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FREE SPEECH, MEDIA, AND POLITICS IN POST-COMMUNIST ROMANIA

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Introduction

This paper approaches the free speech system in postcommunist Romania by focusing on both the facilitating institutional arrangements (especially media policy) and the social, political, and cultural context that shapes free speech (emphasizing the place of free speech in the values and practices of Romanian journalists). The approach is interdisciplinary, combining a philosophical approach to the free speech principle and the normative theory of media with empirical qualitative research. The analysis shows that chilling effects on free speech in Romania are rather social and cultural than institutional in origin and points out some structural problems of the Romanian media system that also contribute to limiting the exercise of free speech.

From an historical perspective, free speech is credited with and essential role in the rise and decay of nations, due to the manner in which it supports the social practices of democracy, free market, and scientific inquiry, all responsible for the competitiveness of nations (Parker 2010). A measure of free speech in a given society is considered to be a good measure of democracy, economic competitiveness, and scientific and technological progress. Even though deeply connected to local social and cultural contexts, free has become in the context of the third wave of democratization, more and more, an exportable item. Deeply linked with key arenas of democratization, free speech is a key area for democracy assistance and a central element of the efforts to support the democratization processes in various parts of the world. The "success" of such efforts is measured in the extent to which the new democracies internalize values such as pluralism, democratic openness, and free speech. This topic is becoming unavoidable in non-democratic states since the emergence of Internet has exponentially raised the citizen's access to information, thus confronting political elites with serious political legitimacy and authority problems. Free speech leads to a broad political participation of individuals in democratic politics, a broad circulation of scientific theories, policies, political leaders and goods, and a decentralised decision-making procedure for adopting or rejecting these theories, politicies,

leaders of goods; the consequences are mixed at best, given the lack of predictability and the increased adaptability involved (Parker 2010).

Free speech can be approached from a philosophical, legal, or social scientific perspective. No matter the perspective, approaching free speech involves resorting to the ideas of authors like John Milton and John Stuart Mill, whose ideas on free speech as widely accepted. One importat aspect in approaching these ideas, that defined the history of free speech, is the place and role of free speech within society and the political system. As Bollinger (1986) noted, the social and political functions of free speech have changed significantly through the centuries, the consequence being circumspection in taking as such ideas such as those of Milton and Mill. Moreover, at given moments in time, the social and political functions of free speech have significantly differed from one society to another. An analysis on how different societies draw the limits of free speech allows us to assess the quality of democracy and, independently of whether we have political democracy or not, the approach to the relationship between individuals and society.

The free speech of citizens and media organisations is a *sine qua non* perquisite of modern democracy. Unanimously accepted, this statement in continued differently by different theorists and media practitioners. On the one hand, we have those who strongly believe no limits and constraints should be imposed. On the other hand, we have those believing that the free speech of individuals and media organisations should be balanced with the needs and interests of society, and if the needs and interests require this there can be some limits and constraints. This distinction is fundamental to any discussion of the opportunity to regulate media. In societies fundamentally distrusting government it is hard to envisage who should guide communication processes and what rules should be imposed, eventually each political system creates its own set of rules and norms (Bennet, 1998). The set of constraints a society chooses to impose on the free speech of media organisations can be reunited under the media policy label. Media policy is the result of political decisions and, consequently, rather problematic in news democracies and states in transition as compared to consolidated democracies. This stems from the normative expectations related to the decision-makink process. We expect political decision-makers in such states to make the best decisions in order to support the creation of independent media, able to fulfil their functions in a democratic society, knowing that these independent media organisations will perform their watchdog function in respect to their behaviour. As history shows, political decision-makers are not always up to this task, the decisions they make depend to great extent on the perceived political importance of the mass media.

To this we add the challenges of responding to the following question: To what extent is the functioning of democracy (and democratisation and democratic consolidation) influenced by the functioning of the media system? Critics point out some aspects with negative influence such as structural issues related to media ownership and the complex interactions between owners, journalists, and politicians and operational issues derived from the news-gathering routines of media organisations. Several topics were intensively reflected upon and empirically investigated in the past decades: the commercialisation and tabloidization of content; the bias stemming from the complex relationships between journalists, owners and politicians; the bias stemming from the relationship between media organisations and advertising clients; the extent to which media actually ensures pluralism of opinions and media's contribution to political socialisation.

This paper approaches some of the above mentioned aspects looking at the postcommunist media system in Romania from an interdisciplinary perspective, which involves applying concepts from the philosophy of free speech in an empirical analysis of the process of transforming media after the demise of the communist regime. The main research question aims at mapping the view of free speech and media freedom specific to postcommunist Romania and the translation of this view into institutional rules and practices (public policies and the policy process) and the professional values and practices of journalists.

The paper is divided in two parts. The first part, comprised of the first two chapters, approaches free speech as a concept of political philosophy, examines the meaning, justifications, and limits of free speech, and details how free speech is translated into the media systems of contemporary liberal and representative democracies. The second part, comprised of the other three chapters, analyses some aspects of the free speech system in postcommunist Romania. The analysis is focused on institutional arrangements meant to ensure a robust and open debate, pluralism of opinions and the acceptability of criticisms aimed at the government. The analysis also emphasises the social and cultural context aimed at making these institutional arrangements functional.

The philosophical justifications of free speech

The first chapter details the history of free speech, and the subcategory of media freedom, as concept in political philosophy. Without making a comprehensive history, we details key moments and ideas and emphasize the instrumental justification of free speech and the place of media freedom within the broader concept of free speech. The first section

of the chapter details the argument from truth and its variations, as found in the works of John Milton, John Stuart Mill and, later, Justice Oliver Wendell Holmes. The next section details the argument from autonomy, focusing on the contributions to the free speech debate of authors such as Eric Barendt and Thomas Scanlon. The third section of the chapter focuses on the argument from participatory democracy and discusses the works of Justice Brandeis, Alexander Meiklejohn and, partially, Ronald Dworkin. These three sections focus on the positive arguments, while the fourth focuses on the negative argument – the justification of free speech based on mistrust in government, idea to be found at Milton or Mill and contemporary authors such as Frederick Schauer. The four arguments are discussed together with the main criticisms directed at them from the perspective of both philosophy and social sciences. The last sections in the chapter emphasize the role of the state in the liberal view on free speech and discuss extensively the two liberal principles for limiting free speech, the harm principle and the offense principle.

The meaning of free speech as a concept of political philosophy is deeply connected to the justifications of free speech. These generally instrumental arguments in favour of free speech work in two directions, because they emphasize both the importance of free speech and the need to restrict it in certain situations. As a function of the arguments, we may have a broader or narrower meaning of the concept, to which it corresponds a longer or a shorter list of situations when restrictions are justified. The argument from democracy is associated with an emphasis on the free speech of individuals, groups, and institutions in the political arena. The arguments from autonomy and mistrust in government are associated with a much broader meaning of free speech, going beyond the political arena. The argument from truth places religious, scientific and artistic speech on equal footing with political speech.

The justifications of free speech are inherently instrumental, even in the case of arguments specifically aimed by their authors at avoiding this instrumental character. The four justifications of free speech discussed here share a common feature: even though sometimes defined in opposition to the others, all four justifications unavoidably borrows some of the arguments from the other ones. This is one of the arguments in favour of the idea that we cannot see them as mutually exclusive. All of them contribute to outlining the so-called liberal free speech system, which makes the transition from the philosophical conceptualisation of free speech to the operationalization of free speech in contemporary liberal democracies.

The liberal free speech system involves a robust and healthy public debate; ensured by democratic institutional arrangements, going beyond aspects limited specifically to free

speech; the protection of religious, scientific and artistic free speech; the existence of a private sphere in which free speech cannot be restricted and the endorsement of specific principles for restricting free speech in certain situations (the harm, offense, and content neutrality principles). These elements are the starting point in analysing how free speech is operationalized in contemporary democracies.

Translating the free speech principle into contemporary media systems

The second chapter discusses free speech in contemporary media systems in the broader context provided by the notion of democratic accountability. The idea that media should be regulated (media freedom should be somehow restricted) is linked with the perception of media power in contemporary political systems, as well as with the need to have the citizen body exercise some degree of control of this power, in order to prevent its misuse. Throughout the chapter we address, combining a political philosophy and normative media theory approach with the results of empirical analyses of contemporary media systems, questions such as: Is media regulation and the limitation of media freedom necessary and justifiable? What should we regulate? What are the alternatives in terms of regulation? How feasible is media self-regulation?

Several arguments in favour of state's intervention in this sphere are identifiable. The economic, political, and socio-cultural arguments stem from media's limited capacity to measure up to the set of normative expectations bestowed upon them by society. From an economic perspective, the key argument is market failure, derived from the very nature of media industries and reflected by media concentration, the commercialization and privatisation of public goods (media products), and the incapacity of the market to cope with externalities (Freedman 2008). Political arguments are linked with the need to implement concomitantly both free speech and competing principles such as the public interest, equality, security. Also a political argument is the need to ensure the plurality of voices in the public sphere and to promote political deliberation. A third political argument emphasizes the fact that media is a quasi-representative political institution, since it supervises political institutions on behalf of the citizens, and all representative institutions should work based on a set of rules agreed upon by the citizens. The socio-cultural arguments emphasize the need to accommodate the moral norms of a given society and the need to advance the cultural values of that society (vezi Garnham 1998: 211-212), and the potential influence of mass media on individual citizens (the media effects discussions).

The analysis in Chapter 2 has emphasized the possibility of distinguishing between otherwise very similar democratic regimes from the perspective of how free speech and media freedom were institutionalised. Within this framework we must emphasize that media has traditionally "confiscated" all discussions on the institutionalisation of free speech, especially in the context provided by the democratization process. In tracing the institutionalisation of free speech and media freedom, we oppose the negative freedom of speech discussed in the previous chapter to the positive freedom of speech of both speakers and listeners and consider how media regulation contributes to upholding this positive freedom. Media regulation is of course under scrutiny because of the unclear demarcation line between media as a political institution and other political actors, reflected by the co-dependency relation between media organisations and politicians. From a different perspective, the quasi-representative character of media requires that some accountability mechanisms are in place. Media accountability can take multiple forms, from a theoretical perspective a distinction is being made between three models: laissez-faire accountability, the fiduciary model, and media self-regulation.

Media policy in postcommunist Romania

The third chapter of the thesis approaches a major component of the free speech system in postcommunist Romania, namely media policy. This prominence of media policy is linked with the monopolisation of free speech by the mass media, a phenomenon that is highly visible in the case of postcommunist beneficiaries of democracy assistance states such as Romania. The research question guiding this chapter focuses on the extent to which media policy in postcommunist Romania is economised (in a neoliberal manner, stressing laissez-faire accountability) as opposed to oriented on maintaining a double focus on both the socio-politic and economic character of media (stressing a mix of accountability mechanisms). This question is approached combining the results of the analysis of official documents (policy documents) with the analysis of secondary data (data on the evolution of the Romanian postcommunist media system, as reflected by a series of documents and reports elaborated by different NGOs, as well as research results from political science, sociology, and communication science).

Media policy in postcommunist Romania is best seen through the lens of the opposition between the notions of public power (state's power) and private power (media owner's power). The role of the public power is to curb the expansion of private power, while self-controlling, so that the media may perform its democratic function. From this angle, public power has failed in Romania in several respects. We must notice the limited

efficiency of media ownership regulations, with potential consequence in terms of actually controlling media concentration; the *de facto* toleration of a quasi-monopoly on the news agencies market; the discrepancy in terms of effectiveness and coherence between the policies aimed at creating a strong private sector on the audiovisual marker and the policies regarding public service broadcasting. In the case of policies regarding public service broadcasting, the consistent lack of policy coherence (mostly due to the concentration of all debates and disputes on the issue of controlling the content of news programmes) is, more recently, accompanied by the domination of a market inspired underlying principle in all analyses of the activity of the public service broadcasters.

The main failure of the public power is apparently linked with the fact that the decision-makers mostly took into account their own interests when making decisions in the media policy sphere. Nevertheless, this is a false problem. Policy decision-making is a political problem, the policy principles and all macro-policies are the result of decisions made by politicians driven by their ideology, their interests, or what they perceive to be the public interest. It is unrealistic to expect that the media policy-making process is an apolitical one. Therefore, the issue at stake is not to depoliticise the policy-making process but to ensure the democratic character of the process. In Romania, the augmentation of the role played by the CNA in the audiovisual media policy-making process raises doubts about the extent to which the media policy-making process is still under democratic control.

In approaching the policy issue of media concentration (or the uncontrolled expansion of private power), the Romanian state opted for a mixed solution, with minimal regulation in the area of audiovisual media, no regulation regarding ownership over print and online media, and no regulation on cross-ownership. From this perspective we may characterize media policy in Romani as highly economized. This economization produces negative effects on the print media market, which is distorted by the presence of a large number of media outlets supporting themselves not from sales and advertising but from their owners' revenues from other businesses. This has lead to several international companies pulling of the Romanian print media market. In a positive tone, media policy focusing on ownership and concentration has led to a significant degree of structural pluralism in the Romania media system.

Both the structural and media content policies are built upon a contextualised meaning of the principles of pluralism, diversity and public interest. Pluralism is often defined as the plurality of voices and important social and political viewpoints, a meaning closer to the notion of pluralism behind the north-American model of media accountability.

Using an European continental perspective this plurality of voices and viewpoints would be labelled as diversity. In Romania media policy diversity is defined in a narrow, demographic, sense. The public interest principle is also defined in a narrow sense, giving prominence to the interest/right of the citizens to be informed and the interest/right of speakers-competitors to be heard. The free speech principle is not contextualised and we cannot find any differentiation between media freedom and the free speech of individual citizens, but we do find a constant emphasis of the responsibility associated with the exercise of free speech.

A characterisation of the free speech system in postcommunist Romania, as revealed by this brief analysis of media policy, emphasizes the hybrid character of media regulation, with a laissez-faire approach concerning print and online media and a rather intrusive approach concerning audiovisual media. From the standpoint of constitutional protection and institutional arrangement this free speech system is comparable to many of the western democracies.

„The ideologies" of journalism and the free speech of local news media organisations

The fourth chapter of the thesis is centred on how are free speech and media freedom embedded in the *modus operandi* and practices of news media organisations and in their relationships with political actors. These aspects are placed into a broader analysis of the professionalization of journalism and the interactions between journalists, media owners and politicians.

The starting point of the analysis is the idea that media organisations unavoidably have mixed goals, deriving from their economic nature and the role attributed to them within society and the political system. The interaction of these possibly diverging goals and their influence upon the interactions between the media organisation and different social and political actors contributes to the differentiation between media systems. The professionalization of journalism is credited with a key role in accommodating the mixed goals of the media organisations. Often associated with an "ideology" of journalism, namely the system of values centred on truth and objectivity guiding the profession, the professionalization of journalism is thought to be in an inverse relationship with the so-called media instrumentalization, the control exercised over media organisations by external actors such as political parties, politicians, social groups and movements, and economic actors seeking to obtain political influence.

Based on these aspects, one of the research questions approached in this chapter attempts to identify the manner in which journalists, editors, and managers circumscribe the notion of professionalization. More specifically, we attempt to identify the values underpinning the professionalization of journalism, the meaning attributed to concepts auch as objectivity, autonomy, and public service, the social and political role attributed to the media from within the media system, and the extent to which the professionalization of journalism in Romania is underpinned by clear concepts, rules, and procedures or by symbolic elements. A second research questions aims to map the instrumentalization of media organizations in Romania and to explore its links with professionalization. We answer these research questions based on an in-depth analysis of local news media in three cities (Braşov, Iaşi, and Timişoara). The analysis builds upon a series of in-depth interviews with journalists, editors, and managers from local news media organisations.

Like in many other countries, journalism in Romania is a form of expression that overshadows all others. The professionalization of journalism is mainly based on symbolic criteria such as the role of the journalist within society and the political system. Two professional "ideologies" are distinguishable within Romanian news media organisations, describable by resorting to the objectivist tradition of American and British journalism and the European continental tradition of journalism. The first one involved an active-promotional role of the journalist (as described in Donsbach and Patterson 2004). The journalists propose ideas and approach social issues; they take up the role of deciding, on behalf of the individuals and the society, what is moral and what counts as common good and public interest. Thus, they take up a social responsibility. This view is mostly common to experienced, older journalists, and is significantly different from the standpoint of younger journalists, which involves a passive-neutral role (Donsbach and Patterson 2004). This standpoint is less clear and displays less self- inspection, nevertheless it clearly emphasizes the role of the journalist as technical expert in the collection and dissemination of information, employing objectivity and value neutrality in his or her day to day work. The "ideology" of young journalists sees journalism as a public service. A third view, specific of an increasing number of journalists, sees journalism as a mere occupation. These are the journalists-clerks, who do not identify on a subjective level with journalism and take on a passive-promotional role, by writing strictly about non-controversial issues and reducing their work to the uncritical reproduction of information received from official sources.

The professional norms, rules, and procedures usually associated with professional journalism in Western societies are mention by Romanian journalists, but they only are employed superficially in day to day activity. This professionalization of media built on

symbolic elements related to the social and political role of journalists is extremely important in the process of accommodation to the instrumentalization of media organizations by their owners. Within media organisations a freedom v. order dilemma is visible, with order usually operationalized having in view of the instrumental purposes of the organisation (stemming from the commercial nature of the organisation and the interests of the owners) rather than the normative goals (stemming from the common good nature of information and the socio-political role attributed to media organisations).

The relationships between journalists and media organisations, on the one hand, and political actors, on the other hand, can best be described as a mix of desirable professional autonomy, based upon a significant dose of adversity between journalists and politicians, and a *de facto* acceptance of dependency in this relationship going beyond what is considered acceptable from both a democratic theoretical and practical point of view. Professional autonomy is part of an idealised view on journalism and its role within the political system involving a black and white description of the relationships between politicians and journalists, opposing total independence and total dependence, and ignoring the shades of grey present in day to day interactions. From a citizens' point of view, as long as the instrumentalization of media organisations remains widespread, the situations in which the media organisations acknowledge the political partisanship resulting from this instrumentalization would be rather positive. The media – political parallelism might be far off the normative expectations of a free press, nevertheless, as long as all opinions are reflected and the citizens-readers are warned about the political views pursued by the media organisations, it is not necessarily undemocratic.

Probably the most important result from this section of the analysis points out the fact that journalists do not seem to make the necessary distinction between their free speech as citizens and their free speech as journalists, the latter associated with some normative expectations of responsibility in exercising media power. To this we add the fact that media owners seem to take for granted they have greater speech rights than the rest of the citizens, as they use the media organisations to pursue their political and business goals. This aspect falls within a broader discussion about wealth-based speech.

The internalization of free speech: the case of the pink pony

The fifth chapter attempts to identify underlying views on free speech within the media and the political system. We do this by analysing a critical discourse moment, the very public and visible debate on the so-called case of the pink pony, a public scandal

surrounding a controversial exhibition, funded by the state, organised by the New York branch of the Romanian Cultural Institute. The chapter uses frame analysis to approach the initiation and coverage of the public controversy in this case and to stress the extent to which free speech is internalised within the media system.

The starting point of this chapter is the idea the news discourse is deeply determined by the social context in which it is produced and received (Anthonissen 2003, Talbot 2007, van Dijk 1983), a context defined by institutions, shared knowledge , and professional norms (Talbot 2007). Media discourse involves a process of selection and transformation of real events into news, with news framing playing a crucial part. Framing involves the selection of certain aspects of reality and their enhancement so as to promote a certain problem definition, a certain causal interpretation, and certain moral evaluations and recommended solutions (Entman 1993: 52). The literature has identified a series of generic newsframes, used to interpret large numbers of events and issues approached by the media (see Semetko and Volkenburg 2000). The use of these newsframes is connected to the dominant role journalists attribute to themselves, that of passively covering events or that of actively interpreting events (de Vreese 2005).

We can argue for the relevance of the case analyzed here from several perspectives. First, the case of the pink pony is highly relevant for the issue of artistic free speech. Second, given the institutional context, it is also a case of limiting free speech when state funding is involved. Third, from the beginning this was a case prone to controversy due to the specific description of the art exhibition at the centre of the case as including socially and politically engaged artworks. Last, but not least, because public debate on free speech in Romania was focused on media freedom and has seldom approached the issue of artistic and scientific free speech.

We use frame analysis to approach news discourse of this specific case, as it helos identify the manner in which social objects are labelled, defined, and categorised. We focus on the use of generic frames and the identification of issue-specific frames. This approach allows us to emphasize arguments' complexity, the use of themes and frames that appeal to a large audience, and the contribution of journalists and media organisations to our experience of public controversy (see Cramer 1992). For practical reasons we focus on the coverage of this case in the quality main print and online media.

The analysis shows that two news frames are dominant in the coverage of the pink pony case, both highly appealing to the general public and to what the journalists perceive to be the social values and norms applicable to this case. A highly visible issue-specific

frame, emphasizing the issue of Romania's national identity and cultural values and their representation abroad, is combined with the equally visible generic frame of politics as a game (the strategic frame, the political conflict frame). Beyond these general interpretations of the issue at stake, a series of media organisation specific newsframes, strongly determinate by the context and the history and political orientation of the respective media organisation, were identified,

How Romanian news media approach the issue of free speech in the public arena and the protection of artistic free speech is reflective of some of the structural aspects identified in the previous chapters. The present analysis points out to some unfinished debates on free speech in Romanian society, with special reference to the cultural sphere and the financing of cultural projects by the Romanian state. At the same time, the analysis points out the manner in which media organisations take sides in the public debate and help transfer this issue from the free speech sphere to the political conflict sphere. When free speech does enter the discussion media organisations choosing to take sides actively deny it to the opposing party, which justifies why, at the height of the public scandal, doubts were raised concerning the professional practices of Romanian news media. The main problem is the poor institutionalisation of free speech for all as a guiding value in the newsroom. While free speech is accepted as a matter of principle, the associated elements of responsibility and reciprocity seem to be only partially internalised by Romanian news media. This brings into discussion the relevance of this case for the issues of ensuring free speech and the quality of democracy in postcommunist Romania. If media organisations abuse the power of free speech this only happens because such abuse is acceptable at societal level. The media is caught in a vicious circle. On the one hand, as a matter of self-preservation it must reflect underlying values and norms. On the other hand, as part of its role democratic function it must contribute to education and uphold the value of free speech. The issue of building a responsible and accountable media culture (see Silverstone 2004) at both elite and societal level remains open.

Conclusion

This thesis has approached a few key aspects of the free speech system in postcommunist Romania. Like many other discussions on free speech, no matter the context, this one was also not able to escape the "confiscation" of free speech by the mass media. Two reasons are behind this. Firstly, the democratic function attributed to the mass media makes free speech and media freedom a key characteristic of the political system, especially in the case of the states in transition or the new democracies. Secondly, and

partially deriving from the first reason, the debates on free speech in postcommunist Romania were and are centred on the mass media. The paper shows that the free speech system in Romania is quite complex in terms of institutional arrangements and very much similar to Western democracies but quite dependent the fact that free speech as a general societal value is far from being internalized. This is obvious if we look at the values and behaviours of a series of key actors, taken together and separately. Becoming aware of the importance of the media in managing the transition process has made political actors seemingly incapable of letting go of their narrow political interests when in media policy-making. This has led to some significant failures of media policy, which led to some of the structural problems of the Romania media system: a distorted print media market, a highly competitive private sector of audiovisual media coupled with highly uncompetitive public service broadcasters (mostly due to a focus of policy and political conflict on controlling the content of the news programmes broadcasted by the public service companies). The incapacity of the media system to self-regulate, coupled with rather permissive state policy and defective professionalization, facilitated the instrumentalization of media organisations by their owners, for the purpose of furthering certain political and business goals. To these structural aspects of the media system we add a media culture that gives prominence to the free speech rights of the journalists and the owners as compared to the free speech rights of other collective social actors and individual citizens.

Annex – Table of contents

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