RIGHT TO PROTEST

A Republican Defence of the Freedom of Expression

Pau Llonch



A Spanish Television reporter on live TV on the highway cut in La Jonquera in November 2019, during a protest action from Democratic Tsunami. Picture by Jordi Borràs

«The press law, therefore, is far from being a repressive measure against freedom of the press, a mere means of preventing the repetition of a crime through fear of punishment. On the contrary, the absence of press legislation must be regarded as an exclusion of freedom of the press from the sphere of legal freedom, for legally recognised freedom exists in the state as law. (…) Laws are rather the positive, clear, universal norms in which freedom has acquired an impersonal, theoretical existence independent of the arbitrariness of the individual.
A statute-book is a people's bible of freedom» [1]

Karl Marx

If freedom of expression always leads to heated confrontations, it is because one would have to be a fool not to claim it as a banner. However much we try to avoid comparing the

disparity of agents who claim it for themselves and star in these disputes, we must accept that rather than having a clear consensus on what it means to defend it, we are dealing with a colossal nonsense; the Catalan pro-independence supporters rightly claim it to point out the repressive drift of the Kingdom of Spain against a movement which is already at breaking point, but so too do the voices of the Spanish media oligopoly against the PSOE-Podemos coalition government's desire to "limit freedom of the press" [2]; COVID-19 negators shout for it with their masks under their chins, as does a somewhat lunatic left, decidedly libertarian in defence of its own unlimited expression but puritanical and offended by that of the others.

What surely motivates the struggle for freedom of expression within the Catalan left, understood in a broad sense, is a stack of obviously shared positions, the need to mobilise to achieve it being one of them. From this perspective, the street would always provide the fool proof recipe for exercising our freedom of expression and winning the right to protest. In fact, I suspect that this article was commissioned with the intuition that it would continue to revolve around this idea. However, in my opinion the incontrovertible fact is that the street and mobilisation are of an ambivalent nature: under certain circumstances, they have indisputably been a requirement for the modification of any interaction of forces throughout history, but they have also been the dead-end road that finally entraps all movements which, directionless, have nowhere else to go.

Without wanting to deny the importance of the antagonistic struggle, perhaps we should consider whether this would be an opportune moment to take advantage of the downtime –striving to be benevolent in my choice of expression– in which the process of self-determination now finds itself. Perhaps, for the republican struggle in our country –and especially for the anti-capitalist ranks– we should reconsider some of the ideas proposed by what Antoni Domènech insisted all his life on calling democratic republicanism. And also socialism, as an inseparable part of it. After all, the idea of wanting to build a Republic with such a flagrant lack of debate on what really constitutes a republican project is somewhat alarming. And in the case of Catalonia, that project should imply much more than just ceasing to be Spanish or not having a king. Anyone who believes the street alone will not become a road to nowhere ought to continue reading.

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Thus, debate is fundamental in many more spheres, but what we set out below is intended to be a defence of freedom of expression from a position that, connecting with the democratic and socialist republican tradition, refuses to admit that the only problem deserving of being tackled by Catalan republicanism in relation to the rights of political participation is the liberticidal and regressive nature of the Kingdom of Spain, no matter

how repugnant and grave it may be. To do so, we will first refute the liberal view that conceives of the absence of censorship as a necessary but also sufficient condition for freedom of expression. We will see that the republican tradition has never established the merest of correlations between non-coercion and freedom. Thus, in contrast to this liberal view, but also contrary to certain Marxist readings, we will continue with a defence of the right without falling into the aporia of those who claim it compatible with the capitalist mode of production, emphasising the importance of material conditions to safeguard the exercise of freedom, among which we will include the safeguard institutions, civil independence and free time.

Rights and the law as a necessary condition of freedom

Before expanding on the specific problem of freedom of expression, it is worth dwelling briefly on the more general issue of political freedom from the republican perspective. I am convinced that most readers must have been enormously surprised to discover the authorship of the quote that opens this article. I now invite you to reread it if you skipped over it before. A lot has been said about Marx and his thematisation on the issue of freedom, both by the orthodox Marxist tradition and by its open detractors. On the one hand, and as is well known, the canonisation of Marx's theories by the German Social Democrats and the Soviet philosophers of Stalinism portrayed him as a deterministic thinker who understood freedom essentially as a conscious understanding of necessity. On the other hand, this popularisation was not entirely incompatible with another that has had even more disastrous consequences, insofar as it has also penetrated much of the critical Marxist reception: that of Marx as a staunch opponent of "bourgeois democratic liberties". And of political freedom itself.

Marx's quote, which considers law as the "people's bible of freedom" undeniably places him much closer to a tradition that from Aspasia to Robespierre, or Aristotle to Rousseau, has regarded political freedom as a creation of democratic law. In Catalonia, we have had the privilege to have learned this with incommensurable historiographical rigour thanks to Antoni Domènech and other authors from the *Sinpermiso* magazine. The recognition of constitutive rights, inalienable and non-cumulative, would not be, from this perspective, a bourgeois ideological superstructure that could be conveniently overthrown if one seeks to end the capitalist mode of production, but would instead, in reality, constitute the free citizen. Political freedom, therefore, would not only stem from minimising the de facto interference of third parties in one's life plans, as the liberal tradition claims, but would also be the product of a democratic and, therefore, non-arbitrary interference in these plans.

Having arrived at this point, however, the reader will not need to be especially lucid to detect an anomaly: we are surrounded by legal systems that formally recognise rights which are not worth the paper they are written on. In next section of this article, we will examine why, in a capitalist mode of production, what is truly lacking is the effectiveness of the laws, which have become more of a blindfold over the eyes of a people's freedom than its bible.

All freedom has material conditions for its exercise. Civil independence as a condition of freedom

It is one thing to believe that freedom is not a civil and pre-social attribute, individual and original (as liberal theory from Hobbes to Ramón Rallo claim) but constituted by rights and laws. It is a very different thing, however, to swallow the quintessential legal fiction of the modern world: that these rights become a reality in a society where one class is separated from its livelihood and depends entirely on someone else to live. This concept is what Marx –like Robespierre– is not willing to accept. Once the majority of society has been expropriated of its means to live and subsist, a capitalist ownership structure has been established and the mercantile mechanism has become standard in all spheres of society –including and, above all, to regulate the workforce– all that remains to guarantee the effectiveness of class exploitation, is to enshrine freedom and equality in the market. This is the trap that the liberal tradition has always used to pass off capitalism and enlightened modernity as two sides of the same coin.

Marx incontrovertibly proves it: once the process of widespread expropriation that constituted the primitive accumulation [3], has been carried out by fire and sword, labour negotiations are controlled by the Sword of Damocles that is the necessary mass of available labour, the famous “industrial reserve army”, that depends on a wage to live. It is in these circumstances that freedom (in the market) generates conditions of competition in which there are always people willing to work for less. Thus, in the coordinates of a capitalist labour market, individual freedom – to establish contracts– in the absence of democratic interference in property automatically implies the most effective mechanism of class exploitation:

> “In order to complete the implementation of this fabulous mechanism of exploitation in the name of freedom, all that is required, of course, is to admit the legal fiction that consists of considering those who lack any possibility of autonomous subsistence (and therefore whose lives depend tooth and nail on whether another individual decides to employ them) as owners and, therefore, subjects capable of freely entering into contracts. Once this has been accomplished, it is sufficient to demand that the will of the individual contractors be scrupulously respected to ensure the system exploits at the maximum level the technique will withstand in each case (i.e. to ensure that all the technique manages to produce beyond the minimum return necessary to guarantee the reproduction of the population, benefits only the system)” [4].

The scam consists of trying to explain modern society by what happens in the field of the movement of goods (*freedoms* in buying and selling, in the labour market, and in establishing contracts between legally *equal* subjects) while omitting what happens in the production sphere, where despotism, not freedom, nor equality, nor fraternity, reigns, and where social wealth incessantly accumulates in the hands of media owners. That is why in Volume 1 of *Capital*, before delving into the confines of the world of production in the 2nd section, Marx masterfully sharpens his devouring sarcasm:

> "This sphere of circulation or exchange of goods, within whose boundaries the sale and purchase of labour-power goes on, was in fact a very Eden of the innate rights of man. There alone rule freedom, equality, property and Bentham. Freedom! Because both buyer and seller of a commodity, say of labour-power, are constrained only by their own free will. They contract as free agents. The agreement they come to, is but the form in which they give legal expression to their common will. Equality! Because each enters into relation with the other as simple owners of commodities, and they exchange equivalent for equivalent. Property! Because each disposes only of what is his own. Bentham! Because each looks only to himself. The only force that brings them together and puts them in relation with each other, is the selfishness, the gain and the private interests of each. And as each looks to himself only, and no one troubles himself about the rest, and just because they do so, do they all, in accordance with the pre-established harmony of things, or under the auspices of an all-shrewd providence, work together to their mutual advantage, for the common weal and in the interest of all".

All too often, the meaning of this passage has been misunderstood. This text does not make Marx –who did not meet his comrade Engels at a fraternity party celebrating the First French Republic– an opponent of enlightened freedom and equality, but a critic of the scam which entails nothing but their formal recognition within a capitalist mode of production. For Marx, the fundamental law of modern society must be sought by studying what is happening in the heart of civil society and ridiculing those who seek to disguise a system of exploitation in republican clothes. As Harvey points out [5], neither Marx nor the republican and socialist tradition underestimate the importance of maximising the realm of individual freedom, but argue that it is only effective when the realm of necessity is taken into account: "The task of a socialist society is not to regulate everything that happens in society; not at all. The task of a socialist society is to make sure that all of the basic necessities are taken care of — freely provided — so that people can then do exactly what

they want when they want". We will return to the central issue of the *realm of necessity* later.

One could summarise everything we have covered so far by saying that what essentially distinguishes the republican and socialist tradition from the liberal tradition, is that the former refuses to disconnect the formal issue of freedoms from the material conditions required for their exercise. And on this point, it is difficult to find substantial differences between Marx and the position of the democratic wing of republicanism defeated in France in 1794, embodied in Robespierre: "The first social law is thus that which guarantees to all society's members the means of existence" [6]. On the matter of how liberalism has rewritten history by presenting something that amounts to no more than the history of plebeian and democratic republicanism as liberal, it would be superfluous to add a single word to those already written by Domenech in this interview.

The negative freedom advocated by the Liberals, from Nozick to Rallo, is a scam because in order for it even to provide its minimum functions of security and property protection, it is necessary to 'interfere' with its precious market freedoms through fiscal coercion. It is a fraud because what it really advocates is that only those interferences in freedom which allow the state to function as a tool for class domination are legitimate [7]. The positive republican freedom defends the legitimacy and necessity of all democratic intervention in property rights to give effect to fundamental rights, deploying all the necessary safeguard institutions necessary to ensure that laws are not reduced to a mere declaration of intent. And, if Ferrajoli believes that if "the safeguard institutions were missing, the only thing it would highlight would be the gap" [8] then the very configuration of the law demands to be completed. Clearly, we live in a world where fundamental rights are systematically violated, basically because they are not protected by the resources of the safeguard institutions that ought to enforce them. Capitalism, with its incessant thirst for resources to ensure the appreciation of capital, makes them infeasible.

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Tragically, the path that real socialism followed was to think that, since, in the capitalist mode of production, laws were worth no more than the paper they were written on, there was a need to improve upon the procedures of the "bourgeois democracy" (terminology absent throughout the immense published and unpublished works of Marx) and trust that by conquering private property neither laws nor state would be needed. This conclusion is

unsurprising in the context of the nineteenth century; a time that saw the birth of original Marxism and when the functions of the state were limited exclusively to those that allowed for capitalist domination. Yet the conquests of the plebeian wing of republicanism and the labour movement, such as democratic labour law, the right to education and public assistance, the right to occupy any place in the Spanish Administration, to the right to a fair trial and to receive humanitarian treatment during an arrest, the right to freedom of expression –and a long list of others– cannot be characterised as a bourgeois right other than by buying the story of the triumphant bourgeoisie. The path followed by those who wanted to invent procedures that were far more revolutionary than this also deserves to be evaluated from all angles; in as far as the subject of this article is concerned, the historical result was that what became extinct in real socialism was in no way the state but –in reality– a large chunk of the political participation freedoms, including the freedom of expression.

Characterising freedom of expression

We now have a framework, succinct and schematic, to help us understand what also happens to the freedom of expression and the freedom of the press in a capitalist mode of production that has constitutionalised property rights as fundamental rights. The problem here is very similar to the one we just diagnosed in more general terms: the liberal position, which today is also embodied by the omnipotent voice of the giant business communication groups that make up the Spanish media oligopoly, argues that there is freedom of original civil and pre-social expression, negative because it is characterised exclusively by demanding the non-intervention of public authorities in the field of communication that they control (unless it is to give them risk-free public funds, of course!). The republican position, by contrast, ought to consist of remembering that, without material conditions and safeguard institutions, the freedom of expression or the press is reduced to little more than the freedom to express the opinions of the media moguls. Furthermore, it is worth remembering, to return to Marx, that “the absence of freedom of the press makes all other freedoms illusory” [9]. Therefore, to ensure freedom of expression does not become a mirage, both laws and safeguard institutions are needed.

As David Guerrero puts it, being able to sing that Bourbons are thieves and make jokes without fear of being dragged through the National High Court and therefore abolish regressive legislation such as the Gag Law is “just as important for freedom of expression as a balanced, non-oligopolistic distribution of television and radio channels, or the public control of fibre optics and antennas that give us access to the internet” [10]. Treating freedom of expression merely as a civil rather than a political right, and presenting it as a “negative” freedom, complicates any intervention to correct excesses in the exercise of this right. As Julio César Guanche states [11], in this context, it is the most marketable of civil and political rights: it can become a monopoly. If what we wanted to characterise was the right to protest, the problem remains unchanged: without institutional processes to ensure that protests translate into legislative changes –through, for example, binding referendums and/or revocations, as guaranteed for example by Article 72 of the Venezuelan Constitution of 1999– the right to protest is reduced to a mere right to rebel.

The right to communication and its guarantee

Freedom of expression implies the freedom to seek, receive and circulate ideas and information of all kinds and by any means. Thus, while being a broader concept than freedom of the press, it is more restricted than the most recent right to communication, which consists of “the informing and being informed, speaking and being heard that are essential to be able to participate in decisions concerning the community” [12]. The latter, which understands communication as a process of creating social awareness that enables the debate on the structure of the ownership of the means of expression, is what has taken shape in various Latin American Constitutions such as those of Venezuela, Bolivia and Ecuador. As an example, the Ecuadorian Organic Law of Communication (2013) prohibited bank owners from owning media companies and distributed outlets between three forms of media ownership: public, private, and community.

The democratic-republican approach must accept that controlling the asymmetry of information that the state concentrates in its favour is essential, but also that while the structure of private media ownership and oligopolistic tendency persists, it is impossible. While the objective may be simple to formulate –build media that are not subject to the absolute power of the market or the discretionary decision of the public authorities– it is much harder to achieve. That is why a possible solution could lie in the full public ownership of communication and media infrastructures, with the corresponding safeguard institutions ensuring they are never subordinated to government or party agendas. In this regard, one proposal worth considering would be to support these objectives by equating freedom of information with the establishment of a level of protection analogous to that of the freedom of the chair of professors and judges [13].

Epilogue: free time as a condition of truly free expression

Some key considerations regarding the many other institutions that can safeguard freedom of expression, understood positively, are absent from this text. One such example would be a public education system at all levels, endowed with resources and oriented to the construction of critical subjectivities and not to market demands. However, I cannot close this article without devoting a few words to the necessary, last and most essential condition for the construction of a free and co-legislating republican citizenship: free time.

It can hardly be difficult for us to admit that this text has so far offered a unilateral view of the freedom issue through Marx’s theories; an author who offers us a vibrant discourse, in which he combines anthropological, social, historical, political and economic elements, as well as legal and institutional. Marx characterised freedom as human self-realisation through the exercise of his own powers, on the basis that humanity remained divided, uprooted, and alienated, and that only a historical practical process that could leave behind the society of commodities could reunite the human essence and existence. In a strictly Marxist sense, only an undivided humanity will be able to express itself freely. Nevertheless, sometimes things do not have to be that complicated; Schmidt’s approach, which says that Marx reduced the problem of human freedom to the problem of free time

[14] may be more prosaic but at the same time perhaps more useful for thinking about how the man from Trier imagined the "realm of freedom". It is worth reading his celebrated text on the issue carefully:

> "The realm of freedom actually begins only where labour which is determined by necessity and mundane considerations ceases; thus in the very nature of things it lies beyond the sphere of actual material production. Just as the savage must wrestle with nature to satisfy his wants, to maintain and reproduce life, so must civilised man, and he must do so in all social formations and under all possible modes of production. With his development this realm of physical necessity expands as a result of his wants; but, at the same time, the forces of production which satisfy these wants also increase. Freedom in this field can only consist in socialised man, the associated producers, rationally regulating their interchange with nature, bringing it under their common control, instead of being ruled by it as by the blind forces of nature; and achieving this with the least expenditure of energy and under conditions most favourable to, and worthy of, their human nature. But it nonetheless still remains a realm of necessity. Beyond it begins that development of human energy which is an end in itself, the true realm of freedom, which, however, can blossom forth only with this realm of necessity as its basis. The shortening of the working-day is its basic prerequisite" [15].

As we see, Marx defined communism as the transition from the realm of necessity to the realm of freedom, defining the expansion of free time, the shortening of the working day, and the development of the productive forces as its prerequisites. Many have tried to paint Marx as an apologist for work, and the Stalinist canonisation of his theory worked hard to achieve this. On the contrary, however, it is irrefutable that if Marx devoted great praise to the technologically innovative capacity of the capitalist mode of production and modern industrial bourgeoisie, it was because of the enormous possibilities that could be accessed by so much productivity conquered by capital in a world rationally governed by producers unified in… their conquest of free time.

Long before any North American sociologist fashioned the idea of a jobless or "zero marginal cost" society [16], in the Grundrisse, Marx shows himself to be an ardent supporter of the development of technology and science as a condition disposable time when he states that:

> “To the degree that large industry develops, the creation of real wealth comes to depend less on labour time and on the amount of labour employed than on the power of the agencies set in motion during labour time, whose ‘powerful effectiveness’ is itself in turn out of all proportion to the direct labour time spent on their production, but depends rather on the general state of science and on the progress of technology, or the application of this science to production” [17].

Today humanity is able to produce everything it needs in a time that would have been unthinkable two centuries ago, and this makes it possible more than ever to reduce the realm of need almost to ashes. Perhaps socialism should not have been interpreted as the abolition of the Republic and the state, but rather its only rational ally: a way of taking effective control of the human metabolism with nature to reduce the working day as productive forces advance. Socialism would not be an end, as much of the Marxist tradition has claimed, but rather the only means to achieve something more important: the evolution of human energy understood as an end in itself, which can only be realised in free time. An energy that could, finally, express itself freely as well.

If we really long to be a nation in the form of a Republic in Catalonia, it would be good to stop hypocritical slogans such as we need to mobilize and disobey erratically and without a clear roadmap, and put back at the center of political action the laws that surely we would like to obey: those who steal freedom in the markets to return them to the citizenry. It was not in vain that one of the most important aggregators of the Catalan independence movement before 2017 was the realization of the impossibility of these laws within the framework of the Spanish state: republican common sense is always anti-capitalist.

REFERENCES

1 — Karl Marx “Debatten über Preßfreiheit und Publikation der Landständischen Verhandlungen”, Rhenische Zeitung, 12th of May 1842 [MEW, Vol. I].
2 — *Así quiere limitar el ‘Gobierno del progreso’ la libertad de prensa* (This is how the ‘Progressive Government’ seeks to limit the freedom of the press) (2020). Madrid: El economista. Available online (in Spanish).
3 — Karl Marx (1867). *EL CAPITAL.* “Cap. XXIV. La llamada acumulación originaria”. Available online in Spanish on marxists.org website.
4 — Luis Alegre Zahonero and Carlos Fernández Liria (2009). “Capitalismo y ciudadanía: la anomalía de las clases sociales”. Published in the 100th issue of *VIENTO SUR*, January 2009. Available online (in Spanish).

5 — David Harvey. “Socialists Must Be the Champions of Freedom”. Article from *Jacobin* magazine, published on October 22, 2020. Available online.
6 — Maximilien Robespierre: «La primera ley social es aquella que garantiza a todos los miembros de la sociedad los medios para existir» (*«The first social law is one that guarantees all members of society the means to exist»*). Robespierre’s speech published on the Kaosenlared website. Available online (in Spanish).
7 — Luis Alegre Zahonero, Carlos Fernández Liria and Daniel Iraberri Pérez. “Derecho, Estado y propiedad / La libertad republicana contra la concepción liberal del Estado”. Article published on the marxismocritico.com website on October 10, 2012. Available online (in Spanish).
8 — Luigi Ferrajoli, *Derechos y garantías*, Trotta, Madrid, 1999.
9 — *Gaceta Renana*, number 139, May 19, 1842, in K. Marx, *op. cit.*, p. 102.
10 — David Guerrero. “Tres viejas ideas para comprender la libertad de expresión hoy: el Marx de la Gaceta Renana (1842-1843)”. Article published on the Sinpermiso.info website on September 16, 2018. Available online (in Spanish).
11 — Julio César Guanche. “La biblia de la libertad de un pueblo”. *Cuba, la libertad de expresión, el DL 370 y una ley de comunicación*. Article published on the rebelion.org website on July 2, 2020. Available online (in Spanish). Original source: OnCubaNews.com
12 — “Comunicación, derechos y desarrollo sostenible en Cuba”. Article published on the waccglobal.com website (*WACC, communication for all*) on August 27, 2017. Available online (in Spanish).
13 — Luis Alegre Zahonero, Carlos Fernández Liria and Daniel Iraberri Pérez. “Derecho, Estado y propiedad / La libertad republicana contra la concepción liberal del Estado”. Article published on the marxismocritico.com website on October 10, 2012. Available online (in Spanish).
14 — A. Schmidt (1976). *El concepto de naturaleza en Marx*, page 164.
15 — *El Capital*, volume III, section seven, chapter XLVIII; page 759. Mexico: Economic Culture Fund.
16 — Rifkin, J. and Sánchez Barberán, G. (2016). *La Sociedad De Coste Marginal Cero*. Barcelona: Paidós.
17 — Grundrisse, OME-22, page 90.



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