



Freedom of expression and the right to communication in Latin American constitutionalism

Libertad de expresión y derecho a la comunicación en el constitucionalismo latinoamericano

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ABSTRACT

This article analyzes the rights to freedom of expression and communication in the context of Latin American constitutionalism, highlighting the influence of classical liberalism and its critiques from Marxist thought and the political economy of communication. It presents a historical evolution that ranges from entrepreneurial freedom of the press, through its professionalization, to international recognition as a collective right. However, limitations are identified, such as media concentration, the commodification of information, and legal restrictions that affect media plurality and social responsibility. The concept of the "right to communication" emerges as an extension that seeks to guarantee equal access to the media and promote diversity of voices in a context of media concentration and globalization in Latin America. A comparative analysis of the constitutions of Mexico, Cuba, Argentina, and Bolivia reveals different perspectives, ranging from liberal approaches to models focused on social ownership and the protection of collective rights. The research highlights the need to strengthen the legal framework for effective democratization of communication and to guarantee universal rights in the region.

Keywords: Freedom of Expression; Right to Communication; Human Rights; Latin American Constitutionalism.

RESUMEN

Este artículo analiza los derechos a la libertad de expresión y a la comunicación en el contexto del constitucionalismo latinoamericano, destacando la influencia del liberalismo clásico y sus críticas desde el pensamiento marxista y la economía política de la comunicación. Se presenta una evolución histórica que va desde la libertad empresarial de prensa, pasando por su profesionalización, hasta el reconocimiento internacional como un derecho colectivo. Sin embargo, se identifican limitaciones, como la concentración mediática, la mercantilización de la información y las restricciones legales que afectan la pluralidad y la responsabilidad social de los medios. El concepto de "derecho a la comunicación" surge como una ampliación que busca garantizar el acceso igualitario a los medios y promover la diversidad de voces, en un contexto de concentración y globalización de los medios en Latinoamérica. El análisis comparativo de las constituciones de México, Cuba, Argentina y Bolivia revela distintas miradas, desde enfoques liberales hasta modelos centrados en la propiedad social y la protección de derechos colectivos. La investigación resalta la necesidad de fortalecer el marco jurídico para una democratización efectiva de la comunicación y garantizar derechos universales en la región.

Palabras clave: Libertad de Expresión; Derecho a la Comunicación; Derechos Humanos; Constitucionalismo Latinoamericano.

INTRODUCTION

The rights to freedom of expression, thought, conscience, printing, and the press are contained as civil and political rights generally placed in the first generation of human rights. Their relevance in liberal discourse and their pivotal place in the definition of a society as democratic make them essential rights in any discussion of a political or legal nature.

This paper addresses the study of the rights to freedom of expression and the right to communication in Latin American constitutionalism. These rights are explored from their conception as civil and political rights within the liberal tradition, highlighting their importance for the definition of a democratic society and their historical-conceptual development.

The essay also considers critiques of the liberal view of freedom of expression from Marxist thought and the political economy of communication, especially in relation to freedom of enterprise, the commodification of information, and the concentration of media power. In contrast, it analyzes the emergence of the concept of the “right to communication” as a broader notion that seeks to guarantee equal access to the media and promote a plurality of voices, transcending classical freedom of expression.

In this work we will address these rights, some elements of their historical and conceptual development, some criticisms that have been made of them from Marxist thought, and then we will proceed to analyze their presence in some Latin American constitutions. We selected the constitutions of Mexico, Cuba, Argentina and Bolivia because they represent a diversity of States in terms of political order, region, social ordering, and recognition of plurinationality, which allows us to develop a diverse perspective for examining points of similarity and difference regarding the way in which constitutional texts establish these rights.

DEVELOPMENT

Freedom of expression as a human right

Among its absolute historical claims, liberal doctrine establishes, as the basis of its cosmogony, the freedom of the individual to realize themselves in the world without limitations that constrain or endanger them. This philosophical approach within the liberal tradition has been defended since John Milton’s mythical speech before the British Parliament in 1667, published under the title *Areopagitica*. Since that moment, the right to freedom of expression has undergone various historical developments, but it has been grounded in the logic of defending, as a last stronghold, the freedom of the individual and their inviolability.

Milton (1) states that “...if there were a desire to know the immediate cause of all this writing and free expression, no more genuine cause could be assigned than that of your gentle, free, and humane government. It is this liberty, Lords and Commons, that your valiant and happy counsels have procured for us, a liberty that is the nurse of all great genius; it is she who has refined and enlightened our spirits like a celestial influence; it is she who has manumitted, enlarged, and raised our apprehensions a few degrees above themselves...”

It is relevant not to lose sight of the importance that, for four centuries, liberalism has maintained in the defense of the individual and the freedom from which he emanates. This possibility that the realization of his freedom of thought, of expression, and of the press depends on the entire basis of his freedom as an individual in a society is among the great arguments of the liberal order for characterizing any political system as democratic.

In a study on the right to communication in Argentina, Maisonnave (2) reviews the conceptions that can relate freedom of expression as a human right and its traditions within the corpus of liberal thought. Following the authors Loreti et al.(3), he defines the evolution of freedom of expression in 3 stages after the bourgeois revolutions and before the neoliberal era:

1. The “entrepreneurial” moment is defined as the point where, after the end of absolute monarchies and the sovereign’s monopolistic control, the possibility of creating media is realized through freedom of enterprise. That is: “freedom of the press is reduced to freedom of enterprise; the entrepreneur is the exclusive holder of the power to inform and he has the relationship with political power; the information enterprise adopts the logic of profit, in tune with the rest of commercial activities; and lastly information is considered a commodity and the public mere consumers”.(2)
2. In the first decades of the twentieth century, after major technological changes in the productive base of the press, the expansion of liberal democracies brought about by the rise of the

labor movement and the triumph of the October Revolution, and the literacy processes in European countries, produced the expansion of the public sphere, leading to greater professionalization of the journalistic profession. Maisonnave calls this stage “professionalist,” in which “the ethical dimension of the communicator is reinforced, unionization advances, and the entrepreneurial model is placed in crisis.”(2)

3. As a result of these historical processes, and after the defeat of fascism in Germany and Italy in the Second World War, the so-called “universalist” cycle begins, which enshrines freedom of information and expression in international law, laying its foundations in the 1948 Universal Declaration of Human Rights. “In this way,” Loretí and Lozano point out, “modern democracies begin to recognize information and communication as a human right whose ownership belongs to society, to the public, and no longer falls exclusively to the State, nor to media owners, nor to journalists.”(2) This evolution—from the “entrepreneurial” moment, in which media owners are free to express themselves and profit from their activity, through the professional moment, in which a sector of the population working in the media develops a specific professional ethic and culture that serves as a basis for a professional and social awareness of what freedom of expression should be and how it should be exercised, to a universal conception of this right that seeks to go beyond the framework of the market and the profession and to reposition the right to expression anew as a matter belonging to every individual—may constitute a good summary of the trajectory of the right to expression in the liberal tradition.

It is important to note that these stages are methodological distinctions, but in the contemporary debate on public expression, major business interests, press professionals, the State, and individuals continue to clash.

In this sense, Maisonnave identifies within liberal doctrine a strand that, through the use of state institutions, asserts its possibility of legitimately regulating the use of the media. This political and legal position presents itself as a social-democratic and progressive alternative to the classic liberal postulate that defends the unrestricted freedom of the individual in matters of expression. (...) States play a fundamental role in shaping plural communication systems, not only in their function as administrators of the waves of the radioelectric spectrum, but the State also has the duty to promote pluralism and diversity in media that do not use that spectrum.(2)

In Latin America, this movement gained particular momentum in the 70s of the last century, after the triumph of the Cuban Revolution and Salvador Allende’s rise to power in Chile; the rise of anti-imperialist popular movements gave rise to the anti-monopoly perspective on the media. This debate achieved global relevance when the McBride Report was presented in 1980, and the battle for the New World Information Order (NOMIC) was launched from UNESCO and the countries that made up the Non-Aligned Movement.

In this context, nation-states and their regulatory duty over communication transcended the paradigm of classical liberalism. This discussion about the intervention of states in media regulation is a doctrinal discussion about the scope of freedom and property. Luigi Ferrajoli, in a text entitled “Freedom of Information and Private Property: A Non-Utopian Proposal”, addresses the central elements of this contradiction by advancing the understanding of freedom of expression as a fundamental right that must not be subordinated to the interests of individuals, but to collective interests.

Ferrajoli questions whether, in private hands, freedom of expression can effectively evade the dangers of repression, censorship, and the control of opinions and information, since in the market economy of contemporary capitalist societies these mechanisms of control can be exercised by the owners of the media.

This shift from the public to the patrimonial and vice versa is related to an analysis that has been undertaken within the political economy of communication over the last 50 years. Bolaños (4), Faraone (5), Mosco (6), Sierra Caballero (7) insist on understanding the field of communication not as a mere dispute over meanings or a purely ideological terrain in which all debate in the realm of ideas is framed, but rather seek to place the debate also on information as a commodity and the media as capitalist enterprises whose ideology and forms of economic reproduction are directly reflected in their discursivities. The Political Economy of Communication places the debate on the press, entertainment, and advertising in critical terms, recovering the theoretical elaborations of the Frankfurt School, Marxism, and studies on cultural imperialism.

Among the critical thinkers who have devoted space to framing the change in communication in the new era is the Italian Augusto Ponzio, who, in his article “The Logic of Communication and the Ideology of Advertising in Global Communication-Production,” insists on its “viral” dangers for the aspiration to democratic and full societies, not subordinated to the logic of capital.

Ponzio (7) states that “...Today, communication is no longer solely an intermediate phase in the production cycle (production, exchange, consumption). Beyond this, communication today constitutes a constitutive modality of the very processes of production and consumption. Not only does the exchange phase involve communication, but even production and consumption are communication. The whole reproductive cycle is communication...”

How can the goals of subjective liberation proposed by liberalism in its classical conceptualizations be pursued when capital, in its logic of reproduction, imposes on the dynamics of media companies a set of rules with which they must comply in the market in order to be profitable and continue to exist? How do these precepts of freedom of expression, opinion, press, communication, etc., address the logic of advertising as a “virus” within the communication market? Ponzio (7) offers the following reflection: “...the goal pursued by advertising discourse is the consumption of goods, but the truth is that the primary purpose of the advertising industry is to reproduce the advertising process through the consumption of advertising. The production of advertising discourse for the benefit of advertising is, no more and no less, the other side of production for the benefit of production. The objective of the advertising industry is the consumption of advertising: consumption of advertising messages, which are obviously in turn commodities. And just like all commodities, new advertising messages are added to the preceding ones provided that these appear outdated and obsolete...”

In this contradictory context, in which classical freedom of expression is exhausted, Maissonave (2) insists: “...The systemic and holistic quality of the subject matter cannot be left aside, since all communication processes must be related to the social totality in order to visualize social processes in a complex manner, with different levels and scales. Likewise, phenomena such as the internationalization of capital and the transnationalization of the media and cultural industries must be considered, in the world-system in which we live...”

Challenges and Contradictions of Expression as a Right

The doctrine on freedom of expression in classical liberalism defends this right as a cornerstone of individual freedom. In the liberal understanding, individuals must express themselves freely because this demonstrates their freedom of thought. The triad of freedom of thought, freedom of expression, and freedom of the press constitutes the basis of the liberal argument for the defense of this freedom, given that if individuals think differently, they must have the opportunity to express it and the means to disseminate it to all.

However, in the previous section, we discussed some limitations imposed on it by critical thinking and the Political Economy of Communication:

- a) Freedom of expression merges with freedom of enterprise, producing a collision of freedoms in which the ownership of the medium and the owner's freedom to use it affect society's informational needs, as well as the social responsibility of the press. Freedom and ownership enter into contradiction.
- b) The media constitute businesses within the communication market, in which they must compete not only with other media but also with other forms of entertainment; therefore, under the principle of freedom of expression, a sensationalist form of communication finds refuge, which views audiences as consumers and information as merchandise, undermining the educational aims of the press and its commitment to the formation of citizenship. This problem leads to sensationalism as discourse and to the impoverishment of media quality.
- c) Freedom of expression and freedom of the press cannot be understood apart from social relations and, particularly, from the power relations that shape the field of communication. Particular attention is paid to how the concentration of media ownership and economic power can limit the diversity of voices and perspectives in the public sphere.

In this sense, Hispanic American thinkers have defended “the right to communication” as a political, legal, and ethical concept with a broader scope. Cuban researcher Tolentino (9) defines it as follows: “...the right to communication transcends classical views where freedom of expression and information constitutes a principle capable by itself of ensuring the establishment of a democratic order. The new notion proposed aims to encompass much more, by recognizing the aforementioned freedoms and at the same time raising “the central demand of equal access to the media through which this right could be exercised” and making it concrete; an interest that translates into creating the “necessary material conditions” to guarantee that all citizens have “access to communication channels and to put into circulation a plurality of points of view...”

The emphasis on the right to communication seeks to resolve the contradictions created by freedom of expression and its limitations. “...the right to communication from a philosophical and

legal perspective of human rights emphasizes the instrumental character of ICTs, of the media, of information and of knowledge, which acquire their full meaning insofar as they favor the exercise of people's rights and the satisfaction of the needs of both individuals and peoples or States..."(2)

The right to communication seeks to establish itself as a human right, not merely a first-generation right situated in the classical freedom of expression of liberalism. Rather, by recovering the debate on the rights of peoples to communicate, on the need for a plurality of voices from different social groups, and on the need for the State to be an important platform for the production of such plurality, the right to communication constitutes a fundamental right.

The importance of discussing the right to communication lies in the fact that it is not limited to the right to information but encompasses it, positioning cultural industries to satisfy the public interest, protect individual freedoms, and generate a civil, political, and socially demanding citizenry in its right to a dignified life, with a propulsive relationship with the State being pertinent.(2)

This human right to communication encompasses the full and comprehensive exercise of the right to freedom of opinion, the right to freedom of expression, the right to freedom, the right to information, and the right to access and use media and information and communication technologies.

Although the right to communication is a concept that, from the activism of popular movements and the Political Economy of Communication, grew in relevance for understanding communicative and legal phenomena in Latin America since the second half of the last century, its use in the legal field is very limited and it is not part of international treaties or regional constitutions. Maisonnave (2) emphasizes: "...the truth is that the right to communication as such is not yet reflected in international norms nor in most of the national constitutions of the continent, although in recent years it has been consolidated in several Latin American legislations (with greater or lesser success and effectiveness)..."

Nevertheless, this conceptual framework, which has evolved within communication thought on the rights associated with expression, allows us to analyze one sample of Latin American constitutions and compare them with respect to their coverage of these rights, their understanding of them, and their possibilities for a process of progressive democratization of communication.

We decided to select the constitutions of Mexico, Argentina, Cuba, and Bolivia because they are relevant countries in the Latin American region and represent diverse types of political systems, and their constitutions were drafted within different socio-historical frameworks, which allows variability to permeate the analysis.

Freedom of expression and the right to communication in Latin American constitutionalism

United Mexican States

The Political Constitution of the United Mexican States (10) addresses these rights mainly in its Articles 6 and 7. Article 6 guarantees the right to "the manifestation of ideas"; this way of framing it already entails an element of originality because it refers to a broad expressive concept. Regarding this right, it states that it "cannot be the object of judicial or administrative inquiry, except in specific cases such as attacks on morality, private life, or third-party rights, provocation of crimes, or disturbance of public order."

This article also enshrines the right of access to plural and timely information, as well as the freedom to seek, receive, and disseminate information and ideas through any medium.

In this regard, section A of the constitutional text establishes the responsibility to guarantee such access to information in "the Federation and the federal entities, within the scope of their respective competences." To this end, it defines in that same section a total of VIII bases and principles to guide the proper performance of the federal entities.

In principle I, the character of public information is recognized for all information managed and produced by public institutions whose access is not regulated by "reasons of public interest and national security". Information referring to private life and personal data are protected by principle II, specifying that this shall be in accordance with the provisions established in the laws.

The following points establish that it is not necessary to justify a request for access to public information (principle III), as well as the mechanisms for access to information and the responsibility of obligated subjects to provide it, and the corresponding sanctionable liability for those who fail to observe these principles (principles IV, V, VI, VII); in the last principle of section A, the creation of an autonomous body is established "responsible for guaranteeing the fulfillment of the right of access to public information and the protection of personal data in the possession of obligated subjects under the terms established by law".

Article 7 establishes the inviolability of the freedom to disseminate opinions, information, and ideas through any medium, prohibiting indirect restrictions such as the abuse of controls over newsprint or radio frequencies. Furthermore, it prohibits prior censorship and the seizure of property used for the dissemination of information.

In terms of principles, the Political Constitution of the United Mexican States is situated in the liberal tradition by recognizing the non-restriction of opinion and the condemnation of any form of curtailing the “manifestation of ideas”. As a principle, the right to public information and the bases on which the state body responsible for satisfying said right must operate are better developed.

In this sense, Carbonell (11) points out: “...The limitations on freedom of expression mentioned by the constitutional text in its article 6 are four: attacks on morals, the rights of third parties, when a crime is provoked, or when public order is disturbed. Given the extreme vagueness of the aforementioned assumptions, their interpretation must be carried out restrictively, because otherwise it would be easy to violate freedom of expression in practice by alleging imprecise constitutional support...”

Undoubtedly, the constitutional approach, which finds further development in the issue of access to public information (subsection A, Article 6) and the use of the radioelectric spectrum and telecommunications (subsection B, Article 6), places the right to expression in its classical liberal meaning of abstention from all prior censorship and recognition of the validity of all opinions. Article 6, third paragraph, also recognizes the State’s responsibility to guarantee “the right of access to information and communication technologies, as well as to broadcasting and telecommunications services, including broadband and internet. For such purposes, the State shall establish conditions of effective competition in the provision of such services.” However, this right can be interpreted more in the sense of access to the available market of the information society (information capitalism) than as recognition of a social plurality in its political, ethnic, social, etc., forms.

Republic of Cuba

The Constitution of the Republic of Cuba (12), in Article 54, recognizes, respects, and guarantees to individuals the freedom of thought, conscience, and expression, but its exercise must be in accordance with the law and the aims of society.

Article 55 recognizes freedom of the press, which is exercised in accordance with the law and the aims of society, and establishes that the fundamental means of social communication are the socialist property of all the people or of political, social, and mass organizations, and cannot be subject to any other type of property.

Article 53 grants all persons the right to request and receive truthful, objective, and timely information from the State, and to access information generated by State bodies and entities, in accordance with established regulations. Article 50 declares correspondence and other forms of communication between persons inviolable, allowing their interception or recording only by express order of a competent authority, in the cases and with the formalities established by law.

The particularity of the perspective on freedom of expression, of the press, and of opinion in the Cuban constituent text of 2019 lies in the fact that it is found in different constitutional articles. This allows us to infer that Article 54, especially in its emphasis, in the second paragraph, on freedom of conscience, refers to “freedom of thought, conscience, and expression” as personal matters. It concerns the individual’s freedom to think, to hold certain values constitutive of their conscience, and to express them. However, by separating freedom of the press from these freedoms in Article 55, the text places the key to interpretation not only in the development laws but also in the category “the purposes of society.”

It is noteworthy that Article 55 clearly states, “The freedom of the press is recognized for persons. This right is exercised in accordance with the law and the purposes of society.” Therefore, the exercise of that right is inevitably linked to the purpose of society; thus, by invoking the social totality to exercise a right, the Cuban constitutional text removes it from the individual framework of the subject and establishes it as a right that can only be exercised collectively. Only if society recognizes that purpose as its own purpose can freedom of the press be exercised.

The problematic issue would now arise in determining how a society recognizes its aims as legitimate, because only in this way is the political space necessary for the exercise of freedom of the press produced; in this sense, the constitutional text sheds little light, so its interpretation may be ambiguous.

The second paragraph of this Article 55 establishes that “The fundamental means of social communication, in any of their manifestations and supports, are the socialist property of all the people or of political, social, and mass organizations; and they cannot be the object of any other

type of property." This paragraph is notable because it precludes the possibility that communication in the mass media sphere can be exercised through private property. To that end, it develops a particular category of political economy: the fundamental means of social communication. The constitutional text does not establish which these are, nor does it specify how they should be determined; it only reaffirms that such means are the socialist property of all the people – again alluding to the social and collective character that rights to expression must have from the material dimension of property – or of the organizations in which the people must be organized (political, social, and mass organizations), and it restricts any other type of property.

Although in this article the Cuban constitutional text leaves some hints as to the bases on which freedom in Cuba must be exercised, it also leaves a not insignificant set of questions about the concrete development of such freedom within Cuban society itself. Some ambiguous concepts, such as "fundamental means of communication" and "ends of society," leave room for legislation that permits the establishment of doctrine on these questions and the clarification of the concrete frameworks for the exercise of expression in Cuba.

Argentine Republic

The Constitution of the Argentine Nation (13) recognizes in Article 14 the right of all inhabitants of the Argentine Nation to "publish ideas through the press without prior censorship." Thus, although it does not directly mention the right to freedom of expression, it recognizes it by implication.

Article 32 prohibits the federal Congress from enacting laws that restrict freedom of the press or establish federal jurisdiction over the press. Article 38 establishes that the Constitution guarantees political parties access to public information and the dissemination of their ideas. Article 43 protects the confidentiality of journalistic sources.

From the Argentine constituent text, Maissonave (2) recognizes that the National Constitution, although it does so in a dispersed manner, protects freedom of expression, freedom of the press and freedom of printing, access to information, and the free dissemination of ideas, prohibits censorship, promotes the protection of identity and cultural plurality, and encourages the safeguarding of artistic heritage and cultural and audiovisual spaces.

However, it is interesting to note 2 issues: 1) Although all inhabitants of the Nation can publish their opinions in the press, it does not establish state responsibility for providing access for everyone to the media; rather, it is not clear how citizens can access spaces for public discussion; 2) It points to the party system as an important actor in access to information and the dissemination of ideas.

Plurinational State of Bolivia

Article 21,(14) numeral 5 recognizes the right to freely express and disseminate thoughts or opinions through any means of communication, orally, in writing or visually, individually or collectively; and numeral 6 guarantees the right to access information, interpret it, analyze it and communicate it freely.

Article 106, in its four points, recognizes diverse forms of freedom associated with expression; point I guarantees the right to communication and the right to information; point II guarantees to Bolivians the right to freedom of expression, opinion and information, to rectification and reply, and the right to freely express ideas through any means of dissemination, without prior censorship; point III guarantees to press workers freedom of expression, the right to communication and information; and point IV recognizes the conscience clause of information workers.

Let us pause for a moment on the analysis of this article in order to observe the breadth of its principles. Initially, it speaks more generally of the "right to communication" and to information, which it recognizes as rights to freedom of expression, opinion, and information, recognizes specific procedures such as "rectification or reply," and the right to express ideas without prior censorship; there is a specific section dedicated not to the entirety of the citizenry, but specifically to press workers, protecting them in their freedoms and in their freedom of conscience.

Article 107, in its three paragraphs, establishes the social responsibility of the media with "the promotion of ethical, moral and civic values of the different cultures of the country, with the production and dissemination of plurilingual and alternative-language educational programs for people with disabilities" (art. 107, paragraph I). We observe how it is not only limited to recognizing "unrestricted" freedom, but also to establishing a set of ethical and moral responsibilities with respect to its mission in citizenship formation and, in the specific Bolivian case, the communication of the plurinationality that constitutes said State.

The second section of this article focuses on observing that the information and opinion disseminated in the media must respect "the principles of truthfulness and responsibility." To this

it adds that “These principles shall be exercised through the ethical and self-regulatory norms of journalist and media organizations and their law.” In this way, we see how the social responsibility of the press is codified in the constitutional text, not establishing prior censorship, but respecting the inviolability of the freedoms established in the first section through an appeal to the self-regulatory frameworks of the journalistic guild and appealing to the professional values of those who assume the function of informing.

The third paragraph prohibits the formation of monopolies or oligopolies in the field of communication, whether directly or indirectly. In this way, it not only appeals to the ideological level of freedom of expression, but also legislates at the level of its productive material base and its materiality.

The last section of this article sets out the State’s willingness to promote the creation of “community media on equal terms and opportunities.” In this way, the State positions itself in favor of communication that grows from social grassroots in order to achieve a democratization of voices that evade the discourse of mainstream media.

CONCLUSIONS

Freedom of thought, expression, opinion, and the press constitute latent inheritances of classical liberalism in its mode of interpretation in the legal field. The principles of the inviolability of the individual’s opinion, as well as the necessary representation of the individual in the public sphere, continue to constitute determining criteria for evaluating the democratic order of countries, insofar as these constitute human rights of the so-called first generation. However, this freedom of expression – classical in the sense of interpreting it as the unrestricted freedom of the individual to express his or her ideas – presents a set of critiques and limitations that must be addressed not only from the political field and social struggle, but must also be reflected in the mode of constructing positive law.

In this sense, we highlight the limitations that this freedom of expression presents when subsumed under the freedom of property and enterprise of those who effectively own the media. From the political economy of communication, a warning is raised about the danger of media concentration and the impact that the modes of communicative production and the capitalist character of communication have on discourses. This interprets information as a commodity and strips it of its educational and civic formation possibilities, alienating it in the capitalist market of advertising entertainment. In this sense, progress must be made toward the “right to communication” as a more plural right that effectively guarantees not only access to TICs, but also the real and democratic participation of society in the public sphere.

Freedom of expression and the rights associated with it are reflected in the Latin American constitutionalism analyzed. The analysis of the constitutions of Mexico, Cuba, Argentina, and Bolivia reveals a diversity of approaches to the protection of these rights. Mexico falls within the liberal tradition, with an emphasis on the non-restriction of opinion and a more extensive development of the right of access to public information. Cuba presents a particular perspective in which freedom of the press is subordinated to the “aims of society” and the principal media are socially owned. Argentina, although it does not explicitly mention freedom of expression, recognizes it implicitly through freedom of the press and guarantees access to information for political parties. However, it does not clearly establish state responsibility for guaranteeing widespread access to the media. Bolivia demonstrates significant progress by explicitly recognizing the right to communication, freedom of expression in various forms, the social responsibility of the media, the prohibition of monopolies, and the promotion of community media.

This work underscores the complexity of the debate surrounding freedom of expression and the right to communication in Latin America, where tensions between the liberal tradition, critiques from critical thought, and diverse constitutional experiences shape the current landscape. The notion of the right to communication is presented as an attempt to update and expand the protection of rights associated with expression in a context marked by media concentration and the need to guarantee more equitable participation in the public sphere. However, its legal realization at the international level and in most national constitutions remains limited.

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