonomy. I then present a second perspective, which I shall call collectivist approach, which argues that only those expressions should be protected that contribute to the democratic deliberation of self-governing citizens. After that, I address the participatory theory of free speech, which justifies constitutional protection for certain speech acts based on the expressive interest of the speakers in participating in democratic deliberation. My argument is that, all in all, these perspectives fail to provide an adequate justification of freedom of expression, at least one that is appropriate to meet the functions democracy and justice require from communication in mediated societies. For this reason, I propose a principle of communicative equality that asserts a different understanding for the idea of freedom of expression. This new understanding, I shall argue, is capable of reconciling the requirements of free speech, democracy and justice. According to Rawls,

Fair equality of opportunity here means liberal equality. To accomplish its aims, certain requirements must be imposed on the basic structure beyond those of the system of natural liberty. A free market system must be set within a framework of political and legal institutions that adjust the long-run trend of economic forces so as to prevent excessive concentrations of property and wealth, *especially those likely to lead to political domination*[[6]](#footnote-6).

The argument is basically that a fair system of freedom of expression must assure equal access to expressive opportunities, i.e. it is inseparable from the rights and duties associated to communication.

**II**

Freedom of expression is commonly associated with the search for truth, with the right to individual self-expression, with the proper functioning of democracy and with the balance between stability and social change. It is not only necessary for citizens to exercise their moral capacities to have a sense of justice and to defend a conception of the good. Combined with the procedures established in the Constitution, the right to free speech appears as an alternative to revolution and to the use of force, which greatly threaten the basic liberties. Moreover, to the guarantee of freedom of expression is often assigned an epistemic value: better decisions are related to a greater amount of speech, or to equal opportunities for discourse.

According to Scanlon, a strong doctrine of freedom of expression holds that some speech acts must be immune from interference, despite the harms they could cause and that would be sufficient for the prohibition of other kinds of acts: “It is the existence of such cases which makes freedom of expression a significant doctrine and which makes it appear, from a certain point of view, an irrational one”[[7]](#footnote-7).

To discuss this issue is necessary to present arguments justifying the privilege certain speech acts are entitled to. In general, the arguments offered are consequentialist in nature: some acts must be protected because this would generate better outcomes than it would be the case if they were subjected to restriction. Alternatively, however, one can rest the case on rights or another non-consequentialist principle, e.g. natural law, autonomy etc. Although great part of the discussion follow the first path, for the purposes of this paper I will focus on the second one, because it allows us to assess the rationale that underlies most of the current decisions and practices.

Following John Stuart Mill’s *On Liberty*, a first approach to the idea argues that the act of self-expression is generally self-regarding (self-affecting) and should be limited only if likely to cause harm to others. In this sense, Scanlon argues that the justifications for restricting freedom of expression should not be sustained on the argument that, if unrestricted, it would lead people to form false beliefs or to consider performing some actions that could be harmful.

Based on the Kantian idea that a legitimate government is the one whose authority is acknowledged by the citizens, considered free, equal, autonomous and rational, Scanlon presents what he calls the Millian Principle:

There are certain harms which, although they would not occur but for certain acts of expression, nonetheless cannot be taken as part of a justification for legal restrictions on these acts. These harms are: (a) harms to certain individuals which consist in their coming to have false beliefs as a result of those acts of expression; (b) harmful consequences of acts performed as a result of those acts of expression, where the connection between the acts of expression and the subsequent harmful acts consists merely in the fact that the act of expression led the agents to believe (or increased their tendency to believe) these acts to be worth performing[[8]](#footnote-8).

The advantage of this principle, according to Scanlon, is that it applies to any kind of speech act and does not rest on the superiority of a determined kind of right (e.g. political rights) or on the value of expressions belonging to a particular domain (e.g. artistic expression, scientific discussion etc.). In other words, it specifies the special nature of acts of expression and the basic distinction between these and other forms of action without appealing to their content. To the extent that the notion of autonomy which underlies this principle is quite weak, the author wants to argue that it is an “exceptionless” restriction on governmental authority. The Millian Principle is, therefore, a limit on the reasons one can use as a justification for government interference on individuals’ freedom of expression – it should not be considered an individual right.

At first glance, it seems that Scanlon is providing an unlimited defense for all types of discourse, once he is placing a value on autonomy above all other competing goods. Of course, at a certain point he argues that freedom of expression is a good we intuitively rank as more important than, for instance, the maintenance of absolute peace and quiet, or rock-bottom taxes. However, the argument is of a much more limited reach, though the limits should be imposed by considerations external to the idea of freedom of expression.

Access to means of expression for whatever purposes one may have in mind is a good which can be fairly or unfairly distributed among the members of a society, and many cases which strike us as violations of freedom of expression are in fact instances of distributive injustice. This would be true of a case where, in an economically inegalitarian society, access to the principal means of expression was controlled by the government and auctioned off by it to the highest bidders, as is essentially the case with broadcasting licenses in the United States today[[9]](#footnote-9).

Scanlon committed to protect individual autonomy, which has at most an indirect connection with collective self-government. According to his view, society disrespects individual autonomy by regulating strongly harmful speech, even when the outcomes would normally justify restricting other acts in order to prevent harmful consequences. The Millian Principle is justified, therefore, on the idea that ascribing the government the discretion to decide whether certain views should be expressed is not congruent to individual autonomy[[10]](#footnote-10). In this sense, it does not acknowledge that some forms of expression as well as the content they convey can be autonomy undermining.

Nevertheless, let me consider a person who is socialized in an environment where public discourse tends to picture those of her class, race, sex etc. as mere instruments for others’ ends. In this same society, TV news and entertainment shows constantly present scenes of violence involving people with one or more of certain characteristics (be it an ethnicity, a sexual preference or a religion), picturing them always in subordinate positions. Would such a person be in a position to consider herself self-governing and act accordingly?

It is impossible to not take into account the sour-grapes phenomenon among those who were socialized in a society where they are not entitled equal opportunities. In other words, self-determination is affected not only by the person’s own choices; it is also an outcome of the belief system that tells someone what the available alternatives are[[11]](#footnote-11). Scanlon thus formulates an argument that does not protect a fundamental feature of democratic communication, the ability of citizens to develop informed preferences.

If we recognize the importance of speech in the formation of public opinions, especially of those expressions that are intended to reach a broad audience through the means of communication, we can see that the Millian Principle provides an account that is too limited to support the act of self-government. So it both violates the principle of autonomy that arguably underlies it, and fails to promote the democratic functions we expect from a view of democracy as a collective enterprise realized through communication.

**III**

A different account of freedom of expression rests on the idea that the privileged status of certain acts of expression is justified by their relation to citizens’ ability to self-government. The American philosopher, Alexander Meiklejohn, occupies a prominent place within this perspective. In one of his most quoted phrases, Meiklejohn argues that “What is essential is not that everyone shall speak, but that everything worth saying shall be said”[[12]](#footnote-12). For the American philosopher, the purpose of the First Amendment to the American Constitution is rather to protect the community from a mutilation of its “thinking process” than to protect individual rights of citizens to free expression. He proposes that the traditional model of town meetings is a pattern from which one can assess the quality of public debate in society as a whole. This would not be a model of unregulated talkativeness, but of a group of free and equal men cooperating in a collective enterprise, in which they mobilize responsible and regulated arguments.

Thus, his focus is mostly on the protection of the listener’s possibility to receive information and opinion from different sources in order to make wise decisions. We must have in mind, of course, that Meiklejohn’s argument was meant as an opposition to Justice Holmes’ doctrine of clear and present danger. According to Justice Holmes, the U.S. Congress was allowed to prohibit speeches whose content could potentially cause harm to society. This rule, putted in practice in 1919, was considered by Meiklejohn a restriction on – and not just an interpretation of – the First Amendment. Furthermore, and most importantly, the exclusion of certain arguments from the public space would turn deliberation less plural, what could prevent the audience from being properly informed of all the views relevant to their judgment.

Meiklejohn believes that the roots of a strong guarantee of free speech can be found in the American constitutional design of popular sovereignty. The fact that popular sovereignty requires a free and open discussion among citizens would condemn the justification for government interference on political discussion – again, this would violate citizens’ autonomy and sovereignty. In line with Scanlon’s argument, the collectivist view condemns the restrictions based on the point of view of the speeches, because they could silence certain views or topics and restrict the flow of information, causing interference on public debate, and, consequently, reducing the quality of democratic decisions[[13]](#footnote-13). The restrictions would, therefore, be unfair, would harm the quality of the debate and its reflexivity.

This approach presents a broader version of freedom of expression. While it precludes the restriction based on the ideas an expression conveys, it opens space for regulations applied to the agenda and the procedure of public debate in order to guarantee the quality of political deliberation. Indeed, freedom of expression is justified by reference to democratic discussion. In this perspective, the state can work to restrict or to guarantee freedom of expression, even when it deals with distributive issues. For instance, in determined contexts, private actors who control the means by which ideas come into public can restrict free speech. In such situations, the state must play an affirmative role in order to secure that citizens will receive all important information to make their decisions. A merely negative attitude may be responsible for a “silencing effect”; i.e., given that no idea becomes widely available without help from some form of publishing, the lack of access to the media lead to an exclusion of some *ideas* from public deliberation[[14]](#footnote-14).

Nevertheless, although it excludes regulations based on the ideas expressed in a speech act, this theory does it only insofar as an idea could be seen as contributing to the public discussion. Meiklejohn distinguishes private from public speech, assigning constitutional protection only to the last one. Following this line of thought, the government would be free to restrict, for example, certain forms of hate speech, based on the premise that the ideas they convey are not contributions to public deliberation and collective self-determination. At the same time, however, it would not be precluded from not supporting and even from restricting some forms of artistic expression or religious content, based on the same argument. In not protecting such speeches, the collectivist approach violates a condition of democratic deliberation, which affirms that to citizens should be guaranteed certain political as well as “non-political” liberties. These last liberties are, in addition to the traditional political rights, what ensure equal opportunities and informed inputs to deliberation. So Meiklejohn disrespects the very constitutional commitments, to political deliberation and political equality, he argues to support[[15]](#footnote-15).

When providing arguments for the distinction between public and private discourse, the collectivist view mobilizes arguments that are opposed to its own underlying principles. Although the theory refers the value of free speech to the effects it has on the audience, public and private discourses are a function of the speaker’s intentions, not of the potential effects on the listeners. Meiklejohn implicitly imposes to the distinction between discourses that should and that should not be protected a comprehensive conception of what must be valued by a society. His theory refuses constitutional protection to private speech based on the normative idea that the self-interest motivation of the speaker disqualifies her expression as a relevant contribution to democratic opinion- and will-formation. According to Redish and Mollen (2009), “a speaker who refuses to believe in the value of community and instead seeks solely to further his own personal interests through expression is to be constitutionally shunned”[[16]](#footnote-16).

Moreover, this approach does not pay enough attention to the results of the political deliberation. The epistemic weigh follows upon the procedure itself, opening the door for restrictions on citizens’ rights through decisions made by the “correct” process. A strictly procedural account is an insufficient basis for an idea of legitimacy because some choices are exceedingly repulsive regardless of the procedure by which they were made.

Finally, the town meetings, which Meiklejohn mentioned as a model for public deliberation, are organized according to specific and shared goals. Being the agenda and purposes defined beforehand, the rules are formulated and established to facilitate their implementation. For this reason, the analogy between town meetings and public deliberation is not a good one because, if we apply the premises of the meetings to the public discussion that occurs in society as a whole, we would lose a key element to the process of collective self-determination that occurs in public deliberation. According to Post,

If the state excludes communicative contributions on the grounds of a specific sense of what is good or valuable, the states then stands in contradiction in the central project of collective self-determination. It displaces that project for the sake of heteronomously imposed norms. The internal logic of self-government thus implies that with regard to the censorship of speech the state must act as though the meaning of collective identity were perpetually indeterminate within the medium of public discourse, where 'the debate as to what is legitimate and what is illegitimate must necessarily remain 'without any guarantor and without any end[[17]](#footnote-17).

So, by isolating the decision about what should be said and the objectives of an expression of the democratic procedure, the collectivist view needs to appeal to some form of management through which it would decide whether “everything worth saying was said”. It requires an a priori agreement on the goal(s) that should drive public deliberation or a moderator whose legitimacy allows her to be entitled to the rights and duties of conducting public discussion.

Post’s objection is that in the idea of public discourse is presupposed that all beliefs, all goals and all conceptions about the role of the state are opened to public scrutiny, as well as the agenda of the discussion. According to him, what shall or shall not to be said, what is a valid argument or not are also subject to disagreement and dispute. No particular comprehensive conception of the good could be used to justify censorship. This would stand in contradiction with the exercise of self-determination through the public use of reason. There is no Archimedean point from which to predict or anticipate the outcomes of public deliberation. Appeals to ideas of equality or diversity, follows Post, refer to particular notions of the common good, not necessarily shared by all.

In this sense, the collectivist perspective fails to acknowledge that the value of individual autonomy is inseparable from the aspiration of self-government, a value to which the collectivist theory gives priority. According to Post’s perspective, there can be no self-government without autonomy. The communicative process deserves special constitutional protection because it is the process through which the democratic “self” is constituted by the reconciliation between the public and private autonomies. The intervention of the state, according to the author, necessarily implies the establishment of structures that undermine citizens’ autonomy.

Following an argument made by Foucault, Post reasons that control structures end up coming to life and threatening even the autonomy of those who created it: “If we create structures of heteronomy, we shall all, sooner or later, be condemned to inhabit them. We shall become the subjects of a power not our own”[[18]](#footnote-18).

**IV**

Based on some of the critics raised to the collectivist approach, Post develops a different interpretation of the freedom of expression that also has, nevertheless, collective self-determination as a basic underlying idea. Differently from Meiklejohn’s account, however, Post’s theory takes democracy as a value rather than as a procedure. The legitimacy of a political order, argues the author, is due to the citizens’ belief in government’s responsiveness to their interests, and to the view of the state as an outcome of their self-determination. So the key question is to determine how the citizens would feel included in the process of collective self-government and how can we make the government subordinated to the public opinion that emerges from democratic deliberation.

Following up with the argument, Post reasons that the public discourse enterprise can create the consensus necessary for the citizens to acknowledge the society as a self-governing body. In other words: public discussion is able to produce consensus and, as a result, democratic legitimacy. What matters more than anything is the citizens’ ability to engage in public discourse, as long as the government is subordinated to the public opinion. Free speech, in this sense, is internally related with the safeguard of public debate and should be understood as excluding regulations that restrict speakers’ autonomy.

Participation is thus equated to individual self-expression, with no concern whatsoever with the listeners and bystanders, and with the resources they have available for making democratic decisions. For this reason, this account fails to address the relation between individual self-expression and the requirements of communication. It ends up being a restrict approach since freedom of expression rests on public discourse but there is no compromise with citizens’ capacity to make their ideas heard in the public forum. Among other reasons, communication should be valued because the audience participates as much as the speakers on the formation of the public opinion to which the government might subordinate its decisions. According to Redish and Mollen (2009), “Just as the speaker may benefit by contributing to public discourse, so too may listeners’ moral and intellectual horizons be expanded by the receipt of information and opinion”[[19]](#footnote-19) – or, I would add, their horizons can be limited due to the sorts of information and opinion they are exposed to. If a speaker has a right to self-expression but lacks the capacity to achieve her intended audience, would she feel as a participant of collective self-government? On the other hand, what happens when the speaker’s right to self-expression – supposing she has also the capacity to reach her audience – is used to disseminate ideas that undermine the listener’s fair opportunities to participate in collective self-determination?

The right to free speech allows one to write a letter to the editor, but does not obligate the editor to publish it or to give it the space it would deserve. In this sense, the access to the means of publishing and/or broadcasting is equivalent to the right to express oneself. It calls for a discussion about how to distribute this right. Under the current conditions on most of our established occidental democracies they are allocated very much on the basis of private willingness to pay. “Although viewers and listeners do not pay cash to broadcasters, each station takes account of the revenue likely to be generated by different programs, and the revenue is in large part a function of the existing audience 'demand' for programming”[[20]](#footnote-20).

**V**

Although there is apparently a consensus regarding the existence of a relation between free speech, media freedom and democracy, for the reasons presented so far, I suggest that the perspectives presented here do not provide a concept of freedom of expression that supports democratic communication. In what follows I’m going to discuss why an adequate account of freedom of expression must assure the fair value of communicative liberties – i.e., citizens are to have substantively the same opportunities to express and to be taken into account in the democratic process of opinion- and will-formation –, and what could be the implications of such an understanding for the norms that regulate free speech.

First of all, I take for granted that any democratic society must protect freedom of expression. However, I also take as a premise that this should not be understood as merely ruling out censorship; instead, democracy requires as well that individuals have some effective means for bringing their views before public[[21]](#footnote-21).

In a deliberative conception of democracy, the collective character of a decision refers to the fact that it emerges from an institutional arrangement that establishes the appropriate conditions for free public reasoning among equals. According to this view, citizens treat each other as equals by offering reasons for collective decisions that could be considered by all citizens as legitimate. So, public discourse is the key element of the political justification.

Deliberative democracy, then, is not simply ensuring a public culture of reasoned discussion on political affairs, nor simply about fostering the bare conjunction of such a culture with conventional democratic institutions of voting, parties, elections. The idea instead is manifestly to tie the exercise of power to conditions of public reasoning[[22]](#footnote-22).

In contrast with the views presented in **I** to **IV** above, I argue that the expressive liberties should not be justified solely by their relation to autonomy, by their contribution to political deliberation or by the speaker’s expressive interests. Rather, they must be referred to the mutual respect we owe to each other as members of the political society. Although the idea of ​​a reasonable discussion oriented towards an agreement is fundamental to the deliberative view, it does not follow that the freedom of expression should be related only to those speeches intended and/or received as contributions to public discourse. The requirement of shared reasons for the exercise of political power is what represents the full and equal membership of all in the sovereign body responsible for authorizing the exercise of that power[[23]](#footnote-23).

In order to ensure that citizens are treated as equals in the argumentative process, the basic structure of the society must: (1) promote the free public reasoning by offering, for example, favorable conditions for expression, participation and association, and (2) tie the exercise of the coercive power of society to such public discussion, by building an institutional framework that favors the responsiveness and the accountability of political power.

According to Habermas’s discourse principle “just those norms deserve to be valid that could meet with the approval of those potentially affected, *insofar as the later participate in the rational discourse*”[[24]](#footnote-24). Hence the citizens must be guaranteed the favorable conditions for the exercise of self-expression that are required for self-government, “in a way that provides each person with equal chances to exercise the communicative freedom”[[25]](#footnote-25). The heart of citizenship, continues Habermas, is composed by both political and human rights, so that public autonomy is not restricted by moral rights and, at the same time, individual’s private autonomy is not instrumentalized for the purposes of popular sovereignty[[26]](#footnote-26).

Accepting the idea that democracy requires (and presupposes) the possibility of public communication among citizens, it is necessary that the principles that underlie its regulation do not weaken, but preserve the conditions for public communication. Thus, communicative obligations require not only that citizens, employees and institutions do not prevent communicators from expressing themselves, but also that they preserve the possibility of continuous public communication. Since communication in mass democracies is in a large part mediated, it imposes obligations to preserve and maintain fair technological, as well as linguistic and social communication conditions for the citizens to access the means of communication[[27]](#footnote-27).

If we consider the requirement that to all citizens should be assigned equal opportunities to exercise communicative freedom, we can assume that it is necessary to reduce the asymmetries in the power of communicating. When such asymmetries are very high, those with a higher power will presumably express themselves so that their opinions and views are considered an indisputable truth. They probably will suppress qualifications and counter-arguments, and hide clues and conventions that are essential to understand and even challenge their assertions – for many different reasons, whether political or not.

The communicative practices indispensable to democracy require not only that communicators avoid presenting their own opinions as overpowering, but that they respect the voices from the audience. For O'Neill, is not sufficient to establish rights to reply that are limited to sending letters to the editor. Given the power that media can have, such mechanisms are not enough to ensure that conflicting positions will be audible. The commitment must go beyond and promote the development and support of institutions that contribute to diversity in communication, while protecting the views and social positions threatened of being silenced or marginalized[[28]](#footnote-28).

In this sense, regulations not only restrict but guarantee the fair value of free speech and, consequently, enable communication. Following O’Neill, I suggest that a good way of thinking about these norms is to consider an ideal model of optimal communication to each form of communication, so the requirements for face-to-face communication might be different from those of mediated speech acts. If we see freedom of expression only as an individual right to self-expression it can be treated as wide, more or less unconditional, right of individuals. Nevertheless, a same interpretation of media freedom in increasingly mediated societies represents an absence of restriction to powerful media corporations, the outcomes of which are completely different from those of individual self-expression.

“Contemporary media empires often achieve great political power. Freedom of expression for these powerful organisations is not innocuous, and a blanket rejection of other norms for communication by the powerful, including the media, is implausible”[[29]](#footnote-29).

Press or media freedom cannot be justified by analogy with individual freedom of expression, or as an innocuous right that should be unrestricted. If nothing else, it is not in any way innocuous since it can (and it does) cause harm to the less powerful. This would make the claim for a more restricted, conditional freedom to publish or broadcast, e.g. one that might require the media to target accuracy when it makes truth-claims. While individual self-expression is generally inaccurate, sometimes uncivil, it does not cause much harm by itself. On the other hand, when a powerful organization enjoys unrestricted freedom to publish and broadcast whatever it wants, it can definitely be harmful and cause injuries. Therefore, other ethical or epistemic norms for communicative actions are relevant and depend on the specific type of communicative acts being performed.

**A tentative conclusion**

In this paper I have suggested that much of the contemporary practice regarding freedom of expression is sustained on the idea that the basic communicative obligation of society is not to impede individuals’ self-expression. Such a conception of free speech is seen as a corollary of a very broad, almost unconditional, media freedom. In opposition to this line of though, I defended that much of the promise related to the right to freedom of expression can only be achieved when acts of expression also communicate.

The three views explored justify the protection of certain acts and forms of speech based respectively on conceptions of autonomy, political deliberation and participation. I have argued, against them, that they either violate the very principles they use to justify these protections or are an insufficient account for promoting the goals they presumably support.

As an alternative, I have suggested that for a conception of freedom of expression to accomplish the functions required by democracy, it should be understood in its relation to communicative action. According to this view, the first requirement is that a speech act must be capable of achieving its intended audiences. The second is that it must not impede further communication in a broad sense. I have argued that the concept of democracy has to embody the idea that individual and public autonomy go hand and hand. It would, therefore, be a violation of the idea of equal respect to protect communication only insofar as it could be seen as a contribution to political deliberation or as a form of participating in the process of self-determination.

As a negative liberty, freedom of expression is achieved when someone expresses an idea. It is an important protection for individuals, whether or not they are seeking to communicate to others, and should be protected unless it takes a form of a speech act that harms other individuals or groups by, for instance, failing to treat them as equal participants of the society. On the other hand, however, a communicative act aims more than an act of self-expression and it usually has wider effects, what could be said to entail a range of norms, including epistemic and ethical ones. These and other norms do not apply to the propositional content of the expression, but to the communicative acts performed.

Based on these premises, I have argued that democracy implies a concern about the equal access to the opportunities of expressing oneself and being heard in the process of opinion- and will-formation. At the same time, it requires not encouraging the dissemination of views that violate the ideal of equal respect.

The most convincing argument for media freedom appeals to the role these institutions play on individual and public self-determination, as well as to their importance in influencing the process of democratic decision-making. To speech acts that are intended as communicative action, that seek to achieve a larger audience and to serve as a public justification for political decision-making, norms such as civility and honesty do apply, and we should not think of them as mere, harmful self-expression. Given the influence media exercise over society, “providing the informational building blocks to structure views of the world”[[30]](#footnote-30) and participating in the definition of the chances many citizens will have to receive information from different sources, to exercise freedom of expression, and to communicatively participate in the decisions that will strongly affect their lives, it is reasonable to defend that it should be accountable and, therefore, regulated in order to promote a just society.

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2. I shall use press freedom or media freedom as referring to the same thing. [↑](#footnote-ref-2)
3. RUMMENS, S. Staging Deliberation: The Role of Representative Institutions in the Deliberative Democratic Process. *The* *Journal of Political Philosophy*, v. 20, Issue 1, pages 23–44, March 2012. [↑](#footnote-ref-3)
4. O’NEILL, Onora. “Ethics for Communication?” *European Journal of Philosophy*, 17:2, 2009, pp. 167–180. [↑](#footnote-ref-4)
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9. SCANLON (2003b), p. 22. [↑](#footnote-ref-9)
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