

# When It's All the Press' Fault (Even when It's not)

EUGÊNIO BUCCI

**On how journalistic excellence ran up against the judicial censorship that has gagged the daily broadsheet *O Estado de S. Paulo***

“**P**OOOR JOURNALISTS!”, exclaims the French commentator Yves Mamou (1992, p. 201) in the conclusion to her book *Blame it on the Press*. “When peace reigns in society, they are accused of the worst connivances with their sources, but when a crisis explodes, they are painted as the persecutors of their informants...”

Before going any further, a minor correction: journalists are not “poor” in the sense of being “defenseless victims”, as used here by Mamou. Without descending into jokes of dubious taste, we have to recognize that while journalists may be “poor” in terms of the salaries they receive, they are certainly not “poor” in Yves Mamou’s acceptance of the word. Defenseless, misunderstood or long-suffering they are certainly not. In fact, as a general rule, they know how to take care of themselves. Newsrooms, newspapers and the press as an institution have proved quite adept at standing their ground and repelling attacks from all comers. Nevertheless, it is an indisputable truth that the press – like the ever-guilty butler of classic detective stories – always emerges from political crises tarred with having aggravated social hardships. In this we have a rare example of supra-partisan agreement both in Brazil and abroad: when it comes to heaping blame on the press, everyone rallies to the cause, even if on the spur of opposing motives.

The powers-that-be do not like the press, though they have no choice but to live with it - cynically, if necessary. In his *Politics as a Vocation*<sup>1</sup>, Max Weber, speaking on the condition of the professional journalist, captured this somewhat malign sign of our times with ingenuity and rawness, noting that:

It is, indeed, no small matter to frequent the salons of the powerful on this earth on a seemingly equal footing and often to be flattered by all because one is feared, yet knowing all the time that having hardly closed the door the host has perhaps to justify before his guests his association with the ‘scavengers from the press.’

It takes no leap of imagination to go from “scavengers” to “muckrakers”, a term the American president Theodore Roosevelt (1858-1919) reserved for reporters and their bosses, such as Joseph Pulitzer (1847-1911), who he attempted

to sue after his *New York World* newspaper ran an exposé on the construction of the Panama Canal early in Roosevelt's tenure (1901-1909) (Pulitzer, 2006, p. 7).

This conflict of interests between the logic of power and the mission of those who publish news is as old as modern democracy itself, stretching back to the 18<sup>th</sup> Century. It is both structural and structuring. So much so that even politicians derived from the ranks of the press, businessmen or journalists of standing, tend to turn a terse eye toward the media once in office, sometimes even verbally attacking their former colleagues, or bringing legal action against them. The most, shall we say, caricatural case, albeit a profoundly emblematic one, is that of Silvio Berlusconi. The Italian TV magnate and current Prime Minister of the country, has, since early 2009, become an assiduous practitioner of the sport of blaming the vehicles of the press for the scandals that have become a trademark of his office. Being photographed surrounded by a bevy of prostitutes at one of his properties is a case in point.

In a report published in the *O Estado de S. Paulo* newspaper on September 5, 2009 (“Defesa de Berlusconi ultrapassa limite ético”), the correspondent Gilles Lapouge wrote that:

Berlusconi has launched an attack on those who accuse him of courting minors and of receiving prostitutes and escorts at his paradisiacal property in Sardinia; reasons for which Berlusconi's wife, Veronica Lario, has filed for divorce. This counter attack has made a lot of noise and flung an awful lot of mud. Berlusconi sued the Italian newspaper La Repubblica for defamation. [...] The newspaper has, on a daily basis, published questions addressed directly to Berlusconi, such as: “Did you know that the dozens of women you received at your home were prostitutes?”

Foreign newspapers did not escape unscathed either. Legal action was taken against the French weekly *Le Nouvel Observateur*, which ran an account of Il Cavaliere's Pharaonic and erotic parties. Another target was *El Pais*, which published photos of naked women at his mansion.

Brazil has recently witnessed a similar phenomenon. The president of the Federal Senate, José Sarney – whose family owns TV Mirante, an affiliate of the Globo network in the State of Maranhão, among other press vehicles -, has also been waxing eloquently on conspiracies and persecution on the part of the press, not only against himself in particular, but also against the senate, his family and his friends, etc. On September 15, 2009, this wave of attacks reached its most strident when the senator declared that “the media has become an enemy of the Congress, an enemy of the representative institutions”. The attacks levied at the press by the president of the Senate are the bedrock theme of the present article – and further ahead we shall look at the manifest and latent meanings in this declaration. However, we will not limit our scope to rhetorical attacks alone, but also, so as to better reflect upon the saga of good journalism being rewarded with

editorship, move beyond the discourse to address the legal mechanisms by which this censorship came to pass, i.e., the injunction sought by the senator's son, the businessman Fernando Sarney, who, thanks to a judge at the Federal District Circuit Court, managed to have the *O Estado de S. Paulo* newspaper restrained from publishing further news about him.

### Some Curious Reminiscences

However, before we immerse ourselves in the specific theme of the *Estadão* and the circus that has sprung up around it, it might be useful to first recapitulate, if only briefly, the way in which the syndrome of laying the blame at the newspapers' doors has become such a common denominator among disparate partisan and ideological doctrines and currents. One old and near-forgotten episode remains illustrative, showing the extent to which the discourse of the powers-that-be against newspapers, no matter how powerful, permits of almost no variation. The protagonists may change, ranging the spectrum from left to right, but even the words they use remain the same.

The episode in question occurred in August 1977, during the death-rattle of the most savage period of the military dictatorship. On the 8<sup>th</sup> of that month, Goffredo Telles Júnior, a professor at Largo São Francisco, read aloud, below the arches of the college patio in São Paulo, his famous "Letter to the Brazilian People". Signed by various jurists besides Goffredo, the document minced no words in branding the Brazilian regime a dictatorship and demanding the immediate restoration of the State of Law. The following day, the "Letter" was all over the newspapers and its repercussions reached the floor of the Chamber of Deputies in Brasília by the 10<sup>th</sup>. Deputy Freitas Nobre, then leader of the MDB, the opposition party, lauded the gesture of the lecturers at São Francisco to the general applause of the House. Cantídio Sampaio, the leader of Arena, the regime's political wing, requested right-of-response, which was granted by the Speaker, Marco Maciel. Cantídio spoke as follows:

Sincerely, this is hardly an original thought. The newspapers, which are the main vehicle for the orchestrated campaign to which these organizations now rally, have run other works by the likes of the jurists Seabra Fagundes, Aliomar Baleiro and many others, all more profound, more significant and far wider-ranging [than this], but falling fowl to the same shortcoming, Mr. Speaker, of attempting to address the complexity of the Brazilian political problem from its juridical aspect alone.

Behind the news, the leader of Arena saw an "orchestrated campaign" against the government, for which the "main vehicle" was "the newspapers". He spoke as if his government were being wronged or persecuted, but basically his speech was the same old discourse of power, for which the source of society's ills and discontent can only ever be the newsroom. Where else?<sup>2</sup>

After the dictatorship, another clamorous manifestation of this same tendency, so typical of the corridors of power, came during the final throes of the Fernando Collor administration. Throughout 1992, his defenders insisted on attributing the massive public mobilization that led to the president's impeachment to a wave of articles alleging corruption within his government. Since these events, we could say that the method of dismissing journalistic material on the grounds that its content is nothing "new", as was Cantídio Sampaio's intention, has become standard practice. More recently we have heard similar news reports dismissed as "rehashed facts" that "add nothing". The buzzwords remain the same: "orchestrated campaign", "the press is an opposition party", etc. It is worth repeating: the ideological colors may change, but the anti-press discourse remains the same, it is a monochord.

### **The Scandals Themselves**

Let us go back to 2009. Once again clashes between the political establishment and the press come to the fore. This time, however, it is the Legislature that is upset, more specifically the Federal Senate. Over the course of a few months, various newspapers and radio and television news broadcasts had been running headlines exposing a series of administrative acts by Senate leadership – pay rises, hirings and other measures – that, contrary to the principles of public administration, *were not published in the Journal of Proceedings*. Once discovered, these measures came to be known as "secret acts", because that is exactly what they were, secrets. As such, and by definition, they were therefore illegal. Many of these undisclosed measures employed or otherwise benefitted members of senators' families. The president of the Senate, José Sarney (PMDB, for the state of Amapá), whose family and friends fell into the public glare with the revelation of the secret acts, started hammering on reporters, and has continued to do so ever since. Yet again, a politician comes out in public to put all the blame on the press.

Even before the discovery of the secret acts, back when the scandal was not really all that scandalous, when the main denunciations concerned a sumptuous lakeside residence which the then director-general of the Senate, Agaciel Maia, had neglected to declare to the Inland Revenue Service as his own, José Sarney was already complaining about the news coverage.

We are being taken as the proverbial bull thrown to the piranhas. So long as we are in the limelight, the rest goes on as normal; and the big problems don't come to the surface. This is a fuss about a trifle.<sup>3</sup>

What exactly did he mean by that? Well, what he meant was that if there was a villain in this story it was the editors of the press. In his view, instead of concentrating on what really mattered, the newspapers were wasting time focusing on "trifles".

Not that Sarney sat on his hands, studiously ignoring this “trifling” news. Just in case, he deigned to address these “trifles” himself, exonerating Agaciel Maia as director-general of the House as early as the first week of March. He also summarily commented upon another question hanging unanswered at the time, namely the use of Senate bodyguards to provide security for his own private home in São Luís, the state capital of Maranhão; a matter that soon dropped out of mind. Days later, graver accusations begin to arise, such as the payment of unworked overtime hours to public functionaries and the existence of nearly two-hundred directorial posts with no precise portfolio. The state-of-affairs deteriorated rapidly, until, on Monday April 6, Senator Cristovão Buarque floated the idea of holding a referendum on whether or not to abolish the National Congress – a proposal also left to die a quick death<sup>4</sup>. It seemed things could not get any worse. Until they did.

There was no referendum, as we know, but, in the wake of such a trail of improbity, the self-pitying grouse that the poor Senate had become “the proverbial bull thrown to the piranhas” gathered force. Week after week, this pre-emptive attack on the media gained new adherents amongst parliamentarians. On April 8, 2009, a Wednesday, various front-bench deputies swelled the ranks of the disgruntled. On Thursday the 9<sup>th</sup>, *O Estado de S. Paulo* recognized as much on page A8: “Câmara culpa mídia por imagem negativa” (the House blames the press for its tarnished image). No one less than the president of the House himself, Michel Temer, spoke thus to the floor:

The headlines and photos, more so than the articles themselves, aim to pit the Chamber of Deputies against the public opinion. See that our political culture is being formed in such a way that, if we do not take some action to repudiate it now, if we do not take a concrete stance on the issue, we will be doing democracy a disservice.

Other deputies echoed his sentiments, from left to right. Once again, it became clear that the propensity to shunt the blame onto the press is supra-partisan. The leader of PT, Cândido Vaccarezza, added his own two-pence-worth:

The editors pick a theme and the reporters are obliged to make reality fit that theme. It doesn’t matter what a deputy says, it holds true across the board. This does not serve democracy.

Next up was Ronaldo Caiado, from the DEM: “This is unacceptable. We cannot tolerate this defamatory campaign that grows with each passing day”<sup>5</sup>.

And what was the cause of such peremptory attacks? Perhaps the fact that fresh news had broken to the effect that some \$80 million reais had been liberated for the reform of parliamentary flats in Brasília. This news was said to have been distorted, on purpose, by reporters driven by the unequivocal aim of eroding the

image of the House. As became crystal clear on that April 8, the representatives of the people, from the PT to the DEM, through the PMDB, while they disagreed on almost everything else, were unanimous in this at least: it's all the press' fault.

Yet there was perhaps one other spur for such disgruntlement, and it had to do with another piece of news gathering steam that same week. On Wednesday April 8, the very day the deputies joined in condemnation of the press, the *O Estado de S. Paulo* ran a scoop that once again disturbed the Senatorial peace: Senator Tião Viana (PT, for the state of Acre) had lent his Senate-issue cell phone to his daughter while on holiday in Mexico and the resulting bill had run to 14.7 thousand reais. The scoop, in a report by Rui Nogueira and João Bosco Rabello, saw tensions rise. Once again, the reporters had rankled the politicians.

### **The Crisis Thickens**

Naturally, other news vehicles, such as *Folha de S. Paulo*, *O Globo*, TV news broadcasts on the major channels and the weekly magazines all assiduously covered the misdeeds of the Federal Senate. Nonetheless, *O Estadão* assumed a leadership role recognized by all the rest, and was the exclusive recipient of the star prize: a gagging order in its sixtieth day by the time this article went to print; something frankly unbelievable in a democracy. Hence the focus of the present paper also falls upon the actions of *O Estadão*. This case should be studied and debated more thoroughly than it has been, and be more widely known – if nothing else than to ensure that the kinds of attacks it suffered prosper less in the future than they have prospered now.

Newer and newer chapters of the scandal emerged from June 2009. In what follows is a brief summary of the most important revelations in the order of their publication in the São Paulo daily<sup>6</sup>.

June 10:

In yet another scoop (report by Rosa Costa and Leandro Colon), *O Estado de S. Paulo* revealed the existence of over 300 secret acts creating positions and appointments for relatives of Senate members. Tapped telephone conversations proved the involvement of the president of the House, José Sarney, in the passing of secret acts and practice of nepotism.

June 18:

An investigative committee analyzing secret acts passed by the Senate announced the detection of some 650 undisclosed acts over recent years.

June 20:

A report for *O Estadão* by Rosa Costa and Rodrigo Rangel revealed that the butler of Roseana Sarney (José Sarney's daughter), one Amaury de Jesus Machado, nicknamed "Secret", earned a monthly salary of 12 thousand reais paid by the Senate.

June 23:

A follow-up story by Rosa Costa and Rodrigo Rangel reported that two employees of the José Sarney Foundation in São Luis (Maranhão) – Raimundo Nonato Quintiliano Pereira Filho and Fernando Nelmásio Silva Belforte – were Senate advisors.

June 25:

In another journalistic scoop, Rodrigo Rangel and Rosa Costa revealed how the operators of a consigned credit scheme at the Senate included José Adriano Cordeiro Sarney, son of Deputy Zequinha Sarney, José Sarney's eldest son.

July 16:

In a piece by Rodrigo Rangel, *O Estadão* reveals that a Federal Police operation (Operação Boi Barrica) investigating Fernando Sarney, José Sarney's son, had obtained sufficient proof to indict him. The Federal Police announced that the group used the Sarney name to gain access to ministries and state-owned companies. Fernando Sarney was interrogated by the Federal Police in Maranhão.

July 22 and 23:

*O Estadão* publishes transcripts of phone calls recorded between March 30 and April 2 2008 that reveal the machinations then in-course to have Henrique Dias Bernardes, boyfriend of Maria Beatriz Brandão Cavalcanti, daughter of Fernando Sarney, appointed to a Senate post.

The reports of July 22 and 23 warrant special attention, as they are crucial to an understanding of the case. Fernando Sarney's telephone conversations were recorded by the Federal Police with judicial authorization as part of an ongoing criminal investigation conducted under a mantle of secrecy. It was in virtue of this secrecy, and allegations of invasion of family privacy, that Sarney appealed to the Courts to restrain the *O Estado de S. Paulo* newspaper from publishing further stories about him. As we shall see in the continued retrospective, he was successful in his motion:

July 31 (the day the gag order came into effect):

Circuit Court Judge Dácio Vieira (Federal District) informed *O Estadão* of the suppression order prohibiting it from publishing any further information concerning Operation Boi Barrica. Injunction comes into effect.

August 1:

The newspaper reveals that Circuit Court Judge Dácio Vieira, a former Senate advisor, is a member of the social circle of the Sarney family and of

the ex-Senate director Agaciel Maia. The National Newspapers Association (ANJ), other entities, senators and former minister for the Federal Supreme Court, Carlos Velloso, criticize Vieira's decision.

August 5:

The lawyer Manuel Alceu Affonso Ferreira demands that the District Judge who sanctioned the injunction immediately declare himself compromised to take decisions on the case. Exclusion by virtue of conflict of interest is registered by the Federal District Court, upholding the allegation that connections exist between Dácio Vieira, Fernando Sarney and Agaciel Maia.

August 10:

The World Association of Newspapers and News Publishers (WAN) and the World Editors Forum (WEF), which represent 18,000 publications, 15,000 online sites and over 3,000 companies in more than 120 countries, write an open letter to President Lula and Gilmar Mendes, President of the Federal Supreme Court, to protest against the ruling permitting prior censorship.

August 12:

*O Estadão* petitions for a writ of mandamus. The aim of such a writ is to ensure the recognition of inalienable vested and contingent rights being violated or threatened through illegal or unconstitutional action by an authority.

August 13:

Circuit Judge Waldir Leôncio Cordeiro, from the 2<sup>nd</sup> Judicial Circuit Court, upheld the order of suppression against the newspaper by denying its petition for a writ of mandamus. Cordeiro delayed his deliberations until after he had received paperwork from Vieira and the Attorney General's Office.

August 14:

Circuit Judge Vieira decides that he is competent to preside over the case, which proceeds to a Special Hearing at the Federal Courts. Minister Marco Aurélio Mello, a member of the Supreme Court, criticizes the prior censorship applied by the State. Entities continue to protest against the gag order.

August 17:

Mendes demands a swift ruling on the case. The lawyer Manuel Alceu files a new petition with the Circuit Court of the Federal District. Through attachments of declaration, he demands that Judge Lopes Júnior explain certain aspects of his decision.

August 21:

*O Estado de S. Paulo* files a new petition questioning the competence of Judge Dácio Vieira to hear the case. The petition is based on Vieira's own decision to ignore an earlier demand that he declare conflict of interest.

September 15:

The Circuit Court of the Federal District declares Vieira to be compromised to rule on the matter and he is taken off the case. A new judge, Lecir Manoel da Luz, is appointed that same day, but prior censorship is maintained.

September 30:

Prior censorship against the newspaper remains in place.

The decision taken by Judge Dácio Vieira – who, as we have seen, accepted a petition by Fernando Sarney, interested in restraining the newspaper from publishing any further findings of its investigations concerning his activities – is ample in its scope. Below is the closing passage of the ruling, dated to July 30, 2009. This was a preliminary ruling, which means it was supposed to be reappraised by the court, but even after Vieira was removed from the case on the grounds of conflict of interests, it remained in vigor and unrevoked (as of the date of submission of this article, September 30, 2009). The basic effect of the ruling was to shield the businessman from any further reporting.

On this matter, in *summaria cognitio*, after reflection, *prima facie*, upon the relevance of the fundamentals as set forth in the present petition, which evinces the possibility of there occurring grave or irreparable damage to the complainant, the court hereby grants the motion, in preliminary capacity, obliging the petitioned party to abstain, pending a definitive ruling by the honorable justices, from using – in any form, whether directly or indirectly – or publishing information concerning the complainant obtained in relation to criminal investigations in-course under the mantle of judicial secrecy.

Note that, in the terms in which the Circuit Judge penned his ruling, any and all information concerning the complainant (Fernando Sarney) cannot be published. The quoted passage does not speak exclusively of transcripts of legally recorded telephone conversations, but of all “information concerning the complainant”. This froze the publication of investigative reporting already conducted by the newspaper prior to the judge's preliminary ruling.

And so it was that, in recognition of its standards of journalistic excellence and series of news exclusives of huge impact upon the Senate scandal, *O Estadão* found itself rewarded with judicial censorship. As the professor of Journalistic

Ethics Carlos Alberto Di Franco so aptly put it during a debate broadcast live over the internet from the newspaper's newsroom on TV Estadão: "We are witnessing a wave of sleaze at the Senate and not one senator has been punished. The only party to be punished thus far is a newspaper that told the truth. This is impunity"<sup>7</sup>.

As if so as not to contradict Professor Di Franco, the Senate Ethics and Decorum Committee, after deliberations between August 5 and 19, chose to shelve the eleven charges against Senator José Sarney. In fact and in law, as the professor so rightly said, "not one senator was punished". Not Sarney, not anyone else.

### **Society does not Seem to Fully Understand the Gravity of the Aggression Suffered by the Newspaper**

As was to be expected, the censorship provoked a vigorous backlash, both from individuals and entities. The World Association of Newspapers (WAN), World Editors Forum (WEF), National Federation of Journalists (Fenaj) and other entities protested against this legally-sponsored violence. However, the backlash failed to meet the gravity of the aggression committed by a high-standing representative of the Judiciary against each and every citizen's right to information.

Judicial censorship, in the manner in which it has taken hold in the country, has no place in a democracy. Sadly, we have recently seen a worrying rise in judicial measures that impede the most diverse range of media vehicles from touching upon certain subjects or printing certain names. In one of the more picaresque examples, the humorist José Simão, with the *Folha de S. Paulo*, was prohibited, for a number of weeks, from mentioning the name of a certain TV starlet.

In a recent article, Judith Brito (2009), president of the National Association of Newspapers and superintendent of Empresa Folha da Manhã S.A., encapsulated the situation didactically well. As she was able to demonstrate with clarity, no-one is disputing the citizen's right to take legal steps to protect his/her privacy or demand compensation for injuries suffered; rather what warrants repudiation, and vigorously so, is the institution of prior censorship, that which prevents a subject from becoming public knowledge. A passage is quoted below:

Article 220 of the Constitution states that "the manifestation of thought, creation, expression and information, in any form and by any process or means, shall not be subject to any restriction". This is a classic principle of the State of Law and of true democracies. In other words: everyone has the right to say what he or she wants and no-one has the right to decide in advance what can or cannot be said.

However, it is also unquestionable that we are all subject to punishment and the full rigor of the law should we misuse that supreme right to freedom of expression to defame or lie. In such cases, one can take recourse to the courts, where compensation and/or right to reply can be sought. The ample and unlimited right to expression is, therefore, not an absolute right, but it does precede all others.

[...]

Let us take as an example the recent case in which a circuit court judge for the federal district ruled to prohibit the newspaper *O Estado de S. Paulo*, and Brazilian media as a whole, from divulging facts related to the Federal Police investigation into the activities of the businessman Fernando Sarney. Is there any doubt whatsoever that this [investigation] is of public interest?

More than that, no-one has the right to decide pre-facto whether or not someone's individual rights are being infringed by the divulgence of information.

This is a judgment that can only be made post-facto.

As can any appropriate punishment.

[...]

To impede the divulgence of information is censorship, pure and simple. Such preliminary rulings usually end up being overturned by higher courts, but however brief the period of censorship may prove to be, the harm has already been done. Society will have been denied its right to be fully and freely informed.

Judith Brito also reminds us that the National Association of Newspapers has denounced 31 cases of violation of the freedom of the press in the last 12 months alone, of which 16 were Judicial rulings in favor of prior censorship. She is quite correct in saying that this type of measure is unacceptable. However, given the gaps in our democratic development, particularly in our political culture, her arguments are not met with the understanding one would expect of common sense and, especially, of the average Brazilian politician. It goes beyond the scope of the present article to address how exactly that transpires, and what, in fact, might be the general view on these matters as held by parliamentarians and politicians, though the endeavor certainly warrants a study all of its own, conducted directly with political agents. For the time being, suffice it to outline the main reasons why it is unacceptable that a State authority should obstruct the citizen's right to information.

### **Three Wrong-Headed Beliefs that Justify Curbing Freedom of the Press**

#### *1. What goes on under the mantle of judicial secrecy cannot be reported.*

This first misconception lumps reporters with a responsibility that is not theirs to shoulder. It never could be theirs. If something is going on under wraps in the Judiciary, then it is up to the Judiciary to keep its own secrets. So far, so good. If, by some slip up, confidential information should "leak", as they say in political jargon, and if the leaked information should happen to be of public interest and fall into the hands of a journalist, then he or she has the duty to publish it. The journalist's pact is with the citizen, not secretive authorities. Once information

comes into a journalist's possession it immediately enters a whole new field: the public sphere. Whether we are talking about legal secrets, industrial secrets or even State secrets, the press looks upon them all as news.

It might sound a touch inflexible or prickly to say this so assertively, but it is necessary. *The New York Times* once betrayed its commitment to report information of interest to the public, and its journalists stewed in regret for many years because of it. In 1961, the *Times* was ready to run a story on the preparations for an invasion of the Bay of Pigs in Cuba. Forces comprising Cuban exiles were being trained by the CIA and would soon launch the operation. Bending to the influence of President Kennedy, who argued against running the story on the grounds of national security, the editors of the world's most influential daily broadsheet decided to water down their report, which came out void of all reference to the impending Bay of Pigs invasion (Lambeth, 1992, p. 31, 120). The journalist Gay Talese (2000, p.17) recounts that, later on, after the failure of the attempted invasion of Fidel's island, "even Kennedy acknowledged that *The Times* had perhaps gone too far in its concern to defend American interests; if it had published what it knew about the Cuban misadventure, Kennedy suggested, the invasion might have been cancelled and the whole bloody fiasco, avoided".

Journalists are not responsible for keeping the secrets of the Republican powers. Quite the contrary: however shocking it might sound to the ears of Brazilian political agents, the journalist's brief is precisely to uncover and reveal those secrets. Quite simply, it's the complete opposite. If their job were not to publish what the authorities would prefer to keep hidden, then what would be the point of having journalists? What use would a press be that withheld such secrets from the public? How could the press serve as the watchdog of the powers-that-be if it were collusive in keeping their secrets?

We can go a little further. If a secret of the magnitude of the Bay of Pigs should have been revealed, even in the opinion of Kennedy, then why should Judicial secrecy be considered off-limits. With what possible legitimacy could the courts interfere with the people's right to information?

It is in precisely this sense that the decision taken by the circuit court judge for the Federal District amounts to prior censorship. There can be no other name for the order he gave. And insofar as it is censorship, it is unconstitutional; and as such, it should no longer be tolerated in Brazil. Judicial secrets should be kept secret – that is unquestionably true, indeed a glaring tautology. However, once discovered, secrets (of the Justice system or anyone else) *should* be published, so long as they are in the public interest.

***2. In cases of risk, the courts should prevent newspapers from invading family privacy.***

Another dangerous myth. In principle, many would seem to agree with this. "What would you prefer?", they ask: "have your privacy protected, or be open so that any old hack can publish whatever he likes, whenever he likes?"

Put in that way, there is only one answer. We have to protect our privacy by all available preventive measures. It so happens that this is exactly what freedom of expression means: citizens, one and all, not just journalists, have the right – and should also have the means – to declare, inform or manifest whatever they wish, whenever they wish, and about whatever they see fit. Of course, they will then have to answer to the courts for any abuses they may commit in the process. But *after the fact*, not prior to publication. That is what freedom of expression means, and it is also, when specialized, the meaning of freedom of the press. Either a democracy ensures that freedom, or it ceases to be a democracy.

By extension, we find ourselves endlessly exposed to certain collateral inconveniences that come with this. As we believe in, and value, freedom of the press, we must also live with the errors the media will occasionally commit, as well as the sensationalism and unjustified invasions of privacy practiced by some of its agents. But freedom is freedom. Either we tolerate the risks that go with it, or we lose it.

When it comes to editorial decisions as to what should or should not go on air or into print, it is the newsroom - not the courtroom - that should make that judgment of merit. It will have to answer for it afterwards, but at the moment of taking the decision, the editors should be allowed to draw from their own autonomous references – the canons of journalism, the ethics of the profession, the rights of the public and the interests of the reader. They need not and should not consider the opinions of external authorities, be they the Judiciary, the Presidency of the Republic or the Vatican.

In relation to information that could be considered to pertain to the sphere of family privacy, the newsroom must decide whether or not it is of public interest. If it is, then it should be published, even if to the detriment of aspects of the individual's private life. Very often or, indeed, almost always, crimes against public patrimony are hatched, masterminded, planned and executed within the private sphere – hence the extreme delicateness of this kind of editorial decision. Journalists wrangle with this practically on a daily basis – and the decision is always difficult.

In short, not only should the Judiciary not attempt to prevent anything from being published, but – as enshrined in the Constitution - *it cannot* make such an attempt. So true is this that all decisions that contradict the fact end up being overturned by the higher courts, where, luckily for the Brazilian people, there reigns a greater level of clarity as to the spirit of democracy.

### ***3. The press is an opposition party.***

It was José Sarney who said: “The press has become an enemy of the Congress, an enemy of the representative institutions”. The declaration, reported in the *Estadão* on September 16, 2009, dialogs with a hard-line approach that has consolidated in certain factions of the left – not all of them, but in many. It also resonates with certain coup-inclined right-wing groups. All the time. On

September 28, 2009, for example, the military ousted the Honduran president Manuel Zelaya and closed down broadcasters that refused to applaud his usurpers<sup>8</sup>. None of those in power likes the press, but some simply go too far.

However, in present-day Latin America, this ideological construct that “the media is the enemy of the representative institutions” has assumed its most intense tones among the left. It should be remembered that the orator José Sarney is about as left-wing as Margaret Thatcher, but his declarations smack of rancorous and befuddled leftist discourse; the kind that nurtures dreams of authoritarian utopias that coerce, direct and harness society’s channels of expression. Adepts of such utopias tend to forget that by wounding one media vehicle, regardless of its doctrinarian affiliations, they are attacking the whole institution of the press. They put the whole apparatus at risk. The guarantee of freedom does not exist exclusively for those who agree with those that govern – or with us, for that matter. Freedom exists for one reason only – to ensure a voice and influence for all who stand opposed. Even Hitler or Mao would not hesitate to ensure the freedom of their respective yes-men. The hard but vital part is to defend the liberty of those who stand against us, especially when they exercise legitimate leadership in their public forums.

Okay, these are obvious ideas, but they have not – for all their obviousness – been genuinely assimilated. Even today, there are those who flirt with tyranny and entertain the delirium of using state power to intimidate dissidents. And as if to excuse such spasms, they roll out the old argument that “the press is the enemy of the representative institutions”.

Now, the risk of the media crystallizing as a political superpower stalking and threatening the State has long been quite real indeed. The migration of communicators into politics is there to attest to the manner in which social communication opens doors for private interests in the public sphere. There are countless examples, and they go from the magnate William Randolph Hearst (1863-1951), the inspiration behind Orson Welles *Citizen Kane* (1941), who first ran for Governor of New York and then twice for Mayor of that same city in the first decade of the 20<sup>th</sup> Century. Hearst failed, but others have followed his example and prospered. And they weren’t even as intelligent, or qualified. The actor Ronald Reagan and the quasi-actor Arnold Schwarzenegger stepped out of Hollywood cinema and into the Republican Party, through which they rose to prominent political positions in the United States.

The media can serve as a springboard to political office, or worse. We have long known this, at least since Tocqueville was struck by the power of the masses in 19<sup>th</sup>-century America, or since Weber (2006, p.80) elected the journalist the new demagogue. Habermas too (1984, p.218), in his earlier works, framed some classic formulations on the theme:

The press, hitherto an institution of private people in a public capacity, became an institution comprised of members of the public in their capacity

as private individuals; that is, it became the gate through which privileged private interests invaded the public sphere.

It so happens that there could be a democratic antidote to the unbalances caused by the over-concentration of power in the media. So long as the antidotes are drawn from a sort of political feudalism, the only winner is the disease, not the cure. And democratic solutions do exist. Take, for example, the antitrust legislation adopted by the USA some 70 years ago to discipline the social communications market, especially radio broadcasters. It was in the interests of combating monopolies and oligopolies – in other words, of combating the concentration of political and economic power – that American congressmen, as far back as March 1934, set up the Federal Communications Commission (FCC). The declared aim of this regulatory body is to ensure a plurality of voices and healthy competition among the various companies active in the communications sector. Hence, in order to protect the public interests, the FCC imposed limits upon oligopoly and monopoly. Were one single group to control the main TV and radio stations in a given region, it would effectively mean harnessing all informal power to direct public debate toward a set of private interests<sup>9</sup>.

In Brazil, we do not yet have any democratic legislation for the sector, and in this we have one of our most serious political shortcomings. Nevertheless, there is no lack of examples of how information skewed by a concentration of power in the media can have grave historical consequences. One such example, and perhaps the most traumatic of all, occurred in the first semester of 1984. At the time, people were turning out in their millions at rallies to demand direct presidential elections. With some rare exceptions, the TV networks, led by Rede Globo, dallied and delayed to give the rallies any journalistic coverage. Effectively, they boycotted the pro-elections campaign. As such, they helped the dictatorship to defeat, in Congress, an amendment that would have restored the direct vote – something that would only come in 1989.

In this Brazilian example of the *Diretas Já* campaign of 1984, the superpower of the media did not engender an aggression against the representative institutions. What happened in this case was a little different, though the meaning was the same: the networks, with a few notable exceptions, aligned with the authoritarian regime, whose institutions were not representative, to level a blow against a society that wanted to establish democratic institutions. On other occasions, however, the so-called “media power” has indeed aimed its torpedoes directly at representative institutions. This can and does happen.

A famous illustration of this hypothesis occurred in Venezuela in 2002, when, acting in an orchestrated manner, the TV networks led an attempted coup-d'état against the democratically elected president Hugo Chaves. At the time, Venezuela was enjoying a period of democratic stability. The TV network coup was quashed within 72 hours<sup>10</sup>. Chaves returned to office, victorious. Afterwards, however, Hugo Chaves himself, who remains in power to today,

began to persecute and shut down TV stations not sympathetic to his government, stifling the freedom of the press and striving to strengthen an undemocratic state communications platform. Once again, the structural tensions between political and media power were made manifest in all their troubling color.

In short, the purpose of this conclusion is to show that there are no illusions as to the risk of media conglomerates rising up against society and the State of Law. It is a real risk, but one that certainly does not loom dark on the horizon of Brazilian democracy. As such, the president of the Senate's rant against an "enemy media" sounds like political Dadaism, besides suffering from a semantic error. Sarney uses the term "media" to designate the press, which, more than being a semantic problem, is an act of political irresponsibility<sup>11</sup>.

The institution of the press only exists when freedom of expression is unfettered. Its corps is spread across newspapers and magazines, TV networks and radio stations, blogs and public debate; its corps resides, therefore, in this plurality of media. Yet its greatest dimension is its freedom. This is a non-corporeal dimension, indispensable to the safekeeping of democratic rights and to the proper functioning of democracy. That is why the press, as an institution, is more precious than the sum of its vehicles. So when the authorities attack one vehicle, they are attacking the institution as a whole, and thus undermining the democratic system. Such aggressions are a blow against the fundamental rights of each citizen.

Some say "the press is an opposition party". Besides being pure rubbish, it is also a form of demagogic rhetoric. Of course, a banal verification would be enough to ascertain the editorial positions of the main Brazilian broadsheets on such issues as privatization, foreign policy or abortion. One could even discern that there are certain points of overlap on these questions among some of the nation's major newspapers. But to say that "the press in Brazil defends this or that position" or that "the media exercises opposition to the government" is to take a considerable leap – sometimes laced with the mal-intent of suggesting that the press should be curbed because certain vehicles, the argument goes, act as defenders of partisan causes.

This is pure sophism, if not libel, and for many reasons, chief amongst them being that the press, as an institution, includes all the newspapers, large and small, from the most influential to the most risible, as well as every single blog, TV network or radio station. To apply such generalized categories as "the media" or "big media" always harbors a veiled threat to liberty. Tread softly.

Moreover, by publishing reports on suspected irregularities in public administration, newspapers are not rising against the institutions. In fact, it is quite the opposite: through responsible, well-researched journalism covering administrative irregularities on the part of the State, newspapers are actually *defending* the health and integrity of the institutions. As such, after everything we've seen emerge concerning the misdeeds of the Senate, it is neither logical nor well-intentioned to declare that the press is an enemy of the representative institutions. Throughout this whole sorry affair, the press has been the best –

when not the only – friend of those institutions, especially *O Estado de S. Paulo*, rewarded for its troubles with two whole months’ worth of censorship, and counting. The irony is more than perverse. Not one of the *Estadão*’s reports on the Senate shenanigans delivered anything but the truth. Not a single piece of news was untrue. And what did the newspaper get in return for this brilliant sequence of play? A gagging order. To listen to the politicians, it is as if, having proved an “enemy” of the institutions, it got what it deserved. Nothing more just, a certain senator would say. That same senator might well add that the *O Estadão* is to blame for the whole thing. The press, according to the men of power, is always to blame.

## Notes

- 1 Dialogue transcribed in Schubsky et al. (2007, p. 219-26)
- 2 I developed part of this analysis in Bucci (2009a)
- 3 See *Globo Online*, March 12, 2009, or *Folha de S. Paulo*, March 13, in the article Sarney usa polícia do Senado para vigiar casa (Sarney uses Senate police to guard his own home).
- 4 “The backlash against the parliament is so great that it is perhaps time to hold a referendum to see whether or not the people want the parliament to remain open”, declared the senator for the PDT.
- 5 I commented on these declarations in an article for the site *Observatório da Imprensa*, under the title Pobres deles, tão perseguidos (Poor them, so persecuted), posted on April 14, 2009 (available online at <http://www.observatoriodaimpresa.com.br/artigos.asp?cod=533JDB0001>).
- 6 The retrospective published below is a transcription, with minor revisions, of that published by the *Estadão* on September 29, 2009.
- 7 I also participated in this debate, core excerpts of which were published in the *Estadão* on August 8, 2009, under the title Nenhum senador foi punido. Só o jornal (Not one senator was punished. Just a newspaper).
- 8 According to the BBC, “This Monday (28/09/09), Honduran armed forces occupied the premises of Radio Globo and the TV network Canal 36, in the capital Tegucigalpa, and forced the two companies to cease transmissions”.
- 9 I discussed this in the article “Os inimigos” (The enemies) (Bucci, 2009b)
- 10 On “media coups”, see the documentary *The Revolution will not be Televised*, by Kim Bartley and Donnacha O’Brien, Ireland, 2003. The directors are independent documentary filmmakers who were in the government palace in Caracas on April 11, 2002, and ended up filming the entire coup, down to the return of Hugo Chavez. The film is available online at: <http://video.google.es/videoplay?docid=5832390545689805144#docid=-3378761249364089950>
- 11 As I observed in an (above-cited) article for *O Estadão*, Sarney’s phrase contains a semantic error. What does he mean by the neologism “media”? Sarney seems to be using “media” as a synonym for the press. “Media” and “Press” are quite distinct. “Media” is a term derived from the Latin *media*, plural of *medium*, meaning ‘means’ or ‘channel’. As languages evolve by errors of usage, this term, which is used interchangeably with the press, really designates all means of communication and the contents expressed therein, i.e., everything from billboards to cinema screens, variety shows to speaker trucks, daily broadsheets to car ads

on the back of an airplane seat. Therein lies the semantic error: to say that this immensity of means and vehicles has all turned against the National Congress is total nonsense. It makes no sense at all.

### **Bibliographic References**

- BRITO, J. Censura prévia é inadmissível. *Folha de S. Paulo*, São Paulo, 27 ago. 2009. p.A3.
- BUCCI, E. A imprensa e a fala do Poder. *O Estado de S. Paulo*, São Paulo, 12 fev. 2009a. p.A2.
- BUCCI, E. Os inimigos. *O Estado de S. Paulo*, São Paulo, 24 set. de 2009b. p.A2.
- HABERMAS, J. *Mudança estrutural da esfera pública*. Rio de Janeiro: Tempo Brasileiro, 1984.
- LAMBETH, E. B. *Committed journalism - An ethic for the Profession*. 2.ed. s. l.: Indiana University Press. 1992.
- MAMOU, Y. *A culpa é da imprensa*. São Paulo: Marco Zero, 1992.
- PULITZER, J. *The School of Journalism*. Seattle: Inkling Books, 2006.
- SCHUBSKY, C. et al. (Org.) *Estado de Direito Já! - Os trinta anos da Carta aos Brasileiros*. São Paulo: Lettera.doc, 2007.
- TALESE, G. *O Reino e o poder*. São Paulo: Cia. das Letras, 2000.
- WEBER, M. *Ciência e política, duas vocações*. São Paulo: Cultrix, 2006.

*Eugênio Bucci* is a doctoral lecturer at the School of Communication and Arts at the University of São Paulo (USP) and a researcher for the Institute of Advanced Studies at USP. His published books include *Sobre ética e imprensa* (Cia. das Letras, 2000), *Em Brasília, 19 horas* (Record, 2008) and *A imprensa e o dever da liberdade* (Contexto, 2009). He writes a fortnightly column for *O Estado de S. Paulo* and the site Observatório da Imprensa. @ - eugeniobucci@uol.com.br

Received on 10.5.2009 and accepted on 10.9.2009.

Translated by Anthony Doyle. The original in Portuguese is available at [http://www.scielo.br/scielo.php?script=sci\\_issuetoc&pid=0103-401420090003&lng=pt&nrm=iso](http://www.scielo.br/scielo.php?script=sci_issuetoc&pid=0103-401420090003&lng=pt&nrm=iso).

1 See link [http://www.ne.jp/asahi/moriyuki/abukuma/weber/lecture/politics\\_vocation.html](http://www.ne.jp/asahi/moriyuki/abukuma/weber/lecture/politics_vocation.html)