

FREEDOM OF THE PRESS: A KANTIAN APPROACH

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This paper is divided into two parts. In the first part I rebuild the meaning of the Kantian concept of public use of reason and its relation to the freedom to speak and to think. In the second part, I present a proposal to update these concepts to think about the freedom of the press in contemporary democratic societies.

1. KANT AND A REPUBLICAN FREEDOM OF OPINION

Kant was one of the most arduous defenders of freedom of speech and think, or of the so-called “freedom of the pen”:

(...) *freedom of the pen* - kept within the limits of esteem and love for the constitution within which one lives by the subjects' liberal way of thinking, which the constitution itself instills in them (and pens themselves also keep one another within these limits, so that they do not lose their freedom) - is the sole palladium of the people's rights. For to want to deny them this freedom is not only tantamount to taking from them any claim to a right with respect to the supreme commander (...), but is also to withhold from the latter - whose will gives order to the subjects as citizens only by representing the general will of the people - all knowledge of matters that he himself would change if he knew about them and to put him in contradiction with himself. But to instill in a head of state concern that unrest in the state might be aroused by [the subjects'] thinking independently and aloud is tantamount to awakening in him mistrust of his own power or even hatred of his people. (TP, AA 08: 304)²

But the recovery of his perspective in order to think the current freedom of the press needs to be done carefully. The first question that needs to be answered is about the exact meaning of the Kantian expression “freedom of the pen” and what its scope.

Freedom of opinion and freedom of the pen, so essential to the possibility and promotion of enlightenment, is thought by Kant essentially as a freedom of *the public use of reason*, which “must always be free, and it alone can bring about enlightenment among human beings; the *private use* of one's reason may, however, often be very narrowly restricted without this particularly hindering the progress of enlightenment.” (WA, AA 08:37)³

The definition of public use of reason is quite peculiar: it is “that use which someone makes of it *as a scholar* before the entire public of the *world of readers*.” (WA, AA 08:37) This

use tacitly supposes that, in a certain context, there is a community of equals in which dialogue is established through common principles. This is realized primarily because Kant emphasizes that only can make a public use of reason that individual who behaves as a scholar in the subject matter and, moreover, that this attitude can only occur before the general public of the world of readers. This restriction does not intend to establish a kind of technocracy and meritocracy supported on erudition, but tries to prevent the public use of reason of falling into mere exposure of unreflective and meaningless opinions. As the scholar's audience is the general public of the lettered world, it means that the public use of reason needs to consider both the principles of a rational debate, since one would not expect less of a community of scholars, and the accumulated knowledge and perspectives adopted by the community in question.

In order to the public use of reason be truly free it can not suffer any external constraint, i.e., it should be regulated only by principles that are internal accepted to the community. This means, on the one hand, that the government or the State should not exercise any force on the public use of reason:

The freedom to think is opposed first of all to *civil compulsion*. Of course it is said that the freedom to *speak* or to *write* could be taken from us by a superior power, but the freedom to *think* cannot be. Yet how much and how correctly would we *think* if we did not think as it were in community with others to whom we *communicate* our thoughts, and who communicate theirs with us! Thus one can very well say that this external power which wrenches away people's freedom publicly to *communicate* their thoughts also takes from them the freedom to *think* - that single gem remaining to us in the midst of all the burdens of civil life, through which alone we can devise means of overcoming all the evils of our condition. (*WDO*, AA 08: 144)

It also means that "*Caesar non est supra grammaticos*" (*WA*, AA 08: 40). However, on the other hand, when there are differences of opinion between the participants in a public debate, it is not allowed to request any interference or foreign aid, because in that case there would be what Kant calls an illegal conflict (Cf. *SF*, AA 07: 29-32). The illegality arises from the appeal either to the prejudices and feelings of the mass or to the feelings of the legislator, which ignore the subject matter or are not willing to follow the rules for a correct public use of reason. In this sense, the conflict ceases to be a debate and becomes a mere dispute or discussion. In a dispute what is important is winning at any cost while a debate has always as a fundamental principle the intention of arrive at the truth either as near thereto as possible.⁴

The illegitimacy of the public use of reason does not occur only when there are external constraints, but also when there are internal constraints. This constraint occurs when there is appeal to arguments from authority or to some alleged higher ability for understanding. On the first case, Kant offers an example in matters of religion, that is, when

some citizens set themselves up as having the custody of others (...), and instead of arguing they know how to ban every examination of reason by their early influence on people's minds, through prescribed formulas of belief accompanied by the anxious fear of the dangers of one's own investigation. (*WDO*, AA 08:145)

About the second kind of coercion Kant thinks in the case of the alleged genius and his sentimentalist exaltation, which has the maxim of a lawless use of reason, in order, as genius supposes, to see further than one can under the limitation of laws. According to Kant, the natural consequence of this case:

is that if reason will not subject itself to the laws it gives itself, it has to bow under the yoke of laws given by another; for without any law, nothing - not even nonsense - can play its game for long. Thus the unavoidable consequence of *declared* lawlessness in thinking (of a liberation from the limitations of reason) is that the freedom to think will ultimately be forfeited and because it is not misfortune but arrogance which is to blame for it – will be *trifled away* in the proper sense of the word. (*WDO*, AA 08:145)⁵

The freedom of individual to the authority of thinking of others does not mean, however, that freedom of thought is a complete refusal of others' opinions, or a refusal of the legitimacy of consistency with the thoughts of others. In other words, if, on the one hand, the public use of reason requires the denial of a discussion based on arguments from authority, on the other hand, it does not lead the individual to a kind of "logical egoism" which entails relativism and skepticism:

The *logical egoist* considers it unnecessary also to test his judgment by the understanding of others; as if he had no need at all for this touchstone (*criterium veritatis externum*)? But it is so certain that we cannot dispense with this means of assuring ourselves of the truth of our judgment that this may be the most important reason why learned people cry out so urgently for *freedom of the press*. For if this freedom is denied, we are deprived at the same time of a great means of testing the correctness of our own judgments, and we are exposed to error. One must not even say that *mathematics* is at least privileged to judge from its complete authority, for if the perceived general agreement of the surveyor's judgment did not follow from the judgment of all others who with talent and industry dedicated themselves to this discipline, then even mathematics itself would not be free from fear of somewhere falling into error. (*Anth.*, AA 07: 128-129).

The true freedom of reason "has no dictatorial authority, but whose is never anything more than the agreement of free citizens, each of whom must be able to express his reservations, indeed even his *veto*, without holding back." (*KrV*, B 766) ⁶ That is, the public use of reason requires that all act like citizens with equal rights and duties. Thus, there is an opposition between the conception of a republican reason and a monarchical reason, in which someone was imposed or presented as absolute sovereign and whose teachings were taken as a criterion of truth.

If one borrows the criteria presented by Kant in order to qualify a republican constitution in the political realm, then it can be said, *mutatis mutandis*, that the republican constitution that must govern the public use of reason needs to be based on three principles: first, the freedom of its members, i.e., the capacity to not obey any law but that which one can consent; second, the dependence of all in relation to a single common legislation; and third, the equality of all, so anyone cannot legally bind other without undergoing simultaneously and in the same way to the same law (See *ZeF*, AA 08: 349ff).

Every external legislation requires guardians. In the case of legislation of a republican reason, Kant assigns this role to the faculty of philosophy and to the philosophers. The figure

of philosopher represents those citizens who, by devoting themselves to the careful study of human reason and its various theoretical developments and by their “original” commitment with the truth and their disassociation with the offices of power, carefully caring for compliance of laws.⁷ But that does not attribute to them any privilege, they also are submitted under all the three principles of a republican public use of reason, just like all its citizens.

In summary, the public use of reason presupposes always a two-way street, in which all move according to the same laws, with no privileges and by free choice. Nobody can be forced to make a public use of reason, but by choosing to do so, one immediately accepted the condition of a citizen of a republic, whose laws are consistently enforced and clarified by the philosophers. The two-way street requires that an opinion is always open to dialogue and debate. This extends even to philosophers when they propose some clarification of legislation, i.e., they must do so always in accordance with the rules of the public use of reason. *The public use of reason therefore presupposes both a particular agent’s attitude and a certain environment to make it happen. If one disconsider some of these two aspects, the legitimacy of public use becomes compromised.*

But if, on the one hand, the public use of reason must be independent of any outside interference, therefore, it should be free from social and state censorship, the private use of reason, on the other hand, does not have this privilege. The private use of reason is “that which one may make of it in a certain civil post or office with which he is entrusted.” (WA, AA 08:37) About this use Kant emphatically states:

[for] many affairs conducted in the interest of a commonwealth a certain mechanism is necessary, by means of which some members of the commonwealth must behave merely passively, so as to be directed by the government, through an artful unanimity, to public ends (or at least prevented from destroying such ends). Here it is, certainly, impermissible to argue; instead, one must obey. (WA, AA 08:37)

It is often emphasized in this passage the permissibility of restricting the private use of reason, but the Kantian thesis is far stronger: *there is even a need for such restriction*, at the risk of public ends cannot be achieved. It could be said that it is understandable, since Kant is thinking on public officers or functions, but the examples that follow show that the scope of the restriction is much higher. Three examples are presented: an army officer, a citizen as a taxpayer and a clergyman. To the first and the latest we can actually speak about public officers or public functions, but on the second it does not seem to be the case, because the condition of being a citizen and a taxpayer is not a function to which one submits by individual choice, but is a condition legitimized and ordered by practical reason through the figure of a “contract”. This shows that, at the end, the private use is not just an individual situation which someone chooses to be submitted, but it is also a social condition. In this sense, one can say that the private use of reason can be attributed to all individuals and in different forms, because it refers to the different social roles that an individual assume, and for each role there may be certain rules that need to be followed so that society could exist and works in accordance with a general will. Thus, for example, the same individual could have a private use of reason as a

father, as a citizen taxpayer, another as driver, other in perform his/her profession and so many more, and for each role and social context there may be some pattern of conduct that can be held civilly liable and required. This does not mean that everything which is done in each “social role” needs and should be publicly ruled, but some essential things can and should be. Otherwise, there would be no state, no society and no common basis to ensure the possibility of mutual coexistence. Ultimately, it can be said that the very possibility of positive law, from the perspective of law enforcement, depends on the possibility of a distinction between public and private use of reason and the restraint and regulation of the latter.⁸

2. THE ACTUALIZATION OF KANT’S PROPOSAL: A REPUBLICAN FREEDOM ON THE PRESS

The purpose of this section is to present some thoughts on which could mean to employ the distinction between public use and private use of reason into the realm of media, i.e., in the conduct of journalists and press. There is of course a big difference between the historical and political context of the Kantian theory and the XIX century, but it is believed that is valid and also necessary to redeem these categories for thinking the issue of regulation of the media today. The possibility of talking about a republican freedom in the press, depends on an update of the Kantian proposal, which I seek to make here at least from the consideration of four aspects: a) in implementing the distinction of public and private use of reason to journalistic activity; b) thinking these categories not only at the individual but also at institutional level in the sense of a particular media company; c) distinguishing the uses of reason in the media according to different moments; d) distinguishing the uses of reason in the media according to different procedures.

The first aspect seeks to understand how the distinction between public and private use of reason may refer to the press. We accept and agree that the State regulates a number of private uses of reason in different areas: education, health, safety, traffic. The question that arises is then: should this be different in relation to the press, to the professional journalist? I see no argument for that. But what exactly would be the public and private use of reason of a reporter and journalist, for example? Although the boundaries are not always completely clear in a given situation, I think there is an essential difference between “publish news and information” and “publish opinion and commentary”. In the private use we could talk about production of first information about events and people while in the public use of reason, we could speak of comprehension of events and people. In a certain way, this seems to be recognized when we distinguish between Newscast and Journalism.

Whether this distinction is correct, then, when we cross it with the rules of public and private use of reason, we could said the following: what is expected of a journalist under the freedom of his private use of reason, i.e., what is expected from him as a social duty is to present news and information in an impartial and reliable way. This is what we expected from journalists as such and if they do not do this, then the freedom of entire civil society is disrespected. It is the united will of the people, through the figure of the state, which ensures legitimacy for

some people engaging themselves in the journalist profession and what is expected of them is that they inform facts and news. If they do not exercise his profession in an impartial and convenient way, the journalists could be punished in the same way that a doctor is, when they make medical mistakes considered unacceptable to their profession as such. In relation to the public use of reason, journalists must also have the right to publicly expose their opinion on the facts and news that they describes and present, but in that case they would be making a public use of reason and should be subject to other rules. While in the public use of reason journalists would be presenting *opinions* about events and people, in the private use of reason they should *present information about events and people*.

The second aspect concerns the fact that in its original context the Kantian categories of public and private use of reason were applied to a certain way in which individuals should act in different situations. If we remained at that level, we could only talking about the private and public use of reason of journalists, which would lead us to a very narrow understanding of what happens in contemporary society. Generally speaking, journalists, while professionals of information, do not act independently, but in a more or less integrated way with the perspective of publishing media company in which they work. This means that the communication company itself, while receiving a public concession to present news and opinions, also needs to be considered, in a broad sense, as an agent, therefore, as being subject to regulation of the distinction between public and private use of reason. Therefore, the media company may, in accordance with what is expected in relation to the *private use of reason*, be punished in case it presents news that are below the minimum standard of fairness and trustworthiness that is expected in society, as well as in the *public use of reason* it has the right to publicly defend its point of view and its opinion.

The third aspect concerns the criterion for distinguishing the uses of reason, both of journalist and of the media company, *according to their appropriate moments*. As noted in the previous section, the Kantian proposal is that, in some cases, the same agent should not perform *at the same time* the freedom of private use and the freedom of the public use of reason. In the case of journalists, it would mean that they should not present news and opinions on the same matter, or in the same program. In the case of the News section, they are not allowed to exercise the freedom of the private use of reason, i.e., they should just report the news and not mix them with opinions. In the case of a communication company the situation is somewhat more complicated, because the very programming of the station or the newspaper itself is also a *medium* in which the freedom of the public use of reason becomes possible, both for the broadcaster and journalists as well as for all other members of society. This means that every communication company, while dependent on a public allowance, must ensure internally into its programming the possibility of the public use of reason, i.e., the programming must be equally open for different opinions and interpretations about the news. The media should present themselves as *the medium* in which must also occur the public use of reason, both of the journalists and the company itself, as well as of the various individuals in general. Considering that companies are the *medium* of communication and also communication subjects and that they must ensure both a private and public use of reason, then the spatiotemporal criteria should also apply to the programming of the station or to the composition of the newspaper. In

this case, the spaces for the presentation of opinion and for presenting news must be carefully separated, i.e., the private and public use of reason cannot be exercised simultaneously. Therefore, the same television program and the same section of a newspaper should not contain simultaneously both news and opinions.

The fourth aspect concerns the *formal criteria to distinguish the correct employment* of the private and the public use of reason in the press. As we saw, according to Kant, the public use of reason requires both a specific audience and a specific scholar's attitude. Two questions arise inevitably: 1. who would be the "reading public" in the case of the press; 2. what would be a "scholar attitude" on the part of journalists and the media? In fact, in order to make sense of these questions in the context of the press itself, one must realize that what is at stake when we speak about the attitude of the viewers/readers and journalists/writers, is not the attempt to constraint who in fact would be the public and who would be the commentators. What is at stake is a form of to qualify the behavior of each of the parties. In the case of the public's attitude as "reading public", viewers/readers should be regarded as capable to listen different opinions and evaluate them for themselves, i.e., on the television or in the news section in question, it should not be present any conclusion or indication about which opinion is the best. This evaluation and decision should be left up to each individual viewer / reader, who takes part of the process as "reading public".

From the perspective of the "scholar who decides to make use of the word", the attitude that is expected is that one presents his opinion according to basic rational criteria, i.e., they must respect the logical rules of good reasoning and the body of knowledge accumulated by mankind. In this case, for example, the opinion that the "black people are inferior to the white people" does not contradict the rules of logical argumentation but clearly contradicts the historical, cultural, scientific and moral knowledge accumulated by mankind. Whether anyone wants to question this aspect as legitimately belonging to the very body of knowledge, then this individual must have the freedom, *but not in the general press* (because that would be racist propaganda), but in the "specialized press" of the community that presents itself as the guardian of that body of knowledge, i.e., that individual must again assume the posture of a scholar, but now facing the *academic* community, hence he/she needs to behave according to the rules of the academic community and present consistent arguments that are able to convince the other members, if this is not possible, then such individual should silence and his judgment will be considered only an unfounded prejudice. Therefore, it can be seen that the freedom of the public use of reason leaves open the possibility of discussing any opinion whatsoever, but not according to a barbarian and unregulated freedom that relies on force and prejudice.

Now from the perspective of the media as both subject and medium, it can be said that television programs or newspaper sections must necessarily present minimal conditions to ensure plurality, because they are themselves a medium for the arena in where the freedom of public use of reason must take place. Although no one can guarantee that all positions in society find a space in the arena of public use of reason, that does not mean that a sample of the main representative opinions could not and should not be considered. In this case, the most appropriate model of journalism, as a distinct category of Newscast, is one in which the theme in question is always, as

conditio sine qua non, subject to different assessments according to the rules of a *republican reason*, i.e., the journal must be made in the form of debate, and the major positions concerning the divergence in society must be represented by different citizens and journalists. All of them should have the same exposure conditions and they opinions must be confronted simultaneously. As the appropriate way to make a public use of reason in media organizations, it should be prioritize the form of a joint dialogue with different persons, i.e., a debate with a mediator in the case of television, or a comments section at the newspaper where different commentators representing different perspectives discuss on the same topic, for example.

Based on these four aspects, I do not claim to have exhausted the theme in relation to employment of Kantian distinction of private and public use of reason in relation to the press, but I just wanted to presented an indication of the way in which the reflection might be developed. I believe the employment of these categories is not only fruitful, but also required for thinking the freedom of the press, both from the perspective of individual interest and from the interests of democratic society. Only insofar that there is some rules and responsibility, there may also be the valuable freedom of expression, understood here not as freedom to form and to manipulate opinions, but as freedom of information and freedom of expression. According to Kant, the only true freedom which is social and civilly legitimate is the republican freedom. Therefore, also the press in order to be truly free and to fulfill its social function for enlightenment should be considered according to the criteria of a republican freedom.

3. FINAL REMARKS

I have defended the idea that from the Kantian categories of public and private use of reason it is possible to legitimize some state or civil regulation of journalistic activity without violating the right to freedom of the press. This is possible since journalistic activity is thought of as an activity that encompasses both a private use and a public use of reason. In this sense, when the media presents facts or news, it is making a private use of its reason and, therefore, its activity can be regulated and could be punished if it does not make proper use of the social function that it occupies. On the other hand, journalists and the media should also have the right to make a public use of reason, but in this context and use, there are also certain rules that must be respected. These rules, in turn, are the rules of republican reason, in a Kantian sense. Thus, according to Kantian philosophy, the restriction and regulation of the media's private use of reason is indeed necessary for the preservation of the right of freedom of thought and expression of all citizens. In other words some kinds of rules that regulate the freedom of the press are fundamental in order to ensure the possibility of enlightenment and the possibility of political and democratic progress of the society.

ABSTRACT: This paper presents an interpretation of the Kantian concepts of public and private use of reason in relation to the topic of the legitimacy of freedom of the press. In this case, I intend not only an interpretation of the Kantian texts but also an update of Kantian philosophy in a sense that tries to recontextualize some arguments and concepts for thinking about the modern question of freedom of the press in democratic societies.

KEYWORDS: public and private use of reason; republican freedom; freedom of the press

REFERENCES

- HÖFFE, O. Eine republikanische Vernunft. Zur Kritik des Solipsismus-Vorwurfs. In: *Kant in der Diskussion der Moderne*. Hrsg. Schönrich G. und Kato Y. Frankfurt: Suhrkamp a. M., 1996, 396-407.
- Kant, I. *Gesammelte Schriften*. Hrsg.: Bd. 1-22 Preussische Akademie der Wissenschaften, Bd. 23 Deutsche Akademie der Wissenschaften zu Berlin, ab Bd. 24 Akademie der Wissenschaften zu Göttingen, Berlin 1900ff.
- _____. “An answer to the question: What is enlightenment” in M. Gregor (transl. and ed.), *Practical Philosophy*. Cambridge University Press, 1996.
- _____. “Anthropology from a pragmatic point view”, R. Loudon (transl). in G. Zöllner, R. Loudon (eds.), *Anthropology, History, and Education*. Cambridge University Press, 2007.
- _____. *Critique of pure reason*, P. Guyer and A. Wood (transl.). Cambridge University Press, 1998.
- _____. “On a recently prominent tone of superiority in philosophy”, in H. Allison, P. Heath (eds.), *Theoretical Philosophy after 1781*. Cambridge University Press, 2002.
- _____. “On the common saying: that may be correct in theory, but it is of no use in practice” in M. Gregor (transl. and edited), *Practical Philosophy*. Cambridge University Press, 1996.
- _____. “The conflict of the faculties”, M. Gregor and R. Anchor (transl.), in A. Wood, G. Di Giovanni (eds.), *Religion and Rational Theology*. Cambridge University Press, 1996.
- _____. “The Jäsche Logic”, J.M.Young (Trasl. and ed.), *Lectures on Logic*. Cambridge University Press, 1992.
- _____. “Toward Perpetual Peace” in M. Gregor (transl. and ed.), *Practical Philosophy*. Cambridge University Press, 1996.
- _____. “What does it mean to orient oneself in thinking?” A. Wood (Transl.), in A. Wood, G. Di Giovanni (eds.), *Religion and Rational Theology*. Cambridge University Press, 1996.
- KLEIN, J. T. A resposta kantiana à pergunta: que é esclarecimento? in *Ethic@* (UFSC), v. 8, p. 211-227, 2009.
- WALDRON, J. Kant’s Positivism, in Waldron, J. *The Dignity of legislation*. Cambridge University Press, 1999, p .36-90.

NOTES

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2 All references to Kant’s works are from the standard volume number and pagination of *Kants Gesammelte Schriften* (Hrsg.: Bd. 1-22 Preussische Akademie der Wissenschaften, Bd. 23 Deutsche Akademie der Wissenschaften zu Berlin, ab Bd. 24 Akademie

der Wissenschaften zu Göttingen (Berlin, Walter de Gruyter 1900ff), and the translations are from the *Cambridge Edition of the Works of Immanuel Kant*.

3 A detailed analysis of the relationship between enlightenment, public use of reason and other central aspects of Kant's practical philosophy is found in my paper: Klein (2009).

4 The characterization of Logic and Philosophy as an art of disputation is severely criticized by Kant: "In earlier times dialectic was studied with great industry. This art expounded false principles under the illusion of truth and then sought, in conformity with these, to maintain things in accordance with illusion. Among the Greeks the dialecticians were the lawyers and orators, who were able to lead the people wherever they wanted, because the people allow themselves to be misled by illusion. At that time dialectic was thus the art of illusion. For a long time, too, it was expounded in logic under the name of the *art of disputation*, and as long as it was, all of logic and philosophy were the cultivation of certain garrulous souls for fabricating any illusion. Nothing can be less worthy of a philosopher, however, than the cultivation of such an art." (*Log*, AA 09: 16s.) This criticism can be expanded to any public use of reason and public debate.

5 See also: "That superior persons philosophize, should it even be up to the peaks of metaphysics, must be regarded as greatly to their credit, and they deserve indulgence in their (scarcely avoidable) clash with the school, since they do, after all, condescend to the latter on a footing of civil equality. But that would-be philosophers behave in a superior fashion can by no means be indulged in them, since they elevate themselves above their guild-brothers, and violate the inalienable right of the latter to freedom and equality in matters of mere reason." (*VT*, AA 08: 394)

6 See also Höffe, 1996.

7 Cf. "This does not mean, however, that a state must give the principles of philosophers precedence over the findings of lawyers (representatives of the power of the state), but only that they be given a *hearing*. (...) That kings should philosophize or philosophers become kings is not to be expected, but it is also not to be wished for, since possession of power unavoidably corrupts the free judgment of reason. But that kings or royal peoples (ruhng themselves by laws of equality) should not let the class of philosophers disappear or be silent but should let it speak publicly is indispensable to both, so that light may be thrown on their business; and, because this class is by its nature incapable of forming seditious factions or clubs, it cannot be suspected of *spreading propaganda*." (*ZeF*, AA 08: 369)

8 This point is also stressed by Waldrom (1999).

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