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From traditional fundamental rights to the modern concept of civil liberties

"...the rights of all people
at all time all situations..."[1]

The civil liberties — in a by now general opinion — constitute a group of civil rights guaranteeing the citizens' freedom of action, conduct or condition in certain respects, owing to the fact that the State's attitude to the civil liberties is expressed mainly by the permission of their free exercise, setting of the limits within which they are to be realized, prohibition or limitation to a considerable extent of State intervention, protection by legal means of their exercise, guaranty of reparation and imposition of sanctions for their violation. The tendency of this group of rights is negative, insofar as their realization gives rise to multilateral legal relationships (with the State as principal obligor), where the essential demand the other parties have upon the State is that it should refrain from interfering with their rights.

The concept of civil liberties, however, has undergone several modifications in the course of its history; the meaning of liberty having been different in the 18th and 19th centuries from what it has been in the 20th century. In the period of its emergence, the notion of civil liberty was interpreted broadly by the theoretical systems. This broad definition was based on natural law and its conception of freedom, which covered the entire group of property and personal rights in the present-day sense of these terms. Life, liberty, a sound, unimpaired physical condition, the personal possessions in the strict sense of the term all fell within the category of bona civitas.[2] The concepts of property and liberty were known to seventeenth and eighteenth-century thinkers in a way proper to the age, as overlapping categories. The scope of the concept of property was much wider than mere possessions in the legal sense of the word. The concept included not only material possessions, but also all of the assets belonging to a person, thus his life and rights were also called his

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[1] *Cranston*, M.: Human rights and supposed. D. Raphael (ed.) Political Theory and the Rights of Man. London, 1967. 49. p.

[2] See also *Locke*, John: Levél a vallási türelemről. Budapest, 1973. 49. p.

property. And at this juncture the concept of property and liberty were inseparably intertwined. The concept of liberty included the group of rights presently called the freedom of the individual and, besides, the right to use freely one's personal gifts and faculties as well as the right to venture upon money-making (mainly industrial or commercial) enterprisses. [3]The scope of the concept of freedom was so widely extended as to include all the rights human beings were entitled to, which allowed the rights to seem liberties by nature.

If we want to find the orginis of civil liberties in history, we must trace them back to the rise of the bourgeoisie. Though we may come across the notion of freedom in previous ages, as well, the bourgeoisie was the first class — a fact already discovered by the young *Marx* — to make conscious efforts to disguise its own class interests as universal human interests and was thereby the first to formulate in generalized form, i.e. with a claim to univerality on an all-societal plane, the need for safeguards as the due of the individual. [4]

It is this universal need, this idea of a sphere of freedom offering protection against interference from the outer world or external impact, that was absent from previous ages. Though there may have been rights and privileges earlier, granted to smaller social groups, these were, however, of a particular nature. The idea of rights as the due of mankind owing to its humanity could not have been proposed in any other context than where man — at least in theory — became free, i.e. freed from the legal status of the slave, who was denied an independent personality, or later from that of the serf, considered as belonging to the land, he could, in theory, become freely the subject of rights and obligations. This need, however, could not be formulated within the system of feudalism in other terms than as an ideological demand, expressing the need for progress. It was the ascending bourgeoisie that was committed to the implementation of the idea, while the role of supporting pillar was taken by the systems of natural law.

When the term natural law is used, it tends to call the school of natural law to our mind, with Grotius, Wolff, Thomasius and Pufendorf as its most eminent exponents. Yet the group of ideas forming the subject of natural law, which played such an important part in the development of the political law of Western Europe in the seventeenth and eighteenth centuries, cannot be restricted to the conceptions of the above legal philosophers. Philosophers, politicians, jurists and praticing lawyers have all had a part in making the world aware of the changes that had taken place in man's condition and place in the Universe and in shaping the legal and political forms and institutions corresponding to this new siutaion. Thus Hobbes, Locke, Rousseau or, from the

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[3] See particularly *Kovács* István - *Szabó* Imre: Az emberi jogok dokumentumokban. Budapest, Közgazdasági és Jogi Könyvkiadó, 1980. 47. p.

[4] This problem is expressed in the young Marx's theory. See particularly Letter of Marx to Bolte (25. nov. 1871.)

opposite side, Bodin, Hermes or Achenwall all had a prominent share in laying the foundations of the actual legal theory and the positive system of institions.

Natural law, as a particular legal outlook, gave expression to the basic principles of the ideology, political, religious and moral views of the ascending borugeoisie. The incentive behind natural law was polemical for more than one reason: it had to fight against the increasingly irrational feudal political and ideological system (by then a hindrance to free activity), the petrified institutions and their legal justification, the theological constructions intertwined with and sanctioning secular power; and it had to express, as a matter of principle, and an appeal to equity and fairness, the bourgois' claim to freedom and eqauality. Equally, the critical function was combined with constructive-constitutive aspirations; where custom allowed it, natural law gave expression to civil interests by outlining positive legal institutions, and providing theoretical grounding for practical legislation.

When natural law had demolished the theoretical scaffolding supporting the 'old order', it found itself facing a totally new problem. It had to cope with the problem of individual activity aimed at the reconstitu tion of society by persons individualized in their possessions, nature, mentality, with the problems of the individual and citizen's claim to human political rights, and with the problems of the moral and academic justification of these asprations. It had to circumscribe the personal liberty of the citizens, and to mark off the citizens' private sphere of freedom from that of State authority, it had to state its views as to which agencies and means of publicity the citizen wishing to give voice to his own views besides and even in opposition to other people's opinions, could have recourse to, it had to lay down and fix the rights the subject of economic life was entitled to, in the interest of the enrichment of the individual, as well as in the parallel interest of the prosperity of the community, and, last but not least it had to appeal to security provided by the law, the realization of lawful asprations, and the guarantees of their assertion in order that the interests which had taken the form of laws should actually and permanently be present in the life of society.

In the constructions of seventeenth and eighteenth century political law in Western Europe high priority was given to civil liberty. Though the legal concept of freedom was derived, in the last analysis, from positive legal opportunities and legal institutions, the meaning of liberties, formulated within the domain of natural law and often verified by speculation, in their turn, also became a starting point for legislation and jurisprudence.

Each system of natural law made use of the triple notion of natural state — contract — social status, and correlated a particular state of human liberty to each of the three components. The freedom of the natural stat (status naturalis) was the natural liberty (libertas naturalis), the freedom of the social or civil status (status civilis) was the civil liberty enriched with moral undertones. The latter was conveyed by the freedom of human beings, based on man's sociability and tendency to gregariousness, to conclude contracts. The political thrust of the libertas naturalis (some elements of which had already been present in the

early documents of constitutional law, criticizing the society of Estates and Orders, the privileges of the feudal aristocracy and the violations and flouting of the law) was directed against the status quo of power, and against the state of institutionalized lack of freedom. This 'freedom' had no definite legal content, and, at first, the real object of protest was not specified, either. Thus we are led to the conclusion that the status naturalis and its libertas had an essentially methodological function within the sphere of natural law, it was a kind of 'prototype', a ground for reference to the notion of civil liberty to be created sometime in the future. At first the 'iura connati', listed in the catalogs as a legal projection of liberty, lacked a political and legal content, they did no more than to describe the civil law relating to the citizens and the moral obligations of princes. The exponents of natural law identified the libertas natura lis most of the time with man's freedom of action and, less frequently, with the freedom of will, and sometimes by deriving it from libertinism and defining it as 'independence' from the will of other's, an unrestrained desire that every people may do as they please'.[5]

This confusum chaos (Thomasius), this bellum omnium contra omnes (Hobbes), or rather the advisability to suppress it was the basis of the contract between individuals. It was the conclusion of the social contract, i.e. a voluntary agreement between human beings that gave rise to the social status, with its concomitant libertas civilis, the freedom of the citizens, which in the thought of most of the exponents of natural law was an institutional framework for the putting forth of individual capacities and talents and for the realization of human and civil liberties. Of course, it does not follow automatically from the idea of contract in itself that emancipation is open to all. Entering into the social status might also mean the acceptance of the absolute power of the State, and it might imply the total transfer of sovereignty as well as the keeping up of sovreignty, which is not affected by the conclusion of the social contract. It may suffice here to refer to the differences between the natural law as conceived by Hobbes and by Rousseau.

The radical turning-point in the history of civil liberties was the victory of the bourgeois revolutions (and the most important among these, as to its impact, was the French Revolution of 1789). These revolutions not only gave expression to the citizens' longing for freedin (protesting against the state of non-freedom), but also, by having done away with the feudal legal system, created a legal formation of a new type, and drawn up a catalogue appealing to the rights of man. In this new system, the main stress was on the civil liberties. For the 'liberties' no longer appeared in this connection as a mere, theoretically formulated demand, but were transformed into the aspiration and legal requirement of the victorious class to give the demands serving for the ideological basis upon which the power of the bourgeoisie was to be built the

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5 *Wolff*, Christian: Grundsätze des Natur - und Völckerrechts Halle, 1754. 77. §. See also *Klippel*, D.: Politische Freiheit und Freiheitsrechte im deutschen Naturrecht des 18. Jahrhunderts. Paderborn, 1976. 33., 35. p.

form of law, binding upon society as a whole. It was there, in the liberty of the achieved civil status, the liberatas civilis, that the content elements expressing the already full-fledged interests of the ascending bourgeoisie made their appearance. An important part was played in the crystallization of the new idea of liberty by such theoretical and legal aspirations as the naming of the potential opponents of liberty, the drawing up of the catalogue of human rights, and the frequent discussions about the abuse of power.

The natural law of the Englightenment combined with the notion of civil liberty had reached the stage where it became political opposition to the existing feudal establishment. On a purely theoretical plane, the change was indicated by the fact that new meanings were attached to such terms as 'natural state', 'man' and 'liberty'. Human rights, which had also been political rights from then on, were derived from man's essence, personality, i.e. his make-up as a social being, and actual social conditions. On the one hand, a distinction was made between the notions of State and society, on the other hand, a powerful liberal opposition was shown when the demands for liberty were formulated so as to be directed against the State. (P.J.A. Feuerbach, K.H. Gross, S.S. Witte.) The demands that had surfaced here were those of the typical liberal political theories, such as personal freedom, safeguards for the immunity of the private sphere against State inferference, guarantees for the access to publicity (especially through the freedom of the press), the removal of the economy from the sphere of State activity (through demanding the freedom of property and the freedom of industry and commerce, in particular), security based on law and order (through binding the prince by means of positive law).

A great importance was attached to these characteristically liberal demands in the contemporary documents. The French Declaration of the Rights of Man and of the Citizen — the Déclaration des droits de l'homme et du citoyen — is often called the catalogue of classic fundamental rights. High priority is given there to liberty, and a definition can also be found there, as follows: 'Liberty means that we can do anything which is not harmful to the interest of others. Therefore the exercise of natural rights has no other limit than the imperative to ensure for the other members of society the exercise of the same rights...'[6] Besides giving a clear-cut definition of liberty, the Declaration also lists the civil liberties. On the evidence of what were considered fundamental rights, the trinity of liberty-property-safety pivoted in fact on a single right: in the bourgeois society the real need was felt for the right to own private property, to possess it freely, with free disposition over it, to safeguard and protect it. Therefore the freedom to own property was one of the most important of the classic fundamental rights. The natural law laid down the rights the subject of the economic life was entitled to, in order that the growing rich of the individual might run parallel with the increasing prosperity of the community; that is why it stressed that the right to own property, to practice industry or commerce were man's inherent natural inalienable rights. Carrying it

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[6] Déclaration des droits de l'homme et du citoyen. 1789. 4. §.

even a step further, when presenting the right to own property (illusorily) as a universal human right, a category of emancipation, and when expressing it as a demand by 'civil society' to free itself from the authority of the 'political State'.

To consider the right to own property as a human right is, of course, an illusion. It was Marx who pointed to the fact, in a biting tone, in his work, 'To the Jewish question' that the only right that could be built upon private property was the 'right to selfishness', and that the loud claims to equality by the political sphere were only a disguise for the prosaic inequality of 'bourgeois society', For the exponents of natural law of the Enlightement it was an ever-present illusion that the rights derived from the abstract idealized notions of 'man' and 'liberty' could actually emancipate society and, in the last analysis, the entire human race. Yet the above liberties, even if they had been universally extended and guaranteed to every member of the society, could not have called into being the realm of liberty and equality only in the dreams of the exponents of natural law, because these conceptions worked on the supposition that proved to be a fiction in disguiese, that everyone having a civil status could also gain the status of proprietor and, through this, the human status. When the French declared in the 1789 Déclaration des droits de l'homme et du citoyen the citizens' right to own property as a universal human right, they used a legal-ideological fiction, viz. that in the bourgeois society, at the level of the realization of basic activities, every man might own and, indeed owned property, i.e. disposed over the means allowing him to develop freely his abilities. It was only in these terms that the Declaration could present the citizens' right as a universal human right. Yet the society of proprietors and industrialists, with its laissez faire economy and competition, tended to become the realm of non-freedom for those not owning property. The only society where the citizens' right can be considered as universal human right with any claim to reality is, where from the grassroots level of the political sphere upwards, on the level of basic activities each and all have the opportunity to realize their human potential and build free, organic communitites. In any other case, the freedom of the citizen is just an abstraction devoid of sense, having a single function: to disguise the lack of freedom of the actual man.

If the scope of civil liberties were to be restricted to those classic fundamental rights declared by the victorious bourgeois revolutions, we should have to content ourselves with a rather meagre catalogue of rights. Just as it would be wrong, from a historical point of view, to draw the boundary line between the victory of bourgeois revolutions and the bourgeois development in their wake too firmly; the separation of the early phase of liberties from their later growth is also inadmissible. The catalogue of liberties began to be extended as soon as the first constitutions following the victory of bourgeois revotions were issued (e.g. the 1791 or 1793 constitution of France), and the later development of the law, taking place, by then, under the conditions of a bourgois society, completed the system of fundamental liberties with a variety of laws. The freedom of association was declared as well as the right to organize unions, and the freedom of science and education was also proclaimed. Almost

every State regulated the problems of citizenship, as a preliminary to civil liberties, on a constitutional plane. After the turn of the century in particular, as a result of the demands made by the growing labour movement, the declaration of the right to organize trade unions was becoming more and more common.

We could continue the list with the different variations, and forms of the institutionalized liberties. Still — as pointed to by Lajos *Szamel* — 'there is no doubt that the catalogue of liberties was substantially extended in the period ranging from the 1789 French declaration to the Constitutions issued following World War II, and in accordance with this the international standard for the evaluation of the constitutions of individual States with regard to whether they conform to the requirements of constitutionality, with special reference to civil liberties, was also rising higher and higher, yet, we can also state that in the course of two centuries no further group came to be added to the original three groups of fundamental civil liberties. These were: freedom of the individual, the freedom of expressing one's opinions and beliefs, and the freedom of political action.'[7] As Lajos *Szamel* observed, the catalogue of civil liberties had been constantly extended, widened, but the seminal period, from the point of view of the basic system, was the era of the bourgeois revolutions and the following bourgeois development. The three classic groups of civil liberties were institutionalized in the constitutions of individual States under the form of newer and newer liberties, while the system as a whole remained unchanged.

If constitutionalism is basically prevaliling in a State, the proclaiming of liberties included in the above three groups of liberties — though different variations may occoíur from country — serves as a guideline in setting the limits of constitutional liberty. For the liberties cannot be absolutely unlimited, because every form of regulation (including the constitution and the various laws) have a bearing on how rights are to be exercised, and, of necessity, conditions are limits, as well. It is of vital importance, however, where the limits of the legal regulation of freedom are drawn. The broadest interpretation of this legal framework can be found in the 1949 Constitution of the GFR or in the latest European constitutions (Greece 1975, Portugal 1976, Spain 1978). Taking the above constitutions into consideration, we can draw up the most extensive catalogue of liberties to date.

These liberties are: right to life, to the enjoyment of physical and mental health, to personal liberty, right to moral integrity, freedom of belief, conscience, religious and ideological convictions, freedom of expressing opinions, of speech and writing, picture and diagram, freedom of news communication, mass communication and information; artistic freedom - including the freedom of liberary creation mentioned separately, the right to cultural improvement, academic freedom: the freedom of science, research and education; freedom of assembly and meeting, freedom of association, including the right to found unions and societies and to form coalition, or the right to found associations for assuring and developing the working and economic

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[7] *Szamel* Lajos: Az állampolgári szabadságjogok. Budapest. 1987. 23. p.

conditions, the right to organize in trade unions, the freedom of choosing one's job and place of work, of choosing one's ca reer through the free choice between educational opportunities: educational or training institutions; freedom of movement, including besides the right to change one's residence and free movement within the State the right to leave the State, as well; the right of petition and communication (so-called right of petition), moreover the right to immunity from interference with one's privacy, home and correspondence, and other communications through the postal and telecommunication services.

The considerable extension of the catalogue of rights as compared to the classic fundamental rights is quite obvious even from this list. The range of the civil liberties, however, is far from being complete, we must reckon with its progressive extension, in reaction to the challenges of modern experience. Besides the gradual widening of its scope, its development in another direction is also worthy of notice. The so-called classic fundamental rights are outstanding components of the development of society and, within this, of formal, institutionalized law, the lasting values of universal human culture, requiring for that very reason to be reinterpreted by each period of history and to be adapted by them to their peculiar conditions. To cite a single example: it is evident that our interpretation of the freedom of the press differs widely from the interpretation given to the same notion in the sventeenth and eighteenth centuries. The maning of the classic and the modern freedom of the press differs considerably, notwithstanding the fact that it continues to be the same proclaimed right. The freedom of the press in the modern sense of the word has to be defined broadly. By now, the word press means not only printed matter, but also a wide range of mass communication media, the so-called electronic media, which are also subject to regulation. On the other hand, the meaning of this particular right also underwent a change, for the classic meaning (the prohibition of preliminary censorship and the criminal responsibility for the output of the press) was extended to include access to information (i.e. the freedom to obtain information).

Under the impact of the civilisation-oriented development in our century social conditions and circumstances have surfaced carrying new interpretations of freedom, and to proclaim these as liberties will be the task of the immediate future. The constitutional development of States in modern times demonstrates that the 'universalization' of rights gave rise to a radical change in the development of the civil liberties, as well. Beginning with the early 1980s the view that a qualitative change took place in the advance of human rights, has become more and more common. In this view, it is not only a simple extension of the catalogue of rights that is involved, but also the fact that the change in degree becomes the starting point of a new interpretation os these rights. Karol *Vassk* in his paper on the development of human rights as an institution put forth the hypothesis that there were three stages of legal development. By

making use of the slogans of the great French revolution,[8] the three stages could be labelled as Liberté, Égalité and Fraternité. The firstgeneration of rights, that of Liberté contained the 'negative', individualistic liberties. The characteristic features of the second generation, that of Égalité, are the economic, social and cultural rights. In the third generation, that of Fraternité, previoiously unknown concepts were added to the problem complex of human rights.[9]

Seen from a historical aspect, it has been the third generation that reacted to the processes of modern experience, and wished to put the existing demands into a legal form. In this systematic treatment of rights, under the heading of the so-called solidarity rights, a new generation of rights, the course of 20th-century development can also be found.

Of the rights falling within the scope of the third generation, most of the authors mention by name the following: the right to improvement and progress, to peace, a pollution-free environment, access to and the free flow of information and to a share in the common heritage of mankind. Of these rights, the right to peace and access to information fall certainly within the scope of our subject, in connection with the notion of liberties tailored to the needs of the 20th century.

The problems of the right to peace occur mainly in international law, just as the most important task of the UNO is to preserve peace and security. The importance of the right to peace is — to use an analogy from national law — similar to the relations between the equal rights of citizens and their other rights. Thus the right to peace can be considered rather as the supreme freedom which is the precondition of the realization and guaranteeing of all the other human rights. The 1984 and 1985 Resolutions of the UNO General Assembly proclaimed the right to peace; while not making clear how to solve the problems which might arise from the contents of the new right. It is principally on the international plane that efforts to outline the nature of the new rights, including the right to peace, have been made, to date. However, there are such among the third generation of rights, which are already beginning to make their presence felt in national legislation, as well. (E.g. free access to information.)

The proclamation of free access to information in the constitution — which had been the peculiarity of only a few States, as yet — made plain a social need which was typical of the 20th century. The 20th century, with its accelerated progress, made man a real 'social being', a 'citoyen'. (It will suffice to mention the extension of the vote to all adult citizens, male as well as female. Or we may cite the 'fashionable' pressentday agency, the direct democratic forum — e.g. plebiscites —, the right of complaint and of petition, to which references are made more and more frequently, etc.) If the citizens want to make their rights, following from their status, effective, they will have an im

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[8] See, e.g., *Marks*, S.P.: Emerging human rights: a new generation for the 1980-s? Rutgers Law Review 1981. No. 2. 441. p.

[9] *Vasak*, Karel: A 30-year struggle the sustained effort to give force of law to the Universal Declaration of Human Rights. — The UNESCO Courier 1977. Nov.

perative need for a certain amount of information. For, without having access to information, the rights ensuring the freedom of political action cannot be exercised by now. We can indeed extend the problem from people's everyday, private sphere to include even science. To put it differently, by now, having access to information is indispensable, even for life as an individual.

In this connection, information denotes the kind of particular knowledge (which is not taken here in its abstract, epistemological sense of a piece of universal knowledge) which has a special usefulness in the contacts between people. This useful knowledge is, in the last analysis, the cognitive prerequisite of the realization of the peculiar human quality, of the functions deriving from this quality, and the existential potential of the individual, of groups of individuals or, more broadly speaking, of the entire society, of their being or becoming what they really are or should be.

Approaching the problem from a negative angle, the lack of information, the information gap makes impossible to realize this very peculiarity of our humanity. Thus, without gaining access to information, the availability of a wide variety of other rights is inconceivable. Consequently, a high priority should be given to the need for access to information, and the requirement should be laid down in the constitution as a fundamental civil liberty.

As to the substance of the right to information and having access to information, there is still a lot of vagueness about it. Of the international documents the International Covenant of Civil and Political Rights, though not referring to this right by name, includes in its prescriptions for the freedom of expression some provisions to the effect that the States are prohibited from pusuing activities hindering the access to or dissemination of information. In the Final Act of the Conference on Security and Cooperation in Europe signed in Helsinki in 1975 there are some international safeguards of the freedom of the press in the broad sense of the expression, but this document does not regulate content problems, either.

In the specialist literature on the subject, the rights of the access to information type are discussed in several variations and under several forms. Nevertheless, this seemingly terminological variety disguises differences in the content of the right, and this have given rise to much discussion about the matter. Has it no more to it than that the right to information can be replaced by a great number of synonyms? It is easy to see that the terms often differ in meaning, though sometimes only in shades of meaning. The right to information has a manifold meaning, including besides access to information the obligation that, in support of the realization of this right, the State organs are obliged to provide access to citizens and vaious communities of citizens to information (official secrets alone are exceptions to this rule), the freedom to disseminate information and the right to self-determination in information can also be grouped under this term.

As the right itself has been made up of a number of individual components, points of connection with rights of a similar nature may automatically be found. Such a point of connection may exist between the rights

to communication,[10] mentioned by name mainly by English authors, and the rights to information. The rights to communication offer a broad framework, within which the free choice between pieces of information, the free dissemination of information are also enclosed, together with other partial entitlements (such as certain participation rights and access to culture). Another point of connection can be found with the freedom of the press, in the modern sense of the term. As information is conveyed to the recipients mainly through the modern mass communication media (which may be the most extensive individual outlet for the realization of the right), the right to dissemination of and access to information is by all means worthy of mention. The right to gaining and providing information is the point, where the right to information and the freedom of the press are connected. Taking the Hungarian model of regulation as a starting point, it is easy to understand that the modern freedom of information is also made up of several components. To begin with, one is entitled to access to information, which is synonymous with the freedom to obtain information. Another aspect of this entitlement is that the press hat tasks deriving from the obligation to provide information or otherwise connected with the access to information. These tasks mean for the press that they are obliged to provide, in the first place, authentic, prompt and precise information. In order that the press may fully meet this engagement, the press itself has to have proper access to the information that it is supposed to convey to the public. And here we are coming accross the third component of the right to information, whereby the organs listed in the text of the law are obliged to provide information for the press, i.e. the press is also entitled to have access to information.

The right to have access and disseminate information is an important precondition of the exercise of other fundamental rights and liberties. The quality and standard of the system of information is determined by the stage of development of the society concerned. The mass media are certainly the most important area of the system of mass communication. In the 20th century the mass media can become the possible means of manipulation. For the very reason that mass media may make communication impossible (because the audience has no means to react at once), the relation between them is completely unilateral. This amounts to their being capable of stopping the 'dialogue', the form of communication that makes criticism possible at all. Manipulation by the mass media is made possible, in the first place, not by the fact that only one person or very few people can address an audience of several millions over a wide range of time and space, exerting a lasting influence on their consciousness thereby, but by the inability of the millions to reply.[11]

Thus, while the realtionship with the mass media is seemingly the most civilised of interactions, the abuse of mass media may lead to its becoming the

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[10] See, generally about this question the right to communicate: a new human right. Dublin 1983.

[11] See *Marcuse*, Herbert: One-dimensional Man. Boston, 1968.

most harmful and anti-human of relationships. This demonstrates that interference with human liberties is not necessarily brutal (e.g. the policy of apartheid), it may also be seemingly civilised. This is the reason why mass media and the legal regulation affecting them should be given high social and political priority.

The considerable technological progress of our age provided mankind with a rich assortment of mass media (telephone, radio, television, electronic computation, the audio-visual recording of information, telecommunication satellites etc.) The advances in technology, however, proved to be a mixed blessing, brining in their train several problems, in addition to new opportunities of realizing civil liberties. This holds particularly true of the safeguards of personal liberties. More than one author furmulates his reservations about the latest 'wonders' of technology and the need for legal protection against them. They would like to protect the citizens' privacy against telephone-tapping systems and other kinds of secret monitoring, by cameras etc.[12] Others want to set and define clearly the limits of the use of psychological tests offensive to personality, and of the employment of such methods of investigation in criminal proceedings and civil lawsuits. Another requirement formulated by them is that for the errors committed by computer-based data processing compensation should be paid, and that the ethical and legal problems posed by the latest methods of medical science, such as artificial insemination, organ transplants and proceedings allowing of psycho-pharmacological manipulation and genetic engineering should be laid down in statutory regulation with the utmost clarity and unambiguity.[13] Presentday legal thought has already been penetrated by these ideas, but the statutory regulation of these requirements, fixing the limits of action, still remains to be done.

As demonstrated by the above reflections, the twentieth-century trend of civil liberties requires an approach which is totally different from that of the past. In our increasingly complex world, recently institutionalized new liberties are becoming the parts of common legal knowledge. These liberties of the new type cannot be approached through the traditional perspective, for the most important characteristic of these rights is their universality, exceeding the limits of the traditional civil condition. A better uderstanding of the increasingly complex character of the 'media', through which this right is to be realized, has led to the formulation of a new theory and the emergence of the up-todate forms of human rights, tailored to the needs of the twentieth century.

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[12] See, e.g., *Miller*, A.R.: Der Einbruch in die privatsphäre Neuwied, 1973.

[13] See, e.g., *Wolstenbome*, G.: Man and his future. London, 1983.