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Press Councils in Portugal and France: Something new on the Western front

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Abstract

In a time when ultra-liberalism, de-regulation and market-driven trends increasingly dominate the media business, but also when their ‘clients’ increasingly demand to have a more active voice in the public communication process, the issues of media responsibility and media accountability seem to be gaining a renewed interest. The technological environment of our digital era, with the expansion of Internet, of social networks and of opportunities for self-edition, allowed many new actors to enter the media field, or to get much closer to it, claiming for a new relationship between the traditional media ‘producers’ and the traditional media ‘consumers’. These last ones demand more and more to be regarded as citizens, rather than just ‘consumers’, and therefore as partners in the process of news production and diffusion in the public sphere. But in order to achieve this, media must also be willing to open the doors of their ‘fortresses’ and accept that transparency and interaction with their publics are an unavoidable pre-requisite for the legitimization of their power in a democratic society. This is what media social responsibility is all about, after all.

In this context, an important role could be played by the so-called Media Accountability Systems (M*A*S*, as they were named by Claude-Jean Bertrand), and particularly by the Press Councils – mechanisms that bring together representatives of the media industry, of the journalists and of the public, in order to held the media more accountable on a voluntary, self-regulated basis. In the last year, two movements emerged in two Western European countries, both trying to launch a Press Council: France (where such a mechanism never existed, although the country was a pioneer in the struggle for press freedom) and Portugal (where a Press Council was created in 1975, soon after the recovery of democracy, but was extinguished fifteen years later, having been somehow replaced by a State-driven regulatory entity). In spite of their obvious differences, these two cases, besides coinciding in time, show some similarities that deserve our attention and can be regarded as examples of new trends in the media landscape. It is our purpose, in this paper, to look at the French and the Portuguese cases, trying to understand their specific backgrounds and to systematize the arguments of the main protagonists of the two movements going on. We’ll do this, in a first moment, through historical and documental research, and, in a second moment, through interviews to some of the leading supporters of this idea in both countries. As for the Portuguese case, we’ll also evoke the experience of the former Press Council, trying to shed light on the (mostly political) motives that led to its premature death.

Key-words: Press council, journalism, social responsibility, media accountability, self-regulation.

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*“With a few exceptions, what is wrong and what is right is the same in every democracy.
So the problem no longer consists in defining rules of conduct,
but in getting media and journalists to respect them”.*
(...)

*“Informing properly is not enough for the journalist.
He/she must listen to the public and be accountable to it:
two conditions to recover trust and esteem”.*

(Claude-Jean BERTRAND, 2008)

1. Press Councils and media accountability

Press Councils are widely regarded as one of the most stimulating and most complete mechanisms of media accountability. Regardless of their different designs according to the different countries or regions where they have been created, they generally tend to sit at the same table the three most important groups of the people who actively participate in the process of public information: the media **investors** (owners, publishers), “who own the power to inform”, the media **producers** (journalists), “who possess the talent to inform”, and the media **users** (the public), “who have the right to be informed” (Bertrand, 2004). And the rationale underlying the way of functioning of a Press Council absolutely excludes any right of one of these groups to constrain or dominate the others, since “its efficacy depends totally on the cooperation between the three groups” (Bertrand, 1999: 109). It’s why some people consider that this type of accountability mechanism – most of the times developed in a voluntary context of self-regulation – “represents the *collective moral consciousness* of the mass media” (Aznar, 2005a: 263, emphasis by the author). No wonder that the Council of Europe itself, in its resolution nr. 1003, dated from 1993 and devoted to the issues of ethics in journalism, specifically pledged for the creation of

(...) organisms or mechanisms of self-control, joining together editors, journalists, associations of media users, specialists from the academy and judges, engaged in the elaboration of resolutions regarding the respect for the ethical principles of journalism, with the commitment previously accepted by the media to publish the most relevant of those resolutions (*apud* Aznar, 1999: 179).

The participation of members of the public in these organisms is especially meaningful, because, on the one hand, it forces media to escape the temptations of corporatist closure of the professional group or the defensive strategies of owners and managers, and, on the other hand, it allows the public to have a voice in the communication process – and we mustn’t forget that it is mostly ‘in the name of the public’ that the media industry, and journalists in particular, tend to

support (self) regulation in ethical issues (Fidalgo, 2009: 402). As a matter of fact, one of the main ways for any economical sector to meet the demands of accountability towards the community is, precisely, the “participation of laypersons in the organs of the self-regulated entity” (Moreira, 1997: 106).

The primary activity of Press Councils is to receive complaints from whomever feels directly or indirectly offended by specific media behavior, to analyze those complaints and to make a public judgment about them¹. The medium in question is supposed to publish this judgment in its own pages, thus being somehow sanctioned for its alleged misconduct. In most of the cases, no other sanction is imposed to the media, apart from this public critique; it’s a kind of ‘moral sanction’, usually considered the proper one to deal with questions where ethical responsibilities are at stake (which are rather different from legal responsibilities, covered by law and materially sanctioned by the courts). Besides judging the complaints by the public, these Press Councils sometimes engage in a kind of mediation between the media and the offended persons, trying to solve conflicts in a fair and friendly way, for instance through the voluntary publication of corrections, the acceptance of the right to reply, or just a public apology. In doing so, these mechanisms also help building bridges between the media and their audience, as well as to recover some of the frequently lost trust in the media business.

Together with the participation of representatives from the public, both the presence of media professionals and of media owners, managers or editors in these councils is very relevant, as P. B. Sawant (2003), a former president of the Indian Press Council, argues:

“A body consisting only of media representatives will make the media persons the sole judges in their own cause, whereas the absence of peers in the profession will remove the deliberations from the realities of the media world” (Sawant, 2003: 21).

The direct commitment of the media industry with these instruments designed to make it more transparent and more accountable is necessary if we want them to have some practical consequences, namely through the publication of the resolutions criticizing its errors and misconduct, in order to try to improve its quality.

For these reasons, the Press Council is considered by the French researcher Claude-Jean Bertrand one of the best and most complete mechanisms for media accountability, although “also one of the most difficult to set up” properly (Bertrand, 2008: 35). This kind of mechanisms has

¹ Some people think the Press Council should go a little further, because many controversial practices by the media don’t turn into direct complaints, and yet they should deserve some attention. That’s why, according to these opinions, the Councils should also analyze the media performance on their own initiative and make some public intervention about it (for example, under the form of an annual report), developing a monitoring activity that is particularly useful in the context of their pedagogical action (media education).

been named by the same Bertrand as M*A*S*, that is to say, “Media Accountability Systems”², as he explained in a book (originally published in 1999) wisely sub-titled “*An Arsenal for Democracy*”. In the classification proposed by Bertrand (*ibidem*), the Press Council should be included in the group of the “*cooperative*” M*A*S*, because it usually includes people from inside the media industry (journalists, editors, managers) and from the outside (public), all involved together in a common effort to improve media quality. Differently from this, other mechanisms also concerned with media accountability are classified by him either as “*internal*” (e.g. letters to the editor, press ombudsman, newsroom councils...) or as “*external*” (press observatories, media monitoring blogs, readers’ associations, etc.).

However, not all the existing Press Councils follow the same ideal-typical model, especially in terms of their ‘cooperative’ work. After having looked for examples a little all over the world, Bertrand analyzed their differences in terms of multiple representation, independence and autonomy, which led him to distinguish between “*pseudo-councils*”, “*semi-councils*” and “*real councils*” (Bertrand, 1999: 90-91), according to the degree of government involvement in them. “*Pseudo-councils*”, he argues, are those who have members appointed by the government itself and, thus, “have no interest at all” (*ibidem*), as far as media accountability and genuine self-regulation are concerned. “*Semi-councils*”, he continues, are those who can’t fulfill all their tasks because they only have people coming from the media industry (just journalists in some cases, journalists and media owners or managers in other cases), and nobody from the public. The “*true councils*”, finally, would be those who guarantee the representation of the three groups (owners, journalists, public) and, furthermore, work on a totally independent basis, even in the cases where they have been set up by law and get some help (funding, housing, staff) by the State budget.³ Still following Bertrand (1999: 91), only these “*true councils*” are entirely free and fit to accomplish their double mission: “to try to help the press in its fight against the traditional enemy of press freedom, which is the government and its bureaucracy”, and “to try to force the press to be accountable to the public”. In other words, it is what a former member of the British “Press

² As Bertrand himself explained, the expression M*A*S* was somehow inspired in the acronym M*A*S*H*, the name of a very popular American television sitcom in the 1970’s. The corresponding expression for French is M*A*R*S*, meaning “*Moyens d’Assurer la Responsabilité Sociale*” de la presse (ways of ensuring the social responsibility of the press). In his own words, M*A*S* can be simply defined as “any non-governmental means of inducing media and journalists to respect the ethical rules set by the profession” (Bertrand, 2004).

³ The genuinely *self-regulatory* Press Councils are set up on a completely voluntary basis, usually emerging from the media industry or from the media professionals (or from them both), and self-financed too. In many cases, however, the councils are created by statute (usually a law voted by the Parliament) but no direct involvement of the government or of any other political institution interferes with their functioning. In these cases, it would be more adequate to talk about “*regulated self-regulation*” [see footnote 8], because the independence of the organism is guaranteed by its statute, but the initiative of creating it comes from a public institution (usually the Parliament) and from a law. As for the so-called “*pseudo-councils*”, obviously they can’t be considered as self-regulatory mechanisms; still, if they result from a serious partnership between public and private, respecting some balance in its composition and autonomy in its statute, they can act as instruments of *co-regulation*, with some positive role in the large and multiform regulatory building of a democratic society.

Complaints Commission” (PCC) said about the mission of ‘double protection’ aimed by this kind of councils: “to *protect the freedom* of the press and to *protect the public* against the abuses of that freedom” (quoted in APCP, 2009, emphasis added).

After some pioneer experiences in Scandinavian countries, in the early decades of the 20th century, this kind of accountability mechanisms was more widely put in place after the 2nd World War, in a time when concerns grew about the great power of the press (and of its misuse), with corresponding claims that it should meet better its social responsibilities in the building and nourishing of an active, democratic public sphere. The well-known report made by the so-called Hutchins Commission (USA, 1947), under the title “*A free and responsible press*”⁴, is a landmark in this process. Different initiatives appeared in different latitudes, particularly after the 1960’s, although “over half the existing Press Councils have been created since 1990” and “one third since 2000” (Bertrand, 2004)⁵. Nowadays, according to a last survey run by Bertrand (2008: 35), there are about 70 “active, genuine” Press Councils around the world⁶, which is a “relatively small” number, “considering democracies are more numerous than ever” (*ibidem*). Even in Western Europe, it is interesting to notice that most Southern-Mediterranean countries don’t have a Press Council, as it is the case for Portugal, France, Greece, Italy and Spain (where a regional Audiovisual Council exists in Catalonia). No wonder if we find some obvious relationship between the situation in these countries and the fact that they all belong to the “Polarized Pluralist Model” proposed by Halin & Mancini (2004) in their important work about different media systems and their connection with political systems (the other two models are the “Liberal Model”, joining the USA and the United Kingdom, and the “Democratic Corporatist Model”, especially typical for the countries of Northern Europe – where, actually, most European Press Councils concentrate)⁷. In the context of media accountability, which we are dealing with in this

⁴ According to Von Krogh (2008a), who recalls the work by M. T. Marzolf (1991), the first draft written by the Hutchins Commission was entitled “*A free and accountable press*”, but in the final report it was changed to “*A free and responsible press*”, allegedly because “accountability implied some mechanism to enforce standards”, whereas “responsibility was self-imposed” (Marzolf, 1991, *apud* Von Krogh, 2008a: 16).

⁵ One of the most known Press Councils is the British one, initially established in 1953, but twice rebuilt until it led to the present “Press Complaints Commission” (PCC), dating from 1990. But some examples from outside Europe, although less well-known, came to light rather early too, and with some interesting innovations. Bertrand (1999: 87-88) remembers that the first Press Councils to include non-media professionals or managers among their members were those from Turkey and from South Korea, in the early 1960’s. As a matter of fact, in the beginning, the original British Press Council didn’t include any person from outside the media business; it only opened its doors to representatives from the public as late as 1962, when its composition and statute were revised (Aznar, 2005b: 265).

⁶ The exact number pointed by Bertrand is 68, but it goes up to 83 if some African councils (which he tends to classify as “media observatories”) are considered, and up to 89 if some “similar accountability systems like ‘ethics commissions’” are also included (Bertrand, 2008: 35).

⁷ The main characteristics of the media systems in the “Polarized Pluralist Model”, as defined by Halin & Mancini (2004), are: low newspaper circulation; elite politically oriented press; high political parallelism; commentary-oriented journalism;

paper, it is interesting to note, as Von Krogh (2008a: 19) does, that the models by Halin & Mancini also “show how both the ability and the means to hold the media accountable have developed differently in different parts of the western world”.

Furthermore, the fact that two of these countries – Portugal and France – recently saw the emergence of opinion movements asking for the creation of Press Councils suggests that something is (or could be) changing, and gives us an opportunity to look a little closer to each of these processes.

2. The Portuguese experience from 1975 to 1990

Portugal had already a Press Council between 1975 and 1990. It was created immediately after the political dictatorship came to an end and democracy and press freedom were recovered through a peaceful revolution led by the military (the 25th April 1974). The first press law in democracy stated that a Press Council should take care of all the issues related to press freedom, press complaints and abuses, as well as to the rights of the people to be heard, to reply when necessary and to have fair, reliable, accurate information in the media.

The legislators were inspired by the examples of existing Press Councils in Austria, Germany (then West Germany) and the United Kingdom, but they designed a fairly different model, according to the particular characteristics of the country in those very peculiar times. It was a statutory Press Council, functioning next to the Parliament (and financed by it) but clearly defined as “an independent organism”. It was presided by a judge, had representatives from the media management and from the journalists (and even one worker from the newspaper industry), as well as four members elected by the Parliament and two representatives from the public. No direct or indirect involvement by the government was previewed or accepted in its statute.

Since everything was new in terms of dealing with the press in a democratic context, the Press Council was charged with many more powers than those usually assigned to these organisms: besides dealing with the complaints by the public, thus working as a “moral court” to manage ethical issues related to the media, it was supposed more generally to deal with questions of “political and juridical control of public information” (Carvalho, 1986: 14). For instance, and according to its founding law, it had the duty to “zeal for the independence of the press from the political and economical powers”, to “participate, as advisor, in the preparation of anti-trust laws”, to “classify the press publications” in terms of their content, to “zeal for a general orientation that respects ideological pluralism” in the press, to “organize and publicize the

journalists’ weaker professionalization and instrumentalization (absence of self-regulation); strong state intervention; long periods of censorship; deregulation.

printing and circulation figures” of newspapers and magazines, etc. (CP, 1983: 64-65). Such a magnitude, diversity and complexity of tasks and duties are well synthesized by a former member of that council and subsequent researcher of its role:

“[The Press Council] is competent to deal with a complaint from one ordinary citizen against a small local newspaper, and at the same time it is requested to globally zeal for the independence of the press towards the political and economical powers or for a general orientation which respects the constitutional principles” (Carvalho, 1986: 40).

This particular statute must be understood, of course, in the political context of the country at the time – a time, for example, when most of the national media were owned by the State, in the sequence of the nationalization of the most important economic sectors (including the press) after the revolution. And Portugal was just coming out of a period of 48 years during which there was no freedom of expression and all the news media were submitted to a fierce State censorship. The fact is that the Press Council played a role that some researchers considered to have, in political terms, an “oppositionist and counter-power side” (Carvalho, 1986: 18) which may have led it to areas where most of the ‘usual’ Press Councils have nothing to do with. In spite of this, the Council also took good care of the complaints from the citizens against the press – and during its first 10 years of life, “about one half” (*ibid.*: 227) of the complaints it handled regarded the “right of reply” (the right of people somehow involved in, or affected by, news to have also their say in the newspaper in question). It should be mentioned that this “right of reply” is granted by law – by the press law and by the Constitution itself – in Portugal, and it was one of the Press Council legal obligations to ensure that it was respected.

This council, in its own words, considered its statute to be the proper way to “satisfy the legitimate desire of the public to have a more responsible press”, because it simultaneously rejected any control by the government or “by any authority with sanctioning powers” (CP, 1983: 6). As said before, it was concerned with the defense of the freedom of the press, but also with the defense of the public against any abuse of that freedom. In some cases, the defense of the freedom of the press (linked, more broadly, with the freedom of speech) regarded not only the alleged interferences coming from the political power, but also those coming from the economic power: some complaints were brought to the Press Council by journalists themselves, for instance when they were forbidden by their managers to publish this or that text. In this sense, the Council was committed with the “legitimate interests” both of the public opinion and of the media professionals, trying to zeal at the same time for the three most important values: *freedom*, *independence* and *quality* of the press (CP, 1983: 10). In spite of all this and of its statutory origin, the Portuguese Council (like most of the Press Councils) didn’t have any special power to

impose sanctions to the newspapers, apart from their obligation to publish the resolutions criticizing their conduct; it was no more than a moral sanction, so to speak.

All things considered, we can say that this Council, created by law and defined as an “independent organism” working “next to the Parliament”, was not exactly an example of self-regulatory mechanism, since its origin is not in the free will of the ‘civil society’ – nor in the voluntary initiative of the media business (owners, managers and/or professionals considered). It should more properly be classified as “induced self-regulation” (Carvalho, 2009) or “regulated self-regulation”⁸. But, in spite of those specificities and weaknesses, its role during those 15 years of life is generally regarded as very positive, particularly by several journalists who were part of it for different periods of time. Interviewed in the context of this research work, all of them somehow agree that the Council “had many merits” and “was extinguished too soon” (Osório, 2009), “left wonderful memories” of “strong debates” but also of good collaboration among all (Cascais, 2009), acted with “real independence” from all the vested interests and from the government (Fontes, 2009), was “a very interesting experience” (Letria, 2009), was “the most prestigious and most independent institution” ever created in the country to defend press freedom (Mascarenhas, 2009), “their meetings were always an exercise of democracy” (Pinto, 2009), it played “an extremely useful role”, helping to “raise the consciousness of what really means to have a free, responsible and democratic press” (Palla, 2009), its heterogeneous and plural composition allowed fruitful and “very stimulating” discussions (Cardoso, 2009). Following these opinions, no wonder that all the interviewees strongly criticize the political decision to extinguish the Press Council in 1990 and strongly speak in favor of its re-creation, even after all these years.

3. A new Press Council in the Portuguese horizon?

Various sectors of the Portuguese public opinion (particularly of the journalists’ professional group) never agreed with the replacement of the former Press Council by another regulatory entity, with a totally new design, framework and purpose – namely, a much larger involvement of the political powers, and a corresponding smaller participation of media managers

⁸ According to Schulz & Held (2004), the term “*regulated self-regulation*” has been introduced in the public debates by Wolfgang Hoffmann-Riem, back in 1993. Those authors define it as a kind of “self-regulation that fits in a framework set by the state to achieve the respective regulatory objectives” (Schulz & Held, 2004: 8). In other words, “the concept implies that the state should abandon its role of hierarchical control, and aim instead to influence the process at work in society” (*ibid.*: 4). This means a kind of ‘middle way’ between the State (command-and-control) regulation and the pure, voluntary self-regulation. This intermediate form, “combining self-regulation with laws enacted by the state” and thus supposing some public-private partnership or cooperation, can be, still according to Schulz & Held (2004: 7), translated into various expressions, meaning more or less the same but stressing this or that specific focus: “*regulated self-regulation*”, “*co-regulation*”, “*audited self-regulation*”, “*enforced self-regulation*”, “*enforced voluntary regulation*”.

and professionals, as well as of the public. In 1990, the so-called AACS-*Alta Autoridade para a Comunicação Social* [High Authority for the Media] inherited the role and functions of the former Press Council, but widened its scope – from now on, it would also take care of radio and television, along with the press – and changed strongly its composition: from now on, three members directly appointed by the Government would join five members elected by the Parliament and four members co-opted by the others, representing “the public opinion, media and culture”⁹. Later, in 2005, a change in the Portuguese government (from the social-democrats to the socialists) also caused a change in the area of media regulation. The controversial AACS was replaced by a much smaller organism, the ERC-*Entidade Reguladora para a Comunicação Social* [Media Regulatory Entity], composed by only five members, four of them elected by the Parliament (under a qualified majority of two thirds of the votes) and a fifth co-opted by the other four. No other representation, either for the media industry or for the public, was previewed. This is the present situation in the country.¹⁰

This picture helps to understand why the idea of re-building a Press Council grew stronger and stronger, until in the end of 2008 it turned to something more concrete: representatives from the national Journalists Union (SJ) and from the Media Owners Association (API) decided to create a “Mission Group” in order to prepare the launching of a Press (or Media) Council as soon as possible, perhaps still during the year of 2009. Unlike the previous regulatory entities, this is supposed to be a truly self-regulatory mechanism, born from the free initiative of the media actors and depending, therefore, on their voluntary adhesion to such an accountability instrument.

In his first statement about the idea of creating this new Press Council, made in July 2008, the president of the API suggested that the new organism should “safeguard the experience” of the former Press Council, an experience which “allowed media owners, managers and journalists, together with the public, to lay the bases of the specific responsibilities of the media sector in a context of self-regulation” (Palmeiro, 2008). Regarding the scope of the new mechanism, he argued that it should concentrate on the press alone (either in paper, or on-line), since the activity of radio and television “is submitted to a public licensing process” and, because of that, it is subject to the control of some “specific administrative entities” (*ibidem*).

⁹ This composition was slightly changed in 1995, with the Government reducing its direct representation to one member and the journalists and media owners having the right to appoint one member each. But the overall design didn't change in a meaningful way.

¹⁰ In the meantime, a new regulatory organism was put in place, regarding specifically the journalists' work: the existing “*Commission of the Professional Chart*” (who grants the obligatory license for anyone who works as a professional journalist, and is composed by journalists and media representatives, but was created by law - another case of “*regulated self-regulation*”) was granted, in 2008, new disciplinary powers – including material sanctions – in what concerns the journalists' ethical duties.

The journalists seem to have a different idea: they prefer a “Media Council” instead of a Press one, with its authority also spreading over the audiovisual media, where journalists also work and also are submitted to the company’s hierarchies. Although they agreed to work together with the owners’ association in order to try to create this council, the journalists, through their National Union (SJ), put some previous conditions: in a statement made public in October 2008, they said that they would participate in a process of self-regulation of the media sector only “if they realize that the media companies are genuinely interested in it and if they commit themselves to remove any practices of disrespect of the rights and duties of the journalists” (SJ, 2008). Additionally, the SJ said it “won’t accept any process that may open the way to the invasion of the restricted area of the journalists’ professional work, and namely to the control of their professional duties” (*ibidem*)¹¹. Finally, the SJ strongly suggested that the media owners’ association also prepares and formally adopts an ethical code of conduct, since the journalists themselves already have one.

In spite of these somehow diverging opinions, the fact is that a joint “Mission Group”, composed by three representatives from the SJ and three from the API started working on this project. The points to be discussed and negotiated have been defined as follows: (1) “to identify and to evaluate the existing partial self-regulatory agreements in the media sector”; (2) “to identify and to characterize the needs for self-regulation in the sector”; (3) “to select possible models for a self-regulatory mechanism in the sector, namely in what concerns its competences and attributions, the scope of its intervention, the nature of its deliberations, as well as its composition, funding and rules of functioning” (API/SJ, 2008). There are still no public results of the group’s work (a first progress report had been promised to February 2009, and a second one to May 2009, but nothing has been shown yet), although representatives of both parts, when interviewed by us, seemed optimistic about its outcome: the president of the API said that “the media owners continue to be very interested in this project” (Palmeiro, 2009) and the president of the SJ said the same about the journalists’ commitment, although he insisted that self-regulation in the country is even more necessary for the media companies than for the journalists, “because these ones have already a Code of Ethics and an Ethics Council, to whose control they must submit” (Maia, 2009).

¹¹ In order to fully understand this statement, it should be mentioned that the Journalists’ Union has an Ethical Council, supposed to zeal for their proper conduct as far as the ethical responsibilities (translated into a Code of Ethics, adopted in 1993) are concerned. And it doesn’t intend to give up of this council and its specific scope of action, even if a Press Council is put in practice. The problem is that not all the Portuguese journalists are members of the union (they are free to join or not) and those who aren’t don’t recognize the jurisdiction of its Ethical Council over their professional activities.

Apparently, the re-creation of a Press Council won't be very easy in the near future. Adding to these differences of opinion (and some lack of mutual trust) between media professionals and media owners, we have the whole regulatory framework of the country, built precisely when (and because) the late Press Council was extinguished in 1990. Its re-creation would most probably require important adjustments in other existing organisms (or even their extinction), which depends on the will of the leading political forces. And the experience of recent years, either under the government of the social-democrats or under the socialists, didn't show much openness towards a scenario where genuine self-regulation should take care of the media misconducts in terms of ethical principles and moral values.

The law that created the Media Regulatory Entity (ERC) in 2005 clearly said that the whole regulatory framework for the country would be incomplete until mechanisms of self-regulation and of co-regulation were added to that entity. But the fact is that nothing else appeared since then. So, the framework remains incomplete – and rather unsatisfactory for most of the media actors, as well as for the public.

4. France also projects a '*Conseil de Presse*'

Coincidentally, the idea of creating a Press Council also emerged in the last two years in France – one of the European countries that never had such a mechanism, in spite of its well-known efforts to conquer press freedom and to legally protect journalists. The first move in this sense came from a group of journalists “concerned with the future of their profession and with a serious crisis of their credibility” (APCP, 2009), who decided to launch, back in December 2006, an “Association for the Creation of a Press Council” (APCP – *Association de Préfiguration d'un Conseil de Presse*)¹².

Characterized by the APCP as “a place of mediation between the media and their users”, as well as “an instrument for the regulation of the journalistic activity”, the proposed Press Council is justified like this:

“The idea of creating a Press Council was born when we realized that there is a deep gap between the citizens, unsatisfied with media content and quality, and the reduced attention paid by the profession to these protests. The answers usually brought by the media world to these concerns are nothing but technical, managerial or financial. They never result from an ethical reflection about the content of the products publicly diffused. The Press Council intends to offer a *common space* where, precisely, the *ethical tensions* concerning the media and their way of functioning can be analyzed and *publicly debated*. (...) In a democracy, it is not legitimate for the press to be unaccountable (APCP, 2009, emphasis added).

¹² This association was born within the “International Alliance of Journalists” (*Alliance Internationale des Journalistes*), being presided from its beginning by Yves Agnès, a former journalist from the daily newspaper *Le Monde*. (Further information available online, at <<http://apcp.unblog.fr/un-conseil-de-presse-en-france/>>).

So, its main purpose would be “to promote an ethics of information in the media and to guarantee that it is respected”, doing that through three inter-related functions: (1) a function of “professional regulation and mediation between the media and the public”, (2) a function of “critical observatory” and “constant debate about the professional practices”, and (3) a function of “pedagogical action” oriented both to the professionals and to the non-professionals who deal with information in the public sphere (APCP, 2007).

The main motives justifying the need for a Press Council in France, according to its original promoters (APCP), are these:

- The basic principle of the *citizens’ right to information*, and more specifically the right to a free, honest, pluralistic and proper information (the APCP even asks for a change in the French Constitution, suggesting that the principle of the citizens’ right to “honest and quality information” should be part of it, thus making clear that the public powers have the duty to actively engage in the promotion of “such an essential good to the exercise of democracy”);
- The *ethical misconducts* of journalists and the media, often “offending the rights of the persons”, which have been spreading apparently “without any reaction from the profession and without any useful measures taken by the political power for the citizens’ sake”;
- The *crisis of credibility* presently affecting both journalism and the media, as well as their relationship with the public, which causes severe damages to all the parts involved – and, consequently, to the good functioning of democracy;
- The need for a *national response* (besides some partial or local responses already in place, for example the adoption of codes of conduct by some media companies or the appointment of press ombudsmen – called ‘mediators’ in France) to a problem that is also regarded as national;
- The assumption that, in order to meet efficient answers in this domain, it is urgent that the media and the journalism adopt at the same time a “*code of ethics*” accepted by everyone¹³ and an “*ethical stance*” adequately empowered to promote that code and to guarantee that it is respected;

¹³ In the context of the “General States of the Press” (*États Généraux de la Presse Écrite*), organized under the French government initiative in the last months of 2008 and the early months of 2009, a “Chart on the Quality of Information” has already been discussed and voted. The multiple entities involved in those debates (journalists’ associations, media companies, journalism schools, media researchers, etc.) suggest that such a Chart could now be adopted as the national reference for the sector.

- The need “*to overcome the corporatism*” both of the journalists’ professional group and of the media owners and managers, which allegedly makes them “live in the abstraction that they shouldn’t be accountable to anyone, except to their own peers”, which, as a practical consequence, makes them “totally unaccountable”. According to this argument, it is “a point of honor” that the future Press Council has a tripartite composition, granting one third of its members obligatorily to representatives of the public (APCP, 2009).

This initiative has been worked over during the years 2007 and 2008, and was welcomed by the “General States of the Press” (*États Généraux de la Press Écrite*) held in the end of 2008, under the responsibility of the French government itself, as well as in the “Journalism Meetings” (*Assises du Journalisme*), held in January 2009, both with the participation of all the relevant professional media organizations in the country, together with citizens’ associations concerned with the media and journalism schools.

It was interesting to notice that one of the controversial points to discuss was precisely the composition of the future Press Council, because some of the participants seemed to prefer the creation of a sort of “Observatory for the Media” or “Observatory for the Pres Practices”, joining together “three fourths of media professionals and one fourth of ‘qualified experts’ co-opted by them”, and having as main purpose the elaboration of an annual report about, let us say, the state of the press. However, the APCP contested this model, considering it was “clearly not enough” to the needs of media accountability, and insisted in the importance of “a tripartite council”, with an adequate representation of the public itself (one third, together with one third of journalists and one third of media owners/managers). And its purpose would be not only to observe the press practices and to report on them, but also to receive and analyze the complaints from whoever feels mistreated by it in ethical (not legal) terms. Furthermore, the APCP insisted that this organism should make public recommendations about media practices and have them published in the press, but it shouldn’t have the power to impose any other sanctions besides this kind of moral sanction.

This last understanding of the design and role of the future Press Council eventually gained the recognition of the majority of the participants in the “Journalism Meetings”, which was applauded by the APCP members, who insist on this “simple idea” as the rationale for such a council:

“Media need to listen to the critics coming from the public, need to question themselves on a permanent basis and need to improve their practices. It is not about morals; it is about credibility, about professional ethics [*déontologie*] and even about professional efficiency” (APCP, 2009).

In institutional terms, there is an ongoing debate about the model for the future Press Council in France (as well as in Portugal), particularly regarding some kind of direct or indirect involvement of the political powers in it. The initial idea of the promoters in France was to have an entirely private association, according to the pure logic of self-regulation, although they didn't deny some kind of participation or help by the State, particularly in terms of funding, under the presupposition that a Press Council is a mechanism intended to defend and to improve “a public good”. In the sequence of the “General States of the Press”, an alternative idea emerged: the future Press Council could function next to the “Commission for the Journalists Professional Chart” – a legal organism existing since 1935. In this scenario, the Press Council would also have some legal background, starting from the fact that it would be (like the Chart Commission) created by law. The APCP supports this new scenario, because its members think that “only through a legislative act” could the new Press Council earn such a statute that made it recognized by all the media professionals (journalists and managers), and also recognized “by the society as a whole and by its political representation” (APCP, 2009). Nevertheless, the law creating that Council should absolutely guarantee its independence, since this is regarded as “a condition *sine qua non* for its legitimacy and its efficacy” (*ibidem*).

Finally, according to its most engaged promoters, the expected French Press Council – still being worked over – would only deal with the press (written or on line), excluding from its field of attention the audiovisual media (radio and television), whose action is already supervised by a statutory regulatory entity.

5. Conclusion

The recent and almost simultaneous emergence, both in Portugal and in France, of initiatives aiming to create (or re-create) a Press Council suggests a renewed interest in mechanism allowing to hold the media publicly accountable, under the justification that the defense of freedom of speech and freedom of the press must always go together with the demand for a responsible use of that freedom. In a time when, as Von Krogh (2008a: 12) underlines, there is a renewed interest in, but also a renewed need for, all the issues related to media accountability, the Press Councils could be (as they are already in various countries) one of the most complete and most interactive instruments to bring the media closer to their publics, and, in so doing, to

recover a relationship based on trust – the trust that is being put more and more at stake in recent years.

Regardless of some sort of ideal-typical model for Press Councils, the bare existence of so different designs in different countries (which means different histories, different cultures, different political contexts) doesn't allow us to say one is definitely better than another. Different choices can be made in these four areas:

- 1) **Institutional model.** – There are cases where the Press Councils are totally private and independent from the public powers (e.g. Great-Britain and its PCC), and there are cases where the government's direct involvement hardly allows us, following Bertrand (1999), to classify them as “true” Press Councils, because the line between self-regulation and state regulation (or “*command-and-control regulation*”, as it is often named) becomes very thin and fragile. There are intermediate solutions (as it happened in Portugal and as it is intended for France) where some indirect involvement of the political power in the creation and support of these Councils doesn't necessarily put their independence and autonomy at risk; on the contrary, the state assumes its own responsibilities in what concerns media quality and media respect for the citizens' rights, and decides therefore to help the direct actors of the information process (public included) to put some accountability mechanisms at work. Models of “*regulated self-regulation*”, in the broader context of modern governance purposes, are becoming more frequent nowadays, sometimes evolving to public-private partnerships we could classify as “*co-regulatory*”. Of course, the choice for one or other model is not independent from the whole regulatory framework in the country, where both questions of law and of ethics are concerned, and where the role of media companies as economical and technological bodies also calls our attention, along with the specific journalistic work.
- 2) **Jurisdiction.** – The first Press Councils were born in a time when press dominated the media landscape. Things changed strongly in the last decades, particularly with the widespread development of television (and particularly of commercial television), and more recently with the explosion of the new electronic media, made possible by the digital technologies and the omnipresence of Internet. Under these circumstances, where journalism is practiced in so different platforms – and non-professionals increasingly are taking part in this process too –, should a Press Council look after the press alone (as it happens in Sweden, India or Germany), or should it widen its scope and pay attention to every medium where journalism is practiced, including television (as it is the case in Chile, Finland or Thailand)? The press still plays a particular role in our societies, as far

as the diffusion of information is concerned, although it is migrating very fast to the on-line platforms. On the other hand, many of the strongest critics about media misconduct concentrate on television, given its comparatively much greater reach and power of influence over large audiences. It is probably more complex to put in place a ‘Press Council’ with a larger scope, because more partners are involved, but the future trend should be in that way.

Another item related to the councils’ scope is whether they are allowed or not to examine ethical misbehavior by their own initiative, that is to say, even when nobody complained about it. In some countries the Press Council does it (e.g. Israel, Norway), in others it does it rarely (e.g. Finland, Switzerland, Canada/Québec) in others it is not supposed to do it at all (e.g. Australia, New Zealand, Canada/Alberta)¹⁴

- 3) **Powers and competency.** – This item somehow depends on the institutional model chosen for the council, and particularly on some kind of participation of the political power in it (which is more likely to grant it some extra power or sanction capacity, through a specific law). But the most genuinely self-regulatory Press Councils are those who only rely on the free, voluntary and open-minded adhesion of their members, coming both from the media and from the public, and who expect all the media companies and journalists voluntarily to accept the sanctions eventually imposed on them. These are typically moral (rather than material) sanctions, commonly in the form of the publication of any deliberation criticizing their behavior in ethical issues. The comparative advantage of this option is that it clearly separates the domain of ethics from the domain of law (where public powers and courts always have a word) and, therefore, works as a truly accountability mechanism intended to improve media quality and to make it more transparent and trustful in the eyes of the public. Besides this, the experience of various countries (Portugal, for instance) also shows that the absence of these self-regulated accountability mechanisms in the media often tempts the governments to turn to the law and to put other regulatory instruments in practice – which may put press freedom in danger and transfer to the legal environment what should be dealt in the ethical field.
- 4) **Composition.** – The cornerstone of this item seems to be the participation of representatives from the public, if we are sincerely committed with media accountability (and, of course, if we treat the public not just as a passive ‘receiver’, but as a full partner in the public communication processes). This option also helps Press Councils to escape

¹⁴ All the data about specific Press Councils in the world come from the survey made by Claude-Jean Bertrand and are available in the site he built and nourished for years (www.media-accountability.org).

any corporatist temptations or to become disguised instruments of self-defense and self-justification for the media business, which might be the case if only media managers and professionals sat at the table. The fact is that the citizens are increasingly moving from the media sideways to the arena (Nordenstreng, 1997), and this gives the media a good opportunity to regain credibility, trust and social relevance, even if it calls for more dialogue and more interactive approaches. Some well-known Press Councils, as the British one, started working only with members from the press industry, but in due course opened to representatives from the public and even gave them the largest position: among the 17 members composing the present Press Complaints Commission (PCC), “a majority of them have no connection with the press”, thus “ensuring that the PCC is independent of the newspaper industry” (PCC, 2009). In most councils in the world, like those in Australia, Iceland, Denmark or Turkey, there is actually a tripartite representation (managers – journalists – public), sometimes even enlarged to the presence of legislators (India, Burkina Faso); in other cases, like those in Fiji, Peru and Hong-Kong, the professional group of journalists is not involved; in countries like Macedonia or Slovenia, neither media managers nor public have a seat, since only journalists compose the council; in Germany and Luxembourg, there’s a representation of managers and professionals, but not of the public.¹⁵ Still, most scenarios are evolving in time and a better knowledge of the different experiences, as well as of their outcome, will help to better evaluate the advantages and shortcomings of each of them.

It shouldn’t be eluded that many people tend to regard Press Councils (and, more broadly, voluntary media accountability instruments, or even self-regulation as a whole) with some skepticism. On the one hand, the preference for self-regulatory mechanisms, often proclaimed by the media managers and professionals as ‘the only way’ to regulate their activity without putting freedom at stake, is sometimes used as a kind of alibi to escape being brought to account by the society. On the other hand, the fact that these mechanisms usually are voluntary and have no mandatory power to impose material sanctions when media misbehave (since they act on the level of, so to say, moral influence) raises doubts about their real effectiveness to improve media practices and to meet the demands of the public interest.

Most probably, The Press Councils, as well as the other accountability mechanisms listed by Bertrand (1999) under the acronym M*A*R*S*, are not the final solution for all the media

¹⁵ See footnote 14.

malpractices and abuses in the ethical domain. But, as Plaisance (2000) sharply points out, perhaps the great purpose of the accountability instruments is not to “neutralize the tension between journalistic autonomy and the need for a responsible press”; the conflict between one and the other is “not a dilemma to be solved”, but rather “a tension to be managed” (Plaisance, 2000: 266). To make collective efforts to manage this tension in a dynamic, transparent and interactive way, bringing together all the participants in the public information process (media companies, journalists, public), is, nevertheless, a stimulating and mobilizing agenda, focused on the real improvement of our life in democracy.

Of course, this is a demanding agenda too, particularly for the managers and professionals directly involved in the media production. As Bertrand has written:

“Media people everywhere appreciate media ethics, as long as it remains the topic of workshops, books or seminars. The tune changes when the rules are to be enforced, when the focus turns to M*A*S* [Media Accountability Systems]. Basically, I guess, because media people don’t like to change. Also because M*A*S* are about rendering accounts to clients, which no professional enjoys” (Bertrand, 2008: 32)

This is way any concrete effort in this direction, for example in the form of a tripartite, serious, active Press Council, can be a valuable sign for things to change.

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