MEDIA AND JUSTICE: WHAT ROLE IN DEMOCRACY?

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The debate over the image of justice among media, or the way judges perceive journalists is part of a fundamental issue: the preservation of judicial independence and the journalist’s freedom in order for the judge to apply the spirit of the law and to defend the citizen’s right to information and make journalists participate in public affairs. The media and the legal system are important elements for the countries engaged in the democratic process and trying to extricate themselves from authoritarianism, as is the case for certain states of the south-east Mediterranean. They are both crucial for the modernisation of democratic practices in the case of countries which have enshrined them in norms and institutions. The conflicting but complementary relations that the media maintain with judges contribute in several ways to achieve a democratic transition or, quite the contrary; it may play a role in its failure. Both possibilities may apply to all of the institutional, professional, deontological or regulatory levels.

The complexity of this problematic relationship resides in the fact that politics, justice, economics and the media are intrinsically intermixed with society and culture. Thus, 19th century journalism and the audiovisual media of the 20th century do not only constitute one of the major technical and cultural inventions, they also represent a “magical hub” that is constantly renewed to forecast human beings, societies and cultures. Although they embody a “power” by exerting an influence on their various connections with political authorities and economic forces, they also confront weaknesses because of the technological, political, cultural and human challenges that are constantly a cause of concern to them in their constitutive foundation. The media, especially audiovisual media, run in the complexity because they are, in essence, multidimensional. They seem to take liberties and, sometimes, they can go too far.

Faced with the many issues that justice and the media present to decision-makers, judges and media operators, as well as their audiences, it seems difficult to avoid the major questions that Dominique Wolton has formulated in his Penser la communication: “On what condition should we save the wonderful dimension of communication, one of the most glorious invented by man, which sparks his desire to get in contact with others, exchange
views with them, when everything warns against it in terms of interests? How can we save the humanist dimension of communication when its instrumental elements win the day? What is the relationship between the ideal of communication, which crosses the ages and civilisations, to the extent that it becomes one of the most striking symbols of humanity, and the interests and ideologies of the same name?” (Wolton, 1997: 14)

Since there is no communication per se, nor judgment, without ultimate ends, media systems, like judicial systems, irrespective of their nature and technical or human specificities, are inherent in a certain cultural model. Broadcasting is hardly a simple act of transmission, and judging can in no way be but a straightforward translation of the law. In both cases, it is a question of the will to produce an effect and an interaction, a challenge to established authority or a regulatory function, as they can condense the narratives of a society and a culture.

If audiovisual and electronic communication has confirmed, and continues to confirm, the veracity of the idea of the “global village” from a technical point of view, it also shows that this village cannot acquire its global dimension at the cultural and historic level.

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Yet, communication difficulties apply to all bodies and to justice as well. The roles of media and justice represent a topic of ongoing debate in societies. Media and justice provide a special forum in which issues of identity can express themselves on the shores of the Mediterranean and elsewhere. Media systems are profoundly altering mental structures, cultural points of reference and aesthetic sensibilities in this region. Thus, the processes of democratisation allow the internalisation and adoption of a series of norms and universal charters in the judicial corpus. Though the media have a strategic importance in the formulation of the expectations, deficiencies, frustrations and desires of the people in the Euro-Mediterranean area, the legal system is a decisive leverage point in the establishment of a state of law. The idea of justice is fundamentally inherent in human relations, which must be guided virtually by the principles of equity and equality, and enabling them to become reality by granting each person the rights to which he or she is entitled. There is a complementarity between the two professions in establishing good democratic practices, irrespective of their limitations and interests: the media in revealing the underbelly of power and making use of their ability to check, and justice by applying the law and handing down judgements in compliance with the law.

Each time, both the media and justice face a threefold challenge: the first is related to the question of trust and the credibility of those who operate in and through media, and those who have the power to judge and are assumed to be the guardians of the law. The second is inherent in the competencies of
these people and their ability to provide information on the conflicts affecting society in a manner that complies with the professional code of practice in the news and the right application of the law, in the sense of maintaining balance within society and regulating its inherent tensions in the case of judges. The third challenge consists of the various types of attempts to exploit the media and the judiciary by political, economic and ideological powers.

These are the major challenges that hinder and confuse media and judicial good practices in democracies, and this is more problematic when it comes to getting rid of authoritarianism. Indeed, it is always difficult to break with the old habits of propaganda and manipulation established by despotism and internalised by journalists and judges. This is the case for the Arab countries experiencing what the media and politicians have called “the Arab spring”.

**Between norms and practices**

How can we make the media and the judicial system part of the democratic process and the establishing of the values of a democratic society? To what extent can we say that the media abide by their professional and deontological requirements, and the law in the case of judges?

When dealing with these questions, it seems necessary to discuss the equation between norms and practices, between points of reference, however progressive and democratic they may be, and the modes of application, whether in exercising the freedom of speech or in the pronouncement of judgements. This dilemma summarises what is at stake professionally, institutionally, politically and culturally for the media and the judicial system. It is about knowing how the journalist’s freedom is protected or scorned by decision-makers, or sometimes, by the journalist himself, and how the judge manages to maintain independence in the face of vested interests, conflicts and even attempts at corruption. And how, on both sides, the requirement of truth is guaranteed, not as an affected ideal, but as a principle that guides the behaviour of journalist and judge.

It is easy to pretend to be “telling” the truth. Even though there isn’t only one. Everyone is looking for “his own” truth, but it can happen that the judge or the judicial truth strays from the just truth, or that a journalist’s report completely distorts the facts. This is how independence may not be respected in all cases, and press freedom may turn out to be a tool for spreading disinformation and manipulating public opinion. Likewise, the lack of independence and integrity of judges may be as prejudicial to society as it is to the media, and shying away from the truth and press freedom may be detrimental to justice. In both cases, the discrepancy between principles and practices is self-evident.

When we invoke the code of practice in exercising the profession of journalism, we are talking about a text which cannot claim to have the force of law, regardless of the country or the experiences. It is more of a moral base that journalists and other media practitioners observe or pretend to respect in order to “define their practices, regulate them and, if needed, defend them against anyone who may intend to attack the exercise of expression to which media and journalists so keenly hang on as a free and protected exercise.” (Naji, 2002: 13) However, it is possible that these
“codes of conduct” or professional practices might be “imposed by their (public or private) company, or on the media and journalists by a power (political power, military power in the case of conflict or, quite simply, the power of the employer).” (Ibid) As in cases when judges call upon the professional code of practice, although it does not constitute a legal base, when it is a question of an offence by the press which, on the other hand, “is expressly provided for by a law, a press code, a civil code or a criminal code.” (Ibid)

Generally, the professional code of practice is the result of media professionals’ desires. Therefore, they become the guardians, interpreters and regulators whenever journalists themselves overstep the mark. They deliberately opt to keep an eye on their own practices, but they become defenders “to protect the duty that they assign to themselves in society from being hijacked, confiscated or sidetracked.” (Ibid) In this perspective, to what extent do journalists manage to abide by the rules that they choose for themselves in exercising their profession, and what is the relationship between the professional code of practice, ethics and searching for the truth? Henri Pigeat considers that “the professional code of practice can only be defined according to these objectives and would be inconceivable without considering ethics. It is the job of ethics to establish what must be done and why. They can refer only to the values that transcend the profession. Otherwise, it would be to admit that the latter is an end in itself. The ethics will be normative, but after putting the question to oneself on transcendent principles. In the world of information and news, the first principle is, admittedly, that freedom of speech, but as we do not see the purpose to which this would be put if it were to deceive and lie, journalistic ethics cannot, in the very first instance, rest solely on a quest for the truth” (Ibid: 14).

How can the norm be respected in practice, or the ethical commitment in environments that hinder freedom of speech, while some journalists can be themselves, instruments of the exercise of power, manipulation or the apologists for vested interests? Is the truth the ongoing prerogative of the journalist, or can it slide into procedures that transgress ethical values and the rules of the professional code of practice, even in the presence of codes of conduct and ethics?

These questions present a dilemma because of what is at stake for the media, politically and economically. Do they really have any power or are they always and forever at the mercy of economic constraints and the moods and strategies of male and female politicians?

This question confronts us with a particular complexity, which consists of knowing to what extent the media have any power. We suggest, sometimes with levity, that they constitute a “fourth power” against or beside the three traditional powers (the executive, the legislature and the judiciary). A power free of any control, except that which arises from commitments to professional practices or the legitimacy of one of the constitutive rights of democracy: the freedom of expression. Now, the question of “media power” poses four problems. The first, according to Rémy Rieffel, is “the level of analysis to which it is subject. Do we speak of the media’s power over society as a whole? In which case, its evaluation would appear somewhat random and tricky owing to its too broad degree of generality. Or do we rather mention their power over certain social groups (the electorate, young people, women, the political class, etc.) or over certain individuals? The assessment made will then vary upon the point of view adopted and the type of obser-
Perhaps it would make more sense to speak of “media influence” rather than “media power”, because power presupposes possession of a range of means and advantages.
as in the production and management of power resources. In this complexity, we find ourselves faced with new phenomena of “power”, sometimes hard to understand, but which undeniably affects people’s experience, choices and preferences. However, among these “powers”, there are those that we do not necessarily control and upon which we are not totally in charge of the effects and the types of influence that they may have. This is the case with the media.

Additionally, journalism is facing bitter criticism, especially the audiovisual media, and in particular television, being considered as a devastating tool in the process of the homogenisation of public life – which is paradoxical if related to democracy, of which pluralism is one of the very essences.

**Pluralism in media**

Pluralism is one of the major foundations of communication. In addition to its normative scope, it goes hand-in-hand with the evolving process of putting freedom of communication into practice. Pluralism thus acquires a central role in the practice of the freedom of communication as a means for freedom oriented towards the reader concerning the printed press, and the receiver concerning the audiovisual message. Yet, the pluralist treatment of information is governed by norms and a judicial corpus that grants the job of regulation to independent bodies. These bodies may decide on issues concerning abuse, violation of the dignity of persons or the protection of young audiences, but their decisions may be called into question by the audiovisual operator’s right to recourse before the courts, which will have the final say.

Regardless of the ups and downs or the forms of practice undergone by the contemporary political history of the democratic countries or those extricating themselves from despotism, pluralism in media is an essential criterion in the practice of the freedoms of expression and thoughts. Willing to distance themselves from monopolistic practices regarding information, the democratic countries have opted for openness and liberalisation. Openness to the various strands of opinion that circulate among society, and liberalisation of media fields to foster diversity of choice and content in order to provide new impetus to the freedom of expression, each time. In this sense, these countries are guided by a clear will to make pluralism a legal and practical principle of the recognition of political, social and cultural differences.

However, how can we define the strands that represent a difference? How far can we go in terms of recognition and acceptance of unlimited pluralism? And to what extent do media professionals respect the fundamental imperative of the treatment of information or news? In short, what differences in management exist between the requirements of public service, especially in the audiovisual media, and the private sector?

These are important questions in which legal, ethical, political and economic considerations are all correlated. Because, without safeguards, any kinds of excesses are possible and imaginable. This is why journalists have opted for professional codes of practice and states for watchdog bodies in the audiovisual media. Despite the presence of the regulatory and legal instances, whose basic objectives are to respect the ideas of honesty, equity
and equality if not justice, some journalists happen to scorn them, guided in this by political influences or economic interests.

Admittedly, the provisions guaranteed in the judicial corpus and media practices, as democratic as they may be, will always be a subject for debate, controversy and judgement. Criticisms of various persuasions consider the media as a formidable resource that is detrimental to democracy owing to treatment of information which aims to homogenise minds and the public space. In the 1950s, thinkers of the Frankfurt School expressed their concern as to the paradoxes of democracy which, thanks to the media, produces forms of “reification” of minds and strategies that end up by creating a “closed society”. As a consequence, for Marcuse, media systems contribute to this “movement towards integration which is happening in the main without apparent fear: democracy consolidates domination more firmly than absolutism; administrated freedom and instinctual repression become constantly renewed sources of productivity.” (Marcuse, 1968: 8)

Media, especially when private or owned by private groups, contribute to the domination of minds and the standardisation of perceptions and judgements. In this sense, Pierre Bourdieu writes that “with its broadcasting power, television poses an absolutely terrible problem to the world of print journalism and the cultural world in general. Besides, mass-circulation press, which once made people tremble in their boots… seems such a paltry thing. With its quite extraordinary breadth, television produces effects which, although not unprecedented, are something quite new.” (Bourdieu, 1996: 50) What concerned the French sociologist were the power that television possessed in terms of the alienation of audiences, the domination of minds and especially the marginalisation of critical trends circulating in the public space.

However, scholars such as Géraldine Muhlmann observe that modern journalism is haunted by “the preoccupation of joining the community of its readers (potentially the political community in its entirety), while the reporter rallies his audience behind him. We can find this journalistic act of gathering in history, when we examine the way in which journalism speaks of it, presents itself, understands itself, or else its practice alone, which is to say its “productions”. Bringing people together is probably the greatest act of modern journalism.” (Muhlmann, 2004: 24) The desire to bring people together is guided by the concern to reveal the “truth” that the mediator must pass on to the widest audience. He even casts himself in the role of “witness-ambassador”. Whether it is the mass-circulation press or television, the public is “represented” as a mass that overcomes differences and conflicts over political positioning. The public becomes a kind of unified body primed to receive the “truth”, which must, deontologically speaking, be honoured by those involved in the media. And, on this point, a whole “ethical” lexicon is imposed on the journalist, words such as objectivity, honesty, impartiality and publication of the facts. But does the media man, irrespective of which medium he or she works in, brought up on the idea of truth and motivated by the feeling of bringing people together, always manage to respect these “ethical” imperatives?

It is obvious that ideas like objectivity, truth, honesty and neutrality are always open to debate. It is not enough to pretend to reveal a truth for it to be so, or to claim to respect the objectivity of the facts to ensure that...
Form in the media is as significant as substance. It can mislead, falsify and distort “the truth” that the journalist claims he is presenting to the public.

In addition to the epistemological considerations, Jacques Derrida, in his thoughts on television, observes that “the televised image delivers, or gives the impression of delivering, an immediate representation of the real, as if desubjectivised, which is to say a proof, contrary to a testimony which inexorably remains a discourse in the first person, where an ‘I’ expresses itself in its name. But the paradox is that exceeding the subjective bias inherent in the testimony simultaneously presents the possibility of an even greater manipulation.” (Ibid: 55)

**Media practice**

If the media do not necessarily constitute a power, they exert certain pressures and do possess the means, techniques and possibilities of influence over people’s behaviours. Through content and through form, their written, audiovisual or digital discourses produce meaning. The editorial choices and the stylistic and formatting techniques are decisive in the elaboration of effects and, at times, the bludgeoning of minds. This is why the form in the media is part of the content. Some media specialists consider that “deontological vigilance will also concern the techniques and choices of form, to the extent of not only taking an interest in the setting of an article, by a heading, for example (headline, subhead...), but even in its formatting and its impact on the reading process, on the assumed impact of the journalistic product as a whole, i.e. with its content, form and positioning in the media space (print, audiovisual, electronic medium).” (Naji, 2002: 106) Form in the media is as significant as substance. It can mislead, falsify and distort “the truth” that the journalist claims he is presenting to the public. This field is extremely wide and slippery in the world of the media, whether it be the printed press, audiovisual or digital media, or different kinds of journalism – reportage, editorial, investigative journalism or inquiries. Only the individual investment (of the person of the journalist and his company alike) remains decisive in media practice.

We are witnessing unacceptable blunders in the treatment of the news. Indeed, they have always existed in every medium. But what certain Arab satellite channels, for example, are serving up for Arab viewers is a brand new phenomenon: the Gulf states, rich and conservative, are funding channels which have transformed themselves into heavy artillery regarding the events experienced in certain Arab countries. With Machiavellian
The media can be instruments of accountability, channels of civic involvement and tools to denounce corruption, just as they can be used as veritable war machines to protect vested interests or to destroy an adversary.

Attitudes among journalists themselves differ. Although no one questions the journalist’s right to do his work freely, in order to provide the public with the information that he believes to be interesting for the community, we do find journalists, on the other hand, who defend the idea of giving the courts and judges a regulatory role or even power of deontological oversight, even going so far as to consider the judge “an ally and a guarantor of the professional conduct of the media.” (Naji, 2002: 139) In any event, in light of the codes, charters and declarations that the democratic countries have produced (or failed to), the majority favours self-regulation and the handling of professional excesses by those responsible for the media themselves, in line with honesty, accuracy and the sense of responsibility.

If the media need self-regulation and ethical charters to obviate the various forms of transgression of professional rules, prevent defamation, abuse and violation of the dignity of the person by using procedures that go contrary to the duty to inform and the instructive, civic and political functions of the media, then justice is also a major institutional player in conflict resolution through judgments pursuant to the law, governed by equality and equity, translating these general principles and giving
everyone that to which he is entitled. Justice, although it operates under conditions of independence and impartiality, is a “virtue” related to the idea of the Good. It also has a social dimension in its efforts to ensure “peaceful cohabitation” and a certain political role in so far as everyone living in a democracy, including journalists, is expected to abide by the law. Indeed, the judicial system is there to provide adjustments or reparations to any transgression of the law.

As stated above, there is no communication per se, and each media activity should match a cultural model in which those involved in the communicational act can exchange a common language. The judicial institution has as well been forced to adapt its sanctions to the specific practices of the media, integrating adequate methods of treatment to resolve the conflicts or deficiencies that the media may produce.

Societies are built around “conflictual nodes” as differences in the interpretation of history, the question of language, religion or the status of women may illustrate it. These are actual nodes in societies undergoing transition. The audiovisual media and the judiciary can help to “manage” or obviate these “conflictual nodes” and thus make a contribution to social cohesion, civil peace, and a reinforcement of the collective identity, civic belonging and the consolidation of democracy.

### Bibliography


