

# REFLECTIONS ON THE RIGHT TO INFORMATION BASED ON CITIZENSHIP THEORIES

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VICTOR GENTILLI

*Universidade Federal do Espírito Santo, Brazil*

## ABSTRACT

In modern societies, structured as representative democracies, all rights to some extent are related to the right to information: the enlargement of participation in citizenship presupposes an enlargement of the right to information as a premise. It is a right which encourages the exercising of citizenship and affords the citizens access to and criticism of the instruments necessary for the full exercising of the group of citizenship rights. The right to information can have characteristics of emancipation or of tutelage. An emancipating right is a right to freedom, a right whose basic presupposition is freedom of choice. Accordingly, the maxim which could sum up the ethical issue of the right to information would be: give maximum publicity to everything which refers to the public sphere and keep secret that which refers to the private sphere.

**KEY-WORDS** Citizenship, public sphere, freedom, civil rights.

## Introduction

My starting point is a banal observation: contrary to what used to occur in the past, in these days it is absolutely inconceivable to imagine the possibility of life in modern mass societies without the informative mediation of journalism.

Journalistic information is simply indispensable for existence in today's world. What some authors call the "social need for information" is today furnished *above all* by journalism. This does not mean that life in society would be impossible without the consumption of journalistic information produced by the media. But the reality is that all the information indispensable for life in society reaches people today in a mediated way, not directly.

As a result, if modern mass societies are marked by the possession of rights, their complexity leads to the requirement for wide dissemination of information and creates the need for making clear and precise the meaning of the concept “right to information”. Mass communication’s role in the dissemination and propagation of this “civilization which is common property” is thus unquestionable.

Nevertheless it is symptomatic that all the theoretical bibliography specifically dealing with the concept of citizenship does not make reference to the right to information. In reality, it is a question of a secondary right, in the sense that it is a right necessary for the exercising of other rights, a “means” right, not an “end” right. On the other hand, the opposite is equally symptomatic: the bibliography dealing with the issues of the right to information or even freedom of the press is not based on works that contextualize the discussion in the debate regarding the concept of citizenship.

Most of the more recent texts treat in an imprecise way the concept of the “right to information”, or more imprecisely even, the term “social right to information”. The authors avoid defining and going more deeply into the concept and treat it with mechanical logic, in most cases, merely as a broadening of the concept of expansion of citizenship. Norberto Bobbio and Hannah Arendt, as well as João Almino, here in Brazil, thinkers who have in common the fact that their base of support is philosophy and that they avoid ideological straitjackets, are some of the exceptions who deal with the subject, although not with the emphasis that the subject deserves today. It is worth mentioning also the work of the Brazilian Celso Lafer, commentator on Hannah Arendt, who in his work has systematized the thinking of the German author on this issue. These authors are practically ignored in the Brazilian works on the “right to information”.

Modern democracy is, in the words of Norberto Bobbio, the “society of the citizens”, an idea which refers to the expansion and enlargement of civil, political and social rights. The “society of the citizens” is also defined by Bobbio as the “democracy of visible power”, or “government of public power in public”. The author refers explicitly to the democratic imperative of giving publicity to that which is public, of making public, visible, transparent, the facts relating to the public sphere. He also demonstrates how the formulation only seems to be paradoxical, since the term “public” is the opposite of both private and secret. In this original interpretation by Bobbio, it is possible to understand the conception that the author makes of democracy as the “government of public power in

public”, that is to say, as the government in which “that which is not private is not secret”.

This is also one of the conditions for the expansion of the rights. The civil and political rights, rights which take the form of prerogatives and presuppose the citizens’ freedom of choice, are rights which are enlarged, in an obvious way, by the access to information.

For Dahrendorf, modern citizenship rights are divided into “prerogatives” and “provisions”. Civil and political rights are prerogatives which the legislation should guarantee to all citizens, and social rights are located in the area of governmental programs and policies, because they refer to “provisions” for certain social sectors, to be provided or regulated by the State.

This interpretation can be seen as the development of the reasoning which interprets civil rights as rights which protect the citizens from the power of the State, political rights as those which establish the mechanisms of participation in the State and social rights as rights to be guaranteed by the State.

The right to information, therefore, should be understood as a right directly related to the other rights. It is a right which encourages the exercising of citizenship and affords the citizens access to and criticism of the instruments necessary for the full exercising of the group of citizenship rights.

This results in the formulation of public information as an indispensable prerequisite for the exercising of citizenship and a decisive factor in the process of democratic development. As a consequence, the understanding that the access to information is an access door to other rights: in a modern mass society, the access to journalistic information, on the part of the citizens, can potentially consist of a right which assures other rights, provides conditions for equalizing subjects and offers visibility to those in power and to the world.

The right to information is a right in itself – despite it’s taking the form of a “means” right – and thus should be understood in the entire complexity which involves rights in modern societies. In modern societies, structured as representative democracies, as has already been seen, all rights to some extent are related to the right to information: the enlargement of participation in citizenship presupposes an enlargement of the right to information as a premise.

If the challenge is the construction of a mass democracy, then the human being must be accepted as an emancipated creature, capable of evaluating and judging *all* public issues in an autonomous way, without

any tutelage, with absolute independence. The principle of individual judgment thus becomes a premise for an effective mass democracy. For democracy, recognition of the totality of individual judgments is important, even if this judgment takes place without the strictness in judgments made by professional thinkers like philosophers and scientists. In other words, all people in a democracy need to express equally desires and interests (which can be seen both as private and therefore illegitimate, as well as resulting from social diversity) and also effective judgments as the major expression of the public dimension of civil rights expanded and enlarged for all in a society of masses.

Whether it is in the expression of desires or interests, or in the effective expression of a judgment, the equality of everyone in the value of his judgment is an indispensable aspect for democracy. It is in this context, of providing conditions for judgment by the citizens, that the concept of “right to information” should be considered. The matter can be seen from two viewpoints: 1) The right to information should be thought of from the perspective of a right *for everyone*. 2) The right to information should be thought of from the perspective of furnishing the quantity and quality of information for the *best possible judgment by each one*.

As I’ve already mentioned previously, the traditional reflections regarding citizenship practically make no reference to the right to information. In reality, this occurs because they are reflections which treat citizenship rights in their strict sense. For the type of discussion which I am developing here, the access to information is a “means” right, in the sense that it is a right without which the other rights are prejudiced. With the expression “means” right I want to say that the right to information is not achieved by itself, information is not conceived of as something with intrinsic value. The expression “right to information”, as I’ve already stated, offers little clarification. Right to what information? The right to information, conceived of as a citizenship right, is precisely the right to that information necessary and essential for life in a mass society, including here the full exercising of the group of civil, political and social rights. The right to information refers, as may be seen, exclusively to the so-called public sphere. As I will deal with below in more detail, as opposed to the right to information we have the right to privacy, that is, the right to remain secret – that is to say, without public visibility – all that which refers to the field of intimacy, namely, the private sphere.

Accordingly, the right to information should be thought of as the right that necessarily provides the conditions necessary for carrying out the choices concerning the full exercising of rights. Each one’s right to

have access to the best possible conditions in order to be able to *form his own particular preferences, make his choices and his judgments in an autonomous way.*

In these conditions it is a circumstance which generates a right to autonomy; and therefore a two-way factor in the process of democratizing democracy: on one hand, it strengthens the process of human emancipation insofar as it assists the citizens in the exercising of their prerogatives; on the other hand, it consolidates the group of other rights since their dissemination, on becoming wider, consequently makes them more accessible.

The right to information can have characteristics of emancipation or of tutelage. An emancipating right is a right to freedom, a right whose basic presupposition is freedom of choice, a “prerogative” in Dahrendorf’s interpretation. The right to information with emancipating characteristics is the right to information concerning civil or political rights. The right of tutelage, on the other hand, is a right linked to social rights, that is, it deals with that information which either makes social rights public or makes them constitute social right by themselves.

I am showing as an example, in order to clarify the discussion, the access to health and education. Information regarding the possibilities of this access increases this right’s potential in a direct way. From another perspective, the dissemination of an item of information of social interest – for example, the wide dissemination of the formula for household serum – makes up an item of information which itself becomes the very right from a social perspective. As has already been seen, this is a question of a right to be exercised or regulated by the State.

Information as a social right is therefore all that information with social meaning, indispensable for life in society - all that information conceived in a way similar to that of education, as a passing on of information indispensable for a collective use of human conquests in the social field. From the social perspective, the right to information should be conceived as an extension of the right to education and the right to health, necessary and useful for the maintenance of human life with minimal dignity.

According to this interpretation, information should be conceived of as a provision, in the same way as the social right in itself. Citizens do not have the right to choose between receiving an item of information or not, as they have the prerogative of walking freely through the streets, if they so wish. Citizens have the right to be provided with the information

necessary for their day-to-day existence, just as a father, who has the obligation to take his child to the vaccination point, has the right to receive the information necessary for compliance with this obligation without any difficulty.

Journalism is one of the forms of expression of this social right, obviously not the only one. At the times when the citizens' access to this information is shown to be lacking, it is the State's responsibility to offer this information, in a tutelary or regulatory way, in the same way it furnishes (or should furnish) health, education or other social services.

Thus the access to information needed for the exercising of a social right should therefore be provided, granted or regulated by the State. The threat of a public calamity or an epidemic would be a dramatic example of one of these extreme situations in which the State has the obligation to provide the citizens with the information to which they are entitled so that they can make the necessary arrangements to confront the situation.

The fact that the right to information as a social right is linked to the State does not mean that it is exclusively offered by the State. The communication media, as free institutions – newspapers and magazines – or as public concessions – TVs and radios – are free to produce information of this type. Obviously, regulation by the State is recommended.

It does not require much effort, therefore, to understand that the access to provisions expands when more people have information regarding the right to these provisions.

In this connection Barbalet states that social rights are not universal, because they refer not to the citizens, but to “workers”, to the “elderly”, to “children”, etc. To some extent they are rights linked to some type of obligation or regulation of the State. They are rights in which individual freedom is limited. Accordingly, from the social perspective, the right to information can accept restrictions. There are countless cases of conflict between freedom of demonstration and expression and regulations protecting children and adolescents.

The social right to information can be viewed from two approaches. In one of them, it should have the universal meaning of propagating to everyone the benefits won by civilization, with special emphasis on the health, education or other similar areas. Although not exactly imposed – because it is a question of a right – it is a right that concerns *everyone*, seen as emancipated citizens. In the other approach, it is restrictive and limiting, especially on affecting social segments that for some reason are

not yet *emancipated* as full citizens, such as, for example, children and adolescents, among so many other “individuals as subjects of rights”.

Information as a civil right is the way in which freedom of demonstration and expression presently appears in the context of the State of law. In reality, the civil right to information is only one specific aspect of the group of civil rights which are much broader. It is based on the right to speak out, on combating any type of censorship, on the freedom to create newspapers, disseminate information, etc.

As a civil prerogative, the right to information also takes on the basic premise of the plenitude of the rights of choice, due to the fact that it assumes that each one can be included, as an independent unit, since civil rights constitute rights to freedom.

Civil rights are also rights that are enlarged with the access to information. In this case, access to information is also only a prerogative. But when we associate the idea of exercising civil rights with a circumstance – wide access to information, there is a clear understanding of the cause and effect relationship between, on one hand, the idea of rights which generate rights, and on the other hand, the fact that civil rights are rights which take on another quality when they are actually universal.

It is worth mentioning, with emphasis, that if there is a great inequality of civil rights between the ordinary citizen and the property owner, this inequality reaches its paroxysm if the owner is the possessor of a means of mass communication.

The right to information, from the political perspective, in turn should be interpreted from two major points of view. On one hand, it should be interpreted as information which affords citizens the choice, the option, in the field of the public sphere. The visibility of power and of the possibilities for choice should be understood as one of the premises of the right to information from the political perspective. It has a clearly different meaning from the social right.

Political rights, as well as civil rights, are rights relating to freedom, they are prerogatives, while social rights are a necessity, they are provisions. In the case of political rights, civil liberties therefore appear as one of the (two) premises necessary for their full enjoyment.

In the field of political rights, the right to information is an indispensable right *above all* for the full, conscientious exercising of the right to vote. If citizens do not have access to the necessary information about the parties disputing the election, their proposals, their opinions, etc. they will not be able to vote conscientiously.

In reality, the right to vote is only one of the conditions – *the most essential* – of political rights. In addition to this, the systematic accompaniment of governmental activities, of the movements and discussions in the parliament, of the behaviors of the political actors in general, in short, publicity for the government's actions, are other conditions indispensable for the permanent exercising of political prerogatives which are only possible based on the dissemination of information.

From another viewpoint, the access to information is a prerogative and should be guaranteed by law. This is because the right to information necessary for the exercising of a prerogative should constitute a prerogative in the same way that, as we have seen, the right to information necessary for the exercising of a social right should be a provision. In support of this argument we can take the case, for example, of the very well-conceived Brazilian legislation on political party and electoral communication.

Brazil has mass communication monopolies that are very much consolidated in the electronic media. Nevertheless, as concessionaires of the State, they are obliged by law to cede their most profitable time frames on the eves of elections so that each political current can disseminate, with total freedom, and in proportion to their representation in the parliaments, their ideas and proposals. This is a legal formulation which balances and resolves a situation of a group of rights in conflict. On one hand, all the citizens are provided with the necessary information for making their political options with the maximum possible information. On the other hand, each political party is not only free to expound its ideas but also has available a specific period of time for dissemination in the electronic media. The inequality of the equals in the exercising of the civil right to freedom of opinion is neutralized by the law.

In this case, the only correction still to be made is to cease being compulsory, because if political right constitutes a prerogative, the right to political information should also be one. As a right, the right to information is above all a political right, although it has some specific aspects of a civil right and other aspects of a social right. In all of them, it is a question of a right relating explicitly to the public sphere. And as a right relating to the public sphere, it has as limits precisely the right to privacy. This is an issue which requires a more detailed clarification: on one hand, as the expression of the freedom of demonstration and expression, the conflict with the right to privacy is a question of a conflict between two civil rights.



Obviously, it is necessary to think of the right to information also as a public duty or private duty. The distinction, taken from T.H. Marshall's seminal text, restores the discussion of citizenship to its original meaning and enables us to understand the right to information in its several aspects. The counterpoint to the right to information is the right to intimacy. All that which is related to the private sphere "does not require publicity because it does not involve the rights of third parties."

The traditional individual rights are included in the sphere of freedoms. They are rights which refer to an affirmation of coercive freedom with relation to governmental authority. They are rights that require obligations on the part of other people, including public entities, abstentions from certain behaviors which infringe on these rights. In order for the right to privacy to be protected and recognized as a civil and private right, it needs to be protected by legislation and/or by ethics – thus understood as deontology.

This is the fulcrum in the conflict between the right to privacy and the freedom of expression and thought. Both constitute civil rights and possess the characteristics mentioned. They are, however, mutually conflicting. To the extent that social rights gain recognition, they are transformed into powers.

If there is recognition of the right to privacy as a requirement of journalistic ethics, this right is transformed into the power to restrain the journalist individually from exercising his individual freedom to make public information from the sphere of privacy. Otherwise, private information is transformed into public information. And it is precisely with relation to this conflict that the Gordian knot of the ethics of information is located: to distinguish and separate the public sphere from that private one. Thus, freedom of demonstration and expression should be total in the public sphere, in which any type of censorship or restriction is unacceptable.

Accordingly, the maxim which could sum up the ethical issue of the right to information would be: give maximum publicity to everything which refers to the public sphere and keep secret that which refers to the private sphere. The production of the visibility of those in power, or the publicizing of the government is the reason for the existence of the press. How can this be done, in a world where the distinction between public and private is increasingly diluted, where the phenomena of publicizing what is private and privatizing what is public are growing?

Information about others' privacy cannot be conceived as a right, although its restriction constitutes a limitation of the freedom of

demonstration and expression, which characterizes a conflict between two civil rights.

It could be argued that the public character of the right prevails over the private character. This would occur only in special circumstances. If a director of a public entity uses public funds for private activities, this would be one of the cases in which there would be prevalence of the public over the private.

This circumstance makes, in journalistic practice, the discrimination between public and private information turn into a great difficulty for the effective protection of the right to privacy of the citizen (who originated the information) and the right to public information of the citizens to whom the information is destined.

Making an analogy to the need for protection of civil rights against the coercive affirmation of the State, it is seen that the right to privacy leads to the paradox of needing to find a more effective protection against the private authority conferred socially upon journalism, of making public information which is from the private sphere.

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**Victor Gentilli** is journalist, professor at Universidade Federal do Espírito Santo, Brazil, with a Ph.D. degree in Sciences of Communication from Universidade de São Paulo, and administrative director of SBPJOR.

