

Desacato Laws:

Insult to Press Freedom

by

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During the past year, radar revealed blurs on the free press screen. At first they attracted little interest or concern. But recently, the blurs have come into sharp focus, revealing a growing mass that sets off alarms.

Today, I'm here to share with you my concern about two specific threats – new efforts to revive the notion of a “new world information and communication order (NWICO),” and the persistence of desacato or “insult laws” – and to sound the alarm for action.

Twenty years ago, I helped the World Press Freedom Committee unify independent news media against the NWICO, a major threat to press freedom. Since then, WPFC has provided leadership in the worldwide fight against proposals for the licensing of journalists, mandatory codes of conduct and efforts to censor directly or indirectly. Today, with 41 affiliated journalistic organizations on five continents, including the IAPA, WPFC is in the forefront of a struggle for a free press everywhere. The IAPA is a strong supporter of the effort, and has been for 20 years.

The NWICO

Let me take you back to 1976 to a UNESCO general conference at Nairobi. At this meeting, the Non-Aligned countries and the Communist states from the former Soviet Union revealed a carefully conceived master plan – the new world information and communication order (NWICO).

They argued that the media world-wide was controlled by Western news agencies such as AP, Reuter and Agence France-Presse, and that these gave scant attention to Third World poverty and ignored the need for major social reforms to correct the economic inequality between the “haves” and the “have nots.” The reformers advocated placing the media under government control, licensing journalists and imposing censorship of the printed press, radio and television.

These extreme positions drew the line in the sand for the free press. WPFC and other press groups throughout the world met this threat and reminded the nations of the world that Article 19 of the Universal Declaration of Human Rights provides:

“Everyone has the right to freedom of opinions and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

The IAPA played an important role in this effort by sending representatives to UNESCO sessions. They enlisted the aid of local governments and editorialized on the benefits of a free press. You can be proud of your efforts.

The story has a happy ending. After years of debate and under the leadership of a new secretary general, Federico Mayor, UNESCO rejected the NWICO arguments. The anti-free press rhetoric faded away. In addition, the “have” countries made constructive efforts to aid the Third World by helping to modernize and by giving them a more significant role in international communications.

Under Mr. Mayor's leadership, these nations began to recognize that a free press was essential for economic development and that Article 19 supported the role of the press as a critic.

But our joy was short-lived. Supporters of NWICO have returned and are active again, trying to enmesh the United Nations itself in a new campaign to legitimize press restrictions. Targeted, always, are those who pierce the “dignity” of rulers.

Insult Laws – Desacato

Let's examine the background of *desacato*, an especially dangerous tool of repression used by rulers who believe they have been "insulted." It is very easy for some authoritarians to believe they have been wronged, especially by the press.

The media admittedly are often bothersome for governments. Few chiefs of state or heads of government welcome criticism, which the media offers freely, and often in an offensive manner.

Reporters are frequently irreverent and ask questions to evoke "the truth" by provocative rather than diplomatic colloquy. Such tactics are not designed to please or flatter government officials, but to produce facts which officials might prefer to conceal.

The media sometimes gets it wrong; occasionally even very wrong. But so can governmental authorities – and with more damaging consequences. The danger that the press may misunderstand or misinterpret or even misinform is, in the final analysis, a small price to pay compared to the benefits the news media render when they expose wrongdoing or gross errors of judgment by the powers that be.

Nobody advocates that the press should place itself above the laws set forth for everyone. But it should not be for governments to dictate a standard of conduct to the press. Rather, the first responsibility of news media is to the public. In a free country, that audience is the most effective judge of the success or failure of the press, simply by reading or not buying newspapers, not turning on the radio or not watching television. If the press wants to set rules for itself, that should be its free choice, made without outside pressure. The laws of libel already apply to remedy misdeeds. The press should be judged by judicial standards consistent with Article 19.

Now let me describe the insult laws which some countries have adopted, making it a crime for criticizing its leaders or criticizing government policies.

A typical example of an insult law is the Press Law of Egypt, adopted on May 27, 1995. In the following 12 months, 99 journalists, writers and artists – including 25 editors-in-chief – were prosecuted under this law. Many were imprisoned and fined.

The penal law for which they were jailed contained the following provisions:

- A penalty of detention of no less than one year for anyone who publishes material insulting to the president of the republic. Where the offense of insulting the president of the republic by any of the means of publishing is accompanied by the calling into question of an individual's honor, harming the reputation of an individual's family, or infringement of the sanctity of an individual's private life, the penalty shall be both detention and a fine. The fine shall be no less than half the maximum limit stipulated and the period of detention shall be no less than six months.
- Whoever insults the parliament or other official bodies, the army, courts, authorities, or public agencies through any of the means of publishing can be punished by a minimum detention period of one year and/or a fine.
- A penalty of detention for a period between one and three years is stated for anyone who publishes images damaging to the nation's reputation.
- Anyone who attempts to incite sectarianism or contempt of other people through any of the means of publishing can be detained up to one year if the incitement is conducive to disturbing social peace.
- A minimum period of detention of one year is stated where anyone publishes material vilifying the monarch or president of a foreign state.
- A penalty of detention and/or a fine for anyone who publishes news of investigations which the investigation authority conducts in the absence of an opposing party.

It is significant that these provisions impose criminal penalties, not civil as in ordinary libel cases. But, there is a happy ending to the Egyptian story.

On June 17, 1996, the Peoples Assembly of Egypt repealed the Press Law. This was a tremendous victory for the free press, which rallied its supporters and fended off this very dangerous legislation. It is

also a tribute to the Egyptian journalists who persisted in their opposition, threatened a strike and organized a sit-in which attracted the personal interest of President Mubarak.

I wish I could end on an optimistic note that all is well – but to do so would ignore the growing list of governments that have adopted the “insult laws.” The examples illustrate the problem, but do not describe the numerous countries that have similar laws. Although some do not enforce the provisions, the threat exists that they will when the occasion permits.

Let me describe a few additional blurs on the radar screen.

You’re probably wondering what constitutes an “insult” that will put a journalist in jail.

In Kazakhstan, a writer-historian allegedly called the president of the country a “goat.” He was jailed.

In France, when President DeGaulle was in office, the insult was to shout “hoo hoo” – the equivalent of boo boo in English – as DeGaulle rode down the champs Elysees.

When I asked the minister of justice who decided what constituted an insult, he responded immediately, “I do.”

No jury, no judge. Just, “I do.”

Now let me describe the Latin American situation: “Desacato” exists in various forms in more than a dozen countries, including Bolivia, Brazil, Chile, Costa Rica, Colombia, Cuba, Ecuador, El Salvador, Guatemala, Haiti, Mexico, Paraguay, Peru, Uruguay and Venezuela.

I’d like to refer to two countries to illustrate the problems. First, Argentina and second, Costa Rica.

Argentina

This law incriminated “lawyers, litigants and other persons” (which would include journalists) who in writing or in any other type of communication impugned the authority, dignity or decorum of the magistrates.

Horacio Verbitsky, a prominent political journalist, was convicted on charges involving the minister of the Supreme Court. The conviction was upheld by Argentina’s Supreme Court. However, an advisory opinion of the Inter American Human Rights Convention held that the law violated the Commission’s freedom of expression provisions, which are similar to Article 19.

The Inter American Court stated:

The use of desacato laws to protect the honor of public functionaries acting in their official capacities unjustifiably grants a right to protection to public officials that is not available to other members of society. This distinction inverts the fundamental principle in a democratic society that holds the Government subject to controls, such as public scrutiny, in order to preclude or control abuse of its coercive powers. ... Contrary to the rationale underlying desacato laws, in democratic societies, political and public figures must be more, not less, open to public scrutiny and criticism. The open and wide-ranging public debate which is at the core of democratic society necessarily involves those persons who are involved in devising and implementing public policy.

The law was abolished – the free press prevailed.

Costa Rica

Here the law provides:

“Any person who attacks the honor or offends the decorum of a public official or who threatens him because of his functions addressing him personally, publicly or in writing or by telegraph or by telephone or through hierarchical influence shall be punished by from one month up to two years in prison.”

If, however, the party offended is the president of the republic, a senior official of the executive, legislative or judicial branches of government, a judge, a magistrate of the national board of elections, a general controller or assistant general controller of the republic, then the punishment shall be prison sentences of from six months up to three years.

Let me remind you that Costa Rica was the country which was the forum for historic discussion of the licensing of journalists and a decision on the validity of such laws relating to the collegio and licensing.

The famous case involved Stephen Schmidt, an American reporter who was not certified by the collegio. He and the *Tico Times* were tried in the local courts for violating the laws on licensing. They were found guilty; but when the case was reviewed by the Inter American Court of Human Rights, the court held that such licensing laws were illegal.

The IAPA was in the forefront of that historic free press contest and was a party to litigation before the Commission. You can be proud of your participation. Your editorial support and appeals to the public and the parliament provided the impetus for repeal of the law. I was privileged to act as legal counsel for the World Press Freedom Committee in that litigation, and regard it as a memorable experience.

Now, the IAPA has an opportunity to repeat that performance and victory, by providing leadership in opposition to desecrated laws throughout the world. I hope you will do so, and that the World Press Freedom Committee can play a supporting role again.

Conclusion

The alarm bells have sounded. And although they are faint, they are loud enough to call for action. Here are some conclusions:

- Insult laws contradict Article 19 of the U.N.'s Universal Declaration of Human Rights and similar treaty provisions in regional agreements.
- The enforcement of these laws prevents the media from offering criticism of government action, and leads to self-censorship. Clearly, there can be no "freedom to hold opinions without interference" if the jailer is looking for the critic of the regime.
- Criticism and press reports should be judged by ordinary libel laws applicable to everyone – not by a criminal statute.

The courts have been supportive of the free press arguments. For example, the European Court of Human Rights in an important case, *Castells v. Spain* (23 April 1992), reviewed these principles and came to a very significant decision on these facts.

In 1979, Castells, a senator in the Spanish Parliament representing a Basque separatist coalition, published an article citing a large number of Basque people who had been killed or attacked by armed groups. He accused the government of failing to investigate properly or prosecute the crimes, claiming it thus shared criminal responsibility with the perpetrators. Castells was convicted of insulting the government, sentenced to imprisonment and disqualified from public office for one year. The Spanish Constitutional Court suspended the penalties pending determination by the European Court, which then ruled in his favor.

The European Court decided that governments are required to tolerate an even greater degree of scrutiny than are politicians: "The limits of permissible criticism are wider with regard to the Government than in relation to a private citizen, or even a politician. In a democratic system the actions or omissions of the Government must be subject to the close scrutiny not only of the legislative and judicial authorities but also of the press and public opinion."

This decision offers support on legal grounds for a repeal of the "insult laws," and also reinforces the arguments of human rights advocates for Article 19. It's a good beginning.

The time has come for action. The successful efforts in Egypt and Argentina should lend great encouragement. Here are my suggestions:

1. Journalists from all parts of the free world should become involved in a campaign to oppose any consideration of a “new world information and communication order,” and concentrate specifically on the repeal of desacato laws in their own countries.
2. Editorials should be written stressing the evils of the insult laws and their violation of human rights, particularly Article 19 of the U.N. Declaration of Human Rights.
3. Meetings should be held with parliamentary and government leaders urging the repeal of these laws.
4. The business community and the civic leaders should be urged to join in the campaign. Free speech is a vital safeguard for a free nation.
5. The campaign should be locally based. Costa Rican journalists must fight for a free press in Costa Rica. Other countries should support the movement but it must be led by local media.

Now a final word about the World Press Freedom Committee. We stand ready to participate in your program. The chairman of the World Press Freedom Committee, James H. Ottaway, Jr., Senior Vice President of Dow Jones & Co., and I issued a call for the elimination of insult laws at last fall’s meeting of the Commonwealth Press Union.

Recently, the Wall Street Journal carried our Op Ed piece both in the European and the U.S. editions.

Insult laws are an insult to press freedom. Desacato must be eliminated from the vocabulary of parliament and government agencies. With your help, this will happen.

Appendix

Charter for a Free Press

A free press means a free people. To this end, the following principles, basic to an unfettered flow of news and information both within and across national borders, deserve the support of all those pledged to advance and protect democratic institutions.

1. Censorship, direct or indirect, is unacceptable; thus laws and practices restricting the right of the news media freely to gather and distribute information must be abolished, and government authorities, national or local, must not interfere with the content of print or broadcast news, or restrict access to any news source.
2. Independent news media, both print and broadcast, must be allowed to emerge and operate freely in all countries.
3. There must be no discrimination by governments in their treatment, economic or otherwise, of the news media within a country. In those countries where government media also exist, the independent media must have the same free access as the official media have to all material and facilities necessary to their publishing or broadcasting operations.
4. States must not restrict access to newsprint, printing facilities and distribution systems, operation of news agencies, and availability of broadcast frequencies and facilities.
5. Legal, technical and tariff practices by communications authorities which inhibit the distribution of news and restrict the flow of information are condemned.
6. Government media must enjoy editorial independence and be open to a diversity of viewpoints. This should be affirmed in both law and practice.
7. There should be unrestricted access by the print and broadcast media within a country to outside news and information services, and the public should enjoy similar freedom to receive foreign publications and foreign broadcasts without interference.
8. National frontiers must be open to foreign journalists. Quotas must not apply, and applications for visas, press credentials and other documentation requisite for their work should be approved promptly. Foreign journalists should be allowed to travel freely within a country and have access to both official and unofficial news sources, and be allowed to import and export freely all necessary professional materials and equipment.
9. Restrictions on the free entry to the field of journalism or over its practice, through licensing or other certification procedures, must be eliminated.
10. Journalists, like all citizens, must be secure in their persons and be given full protection of law. Journalists working in war zones are recognized as civilians enjoying all rights and immunities accorded to other civilians.

About the Charter...

This Charter for a Free Press represents provisions approved by journalists from 34 countries at the Voices of Freedom world conference on censorship problems in London, Jan. 16-18, 1987.

The conference was held by the World Press Freedom Committee, with the cooperation of the International Federation of Newspaper Publishers (FIEJ), International Press Institute, Inter American Press Association, North American National Broadcasters Association and the International Federation of the Periodical Press.

The provisions embody a wide consensus on principles necessary to ensure free, independent news media. The Charter has been cited approvingly at OSCE and other meetings, formally endorsed by both the U.N. Secretary-General and UNESCO's Director-General and supported by a number of journalistic organizations around the world.

We hope the Charter will be useful wherever principles for freedom and a free press are needed.

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