THE EXPRESSION OF THOUGHT BETWEEN POSITIVE FREEDOM AND NEGATIVE FREEDOM: CHALLENGES IMPOSED BY "DIGITAL POPULISM"[1]

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Abstract: This article aims to analyze freedom of expression considering the concepts of positive freedom and negative freedom, considering the context of intense information flow to which individuals are subjected. As will be shown, freedom of expression, although a fundamental right, is subject to instruments of direct and indirect influence that can undermine it. A literature review was conducted of the theoretical frameworks. The theoretical frameworks used to understand the problem are Isaiah Berlin's concepts of freedom, Stuart Mill's utilitarianism regarding freedom of expression and the new forms of 21st-century digital populism, based on the reflections of Giuliano da Empoli. The phenomenon of intensified information flow will also be analyzed within a context where expressed public opinion can be subject to both manipulation and censorship, drawing on Bonavides. The intended contribution is to raise questions (without necessarily providing definitive answers) that the democratic rule of law faces in the 21st century.

Keywords: freedom of expression; positive liberty; negative liberty; utilitarianism; public opinion.

INTRODUCTION

Presenting the legal framework of the Fundamental Right to freedom of expression seems vague, especially when a paradox arises: *expressing a thought that denies the democratic principle, which, in turn, is the condition of possibility for freedom of thought itself*. This assertion should not sound absurd, considering that even at the "birth" of democracy (*polis*), thinkers such as Plato presented compelling arguments against the city's democratic order. However, the political reality following the advent of mass communication—especially television and social media—has created an environment in which opinion is freely (and anonymously) expressed, even if it threatens democracy itself. But, unlike Plato, the risk does not stem from rational arguments subjected to public scrutiny and dialectic, but from unilateral statements that gain traction by reinforcing beliefs (*doxa*) without logical-argumentative rationality—as analyzed by

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Empoli[2].

In this sense, it is crucial to understand freedom of expression in light of the different conceptions of freedom—*positive* and *negative*—and the condition of possibility for the existence of freedom (which is democracy). Since the phenomenon of human freedom (of profession, of association, of free enterprise, of access to justice) is determinative in the democratic state, it is necessary to understand it under Berlin's theoretical canons before analyzing its manifestation in the aspect of expression. This is because the author offers an analytical framework that, in some way, seems to satisfactorily consolidate—at least for this article—the notion of freedom. Negative freedom posits that a free person is one who acts without constraints or interference in their individual actions or speech. For positive freedom, being free means having the capacity to enjoy freedom autonomously, as master of oneself, without being driven by constraints. In the positive sense, freedom is acquired after a process of formation that provides the individual with the tools to act without being determined, that is, autonomously. Thus, freedom of expression stands at this threshold: as negative freedom, it must be able to manifest itself without constraints; as positive freedom, it must rely on informed opinions and rational listeners trained to be capable of exercising such freedom. Although both notions make sense, reality is what confuses them.

Well then, the objective of this article is to understand how freedom of expression—in both a positive and negative sense—is shaped within the Democratic Rule of Law, particularly in Brazil, but without limiting itself solely to legal-dogmatic elements. If freedom of expression is to be exercised without external constraints and by self-determined individuals, the questions raised by the concept of "public opinion" should be easily answered, which is not the case. Mill, through a practical example, sets an interesting limit on the freedom of expression of thought: the opinion that private property is theft and that wheat merchants cause the poor to starve cannot be subject to restriction (negative aspect); nevertheless, this statement is not protected if a mob of arsonists is demonstrating at the door of a wheat merchant's house (positive aspect). However, the 20th and 21st centuries have obscured this discussion: when is it possible to know that the recipient of an opinion has arsonist potential? This article does not aim to answer this question. Nevertheless, its elaboration is already proving crucial, especially when the recipients of opinions are anonymous (as early as the 20th century, with radio and television), as well as those who express judgments (with social media).

Thus, first, the issue of freedom and the ways in which it manifests itself positively and negatively will be addressed. This is because situating a concept that is the subject of intense political and legal debate is crucial

[2] Giuliano da Empoli, Os Engenheiros do Caos: Como as Fake News, as Teorias da Conspiração e os Algoritmos Estão Sendo Utilizados para Disseminar Ódio, Medo e Influenciar Eleições (Arnaldo Bloch trans., Vestígio 2019).

to understanding what is meant when the term "freedom" is used. Next, drawing on the thought of Stuart Mill, reflections will be presented on freedom of expression and the contexts in which this freedom, by interfering with life in society, may be subject to state restriction. Finally, some still-open reflections will be offered on certain aporias that Mill could not have foreseen, but which mark the moments of democratic recession in the 21st century, particularly reflections on "digital populism." This reflection is necessary because, until the advent of social media and its algorithms, it was impossible to imagine that freedom of expression could exist in the absence of debate—not only due to "digital bubbles," but also because of the way "engagement" prevents rational responses to irrational "ranting"—and even puts democracy itself at risk. Although this text is being written in the midst of the problem and without foreseeing a solution, it does not seem implausible to imagine that the democratic response to the expression of anti-democratic thought creates a horizon of exception.

I. FREEDOM IN PERSPECTIVE

The question of freedom is a recurring theme in political, economic, and legal debate, not only in the modern era but in the Western world as a whole. One might consider, for example, the questions raised by Greek tragedies, in which the hero is placed in a dubious situation regarding freedom: either his fate is already predetermined, or, if he acts in accordance with what is expected of him, he will meet a tragic end. One might also consider the Platonic debate between Socrates and Callicles (Gorgias) on human nature, the tendency toward excess, and, consequently, the "free" natural domination of the strong over the weak. One might also consider the Cynics, whose conception of freedom was conditioned by the individual's ability to free themselves from conventions. Or the contractualists, for whom the social contract could mean renouncing part of one's freedom (Hobbes) or perpetuating it socially (Rousseau[3]). Nevertheless, there is some consensus on the

[3] Right in the opening lines of his Contrato Social, Rousseau sets forth his position regarding the legitimate administration of society in a way that keeps individuals free: "I wish to know whether there can exist in the civil order a rule of legitimate and secure administration that considers men as they are and laws as they ought to be. In this inquiry, I shall always strive to combine what the law permits with what interest prescribes, so that justice and utility may never be separated." A little further on, his position becomes even clearer: "Man is born free, yet everywhere he is in chains. He considers himself the master of others, yet he is more of a slave than they are. [...] 'When a people is compelled to obey, it does well; but if it shakes off the yoke as soon as it can, it does better: for, in regaining its freedom, it exercises the very right that was taken from it, and if it is just to take it back, it is unjust to take it away.' But social order is a sacred right that serves as the foundation for all others. However, this right did not come from nature; it is based on conventions. The question is: what are these conventions?" (p. 18). See Jean-Jacques Rousseau, O Contrato Social 16 (Mário Franco de Sousa trans., Editorial Proença 2010).

definition of freedom when it is absent: to coerce someone is to deprive them of freedom.

However, the meaning of freedom that derives from this is so open-ended that few interpretations are immune to criticism. With this in mind—not to conclude, but to contextualize this debate—Isaiah Berlin classifies the concepts, ideals, and *practices* of freedom into two types: positive liberty and negative liberty. According to him, all historical and political debates have revolved around these two perspectives. A theory structured around negative freedom seeks to identify the sphere of non-intervention so that the individual or group can develop their potential; a theory grounded in positive freedom aims to identify and neutralize external forms of control capable of compelling someone to do or be something.

Negative freedom is more easily conceivable, especially because it is the notion of freedom that underpins most classical liberal economic doctrines and, to a certain point, contemporary[4]. According to the notion of negative freedom, one is free when no individual or third party, including the State, interferes with the agent's actions or activities. This concept has political effects, since human beings are free when they can act without being obstructed by society; economic effects, since human beings must be free to undertake and compete, which is only possible with non-interventionism; and legal effects, since according to the principle of legality, the foundation of the rule of law, one is free to do everything that the law does not prohibit. Thus, the ultimate goal of negative theories is to find an "area of non-interference," for the greater the non-interference, the greater the freedom[5].

Although the *telos* of non-interference is consensual, so too is the fact that the "area of non-interference" cannot be unlimited, especially since there is interference with the freedom of others—even if there is no consensus on the "extent" of this area. If no such limitation existed,

[4] The caveat regarding contemporary liberal economic theories lies in the fact that there is a vast body of literature—both critical and orthodox—that points to the need to create an environment in which this freedom can be exercised. In other words, it is not enough for constraints to cease for economic freedom to exist. Other measures are necessary, such as legislative reforms (relaxing certain regulations and tightening others), security measures, and the imposition of forms of subjectivation. Economic freedom, before leading society to well-being, must be produced.

[5] Here too, the definition of negative freedom stems from its opposite, which is coercion. When one thinks of economic freedom, its opposite would translate to "economic slavery." The use of the term "freedom" depends on the social or economic theory that employs it, but the criterion of oppression is always the determining factor. Here, Hobbesian doctrine is clearly evident. In a "state of nature," where everyone can do anything at all times, human beings live in fear, for they are in a constant state of war (war of all against all). The only way to avoid this state is through a social contract in which everyone renounces a portion of their freedom, so that interference in the spheres of others' freedom is regulated by a sovereign authority. See Thomas Hobbes, Leviatã ou Matéria, Forma e Poder de um Estado Eclesiástico e Civil (João Paulo Monteiro & Maria Beatriz Nizza da Silva trans., [publisher] [year]).

individuals would interfere with one another's freedom, which would render communal life unviable. "Natural" freedom, in the sense of doing whatever one wants at any time, would lead to social chaos[6]. Basic human needs would not be met. The freedom of some would be suppressed by that of others. This is because human purposes do not automatically harmonize. Although there are "universally" accepted values such as justice, happiness, security, and equality, achieving them would be impossible in a community without any legal-state limitations. In this sense, life in society is a condition for human fulfillment and must be governed by certain limitations, but always in such a way that a sphere remains inviolable, lest freedom be lost to external coercion.

Thus, two factors must be limited so that individuals can pursue their ends, remaining good and developing their natural faculties: intervention state intervention and the intervention of third parties. To define the "area of non-interference," it is crucial to establish a clear boundary between the public (where the individual is subject to state limitations, such as not being able to go out in public without clothes, for example; and intersubjective limitations, such as moral duties whose consequence is social ostracism) and the private. But this is precisely where the problem—and the criticisms—lie, since human beings are interdependent and no human activity is completely private insofar as it never obstructs the lives of others in any way—unless one is speaking of a life outside a human community. In other words, life in society is the prerequisite for speaking of freedom. Human beings are only human in life in society. Thus, the very process of becoming human involves intersubjectivity, such as interference in a child's subjectivity[7], for example. Furthermore, the freedom of some depends on the repression of others.

In theories of positive freedom, the main axis of free action is autonomy, that is, the individual's capacity to be sovereign over themselves, to take ownership of their own course of action, and to act deliberately and consciously without being determined by others. The individual must act in such a way that their life and decisions belong solely to them, not to external forces. Here, the agent must be self-

[6] In the dialogue "Gorgias," for example, this debate regarding a supposed "natural tendency toward excess" is defended by Callicles and is the subject of strong Platonic-Socratic opposition. In this regard, see Ricardo Manoel de Oliveira Morais & Adriana Campos, Retórica e Parresía no Contexto Democrático, Revista de Estudos Constitucionais, Hermenêutica e Teoria do Direito 318 (2016), https://revistas.unisinos.br/index.php/RECHTD/article/view/rechtd.2016.83.05/5732..

[7] On the processes of subject formation and subjectivation, see Ricardo Manoel de Oliveira Morais, Normalização e Processos de Constituição da Verdade, 7 Revista de Estudos Constitucionais, Hermenêutica e Teoria do Direito 197 (2015), https://revistas.unisinos.br/index.php/RECHTD/article/view/rechtd.2015.72.09/4726. and Michel Foucault, Dits et Écrits vols. 1-4 (Daniel Defert & François Ewald eds., Gallimard 1994); Michel Foucault, A Verdade e as Formas Jurídicas (Roberto C. M. Machado & E. J. Morais trans., 3rd ed., NAU Editora 2002); Michel Foucault, A Coragem da Verdade: O Governo de Si e dos Outros II: Curso no Collège de France (1983-1984) (E. Brandão trans., WMF Martins Fontes 2011).

governing, not the object of actions or an external environment. The agent must be driven by their own reasons and motivations, the purposes of which have been rationally attained. In this sense, freedom means being able to assert oneself and carry out actions without being prevented from choosing what one wishes to do[8]. The metaphor of acquired self-mastery applies here above all. Although there are criticisms regarding the possibility of justifying coercion against individuals so that they may "rise" to the status of free agents—that is, to "educate themselves in order to liberate themselves"—one cannot erase from the human dimension itself elements such as experience, education (formal or informal), and, ultimately, the process of subjectivation to which every individual is subject.

As noted, there is a risk of using a positive conception of freedom to legitimize the coercion of some so that they conform to a conception of freedom that is contingent. That is, it involves coercing someone who, out of ignorance, is unable to coerce themselves, but with the aim of assisting them in the process of elevation. Despite this, there is also in this conception of freedom a consensus that human beings are rational, but may be contingently prevented from realizing themselves due to circumstantial impediments (lack of access to education, quality information, or rights). If the point of convergence of negative freedom is the "area of non-interference," theorists of positive freedom seem to establish the element of self-realization as a consensus. Freedom is, in short, the capacity to obey a law that the individual has established for themselves, this being a consequence of human nature's tendency toward autonomy.

Positive freedom depends on two conditions: the possibility of acquiring the wisdom necessary for the proper exercise of freedom, and the ability not to be governed by "external laws" (heteronomy). One of the most celebrated thinkers to address the first condition was Plato. This freedom is still reflected today in the premises of the democratic state when discussing "human rights education" as something to be guaranteed to all; that is, for citizens to be able to fully enjoy their rights, they must be educated. According to Plato[9], freedom depends on the human being's capacity to ensure that reason overcomes desires and passions, which can only be achieved through a process of formation (*paideia*) toward virtue, as he presents in *A República*[10]. Such formation involves constant self-

[8] On the human categories of will and reason, see Henrique Cláudio de Lima Vaz, Escritos de Filosofia V: Introdução à Ética Filosófica 2 (Edições Loyola 2000).. On the notion of "category," see Aristóteles, Órganon (Edson Bini trans., EDIPRO 2005)., chapter "Categories."

[9] Platão, A República (J. Lot Vieira ed., EDIPRO 2000).

[10] Also in Apologia (29d–30b), Platão, Diálogos: Apologia, Critón, Eutifrón, Ion, Cármides, Hipias Menor, Hipias Mayor, Laques, Protágoras 29d-30b (Emilio Lledó Íñigo intro., J. Calonge Ruiz trans., Editorial Gredos 1985). presents, with great eloquence and richness of detail, the arguments and premises of the Socratic concern with education through the elenchos.

examination and the questioning (*elenchos*) of purported knowledge, aiming to attain knowledge, virtue, truth, and justice. The importance of the dialectical method lies in understanding that a life founded on *doxa* (appearances and opinions) is not a free life. Therefore, human beings must be educated, taught, and trained to review their convictions in order to exercise their freedom[11]. Life in *doxa* stems from the individual's inability to free themselves from what is given without such "knowledge" being subjected to rational reexamination. As for the capacity not to be determined by external laws, Kant's reflections take on a central role. For him, the free (autonomous) subject is one who transcends the realm of causality. Classified as a deontologist[12], action cannot be not conditioned by either the motives or the consequences of the agent's acts, the moral axis being duty in itself. The self-determined individual is one who, using reason, understands the categorical imperative[13].

Still on the subject of positive freedom, fulfillment[14] —or, according to the Greeks, *eudaimonia* – and, consequently, true freedom is attainable through the use of critical reason, understanding what is necessary and what is contingent. Ethical-political reality is governed by principles that must be understood rationally—whether in an Enlightenment program or in a Marxist[15] understanding of history—and everything that leads the

[11] This interpretation is presented by Hannah Arendt, A Dignidade da Política: Ensaios e Conferências 97 (Antônio Abranches ed., Helena Martins trans., Relume-Dumará 1993). in her essay "Filosofia e Política." The importance of ensuring that the "truth" of the other is manifested and confronted lies precisely in making a truer city possible. This is because if apparent truths are confronted and accepted as untruths by citizens, the city could gain in virtue and justice. As the author explains in A condição humana, Hannah Arendt, A Condição Humana (Roberto Raposo trans., Adriano Correia rev. & intro., Forense Universitária 2010)., it is in the public sphere that human beings, among equals and in freedom, find their sphere of fulfillment. One can classify Arendt, not without reservations, as a theorist of positive freedom.

[12] In modernity, beginning with Hobbes, the question of action in society gains relevance. Reflection on action affirms the autonomous character of ethics as a field of knowledge whose norms must be justified before human reason. Kant was the thinker who offered a formulation of ethics as an autonomous reflection. For that morality exists only if the act is performed out of duty, out of respect for a self-imposed law. A moral act exists when one acts in accordance with a rational duty (and not in accordance with consequences or motivations). Moral duty exists autonomously.

[13] In Kantian philosophy, the categorical imperative is a representation of an objective principle that compels the will by the command of reason. The norm of reason is an order, since the human will does not have the faculty to choose what is necessary, but rather to choose duty.

[14] Although *eudaimonia* can be translated as "happiness," it should be clarified that in modernity "happy" is sometimes confused with "joyful." This expression, in turn, creates a notion of an ephemeral and fleeting state of positive agitation. *Eudaimonia*, in the Aristotelian sense, has a dimension of permanence, which is why the term "fulfillment" seems more appropriate, although this translation is subject to philological debate.

[15] Berlin characterizes Marxism as a positive doctrine of freedom, which seems to be a plausible classification. Put quite simply, one of the central elements of Marx's thought is the need to understand reality in order to bring about its transformation. It is

individual to act contrary to this reality is irrational. Thus, those governed by myths, passions, impulses, prejudices, fears, neuroses, and imposed economic forces are deprived of self-governance. Only knowledge can lead to freedom and eliminate heteronomy, so that a rational understanding of reality is a condition for escaping the contingent slavery of a given circumstance. In short, human beings are slaves to despots, institutions, beliefs, desires, impulses, prejudices, and passions that can only be overcome by knowledge. One is free only when life is determined by a self-imposed norm[16].

Although this classification, like any classification, may raise criticisms and present situations that do not fit into any of them or are related to theories that fit into both, proceeding from this theoretical framework established by the author shows sufficient for the purpose of this essay, which is to situate the issue of "freedom of expression."

II. UTILITARIANISM AND FREEDOM OF EXPRESSION

Utilitarianism is an ethical and political doctrine that is extremely widespread in the modern era. Although there are different forms and proponents of utilitarianism[17], it can be said that the general idea of this school consists of measuring the quality of an action, a right, or a process based on the benefits it produces. The moral yardstick for any public or private guarantee or action is how useful and effective it can be for the general welfare. By way of example, it can be said that the entire discussion on economic interventionism stems from a utilitarian logic: there are those who argue that non-intervention by the state will bring about more lasting social benefits, even if intervention seems preferable in immediate situations of economic crisis; on the other hand, there are

worth noting that his principal work, *Capital*, is an attempt to understand capitalism and the elements that determine it, not a call for a post-revolutionary future.

[16] Since this is the synthesis of the positive doctrine of liberation through reason, one can conclude that servitude lies in nationalist, communist, authoritarian, and totalitarian beliefs. The simplest path to achieving *eudaimonia* would be the voluntary repression of irrationality by each individual. However, since individuals are almost always incapable of doing so, there is a duty to educate them. If a person fails to discipline themselves, someone must impose discipline upon them.

[17] In addition to Mill, Jeremy Bentham (1748–1832) and Henry Sidgwick (1838–1900) are prominent theorists of utilitarianism. Bentham establishes a calculation regarding the production of the greatest amount of good, identifying this good with pleasure—and can therefore be classified as a modern hedonist. A good action or measure is one that causes pleasure, and a bad action or measure is one that causes pain. Pleasures are heterogeneous, though measurable, with happiness being the element resulting from their sum. Measurable utility can be assessed through different aspects—intensity, duration, monetization, proximity—but is always contrasted with pain. Sigdwick, in addition to discussing the premises presented, introduces a new concept: *average happiness*. According to him, the criterion for measuring an action involves, in addition to the degree of happiness, the number of participants in that happiness, such that what is useful is what increases the average happiness of an entire population—or as much of it as possible—to the greatest extent possible.

those who argue that state intervention in the economy—whether in a targeted and regulatory manner or in a generalized way—prevents socioeconomic distortions and the formation of monopolies, and is even necessary in crisis situations. Far from resolving a debate that is far more complex than this overview, both theses are grounded in utilitarian premises, since both non-interventionism and interventionism argue that their logic will yield greater social benefits. There is a kind of consequentialism here, as no action, right, institution, or guarantee is inherently good or bad. Moral value stems from the consequences that a given measure will bring about.

This raises the issue of freedom of expression, to which the entire analytical framework of positive and negative aspects outlined above applies. Nevertheless, a digression is necessary. Freedom of expression—which at the individual level translates into "free expression of thought" and at the collective or social level is classified as "freedom of the press"—is what constitutional doctrine has agreed to designate as a First-Dimension Fundamental Right; that is, it is a guarantee that emerged with the consolidation of the Liberal Rule of Law and, consequently, tends toward the negative aspect of freedom. In this sense, the prohibition of censorship—even of a mistaken opinion—is imperative. But what will be discussed is not so much the positive or negative aspect that precedes freedom of expression, but rather the one that follows it. Once an opinion is expressed, should it be allowed to circulate freely, or only when its senders and recipients are capable of self-determination?

If one starts from a negative premise, the principle is that any constraint on the free circulation of ideas is harmful. And a range of arguments can be listed (and will be throughout this section). If one starts from a positive premise, there are certain conditions under which an opinion may circulate, whether imposed on the messengers of these ideas—such as the requirement for specific professional training, screening by a fact-checking system, the natural (economic or political) filter exercised by major media outlets—whether imposed on the recipients—such as the discernment to distinguish falsehood from truth, access to the channels through which ideas circulate, and the ability not to be easily influenced.

It is important to clarify that Stuart Mill is classified by Berlin as a theorist of negative liberty. And, it must be acknowledged, there is no shortage of elements in his work to support this thesis. Madeira[18], in the preface to *Sobre a Liberdade* (*On Liberty*), explains that, for Mill, any interference in the individual sphere is presumed to be harmful. The burden of proving that the interference is legitimate lies with the intervening party. This maxim can be summarized as follows: "[...] it is legitimate to interfere in matters that concern only the individual, without

[18] Pedro Madeira, A Filosofia Política de Mill, in John Stuart Mill, Sobre a Liberdade (Pedro Madeira trans., Nova Fronteira 2011).

their express consent, only for reasons of self-protection—this being the best-known formulation of what has become known as 'the harm principle'"[19-20]. This principle seeks to establish parameters for legitimate or illegitimate interference. For matters that concern only the individual himself, such as feelings, opinions, tastes, life goals, and voluntary, non-illegal associations, intervention is harmful. Interference would occur only in justified situations. The partial disagreement that arises here regarding Berlin's classification (which positions Mill as a thinker of negative liberty) does not lie precisely in the caveats that the utilitarian imposes on the principle of non-intervention[21], but in the reflections following the chapter on freedom of expression.

This is because in the final part of the essay, when Mill discusses the applications of the principles of freedom he has outlined, he sets forth certain guidelines so that freedom may be exercised fully. In other words, for the utilitarian, in order for individuals to exercise their freedom consciously and in its entirety, certain interventions in the individual sphere must occur, especially during the formative years. One example is the obligation of parents to bear the cost of educating the generation that will succeed them—since it is in this generation that the future of freedom resides or perishes—or the positive pedagogical consequence of freedom that arises from non-intervention in the expression of ideas, even if they are mistaken. And Mill himself does not resolve this contradiction: on the one hand, he states "[...] that the State has a duty to finance the education

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[20] Pedro Madeira, A Filosofia Política de Mill, in John Stuart Mill, Sobre a Liberdade 10 (Pedro Madeira trans., Nova Fronteira 2011).

[21] "[...] accepting the harm principle seems to preclude the existence of any form of social assistance or redistributive taxation. [...] This apparent contradiction in Mill's thought may serve to explain why people belonging to very different political spectra claim to be heirs to Mill. Many of those who argue that the functions of the state should be reduced as much as possible, with its role limited to ensuring the safety of citizens and the enforcement of contracts, look to the principle of harm and believe they see in Mill an illustrious supporter of their position; and many of those who argue that the state should play a more active role and that it should fund education and healthcare for the poorest look to what Mill says about education and, forgetting the harm principle, also believe they see in Mill an illustrious supporter of their position." Pedro Madeira, A Filosofia Política de Mill, in John Stuart Mill, Sobre a Liberdade 12 (Pedro Madeira trans., Nova Fronteira 2011).

of poor students. However, it seems evident that, according to the harm principle, taxing the rich to fund the education of the poor would constitute an illegitimate interference in the lives of the rich"[22-23]. Since the objective of this essay is not to classify Mill's liberalism as positive or negative, it is relevant to deepen the debate on freedom of expression in light of his reflections, relating them to current examples and the legal and political frameworks experienced throughout the 20th and 21st centuries.

Mill is an advocate of the right to freedom of opinion as well as the right to express it. According to him, agreement or disagreement with an expressed opinion is irrelevant, since it falls within the "area of non-interference." As the author states, these are matters that concern only the individual himself. If a third party disagrees with an opinion because it is incorrect or contradicts his beliefs, it is wrong to prevent its expression, for a simple judgment does not interfere in the sphere of others. In general, the utilitarian argument points out that a freely expressed opinion can have three aspects, none of which can be censored: it may be entirely true, in which case its prohibition would be a harm, since it would prevent contact with new truths and improvement through new dimensions and arguments; be partially true (or partially false), opening itself to public debate and, through this, to dialectic, correcting the false part precisely through public scrutiny; be entirely false.

In the case of an opinion that is entirely—and even manifestly—false, one might infer that its suppression would be useful and even desirable in a "mature" society. However, freedom of expression, even of a false opinion, possesses different layers and facets that deserve attention. The mere hypothesis of banning an argument or an opinion disregards the fact that "we can never be certain that the opinion we seek to silence is false; and even if we were, silencing it would still be a wrong"[24].

If it is entirely false, it is still useful for people to know it, because understanding the positions of our opponents is essential to better understanding our own position, and because an opinion that is not criticized comes to be accepted uncritically and becomes a dead dogma, even if true. And, regardless of whether the opinion in question is true or false, preventing the dissemination of a doctrine is to assume infallibility—it is to assume that human beings are never wrong, which is clearly false. There is a subtlety in Mill's position that is important to grasp: when he criticizes those who seem to assume they are infallible, Mill is not starting from the principle that all our beliefs may be false

[22] This is because, as we have seen, all theorists of negative liberty admit exceptions to the maxim of non-intervention, since the unlimited freedom of some would render the freedom of others unfeasible.

[23] Pedro Madeira, A Filosofia Política de Mill, in John Stuart Mill, Sobre a Liberdade 12 (Pedro Madeira trans., Nova Fronteira 2011).

[24] John Stuart Mill, Sobre a Liberdade 30-31 (Pedro Madeira trans., Nova Fronteira 2011).

collectively; he is merely starting from the weaker principle that, as far as we know, any one of our beliefs, taken individually, may be false[25].

Since one of the roles of freedom of the press (understood as freedom of expression at the collective level) is to ensure that a government remains responsive, it can be argued that the opinion an authority attempts to suppress is presumed to be true. More than that, the attempt to silence an opinion presupposes its infallibility, since preventing a discussion is based on the principle that one is right and the other wrong, without conceiving that the censor's certainty might be incorrect. In this sense, it is socially useful for an opinion to be evaluated publicly regardless of its truth or falsity, in a clash of arguments similar to Socratic *cross-examination*. And even if an opinion is correct, subjecting it to constant scrutiny prevents it from falling into dogmatism, since the reasons for its certainty must be constantly reaffirmed, so that its defenders will not forget them—which can happen, even with an absolutely correct opinion, if it comes to be adopted as an unquestionable dogma[26].

A legitimate restriction on freedom of expression would be based on specific situations, grounded in the principle of harm. Furthermore, the burden of justifying such a restriction would fall on the party imposing it. Nevertheless, the restriction would be justified when an opinion is likely to lead to an illegitimate incitement to violence. According to the example already mentioned, one cannot restrict the expression of the opinion that private property is theft, concluding that it is the wheat merchants who cause the poor to go hungry. Although this is an opinion far from being considered consensual, to say the least, arguments of this kind should be allowed to circulate freely, whether in private conversations or in the press. Conversely, using inflammatory slogans when a crowd of people is demonstrating in front of a wheat merchant's house would constitute an

[25] Pedro Madeira, A Filosofia Política de Mill, in John Stuart Mill, Sobre a Liberdade 13-14 (Pedro Madeira trans., Nova Fronteira 2011).

[26] John Stuart Mill, Sobre a Liberdade 60 (Pedro Madeira trans., Nova Fronteira 2011). points out that it is important to keep intellectual powers fully active, which is why, even when faced with a custom or generational habit that is recognized as positive (or an argument that is consensually accepted as true), it must still be subjected to critical reasoning: "[...] even though customs are good as customs, and suitable for that person, conforming to custom, merely as custom, does not educate them or develop in them any of the qualities that constitute the natural endowment typical of a human being. The human faculties of perception, judgment, discernment, mental activity, and even moral preference, are used only when a choice is made. One who does something because it is the custom makes no choice at all. One gains no experience in discerning what is best. Intellectual and moral powers, like muscular ones, develop only when they are used. Doing something merely because others do it exercises the faculties no more than believing something merely because others believe it. If the grounds for an opinion are not convincing to a person's own reason, then adopting that opinion cannot strengthen their reason, and will likely even weaken it: and if the motives for performing an act are not in harmony with their own feelings and character (in matters that do not concern the feelings or rights of others), this only renders one's feelings and character inert and dull, rather than active and energetic."

illegitimate incitement to violence. Consequently, considering the harm principle, it would be legitimate to restrict the exercise of freedom of expression in cases such as this.

Mill defends the specific restriction on freedom of expression using an example; that is, it is an inductive argument. One starts from a particular case from which a universal rule must be derived, namely that freedom of expression, if it can incite illegitimate violence, must be curtailed. In this sense, one can imagine a discussion about democracy, particularly its formulation as a democratic state governed by the rule of law. It would be legitimate, according to Mill's maxim, for ideas contrary to the democratic form of the state to circulate. Arguments pointing out the inconsistencies of this model—as Plato did in his dialogues on the *polis*—concluding that it should be discarded, theses pointing to the the superiority of an "elite" government—such as Schumpeter's theory[27]—or even ideas maintaining that power should be exercised by technocrats selected through a meritocratic system, should be allowed to circulate. When a crowd of individuals stood at the gates of the main symbols of democracy with the aim of destroying them, it would be legitimate to prevent slogans against democracy from being uttered.

Madeira[28], in the aforementioned introductory essay to Mill's work, presents other situations that would challenge the serenity of the utilitarian theoretical framework, particularly those that lie on the threshold between a clear line separating potentially violent free speech from that which is, in fact, violent. Leaving aside, for now, the question of democracy *versus* freedom of expression—examined in the next section—one might raise issues such as marches organized by racial supremacist, homophobic, or anti-government movements. It is evident that a racist, homophobic, or illegal act constitutes a crime that warrants state punishment. This is not, strictly speaking, the subject of a debate on the "non-interference zone." Nevertheless, there is a substantial difference between being something and acting in accordance with what one is. For example, an individual

[27] As noted by Bernard Manin, The Principles of Representative Government (Cambridge University Press 1997). and Robert A. Dahl, A Democracia e Seus Críticos (P. F. Ribeiro trans., WMF Martins Fontes 2012)., some 20th-century authors presented "elite democratic" theories. The most influential was Joseph A. Schumpeter, Capitalismo, Socialismo e Democracia (R. Jungmann trans., Editora Fundo de Cultura 1961).. According to him, contrary to the classical concept of democracy, in representative democracies it is not the voters who make political decisions. Furthermore, elections do not express the will of the people. Moreover, the people do not govern indirectly by choosing individuals who will carry out their will. The people merely select, from among a number of candidates, those who will make political decisions. Schumpeter defines representative democracy as the institutional arrangement for reaching political decisions in which individuals acquire the power to decide through a competitive struggle for the people's votes. In this conception, representatives are not agents charged with implementing the will of the people. For Schumpeter, representative democracy and indirect government are distinct categories.

[28] Pedro Madeira, A Filosofia Política de Mill, in John Stuart Mill, Sobre a Liberdade (Pedro Madeira trans., Nova Fronteira 2011).

who is a pedophile cannot, by virtue of this condition, be considered a criminal—or we would be dealing with Author's Criminal Law, punishing individuals for what they are, not for their acts. However, if he engages in pedophilia, it is a crime. The law also punishes the expression of racist and homophobic opinions. Although this is not about drawing conclusions, but merely taking Mill's thesis to its logical conclusion: would it not be important for repulsive opinions to come to light so that their abominable nature might be revealed after public scrutiny?

One element not addressed by Mill (nor would it be possible) concerns the formation of public opinion. With the advent of the media, society has become more complex, and the line separating the "wheat merchant's house" from the "incendiary mob" has become blurred. Consequently, the "area of non-interference" of freedom of expression—by the difficulty of distinguishing between erroneous (yet nonviolent) opinion and that which is potentially violent or actually violent accompanies this process.

III. "PUBLIC OPINION" AND MASS COMMUNICATION

A concept of "public opinion" is as difficult to pin down as that of the State. To begin with, even without referring to the vast literature on the subject[29], this expression can denote both the public expression of a particular individual or collective viewpoint and the trend toward which the volatile judgment of the "people" points. Nevertheless, for the reflections to be developed here, it suffices to know that both notions are encompassed and, indeed, often conflated. Public opinion, an important aspect of freedom of expression, can be understood as a force capable of moving the State, influencing or legitimizing it, especially in a democratic environment. Although he does not state it explicitly, Bonavides situates the modern meaning of freedom of expression in the emergence of a sovereign political force occupied by individuals with authoritarian potential if left unchecked: the State. Public opinion, as one of the main focuses of this restraint, was the subject of reflection by the classic modern political thinkers, both those who criticized the Ancien Régime, such as Rousseau, and those who dedicated themselves to understanding real politics controlled by the people, such as Machiavelli[30]. "Since public

[29] Paulo Bonavides, Ciência Política 445 (10th ed., Malheiros Editores 1997)., once again, highlights the complexity of this issue and the breadth of this problem: "Public opinion, as a subject of Political Science, dates back to the 18th century, when it became the object of reflections that linked it to the existence of the State and, in particular, to a specific political system in the organization of modern society: the liberal-bourgeois State."

[30] Although "common sense" refers to Machiavelli as an "absolutist" thinker, given his work The Prince, it must be emphasized that he devoted much of his public life, as a diplomat, and most of his work—especially his Discursos sobre a Primeira Década de Tito Lívio—to addressing and extolling the republic as the best form of political organization. Furthermore, the Florentine thinker asserts, on more than one occasion, that the people are responsible for maintaining a responsive government, which can only

opinion is the most effective form of the social body's indirect presence in the formation of political will, it is no wonder that its exceptional power has been proclaimed and recognized by rulers, philosophers, and political scientists from the 18th century to the present day"[31].

A central element is that the notion of public opinion in the political sphere emerged directly linked to the consolidation of modern representative government—what came to be known as "representative democracy"—as early as the 18th century. Although the government Although representative *government* has undergone transformations throughout the 18th, 19th, 20th, and 21st centuries, Manin[32], in *The Principles of Representative Government*, maintains that the principles underlying it remain virtually unchanged. These principles are: 1) representatives/governors elected by the governed in periodic elections; 2) representatives endowed with partial independence from the preferences of voters; 3) public opinion able to express itself on political matters independently of government control; 4) political decisions made after political debate.

Manin examines the "metamorphoses" that representative government has undergone since its emergence, namely parliamentary government, party democracy, and public democracy. Parliamentary government was defined by personality-based elections in which voters placed personal trust in those elected. Such trust stemmed from the representative's membership in the community of voters, who shared common interests (landownership, manufacturing, commerce, etc.). The body of representatives was not formed through competition, but through the mobilization of personal resources (wealth and prominence). This model, known as the "reign of the notables," enabled the emergence of free expression of opinion, which clashed with the still-restricted suffrage. This opened the way for party democracy, whose central features were the expansion of suffrage and the curtailment of parliamentary freedom in the face of party discipline. The expansion of the electorate meant that representatives no longer maintained personal ties with the electorate, and citizens voted for political parties of their choice with a clear ideological framework, not for candidates they personally trusted. The parties, through their networks of activists and organizational structures, established bureaucracies capable of mobilizing the growing electorate. Nevertheless, party structures entered a crisis[33], triggering another

occur in a republic. See Nicolau Maquiavel, Discursos Sobre a Primeira Década de Tito Lívio (P. F. Aranovich tech. rev., MF trans., Martins Fontes 2007).

[31] Paulo Bonavides, Ciência Política 449 (10th ed., Malheiros Editores 1997).

[32] Bernard Manin, The Principles of Representative Government (Cambridge University Press 1997).

[33] There is a vast body of literature on the crisis of political parties stemming from the crisis of representation; it is worth citing Ricardo Manoel de Oliveira Morais, O Paradoxo da Inclusão Política à Luz de Contribuições Maquiavelianas (Editora Fi 2022), https://www.editorafi.org/ebook/530paradoxo., Roger Eatwell, Populism and Fascism, in The Oxford Handbook of Populism (Paul Taggart & Cristóbal Rovira Kaltwasser eds.,

metamorphosis in representative government: "public democracy." This model is marked by a new personalization of the electoral choice, resulting from the advancement of the media. With the advent of mass communication, particularly radio and television, candidates began to communicate directly with voters, bypassing party mediation.

Political *actors* themselves, in reacting to the new conditions, began to emphasize their personal qualities. Television, above all, intensifies the candidate's personality, leading to the personalization of political choice—a characteristic of "parliamentarism"— be revived. Added to this are factors that have complicated the political reality and the way the government deals with it: the exorbitant increase in governmental powers and activities, the expansion of the state's population and public officials, and, as a result, the development of a complex administrative government bureaucracy. Furthermore, the media have accelerated the speed at which information circulates and the need for government responses. The following scenario emerges: an increase in government responsibilities and activities; difficulty in presenting feasible government projects due to a more dynamic reality and an information flow that outpaces government reactions; increased interdependence and the deepening of relations between states and transnational actors, making political problems less predictable. These factors have led to a demand for greater discretion, and as a result, governments have become unable to maintain a clear ideological coherence.

In this process, governments must act not on the basis of "direct reality," but on information transmitted by bureaucratic intermediary bodies, with public opinion and its expression being one such body. But is public opinion manipulable? Throughout the 20th century, with the crisis of the parties and the welfare state, "the weakened middle class, as it reconstituted itself in developed countries, would fall under the influence of new mass communication techniques." In fact, we have arrived at "[...] the surprising, easy, and convenient technique available to those who control the media to 'create' public opinion and direct it toward pre-established ends"[34]. There is the manifestation of a pre-formed opinion, whether through the "presence" of politicians—fascists, populists, xenophobes, homophobes, misogynists—in the living room speaking "live" and making strong, non-rational appeals, or through the landscape of so-called "digital populism" fueled by algorithms, hatred, and fear.

Given that there is already a vast body of literature on the effect that traditional media have had on politics, this section will examine how social media, with its algorithmic potential, shapes public opinion and, in doing so, blurs the line between the expression of a misguided opinion—

Oxford University Press 2017)., and Otto Kirchheimer, A Transformação dos Sistemas Partidários da Europa Ocidental, Revista Brasileira de Ciência Política, no. 7, Jan./Apr. 2012.

[34] Paulo Bonavides, Ciência Política 455 (10th ed., Malheiros Editores 1997).

whether racist, homophobic, hateful, or simply false—and the manifestation of a potentially or actually violent opinion. And here, the Italian and Brazilian experiences of recent years are central to the debate.

> Strong governments in mass society have made the manufacture of this pill of irrationalism exquisitely "scientific," administered in massive doses, as political needs dictate. Public opinion under the totalitarian dictatorships of the 20th century reached this astonishing result: it became a powerful auxiliary of the raison d'état. In democratic society, public opinion is equally suspect, for despite the pluralism evident there, the elements of the formation and transmission of judgments that shape public opinion, while not concentrated in a single power as in the totalitarian state, are nonetheless held in the hands of a minority—the "lords" of economic and financial power—to whose control the media are generally subject.[35].

To the lords of economic and financial power, one might add "the lords of algorithmic power." With the emergence of revolt movements against the intermediary bodies[36] of political power—an almost direct consequence of the electoral personalization of public democracy (since voters began to interact directly with elected officials, especially to form governments[37]), "[...] the relentless work of dozens of *spin doctors*, ideologues, and, increasingly, scientists specializing in Big Data [...]"[38], public opinion and the forms of its expression have taken on unclear aspects, particularly with regard to illegitimate[39] incitement to violence. In *Os engenheiros do caos*, Empoli explains how this logic works, detailing the *modus operandi* and its consequences. He provides greater details on the Italian case, but his reflections apply to the Western situation. Although the author's aim is to reflect on the "[...] super-powerful communication machine, originally conceived for commercial

[35] Paulo Bonavides, Ciência Política 455 (10th ed., Malheiros Editores 1997).

[36] On the movements of revolt against the intermediary bodies of access to political power, see Nadia Urbinati, A Revolt Against Intermediary Bodies, 22 Constellations 477 (2015), http://onlinelibrary.wiley.com/doi/10.1111/1467-8675.12188/abstract.

[37] Populism predominates in the executive branch, so that the elected leader plays to the masses to undermine the institutional role of those who should mediate and oversee the exercise of political power, particularly the legislative and judicial branches (especially the latter, which often plays a counter-majoritarian role).

[38] Giuliano da Empoli, Os Engenheiros do Caos: Como as Fake News, as Teorias da Conspiração e os Algoritmos Estão Sendo Utilizados para Disseminar Ódio, Medo e Influenciar Eleições 33 (Arnaldo Bloch trans., Vestígio 2019).

[39] "Illegitimate" incitement is a central point of the argument, since it is possible to identify instances in which incitement to violence can be considered legitimate. Pedro Madeira, A Filosofia Política de Mill, in John Stuart Mill, Sobre a Liberdade (Pedro Madeira trans., Nova Fronteira 2011)., for example, raises the issue of legitimate incitement in the case of mobilizing the population to fight a war initiated by the unjust invasion of a foreign nation. Actions by an illegitimate and authoritarian government, likewise, could fall under this exception.

purposes, transformed into a privileged instrument of all those whose goal is to multiply chaos" (p. 50), this machine and its functioning are directly related to the aporias imposed by freedom of expression in the 21st century.

Empoli begins with an analogy between what is happening in the political universe of social media today and the 18th-century Roman carnival, as narrated from Goethe's perspective. Carnival is a festival in which the world is turned upside down: men dress as women and women as men; wealthy individuals pass themselves off as strangers and strangers are cheered; identity fades amid costumes, debauchery, and masks. Everyone let themselves be carried away by excesses, so that permissiveness and freedom are kept in balance by the general good humor. And despite this atmosphere of widespread joy, there is a hidden side to the festival: moments when some dispute becomes more serious and spreads, engulfing everyone in a visceral hatred. Goethe also describes situations in which horse races cause incidents and tragedies, attaching little importance to them. "It is the dark side of Carnival, the inextricable combination of celebration and violence upon which its subversive potential is built [...]. It is no coincidence [...] that this is not a celebration offered to the people by the authorities, but rather a 'festival that the people offer to themselves.'"[40-41].

With the emergence of "digital populism," political reality seems to be transforming into a kind of carnival. Populism is a term employed politically in various ways. The literature contains different conceptualizations, sociopolitical narratives, categorizations, or representations of the populist. Although the notion of populism is central to the reflections developed here, its concept will not be outlined. The term "populism" will be used based on some general characterizations

[40] "Since the Middle Ages, Carnival has been an occasion for the people to symbolically and temporarily overturn all established hierarchies between the powerful and the oppressed, between the noble and the common, between the high and the low, between the refined and the vulgar, between the sacred and the profane. In this atmosphere, the mad become wise, kings become beggars, and reality merges with fantasy. A symbolic coup d'état that almost always ends with the election of a king, a temporary substitute for official authority. [...] The proof lies in the various episodes during which the festival turned into a revolt, to the point of generating actual massacres, whenever the crowd was not content to depose the powerful merely for a laugh—but instead attempted to actually murder them. [...] Nor is it surprising that this festival was abolished, at some point, almost everywhere, including in Rome, at the dawn of the French Revolution, for fear that it might spread. In France, it was the Jacobins themselves who suspended Carnival, going so far as to punish with the death penalty those who had the audacity to dress in costume." Giuliano da Empoli, Os Engenheiros do Caos: Como as Fake News, as Teorias da Conspiração e os Algoritmos Estão Sendo Utilizados para Disseminar Ódio, Medo e Influenciar Eleições 16-18 (Arnaldo Bloch trans., Vestígio 2019).

[41] Giuliano da Empoli, Os Engenheiros do Caos: Como as Fake News, as Teorias da Conspiração e os Algoritmos Estão Sendo Utilizados para Disseminar Ódio, Medo e Influenciar Eleições 14-16 (Arnaldo Bloch trans., Vestígio 2019).

from Eatwell's[42] theory, according to whom populism combines three elements: 1) the defense of the united people, although this unity is not necessarily ethnically or morally pure; 2) hostility toward corrupt and selfish elites who deprive the people of their legitimate voice, even if there are different elites; 3) the goal of producing a political system that allows the will of the people to prevail. The *praxis* of this phenomenon is a tendency to awaken in the people, through a series of rhetorical and aesthetic devices—such as charismatic authoritarian leaders—a Manichaean conception of reality.

In this sense, "digital populism" is understood, in addition to the characteristics noted above, as a factor common to political theories of populism: a form of direct, unmediated communication with the people (or, at least, with the segments of the population one seeks to stir up). And social media are the conditions for this phenomenon, especially when add to this description the elements of interaction and engagement, made possible by the "free expression of thought" liberated from the "shackles of political correctness" and "progressive censorship."

The "political carnival" of the 21st century emerges when the world's celebration stands in contrast to the negative feelings (anger, hatred, fear, insecurity, indifference) that "mask" the political opinions expressed, when there is no recipient with a "face." Before the "opinion-maker," there is only a screen. A vast body of literature[43] places the Italian experiment at the center of this debate, recounting the story of the founding of a digital political *marketing* movement in Italy in the early 2000s. The partnership between Gianroberto Casaleggio—the creator of a specific form of digital political communication—and the Italian comedian Beppe Grillo, who would serve as the spokesperson and agitator for an "algorithm-party," gave rise to the Five Star Movement, "[...] entirely founded on the collection of voter data regarding the fulfillment of their demands, independent of any ideological basis." This operational logic fostered a *praxis* that reinvented political propaganda, but now adapted to the era of *selfies* and social media. As a "political translation" of *Facebook* and *Google*, a true transformation has taken place in the nature of the electoral game. And the populist character lies in the fact that this use of social media involves no intermediaries, placing everyone on the same metric, which is that of engagement.

The social media algorithm is programmed to provide consumers with any content that might attract them and keep them engaged longer, regardless of its content (ranging from extreme positions, hate speech

[42] Roger Eatwell, Populism and Fascism, in The Oxford Handbook of Populism (Paul Taggart & Cristóbal Rovira Kaltwasser eds., Oxford University Press 2017).

[43] Nadia Urbinati, A Revolt Against Intermediary Bodies, 22 Constellations 477 (2015), http://onlinelibrary.wiley.com/doi/10.1111/1467-8675.12188/abstract; Giuliano da Empoli, Os Engenheiros do Caos: Como as Fake News, as Teorias da Conspiração e os Algoritmos Estão Sendo Utilizados para Disseminar Ódio, Medo e Influenciar Eleições (Arnaldo Bloch trans., Vestígio 2019).

against minorities, xenophobia, fear of "the other" and immigration, to even conspiracy theories). The goal is singular: to tap into voters' aspirations and, above all, their fears. Once this is achieved, it becomes possible to cultivate hatred to keep the individual connected and attentive to the content that keeps them glued to the screen, diluting old ideological differences (such as liberalism *versus* economic interventionism) into a reframed conflict that pits the people against the elites. It is the engagement of the disaffected that drives the new format of political propaganda, feeding on negative emotions, as these are what ensure greater participation and concern on the part of its disseminators-recipients (who become indistinguishable in the process of information dissemination). Such negative sentiments are fueled by elements of strong cohesion—linked to *fake news*—and of great emotional appeal—such as conspiracy theories and eschatological narratives.

All of this means that the political game no longer unites people around platforms built on the dialectics of the political sphere, but, on the contrary, stokes passions and hatred. The goal is not to find the point of convergence at the center, but to align with one of the extremes. That is why individuals like Italy's then-Minister of the Interior, Matteo Salvini, post videos and fake news on their social media about crimes committed by Black people or immigrants, aiming to incite ethnic, racial, and gender-based hatred. During the formation of this government, the Minister of Family Affairs went so far as to state that "there are no gay families"; the Minister of Health, on the issue of vaccines, stated that he was personally in favor, but that anyone could hold opposing views; the Minister of Justice proposes the end of the statute of limitations; the Secretary of State is a proponent of a conspiracy theory claiming that commercial airliners are used to spread chemical and biological agents harmful to the population; the Undersecretary of State for the Interior does not believe that Americans went to the moon. In the Brazilian government that led the Federal Executive Branch between 2019 and 2022, the Minister of Foreign Affairs did not believe in global warming; military ministers "did not believe" that the Military Regime was dictatorial or the result of a coup d'état; the Minister of the Environment asserted the need to "let things slide" regarding environmental deregulation. The effect of being able to say whatever one pleases, normalizing a false identity with an electorate susceptible to radical positions that garner engagement, creates a specter that freedom of expression serves to cover up any discourse.

Although the leaders' shortcomings are evident, they become not only a mark of authenticity—since, in the eyes of voters, their inexperience is proof of non-corruption, and the gaffes made on the international stage are evidence of their independence—but any opinion comes to be considered legitimate. The most serious issue is that it is unclear exactly when a false argument should be dismissed as ridiculous and, through public scrutiny, set aside; or when the false argument has the potential to generate illegitimate situations of violence. This is because algorithmic

logic has no commitment to the content that is disseminated. Its objective is simple and clear: to capture the user's attention and awaken feelings that keep them connected. Such feelings, as already noted, are almost always negative. Consequently, public ridicule and cancellation are used as tools of "freedom of expression" to deal with situations that would merit deeper reflection.

In this sense, since the free-market principle of the circulation of ideas in the public sphere is apparently incapable of regulating a scenario in which feelings that subjugate reason—such as fear and hatred—prevail, the solution offered by "legal common sense" is to attempt to establish boundaries for the gray zone of the "area of non-interference," especially after January 8, 2023. It is necessary to recognize that expressing undemocratic ideas is nothing new. Socrates was already doing so more than two millennia ago. And he did so in an incendiary manner at the very gates of democracy, inspiring the young people of his time to continue along the path he had opened[44]. However, when one is immersed in a situation, it is always more difficult to point out paths forward. At this moment, what seems to be occurring is the reign of the truism that the

[44] "Citizens of Athens, I respect and love you, but I will obey the gods rather than obey you, and as long as I breathe and am in possession of my faculties, I will not cease to philosophize and to exhort you or to instruct each one, whoever comes into my presence, saying to him, as is my custom: - O fine man, you who are a citizen of Athens, the greatest and most famous city for wisdom and power, are you not ashamed to care about riches, to hoard as much as you can, and about glory and honors, and then to care nothing at all about wisdom, truth, and the soul, to make it ever better? And if any of you protest and promise to take care of it, I will not leave you just yet, nor will I go away, but I will question you and examine you and convince you, and at any moment it seems that you lack virtue, convinced that I possess it, I will reprove you, because you pay very little attention to things of the greatest importance and great attention to trifles. And I will do this to whoever appears before me, whether young or old, stranger or citizen, and all the more so with citizens the closer they are to me by birth. This is precisely what the god commands me to do, and you know it, and I believe that you have no greater good in the city than this service of mine to the god. Everywhere I go, I persuade everyone, young and old, not to concern themselves exclusively—nor so ardently—with the body and with riches, as they ought to concern themselves with the soul, so that it may be as good as possible, and I keep saying that virtue does not arise from wealth, but from virtue come to men riches and all other goods, both public and private." (PLATO, *Apology*, 29d-30b). What Socrates calls "philosophizing" is the dialectical and challenging examination (*elenchos*) of the human being and their purported knowledge at the level of their soul, aiming to extract from it knowledge, virtue, truth, and justice, and, whenever it is mistaken, to point out such errors. The importance of the dialectical method for Socrates—as opposed to mere oratorical persuasion without the possibility of challenging arguments—is linked to the centrality of the human question in Socratism. Since every human being possesses a *doxa*, a unique and singular openness to reality, Socrates had to ascertain which of his interlocutors' convictions about this reality were true and which were not, since one cannot infer in advance what the other's *doxa* is. Socratic dialectic starts from the human openness to a world of appearances and opinions (*doxa*) to formulate what presents itself as truth, doing so by rejecting that which does not hold up under rational scrutiny.

right to freedom of expression is not unlimited. The issue is that, at times, the opinion being expressed does not seem to be the result of freedom, but of something that has not yet been understood.

CONCLUSION

The purpose of this essay was to point out that the foundations of how freedom of expression is understood are in a serious crisis. On the one hand, there is the argument for the free circulation of ideas and arguments, with reason and reality themselves proving the truth or falsity of the theses. On the other hand, there is a consensus in political and legal world that the right to freedom of expression (like all fundamental rights) is not absolute. The utilitarian thesis, which is the key to the first premise, seems to fail to address problems such as the unpredictability of the recipients of potentially violent arguments. Taking Mill's example of the inflammatory mob at the door of the wheat merchant's house as a basis, one does not know when a speech or a slogan will be heard, nor in what context or for what purposes.

However, beyond simply pointing out the impasse between the obscurity of the "area of non-interference" in the liberal argument and the truism that "no right is absolute," it is worth highlighting the risk of *a breakdown* of the rule of law—and while the use of the term "breakdown" may seem overly strong, it is appropriate, since the institutional framework is fractured. The risk stems from a paradox inherent in the democratic rule of law itself: freedom of expression must be able to challenge the democratic rule of law, yet it must have a space guaranteed by the democratic rule of law. Discussions regarding the limits of freedom of expression are multiplying, as are precedents and institutional responses. Some argue that false discourse cannot be disseminated. Nevertheless, lived reality is subject to countless mediations: there are those who observe and interpret the facts; there are those who narrate the facts; there are those who translate the narrative into words, videos, or images, always through selective editing; there are those who pass on and reinterpret these facts; and there are those who receive and, once again, interpret. Amid an endless chain of mediations, what would public opinion grounded in false elements look like? Situations such as those experienced in Brazil and the United States—involving attacks on democratic symbols—are, obviously, examples of acts based on fallible sources of reality. Nevertheless, the state's institutional responses are also based on mediated sources of information. Thus, if indifference and disconnection from reality are already in themselves a serious problem, how should we conceive of government action in the face of a reality accessed only through mediation, in a world where the circulation of information imposes ever-greater discretionary power and where algorithmic expression (rooted in negative sentiments of hatred) has become a widespread form of expression in the public sphere?

Here lies an uncomfortable question, and one that surely remains unanswered. Does the way governments (here understood to include the three branches of government) have acted—by relaxing legal procedures and guarantees to maintain some semblance of integrity—have the potential to undermine freedom through the exception? Currently, there is much debate about the the need to place limits on freedom of expression. The limit set by Mill is clear, though the reality of the 21st century has obscured it. Likewise, there is a consensus on the need to hold accountable individuals who have in some way acted with the aim of inciting illegitimate violence. However, there are individuals who, caught up in a dynamic of engagement and the stoking of negative sentiments, incite illegitimate violence, but not deliberately. And the logic of reinforcing one's own positions prevents false arguments and misguided stances from being subjected to public scrutiny.

As for the "state of exception," this expression must, of course, be put into perspective. When dealing with a "Democratic State of Law" forged under a broad amnesty for torturers and which has not reformed its main authoritarian institutions, one speaks of a state that is "as democratic as possible." Despite this, certain legal and procedural safeguards won after long periods of institutional negotiations (such as the prohibition on ordering detention ex officio, the holding of a custody hearing *within the legal timeframe*, and the adversarial principle) appear to be being relaxed. The argument that "exceptional circumstances require exceptional measures" is seductive. However, "exceptional circumstances" are, as discussed in section 3 of this article, in a gray, obscure zone. Moreover, the limits drawn by humans are always conventional, invisible, social, and political. The acceptable limit on a freedom at a given moment is the catalyst for a revolution following a shift in a few paradigms. How can the very foundation of a political model (which is freedom of expression) be capable of leading that political model to ruin if it is not limited? These reflections will remain open-ended. And, even if I do not seek definitive answers in this text, it does not seem acceptable for the State to override its democratic element. Likewise, it does not seem acceptable or legitimate for freedom of expression to override its democratic foundation. In the end, it is worth posing one more unanswerable question: would the preservation of institutionality as a justification for the necessary limitation of freedom of expression have the power, by preserving the State, to bring an end to democracy? Or would it be unlimited freedom of expression that, by eroding the institutionality of the State, would render democracy unviable?

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