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# THREATS TO THE INDEPENDENCE OF JOURNALISTS. REFLECTIONS FROM ONE SHORE OF THE MEDITERRANEAN TO THE OTHER

*Cyril Lemieux*



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It is an observation that anyone can make quite easily: whether you are located in the north or the south of the Mediterranean, journalists have trouble with abiding by the principles of the codes of practice insisted upon by their profession, which are supposed to give them guidance in doing their job. But this does not mean that the difficulties with which they are faced are of the same kind, such is the extent to which, between the European Union and North Africa, neither the juridico-institutional context nor the economic context are identical. Indeed, this is the whole point of comparing the current situation of journalists on one shore of the Mediterranean and the other: analysis of the problems encountered by one set of journalists enables us to further our understanding of why the others encounter fewer, and vice versa. This comparison also leads us to envisage specific actions which, in each context, would make it possible to increase journalists' independence.

### **Journalistic independence: an ideal**

But why should it be necessary, after all, for journalists to be independent? And what should we understand exactly by the word "independence"? To answer these questions, we should take a brief look back at the history of political institutions in Western Europe. In this part of the world, during the course of the 18<sup>th</sup> century, an increasing number of individuals who considered themselves found unjustly guilty by the courts, adopted the habit of turning towards the public in order to appeal to its judgement against that of the magistrates. It was in this way that the idea of "public opinion" was born, which was conceived, from this point of view, as a kind of "second instance court" (Ozouf 1989, Baker 1990). In France, this mechanism finds its most striking illustration in the speeches by Voltaire in support of people found unjustly guilty – such as the Chevalier de la Barre and Jean Calas – and later, at the end of the 19<sup>th</sup> century, in the public intervention by Emile Zola in support of Captain Dreyfus. More generally, this mechanism is the very foundation of the political system of pluralist

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democracies, which developed in North America and Europe, as well as in other places around the world, in the 19<sup>th</sup> and 20<sup>th</sup> centuries. We can draw two consequences from this. The first is that, in this particular kind of political system, the judiciary and the media have an interdependent existence: the one cannot function without the other. This is why the idea whereby justice could be dispensed by the courts without the media having anything further to add would seem to be disqualified out of hand. But let us remember that the opposite idea, whereby public opinion, through the media, could dispense justice instead of the courts, is equally inconceivable. The second consequence is that, in this kind of political system, the relationship between judiciary and media tends to be structurally antagonistic: as the media are a kind of court of second instance, it is at once inevitable and functional that they will regularly stand up against the judiciary to criticise its workings and verdicts. Ultimately, this kind of political system has this as a characteristic: it does not rest on looking for consensus, but rather on organising forms instituted and controlled by disagreements (Lefort 1986).

We can then understand why the members of the judiciary felt very early on the need to protect themselves from the pressure from public opinion and the media: thanks to the affirmation of principles such as the secrecy of investigation and the presumption of innocence, it was, as far as they were concerned, a matter of countering the temptation to dispense justice under the dictate of the public – refraining, for example, from reaching a guilty verdict without proof against those whom public opinion judged to be guilty. On their side, the media, in criticising the workings of justice, have succeeded in helping the judiciary in its efforts to free itself at least partially from the pressures of the executive power: it reminded magistrates that their duty was to produce autonomous judgements, i.e. independent not only of the expectations of public opinion, but also of the pressure of the executive power. Admittedly, these days, when we consider pluralist democracies as a whole, it would seem that such independence of judgement is not achieved perfectly anywhere. But it none the less remains a professional ideal that a certain number of procedures – particularly those related to the rights of the defence – help to render not wholly fictional.

As the judiciary has sought to resist the twofold pressure from the media and the executive power by providing itself with procedures intended to guarantee the independence of its judgements, the media have likewise attempted progressively to distance themselves from the judiciary and executive powers. To this end, they began to establish forms of investigation at end of the 19<sup>th</sup> century that would allow them not to trust solely in the word of the establishment, and to check the reality of certain facts for themselves. But these forms of journalistic investigation, although they actually resulted in independence from political and judicial power, also presented a risk of enslaving them to the interests of other powers, quick to use them for their own purposes: as far as journalists were concerned, it was therefore a question of providing themselves with procedures that would enable them also to distance themselves from their sources of information. Once again, it was the complete independence of judgement that seemed to be the ideal to pursue.

As in the case of the magistrates, this ideal, as far as journalists are concerned, has only been imperfectly achieved. However, as all sociological studies conducted over the last 40 years show regarding European and North American media, this ideal is far from being ineffective regarding the behaviour of journalists. In reality, it translates as the existence of a certain number of practical rules that can be qualified as “rules of detachment” (Lemieux 2000). Journalists oblige themselves to abide by these kinds of rules of detachment, with a constancy and success that are clearly very variable from one country to another, the kinds of press, the internal organisation of editorial departments and professional status. We can style these rules as follows:

- 1) *Enunciative detachment*: journalists must strive, in public, to use modes of address with their interlocutors that do not betray too great a complicity or to indicate in the usual way the difference between their position and the one held by their interlocutor or their source. Thus, on television, for example, any journalist who generally addresses a politician by his first name and uses familiar forms of speech will endeavour to address him by his full name and in a more formal manner when on air.
- 2) *Retaining the initiative*: journalists must endeavour to make it clear to the public that it is they who chose to deal with a particular issue (and not their interlocutors who insisted on it), that it is they who invited a figure to express himself in their programme (and not he who invited himself) and that it is they who chose the questions that they are asking (and not their interlocutor who suggested them to them).
- 3) *Cross-checking*: before making an item of information public, journalists must endeavour to check its reliability by looking for a second source who can confirm or refute any information already in their possession.
- 4) *Administration of legally admissible evidence to blow the whistle*: before publicly blowing the whistle on a scandal or reprehensible behaviour, journalists must endeavour to gather sufficient evidence to satisfy the minimum requirements of admissibility from the judiciary’s point of view.
- 5) *Polyphony*: when they report on a conflict, a competition, a controversy or a legal proceeding, journalists must endeavour to give all parties with differing points of view the opportunity to put their case.
- 6) *Separation of facts and comments*: in their account of the facts, journalists must endeavour not to display their own opinions and personal preferences. The latter should only be expressed in the places specifically intended for them in the journalistic space by writers considered qualified to do so (editorials, analytical reports, press cartoons, etc.).

It would appear that, in pluralist democracies, the reactions of frustration or indignation that take hold of some people in response to the way the media report the news are generally due to the fact that one or more of these practical rules are not sufficiently respected by journalists. Each time this is the case, the media provide proof that they fall short of their ideal of producing an independent judgement: they show themselves to be incapable of abiding by the rules of detachment. Yet only respect for these rules can guarantee that they will produce an independent judgement of the institutional powers, just as much as their non-institutional or anti-institutional sources.

## What restricts the independence of journalists?

There are structural factors that restrict the ability of magistrates as well as journalists to produce independent judgements. Here I shall only discuss the case of journalists.

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### The monopolisation of information sources

An initial structural factor that significantly restricts the ability of journalists to abide by their rules of detachment is the concentration of sources of information in the hands of certain powers. Indeed, the more sources of varied and conflicting information that exist in a country, the easier it is for journalists to abide by their rules of detachment. Conversely, where, to all intents and purposes, a monopoly situation exists that favours a single source of information, journalists find it much more difficult to produce independent judgements.

This is clear in those countries which are not pluralist democracies: not only are journalists not permitted to produce independent judgements, the dependence of the media on institutional sources is practically total – let us remember Tunisia, for example, under Ben Ali. Even in pluralist democratic regimes such as the countries in the European Union today, we often see a veritable “institutional tropism” on the part of journalists. This term harks back to the fact that, quite frequently, journalists turn first or even exclusively to institutional sources of information, as these are the most prevalent in the cases with which they have to deal. In comparison, contradictory sources seem difficult for them to find. Furthermore, these contradictory sources often seem less reliable or less credible to them. This is how the media, including in pluralist democracies, often give a systematic advantage to the public authorities and institutional sources when reporting on events (Hall 1978). This is also what we see in a great many legal proceedings in which journalists tend to take investigators and judges at their word: this was the case in recent years in France, in legal proceedings which, in the end, turned out to be miscarriages of justice – like the so-called baggage handler case at Orly airport (in which the baggage handler was wrongly accused of terrorist activities) or the d’Outreau case (which implicated people wrongly accused of paedophilia). Journalists, in this case, are even less inclined to abide by the “polyphony” rule that consists in allowing the defence (and not only the prosecution) to have its say in as much as they have trouble finding contradictory sources to gainsay the sources of the investigation – which encourages them to “sing from the same hymn sheet” as the authorities in what they tell the public.

The diversity and degree of initiative of the sources of information are a vital point in understanding why the media shine the spotlight on certain events or, on the other hand, allow them to go unreported. Thus, for example, when the media reveal a scandal or make compromising information public, they are not generally themselves the source of the revelation: it was forwarded to them by sources with their own axe to grind. This is the case where, when they judge the time right, lawyers arrange certain “leaks” to the media, believing that these leaks will serve the interests of their clients – as we saw recently in France in the

so-called Woerth-Bettencourt case. The same is true when NGOs or other associations provide the media with surveys or reports that offer a second opinion with the aim of drawing the attention of public opinion to an unnoticed or underestimated problem. On this point, the sociology of the media has shown that, contrary to a preconceived idea, journalists are very rarely the source of the information or scandalous revelation: there are usually sources who produce the “basic info”, which then enables journalists to get involved and, where necessary, start investigations to check the facts (Schlesinger 1990). Let us point out that this division of labour of information between sources and journalists is not problematic per se: it only becomes a problem in so far as it introduces considerable inequalities between, on the one hand, the most powerful and best organised sources of information, who are most capable of providing journalists with the “basic info” and, on the other hand, the most poorly organised sources, who have enormous difficulties feeding the “basic info” to journalists and therefore far fewer chances of seeing their interests taken into account by the media.

Although press freedom is essential, it is not sufficient to guarantee that citizens will actually get independent judgements from journalists

This analysis suggests that, although press freedom is essential, it is not sufficient, however, to guarantee that citizens will actually get independent judgements from journalists. What may offer them a further guarantee is what we could call the vitality of grassroots democracy, i.e. the fact that there exists, within the social fabric, a multiplicity of associations, NGOs and challenges to established authority capable of getting involved and giving the media “basic info” (documented facts, evidence, second opinions, etc.) which is easy to exploit from the journalist’s point of view. The more numerous and active these alternative sources of information are in a country, the easier it is for journalists to abide by their rules of detachment. In other words, the more vitality the grassroots democracy has, the more chances journalists have to meet the challenge of their ideal of independence.

### **Economic constraints**

A second structural factor that severely restricts the journalist’s ability to abide by his rules of detachment lies in the economic constraints that weigh on their work. These constraints take a quite different form from one country to another. In countries where capitalism is less developed, involvement in the media is not a profitable business: the advertising market is too small and subscription numbers and newspaper sales too low. In such a context, the media can only survive economically with financial support from the State or rich patrons such as firms, businessmen, political groups or even foreign powers –a financial support which, depending on the circumstances, may be official or, on the other hand, hidden from the public. Furthermore, within press companies, journalists may be tempted, for personal reasons, to boost their income by succumbing to corruption– by defending the interests of a rich patron, for example, in return for money or gifts. Ultimately, in this kind of “pre-capitalist” system, the media economy depends much less on market mechanisms than on non-arm’s length relationships, whether official or hidden, which ties each press firm and each journalist to their backers (patrons, State, etc.). It is clear that the necessity to maintain ties of loyalty with such backers seriously restricts the journalist’s ability to abide by his rules of detachment.

The mechanism of direct dependence tends to be supplanted by a more impersonal mechanism: the continual pressure to improve profitability and productivity

In countries where the capitalist economy is most developed, such as the United States, for example, and in the nations in the north of the European Union, the situation is quite different. The advertising market is highly developed, allowing the media –especially the major international press groups– not just to break even but also to amass significant profits. In this context, press firms are subjected to incessant pressure from their owners and shareholders to improve productivity and profitability norms in order to always reduce production costs further and increase their share of the advertising market. Of course, the mechanism at the heart of the “pre-capitalist” economies, i.e. loyalty to financial backers, has not gone away: there are still certain pressures from shareholders or advertisers to get the journalists to report favourably on their interests. But in reality, the mechanism of direct dependence tends to be supplanted by a more impersonal mechanism: the continual pressure to improve profitability and productivity. In each editorial office, it is a question of reducing the number of journalists to the minimum and rationalising material and organisational resources. In this way, journalists have fewer resources and less time to cover events and conduct in-depth investigations. They must always be quicker to react than their competitors and never ever allow themselves to be left behind by them in the processing of information. They must also know how to “create a buzz”, i.e. give priority to news most likely to be picked up and commented on on the Internet and by other media in competition with them. Finally, they must make a constant effort to make information ever more attractive, accentuating its most frivolous or most spectacular aspects. The effect of these tendencies is to make it more difficult for journalists to abide by their rules of detachment: for want of time and means, it becomes difficult to cross-reference information or investigate to obtain legally admissible evidence; it becomes tough to avoid “following the herd” in respect of the other media; it becomes tempting to simplify events in order to please the widest audience or even – as the News of the World scandal has eloquently demonstrated – to break the privacy laws in order to shift even more “paper” off newsagents’ shelves.

Therefore, contrary to what we might believe, the financial independence of a press firm –i.e. the fact that it is profitable and its economic survival does not depend on rich patrons– is not enough to guarantee that its journalists produce independent judgements. What may offer a better guarantee from this point of view is the journalist’s degree of professional organisation, i.e. the fact that, within the press firm in question, there are unions, journalists’ associations and a multiplicity of journalistic powers to challenge the established order and be capable of insisting on the importance of abiding by the journalist’s rules of detachment in opposition to employers and shareholders. In general, the more that capitalism is developed in a country, and the more that journalists are collectively organised to defend the principle of their professional independence in opposition to their employers, the easier it is for them to counter the negative impact that the profitability and productivity norms imposed on them may have on how they handle information.

### How can these issues be improved?

The foregoing analysis insists on the fact that the situation varies considerably from one country to another. In their work, journalists operating in countries where the government turns its back on the pluralist

democratic model encounter very different problems from the problems encountered by their colleagues working in countries where this model is adopted and guaranteed by the institutions. The same is true for journalists working in countries where grassroots democracy is weak, compared with those working in countries where it is strong. The same is also true for those working in countries where the capitalist economy is highly developed, compared with those where it is in its infancy. However, as I have attempted to show, even though the problems are very different, they are no less real, irrespective of the country under discussion: wherever one finds oneself in the north or south of the Mediterranean, the independence of the journalist's judgement is continually under threat.

Faced with this reality, what tools are available to us to improve journalists' chances of producing independent judgements? We can single out three kinds. In the first instance, we should, of course, mention the law. On the stipulation, however, that legislative provisions capable of helping to resolve the problem can only be of a very particular kind: they must have the virtue of increasing journalists' independence and not curbing it. It is therefore basically a question of establishing legislation that guarantees freedom of expression, freedom of the press and the protection of sources, for only this kind of legislation will enable journalists to distance themselves from the pressures exerted on them by the executive and judicial powers. But it is also a question of establishing legislation that protects citizens' rights from the media, such as the legislation regulating defamation, incitement to hatred and the protection of private life. If this second kind of legislation may help journalists to produce more independent judgements, it is because it reminds them of the importance of abiding by certain rules of detachment in their work – such as those I have referred to as cross-checking, polyphony and the separation of facts and comments. Let us add that it is crucial, if we do not wish the law to be used to curb the independence of journalists but only to enhance it, that all of these legal systems respect the following two principles: on the one hand, a total ban on censorship before the fact (any prosecution of a journalist unable to impose a ban until after publication); on the other hand, the refusal of repressive law in favour of restitutive law (imprisonment should be excluded in sole favour of the right to reply and financial reparations).

The law also turns out to be a basic tool in restricting the harmful effects that economic constraints can have on the work of journalists. We may think here of the legislation that requires press firms to be transparent in their accounting and obliges them to reveal the identity of their shareholders or even of the anti-trust laws, which limit the possibility of a press group monopolising media outlets in a given country. But we may also be thinking of laws that protect journalists' rights from any pressure from their employers – such as the right to establish unions or the legal provision referred to in France as the "conscience clause", i.e. a journalist's right to resign and be awarded generous severance pay in the event of "notable change to the character or orientation of the newspaper" that employs him.

Alongside the law, the code of professional practice provides a second tool that can be used to improve the journalist's chances of producing independent judgements. At the beginning of the 20<sup>th</sup> century, the journalist's profession gave itself national, and subsequently interna-

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tional, charters on codes of practice, which, each in their own way, reiterate the importance to the practice of journalism of what we have referred to here as the rules of detachment. But as has often been said, these charters suffer from the absence of a true sanction apparatus that would make it possible to ensure compliance with them. Indeed, journalists are reticent about the idea of establishing a professional order, following the example of what exists for doctors or architects, which would have the power to sanction them and, in particular, bar them from practising journalism. The risk is too great, they often say, that a professional order of this kind would fall into the hands of political or economic groups and thus prevent the opportunity for journalists hostile to these groups from doing their job and expressing themselves. This fear is doubtless not without foundation: it shows to what extent it is tricky for the journalist's profession to organise itself in a way that does not diminish its independence but, on the contrary, increases it. This explains why the code of practice is an issue which continues to be much less regulated in the journalist's profession as a whole than it is in each editorial office – given that it is at this level alone that the actual possibility can be found to sanction journalists deemed to have breached the codes of practice.

Finally, a third and last tool that may improve the journalist's chance to produce independent judgements has made its appearance in the last 20 years in the countries of the so-called First World: this is accountability. In principle, this means that the media invite criticism to their column inches, their broadcast or their Internet site formulated against them by ordinary men and women and then attempt to respond to it and explain how they work. In some press firms, this principle has led to the appointment of an ombudsman responsible for responding publicly to criticism or for asking the journalists in question to do so. The point of this kind of system is that it relies on criticism from ordinary people to help journalists to remember that they are required to respect a certain number of rules of detachment. But it has to be said that they are still relatively few in number and very uneven and, more often than not, it is journalists rather than ordinary people who still tend to have the final say.

In theory, then, journalists are far, in the end, from being deprived of the means to enhance their ability to produce independent judgements. But the fact remains that, in practice, a great many obstacles prevent the implementation of these means: the law is often conceived and used to curb the journalist's independence (by trying to intimidate journalists, for example); infringement of the code of practice often goes unpunished for lack of sufficient organisation within the profession; accountability is still in its infancy, as a fair number of journalists are reluctant to admit that they should be accountable to the general public as to how they go about their work. In every country, however, at the same time that social forces are tightening the restraints, others are working to loosen them. In this respect, although the problems encountered by journalists differ considerably from one country to another, it is possible to speak of a common struggle that carries on every day on either shore of the Mediterranean, and much more widely around the world. What is at stake here is not only the journalist's independence of judgement but, through it, the chance for all citizens to benefit from free and trustworthy information.

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