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Jurisprudence under the Perspective of the New Media and its Effect on the Communication of Law

Abstract: Despite the law knowledge presumption, Jurisprudence has not always considered the effects introduced by the communication of law in the transition from the print to the electric revolution, using here concepts and ideas of McLuhan´s theory.

The use of Internet by Brazilian Courts (on line transmission of trials, the digital process, transformation of courts in source of news on what concerns their decisions) is an interesting example of how the new medium interferes in the substance of the message of law, since the movement of the messages must be considered to understand the epistemological domain of law. New elements are introduced by the new media and interact with the old meanings, concepts and processes of law and of the old media and can themselves bring new conflicts that are relevant to the comprehension of the complete and real dynamics of Law.

Keywords: Jurisprudence, Law communication, new media

> "Morbid Twitter**.** The incredible media story of the model Cibele Dorsa, former cover of Playboy magazine, who sent an exclusive letter to "Caras" magazine announcing her suicide and posted her farewell on twitter, is an internet phenomenon. After the announcement of her death, at the weekend, she got three thousand new followers on twitter"[1].

The text above was taken from a newspaper column that publishes small general topics and that has replaced the futilities of the social columns of the past. The surprise with her efforts to make her own death public and with people's reaction to respond to the calls of the media are a symbolic statements for the perception of the media integration as an extension of the body and its influence in the substance of the message, confirming what was theorized by Marshall McLuhan in the sixties and seventies. And it says something about the spirit of these times that are also times of law.

This paper intends to raise some issues about how the new communicative demands and their means act in relation to the Judiciary, especially by the integration of its message beyond writing with the use of technologies such as the internet. The questions to be asked are the following: Assuming that law is presumably known, how does it appropriate new media? And

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[1] O Globo, Segundo Caderno, Gente boa, 29.03.2011, 3.

if it does, and when it does, how does jurisprudence understand and analyse the problematic aspects of this process of interaction between means and message? Is it possible that this communication takes on the risk of expository morbidity registered in the initial text? What happens to the person whose life and conflicts are exposed by the translation of the law by new media? What happens when these people are the parties, the judge, the witness, the lawyer, all those who relate to the legal environment through the formal tools?

Jurisprudence doesn't normally absorb the interdisciplinary potential of communication studies in order to understand the processes when the message of law is transmitted. The main consequence of this methodology of knowledge is the lack of a deeper reflection on the dynamics of law dissemination via its various articulation phenomena.

In the age of urgency and of communication as one of the cultural factors or one of the social subsystems which act as language, it is not believable that law would act as a sealed and impervious formula preserving the canons and dogmas as if they were untouchable. Even not assimilating them as subject of reflection constitutes relevant data about how legal knowledge takes place considering the means used and the way they are used.

In the production of the message of law, there are the traditional means that are deemed sufficient to demarcate the total knowledge in which the concept of publicity based on a written format stood out. However, law's raw materials are the conflicts that it seeks to avoid and/or solve. And throughout the journey are the people who experience them and also those who apply the law, so that there is no channel of automation. Law generates effects not only in the internal scope, but it reaches people, and the use of means to *broadcast* its message composes what it is, because along the process of regulating situations, it necessarily makes and changes people's images with the interference of its own media (the reasons, the summons, publication, res judicata, the penalty imposed). It interferes also on how the message about the effect of the laws echoes and is absorbed by other subsystems of communication, which includes nowadays, in addition to the general press, the internet.

Slightly reviving the history of law, since ancient times, what is noticed is the predominance of a spoken law, based on use, until the invention of the press that led to the predominance of the expression of the legal phenomenon to writing.

This was not just a process of law, but an element of the Western culture. And it was not a seamless process.

When Thompson[2] highlights the separation and the dependence of the access from the means, he points to a relevant and pertinent paradox in relation to writing as a place of certainties, and this also applies to law.

The transformation of the needs and interests into a statute, as source or predominant means to have a sharp impact from the early nineteenth century in continental Europe and Latin America, cannot escape reality and, therefore, cannot exclude the fact that most conflicts happen orally. The processes for decision making (the law or statute itself, seen as a decision in an abstract perspective and the sentences and rulings, seen as decisions in an concrete perspective) embody the unwritten as the centre of discussion which precedes the conclusion or the consolidation of a written text.

The advent of the code, as the predominant text of legal expression and with the sophistication of the essential previous theoretical support to decode its meaning, created a distance in the access even by the volume and growing specialization of the legal message and this leads again to Thompson:

> "The publicness created by print was not only severed from the sharing of a common locale: it was also disconnected from the kind of dialogical exchange characteristic of face-to-face conversation. With the advent of printing, the act of making something public was separated in principal from the dialogical exchange of speech-acts and became increasingly dependent on access to the means of production and transmitting the printed word"[3].

The text of the code and of the theory prevents the experience of the *common locale* and of the dialogical exchange characteristics of face-to-face conversation. In spite of the total knowledge ideology, this is not effective in the unrestricted access to the text of the law.

If there was, particularly from the nineteenth century, a theoretical proposition of wide visibility towards understanding the exposure for the ways of making Law public and of the dialogues of convergence, this does not mean that the process of printing and transmitting the word of Law reached satisfactory results. The idea of a presumed knowledge acted, therefore, as if *form* was enough. And it happened in a period of continuous innovation of the means (the print, the radio, the television, the internet) and of insertion of the intensity of its communicative power that acted in relation to everything else, except the law.

The means of communication are not neutral. They contextualize and interfere on the message. This happens to the orality, to writing, to the press, to the electronic and mainly to

[2] John B. Thompson, *The media and modernity:* a social theory of the media. Polity, 2010, 127
[3] John B. Thompson, *The media and modernity:* a social theory of the media. Polity, 2010, 127.

what concerns to the observations that there is no such a thing as a total replacement. Denying orality as legal data is a fantasy over reality. Likewise it is a fantasy to deny the dynamics of convergence of media as result of the use of the internet and the electronic process as a relevant matter to Jurisprudence.

The feeling one gets whilst considering the media conforming of the law is that the influence of the environment in legal phenomena is irrelevant and that the written version that condensates the certainty of law enforcement prevails. Telegraph, cinema, radio and television, which form part of the electric revolution, do not seem to have interfered with the communication of the forms of the law. Even though the news about conflicts and about the performance of the Judiciary have always been on the daily agenda as subject of the news, as plot for a drama there was no efficient use of the media to formally or officially broadcast the message of the law. Neither the law, nor legal decisions or the jurisprudence had made use of the electric revolution.

However it is now made, abruptly, the transition from the printed text, as exclusive source of the law, the decision and the legal theory, to the communication via internet. And the processes of the electronic media interact, for its essential conformation, with the radio, the television and the written word in the language of journalism. Law can be researched on the internet. The court order and even different stages of the process can be found on the internet. The intersection or convergence tends to bring deep effects to the law itself as a means to make justice. It, however, does not clash with the general sense. The convergence of means on display does not act unpunished and Marshall McLuhan's point must be retrieved for an easier understanding:

> "When the movie scenario or picture story was applied to the *idea* article, the magazine world had discovered a hybrid that ended the supremacy of short story. When wheels were put in tandem form, the wheel principle combined with the lineal typographic principle to create aerodynamic balance. The wheel crossed with industrial, lineal form released the new form of the airplane.
>
> The hybrid or the meeting of two media is a moment of truth and revelation from which new form is born. For the parallel between two media holds us on the frontiers between forms that snap us out of the Narcissus-narcosis. The moment of the meeting of media is a moment of freedom and release from the ordinary trance and numbness imposed by them on our senses"[4].

[4] Marshall McLuhan, Understanding media, in: Eric McLuhan, Frank Zingrone. *Essencial McLuhan*. Anansi, 1996, 179.

Such freedom sharpens the senses, but does not allow the lack of attention to the process and its repercussions, especially when it comes to the law that interferes in various levels of social life.

Law constitutes a hybrid and its meeting with the internet and media convergence will certainly imply in an experience to the senses and its epistemology and problematic. The intersection between the statute, the orality and the internet may represent a moment of freedom and release from the numbness that concerns the knowledge of Law. It will not be a process without setbacks and, for this reason, it deserves attention from those who have the Law as a duty and those who make science out of it.

McLuhan does not ignore that the specialization of the media by the change from Gutemberg to Marconi brought trauma, "as one segment of experience infringes and overlays the other in an aggressive, brawling sequence and cycle"[5]. The thinker died in 1980 and did not witness the internet. But his observation about the size of the world and the influence of a new era for communication and reflection about its contents apply entirely to the contemporary experience and to new fields of broadcasting that also become fields of the law as formal technique:

> "All that ends now in the electronic age, whose media substitute all-at-once-ness for one-thing-at-a-timeness. (…) The globe has become on one hand a community of learning, and at the same time, with regard to the tightness of the interrelationships, the globe has become a tiny village. Patterns of human association based on slower media have become overnight not only irrelevant and obsolete, but a threat to the continued existence and to sanity. In these circumstances understanding media must mean understanding the *effects* of media. The objectives of new media have tended, fatally, to be set in the terms of the parameters of old media – especially of speech and print"[6].

The changes that came about in the past decade, with the rise of the internet, represent its introduction as a new medium, that combines and modifies other existing media of the electric era, by which, until now, legal phenomena had not travelled. Even after the telegraph, radio and television, the technical message of the Law was basically exposed by the written process, by the publishing of decisions in official newspapers, legal books and articles. As if it

[5] Marshall McLuhan, Is it natural that one medium should appropriate and exploit another?, in: Eric McLuhan, Frank Zingrone. *Essencial McLuhan*. Anansi, 1996, 180.
[6] Marshall McLuhan, Is it natural that one medium should appropriate and exploit another?, in: Eric McLuhan, Frank Zingrone. *Essencial McLuhan*. Anansi, 1996, 180.

was enough. As if it was not anachronistic. It is important, however, to bear in mind that the argumentative parameters of old media still prevail to some extent.

It is not possible to refuse reality or wish to go back to the good old times. There is no way to deny the influence of the new media simply by what is dysfunctional in it. To talk about their good and evil in it is not only to reinforce the antagonism noticed in the approach of mass media that was so well handled by Umberto Eco in *Apocalittici e integrati*[7]. One must harmonize the critical omission and the conformed support from those integrated to the combative rejection of the apocalyptic of a process in altering the means of communication that is irreversible.

One cannot accept every single medium as a simple achievement. Each of them represents, in fact, a process in which realities are added up. This can be clearly read in Ruy Castro's essay quote about the introduction of the use of computers in newsrooms in which he reminds a day when the medium of the past had to be recovered even for a few moments:

> "One day, the disaster. A crash stopped the system before the closing of the edition and no one could find the problem. Hustle and bustle, distress among technicians, despair among editors. Time was passing by and the unthinkable would happen: for the first time in nearly 60 years, the paper would not be out on the following day.
>
> Until someone from the board of directors had an idea: to bring back from the depot, where they had been forgotten, gathering moist and dust, the old typewriters. That day's paper would have to be done "by hand", like in the old days – like since the newspaper started. When the clerks entered the newsroom carrying Remingtons, there was a shout, a collective roar, as if a goal had been scored. The paper was made and, on the next day, the system was recovered. Past went back to its place, but it was lovely while it lasted."[8]

The past without the internet, without accessible processes for online research, without the processing of petitions via website, without live broadcasting of hearings must not come back. It is a past that has its own place. It is not possible to once again picture communication using Remington's typewriters, carbon paper copies, the need to retype the whole text if an error is made. But the memory of the experience of making the law "with one's own hands" settles and is lived in the rhetoric, in the argument, on the means to make the process gain speed or not.

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[7] See Umberto Eco, *Apocalípticos e integrados*, Perspectiva, 2006.
[8] Ruy Castro, De volta ao passado, Folha de São Paulo, the 12th April 2010, A2 – http://www1.folha.uol.com.br/fsp/opiniao/fz1204201005.htm.

There is a merging of medium that prints a new rhythm to the time of law and adds speed and dispersion of electronic communication to the density of the message around trials and sanctions which characterizes legal communication. As elements incorporated to all steps of the process, there are the effects directly felt in the lives of people who get the message and/or are affected by its substance.

John Thompson states that the reception of media products is a situated activity (the recipients are located in specific socio-historical contexts), a routine activity (because it is "an integral part of the regularized activities that constitute everyday life"), which implies a *skilled accomplishment* (because it "depends on a range of skills and competences which individuals deploy in the process of reception") and which is part of a hermeneutic process[9]. The law as a means of communicating a message about human relations and justice is not different. It is a situated activity and its recipients are in specific socio-historical contexts, also in regards to the meaning that should be assigned to it, a routine activity (because the conflict, its prevention and solution are an integral part of the regularized activities that constitute everyday life and imply a *skilled accomplishment* because it will be more effective when the individuals acquire the range of skills and competences for their hermeneutic process.

There is, therefore, no way to discard the knowledge of the total flow of messages by the convergence of the different means in regards to Law. It is a media product that carries the characteristics of a process in which the shape of its communication affects on what will be absorbed as the basis of their knowledge. This happens when the means is orality, even by the communication of the judge with the parties in the courtrooms, when it is written as in the statute or the jurisprudence and when the internet is used to transmit the trials, to spread the text of the laws or content of processes and to the transformation of the contents of the decision in news on court websites.

The awareness that one must have of Law, as any other means of communication, is not a once-and-for-all event:

> "We are actively fashioning a self by *means* of the messages and meaningful content supplied by media products (among other things). This process of self-fashioning is not a sudden, once-and-for-all event. It is a process in which some messages are retained and others slip away from one´s memory, lost amidst the continuous flow of images and ideas"[10].

[9] John B. Thompson, *The media and modernity:* a social theory of the media. Polity, 2010, 38-40.
[10] John B. Thompson, *The media and modernity:* a social theory of the media. Polity, 2010, 43.

The relational and analogue aspects of people's involvement in the processes of the communication of messages about justice done concretely constitutes an existing side of law experience and epistemology. It is found in all expressions and covers the ways in which the internet is used. This short study aims only to raise some topics about the use of new media by Law and especially the internet from two perspectives linked to the communication of the Judiciary that were introduced in Brazil over the last years a) live television broadcasting of trials; b) the institutional communication that transforms courts into issue sources for other means of communication. A third object would be the transition to the digital process, but about it only a mere mention will be made.

I. Sound and Image

It was a typical day at the labour court of appeal session. The subject under judgement was ordinary. So was the position of the judges who participated in it. But there was a crucial difference: it was being broadcasted live over the internet and was accessible to whoever accessed the system from anywhere in the world. This meant a different position on the means of propagating the message. Instead of the traditional publication, in official newspapers, which were accessed by a restrict group of people, who usually had specialized technical qualification, the access, under those circumstances, was given to anyone. An unpredictable audience would see that hearing as if it was an ordinary television program with a varied potential of message understanding.

When some of my work colleagues were emphatic in their defence of their points of view, different to mine, I don't suppose they took into consideration the open media channel. Their defence of the interpretation that would prevail was based on the invocation of matrices principles of the legal system, such as the dignity of the human being and equality. And it was done in a verbally fierce way, in an energetic exposure. Thus, to have a different understanding from them could seem, mainly due to the verbal power in which they positioned themselves and the time spent in doing so, the degradation of those principles. However, from a hermeneutics perspective, it was just another way of placing equality and actual human being dignity. The facts, according to my understanding, led those principles to a different dimension. I could not guarantee, however, that, away from the transcripts, my point of view would be well understood to whoever heard the greediness of the defence made by them. The solution was to use the same rhetorical resource for the oral expression with which I would not worry about in other times, when that decision was just what was written and encrypted on paper.

It was at stake not only the scope of the meaning of the trial itself, but the image that would be released or frozen from the assumption that the broadcasting allowed or enlarged the phenomena of media convergence with its unpredictability. Jenkins defined the convergence as the flow of contents through multiple media platforms, the cooperation between multiple media markets and the migratory behaviour of the public of the means of communication[11]. In this world of convergence, even from Jenkins, every important story is told, every brand is sold, and every consumer is courted[12]. Or not.

In live trial broadcasting, old legal media (the debate, the reasons) and television are combined, as a new media, even if it is via the internet.

The image of the clash of interpreting views could lead to the impression that we were arguing or that the disagreement highlighted their personal rejection towards me. It could prevail in the evaluation of the circumstances of the trial on main matters discussed by the layman viewer and it could also be translated with more importance by the press if the case had brought up an interest as headline.

Instead of the decision as a written text to be read, the broadcasting brings visibility to the entire process and to people that take part in it. It is a formidable change to the means of access to knowledge. Since it is done without any drawbacks, the apprehension from the television media or any other similar resource is a characteristics of the flow of time. The human being in contemporary society has become used to seeing the world through television. It became part of their bodies, of their way of gaining knowledge:

> "Television thus enables recipients to see persons, actions and events as well as to hear the spoken word and other sounds. The publicness of persons, actions and events is reconnected with the capacity for them to be seen or heard by others. In the age of television, visibility in the narrow sense of vision – capacity to be seen with eyes – is elevated to a new level of historical significance"[13].

Live broadcasting of court trials via television or the internet brings the implications of a new media that starts to be used to give publicity to the acting processes of the Judiciary. To orality, as traditional means, are added the effects of simultaneous view, changing the power of dramatising, that used to reach only those present in the courtrooms. It's worth asking, therefore, about the influence of this live broadcast and about the way it interferes on the

[11] Henry Jenkins, *Cultura da convergência*. Aleph, 2009, 29.
[12] Henry Jenkins, *Cultura da convergência*. Aleph, 2009, 29.
[13] John B. Thompson, *The media and modernity:* a social theory of the media. Polity, 2010, 129.

understanding and dissemination of knowledge of the *res judicata*, of law itself and on its historical significance on the decision process.

For those who work in and with the law, the idea that the means are an extension of the body or that they could interfere in the contents of the message[14] is not an aspect of relevant consideration, even if their awareness is assumed in all of them.

What changes today, with the live broadcasting of trial sessions, especially those in the Federal Supreme Court, and what will change with the transmitting or the possibility of access to hearings, in a not so remote future, is the extension of the visibility to a wider audience of interpreters and the possibility of preservation of what was before fading as words let loose in the air, as momentary voice and movement. It also changes the way of seeing and understanding the legal concepts and standards, once the speech returns to echo, formally, as being the place where law operates. It changes the feeling of proximity to the place where decisions are taken.

Thompson compares the television effects to the "traditional publicness of co-presence"[15] which he defines from the following statement:

> "Prior to the development of the media, the publicness of individuals or events was linked to the sharing of a common locale. An event became a public event by being staged before a plurality of individuals who were physically present at its occurrence - in the manner, for instance, of a public execution in medieval Europe, performed before a group of spectators who had gathered together in the market square. (…) This traditional kind of publicness which drew on, and was constituted by, the richness of symbolic cues characteristics of face-to-face interaction"[16]

The viewer of the trial session broadcasting will have the impression of having been at the place where the trial happened face-to-face and to have been part of it. But the mere presumption that law (form and substance) is known by all continues and that can be highlighted in live broadcasting, if participants do not become aware of the autonomous power of the image. There are sensitive issues such as a discussion, a more aggressive voice, a more intense gesturing that can prevail over the substance of a decision.

The visibility given to trials, as scene and scenario of law, makes the principle of publicity escape from the healthy version of the shorthand notes and of the written text. The aspects that gain resonance are only the ones linked to the prevalent meaning of the decision

[14] Marshall McLuhan, Understanding media, in: Eric McLuhan, Frank Zingrone. *Essencial McLuhan*. Anansi, 1996, 2005.
[15] John B. Thompson, *The media and modernity:* a social theory of the media. Polity, 2010, 129.
[16] John B. Thompson, *The media and modernity:* a social theory of the media. Polity, 2010, 125.

reached after the debates. The headlines of the following day spread the tortuous sentence, the impression from judges who do not do well in real life, the unexpected reaction, jokingly said in a pun that usually do not interfere in the results, but make the news. And get the cover page.

Judges are not prepared to pay attention to this surprising collateral fact (the fight, the catch phrase, the misplaced and mindless word, the abrupt gesture) that, in live broadcasting, overlaps, such as image, the substance of the decision and even the endogenous vicissitudes of the interpretive process of the law. No surprise, though. It's live television and what remains from it is the movement.

As it is not possible to take the past away from its place, judges must learn the communication techniques and the specific nature of the media and its convergence without any subterfuges and must understand the changes that may be attributed to the substance of the message by their use.

Trials are not abstract experiences. They are judgements given in relation to conflicts and, therefore, there will always be exposure of someone, whether the judge in the act of judging, whether the party, the lawyer, the prosecutor or solicitor, the witness. And the exposure can be taken to other media as scandal.

The documentary *A night in 67*[17], reveals, right at the beginning, the desire of one of its organizers to have the live music festival broadcasted as a wrestling. It is not any different here. This feeling – of a wrestling – will certainly be captured and examined with more interest than the debate around the concepts and interpretive techniques of the Constitution, the laws, the case, where the dynamics of law is best seen and the lives of those involved in the conflict and responsible for judging are exposed.

The learning of the communication paths of the law by these other means constitute a tender spot and its construction lies upon those who judge or who defend positions or interests such as lawyers, prosecutors and solicitors. It is a language to be understood that requires the consolidation of training for the communication in inter or trans-disciplinary approach.

Perhaps it would be interesting to remember how to learn about this communication with the live image of the law from some situations of the early history of the television in Brazil prior to videotape. Without having memorised his part, an actor put a small note in a vase of dahlias that was on the scenario. When he went back to that marking point, where he would have to say his part, the show being broadcasted, he noticed that the vase had been removed and, with it, his note. Astonished, the only thing he could do was cry for the dahlia, as if it

[17] Uma noite em 67. Directors - Renato Terra and Ricardo Kallil, http://www.umanoiteem67.com.br/o-filme-2.html, access on 04.10.2011.

was part of his dialogue. From his *where-is-my-dahlia*, said many times, came the expression in Houaiss' Brazilian dictionary defined as "text that is hidden in the scenario, props or put on the floor or next to the camera, as a resource used by the interpreter, if the part is forgotten".

It may bring surprise, within the canons of the tradition of law teaching, to say that one must learn to notice how *the medium is the message*[18], how it interferes on the meaning given to the message. TV and internet live broadcasting of court hearings is only one of the examples to point out that the training of those who deal with law requires confrontation with how the words spoken on the screen may overlap, as news, to the substance of decision. How the fight, the altered voice and irony can become the dahlia that will survive as the history of that trial.

II. Letter and Image

In addition to live broadcasting, the decision may become (before or after its publication as text) a selected communication subject to be published on courts' websites, turning them into news agencies.

The criteria for choice relevance does not differ from the ones used to define what will be the headline of the daily newspaper. The decision must raise interest in its subject matter and cause resonance. The language and the tone is that of journalism.

Subjects involving sexual issues, crimes of repercussion, actions in which celebrities are included, popular range topics, and sensitive moral aspects tend to go beyond the sphere of the sites and pass on the big media.

This was the case of the process involving sexual harassment charges that happened in legal secrecy, but, by error, was the subject of news released on the court website, which arouse the greed of all afternoon tabloid shows and the exposure of the parties' lives, both married, preserved until then.

Caution, therefore, does not relate to the news about the decision and its contents, but to the exposure of the parties or their solicitors, personally, allowing the incidence of an extra sanction that falls outside the law that is the exposure of their privacy to public execration and the mark imposed over the image as if reviving the burning in public squares from the olden days.

Once again the problems and diversions do not decrease the importance of the performance of the courts' communication sectors as arrays of broadcasting of the knowledge about law's dynamic, what represents a move forward in the decoding of technical aspects

[18] Marshall McLuhan, Understanding media, in: Eric McLuhan, Frank Zingrone. *Essencial McLuhan*. Anansi, 1996.

that are so presented in a simpler and more accessible language. The display of various sides of court actions and the openness to the multiplicity of questions faced by them are a path to the openness of knowledge and to the reaction based on the freedom of speech[19].

One cannot consider this model of transforming the use of websites as source for news as done. Firstly because it is a new experience whose results must be tested in the light of legal knowledge. Another aspect is that communication effects various levels of the concretion of law and have interfered in the way how solicitors' arguments are made.

It is common to see them quoting no longer the decision of the court, but its translation that was turned into news and published on the website as part of the broadcasting of institutional information. The whole text, which is *cut and pasted into* the body of the petition, replaces the reference to the decision only. The feeling is that it would present a field of greater certainty, since it would explore an understanding of the court in an unmistakable nature, which is not always true.

Cram refers to the distinction between facts and opinions as a characteristic of journalism:

> "The exercise of judgment is not something editors want to entrust to cub reporters. Even veteran journalists who believe in the necessity of interpretation urge young reporters to begin at a city news bureau or wire service learning to write straight news according to the most stringent rules of objective journalism. Separating facts from opinion is still one of the first things young reporters learn and one of the only things they can be taught in catechism form. This is not likely to change"[20].

When news from court websites are decoded by the outside media, there is often the risk of them gaining an appearance of certainty or of stabilization of understanding that does not exist yet, either because it may represent an isolated thought of a group of judges only, or because it is still possible to appeal against the decision with the potential to change the understanding that supports the interpretation of the law or even the fact. Thus, it can often be attributed to the news exposed in writing, orally or with sound and image a scope that it will never have. It can represent a version of the legal fact that does not correspond to the effectiveness and, thus, hide its objectivity.

This is perhaps the most important criticism to be made to institutional communication: the lack of exposure of the differences that represent an important law building place and the

[19] Ian Cram, *A virtue less cloistered*: Courts, speech and Constitutions, Hart, 2002, 217.
[20] Michael Schudson, *Discovering the news*: a social history of American newspaper, Basic books, 1978, 192.

selection of subjects of impact without the consolidation of questions linked to the processual dynamics and its barriers. Failure to confront these variables prevents the communication of the dialogue or of the common locale because it drives away the message from the reality picture which it should aim to portray. In summary, the issue may have a happier end if, instead of closing the news, it were opened up to other more thorough parts of the journalistic exposition of the facts like the article, the report, the essay, where there would be a possibility of deepening of the information that reached more than the meaning of a single decision and, therefore, it would provoke the reflection about a complex subject in a broader amplitude.

It is likely that this matter of more comprehensive treatment could not be mentioned in petitions as it would tend to aggregate disagreement or dissent. However, it would surely correspond precisely to the means of legal thinking training and could contribute to a more realistic reflection about the law being built.

There is no doubt that the exposure of the subject of decisions by court websites will always be a factor for the unpredictable in regards to the resonance. Referring to one of Volok's work (*Cheap Speech and what it will do*) from 1995, Cram mentions, also, "some important consequences of the era of 'cheap speech' ushered in by the Internet". According to him, these consequences

> "include the wresting of power away from intermediaries such as proprietors, editors and vendors in the private sector and a consequent empowerment of speakers and listeners. Speakers with unconventional or unprofitable messages are freed from the censorship imposed by private parties and/or the market. Listeners too are liberated. They can access as much electronic information/comment on topics of interest as they wish specially since the space constraints of the print media don't apply to electronic speech."[21]

The possibility of the use without intermediaries and without restraint of the means of communication is a factor to be always considered by good and bad consequences. To law, and especially to messages that come from courts, it represents the possibility of criticism and argument, but also of the display of image and the mark of the person as a stigma, misrepresenting the attribute of publicity, which is of the law and cannot work as a section of the sanction that takes people by advertising their behaviour as mark other than the consequences legally envisaged (the penalty, the fine, the compensation etc.).

A very interesting sign of the consequences of these risks can be seen in how the communication of the Judiciary is made on YouTube. The trial scenes, the interviews, the

[21] Ian Cram, *A virtue less cloistered*: Courts, speech and Constitutions, Hart, 2002, 211.

articles about legal matters are posted, but without allowing comments, which would imply an area of loss of control natural to spontaneous reaction on the internet. This restriction of comments prevents the everyday use that ordinary citizens make of areas of criticism in which they express, as emphasized by Jenkins, in the rhetoric of parody and in the direct and incisive language that is nothing like rational criticism[22]. The author deals with these risks in the practice of democracy, but emphasizes that this is how it happens in convergence culture. He says that the politics of parody "does not offer an easy way out, but offers a chance to rewrite the rules and transform the language through which our civic life is conducted"[23].

It is not meant to say with this that the option adopted by the media of the courts is wrong. It is just a strong sign that the outputs are not easy in any of the forms of expression when it comes to making the convergence of the diffusion of formal legal aspects with other media beyond the traditional printing in official agencies. As it has already been pointed out, it is not a matter of taking the fearful position of the apocalyptic, nor the naive view of the integrated. Once again what is at stake is the domain and the knowledge of a process that is important to all and that has to be told by a variety of means so that it can be introduced as a data of spontaneous understanding in common culture.

III. Time does not stop

The spectacularity that may be aggravated by the display of courts action process via internet already resonates in the perspective of theory. It emphasizes the risk of scandal that usually starts from an empty rhetoric. It highlights the difficulty of assimilating the technical foundation that makes the law. It notes the effects of media pressure that, on one hand, can help a correct understanding of the facts, on the other hand, and can block the composition of the real scene by the greediness imposed by urgency and the need to produce images.

Cram points out some of the factors that result from this specific convergence of the media:

> "The publication of court-related speech via Internet-based technologies may be seen to threaten administration of justice interests in three respects. Firstly, by undermining the fairness of individual jury trials; secondly, by breaching the terms of prior restraint orders and bringing about the 'jigsaw identification'. By scandalizing a judge or court. Whilst, legal systems have faced these threats previously from print, terrestrial and satellite broadcasters, the Internet raises especially problematic issues relating to the identification of speakers who breach restraining

[22] Henry Jenkins, *Cultura da convergência*. Aleph, 2009, 398.
[23] Henry Jenkins, *Cultura da convergência*. Aleph, 2009, 398.

orders and the enforcement of such orders where the party in breach is located outside the jurisdiction"[24].

These are just some of the risks that act, in this case, in the closer spheres of the courts that decide criminal matters.

Nevertheless the risk of the jigsaw identification and distortion of the message concerns the trial process (in which the judges, prosecutors, solicitors act) and its results (affecting the parties and witnesses).

The internet provides a way of perceiving and its use by the courts, based on the convergence of media, will involve a way of perceiving the law, not only in relation to the adjudication, but also to look at the process as it occurs, through the access of processual pieces in the courts websites. The fact that they started to frontally guide the press, outside the Judiciary, through the exposure of the news and the possibility of access right to trial sessions, takes to the mainstream media a version of the process of solving conflicts by law that was presumed public, but wasn't indeed public due to the nature of its communication. The attention that this may draw is on the proportion of attraction that the conflict may raise, whether it be in the conflict that is being judged, whether it be the result from the relation between people that work on the trial process. A fiercer argument among judges can become the focus of the interest to publicize.

The spectacularity of the conflict and the sanction is a tradition of the law experienced each time according to the predominant media, even through the pure morality of public squares.

In a chapter called *Experiencing scandal as a Mediated Event*, John Thompson writes about the perspectives of the experience of public exposure and private life:

"Just as mediated scandals are events which are played out in the media, so too our ways of experiencing these events are shaped by the distinctive characteristics of mediated forms of communication. For the individuals who find themselves at the centre of an unfolding scandal, the experience is likely to be overwhelming, as events rapidly spin out of control. (…) They may feel anger and indignation at the ways in which their lives have been overturned, and their plans and ambitions called into question, by the actions of journalists and others who motives may seem malevolent. They may be deeply fearful and anxious about how the scandal will unfold and about how their lives, as well as the lives of those who matter to them, will be affected by it"[25].

[24] Ian Cram, *A virtue less cloistered*: Courts, speech and Constitutions, Hart, 2002, 212-213.
[25] John B Thompson, *Political scandal:* power and visibility in the media age, Polity, 2000, 85.

He ends the chapter by highlighting the diversity with which the public will absorb the scandal and, mainly, how the complexity of the technique that involves some scandals certainly makes them even more distant the practical context of the daily life.

Legal scandals, evens when mediated by the internet, will always have a complicating element to the technique and of the legal procedures in its structural and conceptual, dynamic and static specialization, to refer to Kelsen.

A critical aspect must always be at stake when it comes to the convergence of old and new legal media and to the performance of those who have it as a job: as main characters in all scenes and all exposition there are real people. If they become characters, if they become news, if they become product, purely by the interest of the media, it will be around another issue to be faced by the Jurisprudence and by legal epistemology. And to face it implies, once again, to know how the means affect the message.

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