

Freedom of the Press in Canada and Colombia

MAURICIO BELTRÁN*

Artículo recibido: 20/04/2008

Evaluación par interno: 01/08/2008

Evaluación par externo: 20/09/2008

Abstract

A general conclusion of the history of the Canadian press demonstrates that state was built after true journalism had been consolidating. Press development went along with economic progress and this was achievable, in great measure, because of the manner colonization took place in North America. This aided the de facto nationalization of press freedom in Canada. In Colombia, on the contrary, wealth concentration and the Spanish failure to build an economic market, resulted in a constant political instability from the time the Independence War. Legal and the de facto nationalization would be attained only at the end of the twentieth century, though journalism was already part of the institutional arrangement.

Key words: *Freedom of speech, colombian and canadian press history, legal nationalization, facto nationalization, legal history.*

Libertad de prensa en Canadá y Colombia

Resumen

Una conclusión general de la historia de la prensa canadiense demuestra que el estado actual se construyó después de haberse consolidado el verdadero periodismo.

* Magíster en Asuntos Internacionales (MIA), Columbia University, School of International and Public Affairs, New York, USA. Correo electrónico: mebeltra@urosario.edu.co

El desarrollo de la prensa fue paralelo al progreso económico y se pudo lograr en gran medida por la forma en que se colonizó Norteamérica. Esto ayudó a la nacionalización de facto de la libertad de prensa en Canadá. En Colombia, por el contrario, la concentración de la riqueza y el hecho de que los españoles no construyeran un mercado económico produjeron una inestabilidad política constante desde la época de la Guerra por la Independencia. La nacionalización legal y de hecho solamente se logró a finales del siglo XX, aunque el periodismo ya era parte de la organización institucional.

Palabras clave: *libertad de expresión, historia de la prensa colombiana y canadiense, nacionalización legal, nacionalización de hecho, historia jurídica.*

This paper seeks to compare freedom of the press in Colombia and Canada in terms of legal culture.¹ It analyzes how free public debate became part of the legal cultures in both nations. To the degree that this entailed a role for the press, this paper outlines a broad historical description of the influence of the press in the political and cultural development of both nations. A fundamental objective is to establish how the relationship between liberty and authority served for defining freedom of the press during the 19th and 20th centuries and how this concept responded to the political and economic forces. It is not a goal of this paper to elaborate a rigorous comparison between the press history of both nations.

In contrast to the common law tradition, Colombian legal history places little importance on court decisions. As a result, most analyses have been concentrated on explaining the political agenda behind statutes and constitutional rules. Part of the explanation for this is that, until the 1950's, Colombian history focused mainly on military events, political party disputes and the lives of important personalities. Additionally, and more importantly, is that French legal influence around 1850 (The Napoleonic Civil Code of 1804 was adopted in 1874) and the subsequent legal codification in the 1880s, led most Latin American countries to establish a long standing principle: only

¹ We follow Lawrence Friedman when asserts that legal culture refers to beliefs, values, expectations and ideas of people over law and the legal system. See Friedman, Lawrence. *Introducción al derecho norteamericano*. España: Cometa, 1987, p. 7.

legislation and never cases, compels judges and lawyers; previous decisions are a subsidiary means of interpreting law.² A potential pitfall in an article such as this is that this type of legal history has not previously been undertaken in Colombia. That said, however, there were partial studies about the press in the 19th and 20th centuries that shed some light on the political role performed by the media.³

In contrast, Canadian press history has been the object of generous research by professor Wilfred Kersterton who after 17 years of research an inspiring study of journalism in that country.⁴ Thus, in this article, his work is fundamental. This paper it should be insisted, does not entail an attempt to fill the gap in Colombian history, but only to establish some basic patterns that allow a comparison with the Canadian experience.

As far as this paper is directed mostly to Canadian readers, it will first and mainly focus its comparison on explaining the Colombian socio-political context from the colonial period until 1863 and the role of press during those years. Given the importance of the 1880s for both countries the second part of this analysis will bring us up to the present, and finally, it will offer some broad conclusions.

Building a Nation

In the common law legal tradition it is typical to argue that freedom of thought as well as freedom to organize a government have been long considered natural rights. There would be, in that sense, no

² It has recently been demonstrated how the adoption of Napoleonic Civil Code at the end of the 19th century implied the reception of international legal theories that influenced the Colombian legal culture. See López, Diego. *Teoría impura del derecho. La transformación de la cultura jurídica latinoamericana*. Colombia: Universidad de los Andes, LEGIS and Universidad Nacional, 2004.

³ The main texts used here for studying this aspect in Colombia are: Silva, Renán. *Prensa y revolución. Contribución a un análisis de la formación de la ideología de Independencia nacional*, Medellín, Carreta, 2001; Bushnell, David. "The development of the press in Great Colombia", *The Hispanic American Historical Review* 1950, 30, 4, 1950; AA. VV. VII *Cátedra anual de historia. Medios y nación. Historia de los medios de comunicación en Colombia*. Aguilar, CERLALC, 2003; Otero, M. Gustavo. *Historia del periodismo en Colombia*. Bogotá: Universidad Sergio Arboleda, 1998.

⁴ Kersterton, Wilfred. *A History of Journalism in Canada*. Ontario: Carleton University Press, 1984.

limit to those liberties, and freedom of the press, once a political arrangement has been agreed upon, would appear instrumental to the socio-political organization.⁵

The Glorious Revolution of the 17th century provides the context for understanding the commitment to this liberty. Cyndia Clegg has claimed that the sense of national unity that seemed to be consolidating during the 1600s was strongly connected with the role of publications in England. By 1601 the Book of Common Prayer, English editions of the Bible, some epic texts and various chronicles had already been published. Moreover, written propaganda was already being used by various groups and by the Crown to advance their political agendas.⁶

One may add that a kind of cultural adjustment was taking place and this obviously affected the route the English colonies adopted once they had become economically viable in America. Thus, it appeared that freedom of speech was a legally and culturally binding liberty when the War of Independence was fought by the thirteen colonies. Compared to our experience, it follows that if the *corantos* in 1640 reached an average of 500 copies in a period in which the English Crown was attempting to neutralize their internal opponents,⁷ in Latin America, it must be recognized that those were years of darkness for the press. By way of contrast to the English colonies, freedom of speech, as a mechanism to build public opinion, was a recent idea when revolution erupted in Latin America.

The road to Spanish colonial disintegration began because Spain regarded its colonies primarily as a supplier of precious metals and, secondly, as a source of the taxes necessary to finance its lavish aristocracy. The final step to its collapse came when Napoleon invaded Spain in 1808. At once, a path to independence was opened, and within THAT an overwhelming commitment to freedom of the press.

⁵ Eastland, Terry (ed.). *Freedom of Expression in the Supreme Court. The Defining Cases*. U.S.: Rowman & Littlefield Publisher, Inc, 2000, p. XIV.

⁶ Clegg, Cyndia S. *Press Censorship in Jacobean England*, New York: Cambridge University Press, 2001, p. 8

⁷ O, Malley, Tom. *Regulating the press*, London: Pluto Press, 2000, p. 9

In the second half of the 18th century the Bourbon crown had instituted enlightened policies directed toward attaining economic development and re-establishing political and economic control over its American colonies. These included educational reform and the founding of newspapers to discuss recent economic and scientific ideas. This process alienated the traditional elite. Younger members of the elite understood that these provided a new path to defend and increase their role in the decision taking process. Yet, on the other hand, the policy sought to make royal power absolute, once again.⁸ Consequently, those Latin Americans influenced by the Enlightenment became the main protagonists of the independence process triggered after Napoleon invaded Spain.

In Colombia after independence in 1819, “freedom of the printing press (as it was first called in the continental law tradition)⁹ was legally recognized in all the 19th century constitutions. Why was legal concern for this freedom always at stake? A possible answer to this question requires an examination of the context in which this consistent legal recognition took place.

The printing press, for revolutionary leaders, was important to promote the idea that a free public space for discussion was inherent to the new republic. This implied to some degree denying the Bourbon policies in the 18th century. Spain had already acknowledged that reading was fundamental for its future and that the public had to share cultural as well as political interests in order to build a sense of one community.¹⁰

⁸ See Peralta, Jaime. *Los novatores. La cultura ilustrada y la prensa colonial en Nueva Granada (1750 - 1810)*. Colombia: Universidad de Antioquia, 2005.

⁹ In 1831 Francisco de Paula Santander (1792-1840), the most influential Colombian leader during the war of independence war and the establishment of the republic, in 1831, calling for reconciliation between liberals and the clergy, referred to this liberty as freedom of printing press (Palacios and Safford. *Colombia. País fragmentado, sociedad dividida*, Bogotá: Norma, 2002, p. 289). The printing press was utilized by the Spanish crown since the 16th century in México and Perú as a tool to change indigenous culture. Later, the Bourbons, through their enlightened agenda, legislated in the 18th century to license and encouraged readings that were not against the Crown or good manners.

¹⁰ By the end of the 18th century all enlightened authors of France or England had been read in Spain. There already existed editorial companies, and Spanish intellectuals such as

In the colonies, however, there was no suitable environment for reading and discussing ideas and opinions. Neither public libraries nor publishing societies existed as was the case in Spain and in the other countries of Europe. Moreover, as in other sectors economic conditions did not exist for the development of an editorial industry of any kind.

To complicate this scenario even more, the Inquisition Tribunal had the prerogative of applying censorship. This institution was not an obstacle in Spain to the intense distribution of books but it is beyond the reach of this article to establish how effective it was in the colonies. It is clear, however that there existed criminal trials against creoles for having “harmful books”.¹¹

Another important fact is that the first periodical in Colombia during colonial period, *El Papel Periódico* (1791- 1797) which was licensed and controlled by the viceroy, had not much more than 150 subscriptions in the whole territory. At the same time (1794), in a famous criminal trial against one of the founding fathers —Antonio Nariño— for the unlicensed publication of the French Declaration of Rights of Man, his personal library was considered evidence of his disloyalty. Ultimately, in the second half of the 18th century, three hundred years after the founding of Bogotá, the Bourbons encouraged a limited discussion of ideas. In that context the church, as in the conquest and the colonial period, continue to exercise its influence.

Meanwhile in Canada the establishment of each city was accompanied by the creation of a newspaper. Though in Colombia and Canada publisher required official authorization, but the contexts were different. First, in Canada, printers were professionals that arrived from cities with strong commercial and industrial activity

Father Feijoo, Melchor de Jovellanos, and Fernandez de Moratin were very influential among society. Finally, as in the rest of Europe a “fever for reading” had reached even middle class sectors of the Spanish society. See, Diz, Gómez. *Idea y vivencia en Europa del siglo XVIII*. 1^o part, España: Universidad Complutense, pp. 466-494.

¹¹ See Álvarez y Martínez. *Historia de la prensa hispanoamericana*. Madrid: MAPFRE, 1992, p. 14.

such as Boston, Philadelphia and New York. In the Colombian case the royal printer of the first newspaper *El Papel Periódico* was a Cuban who had migrated with the viceroy at the time to serve as a librarian in Santee de Bogotá. He was not a printer and he founded the paper authorized by his mentor the viceroy.

Secondly, the intention behind creating newspaper in Colombia was the expansion of Enlightenment from Santa Fe de Bogotá to the rest of the country.¹² The final purpose of the Burbons was to modernize their economic system without altering the political arrangement. In short, establishment of the press was a perfect example of the authoritarian and centralized way of directing affairs by the Spanish crown.

This is why a kind of monopoly was granted to *El Papel Periódico*, however, its subscription list reached only 146, whereas *The Halifax Gazette*, the first journal of Canada (1752), started with a subscription list of 75. That pattern was repeated for each journal that was created in each of the six regions of current Canada.¹³ Though Kesterton regards press in this early period as a tool of authority, the degree of colonial autonomy is never comparable with the Latin-American experience. The level of autonomy was proportional to the level of riches discovered by each crown when they arrived to the respective lands. Canada never was the source of instant income that the Spanish colonies were and this discouraged migration until the first half of the 19th century. That was when the timber trade appeared and with it migration, settlement and the press flourished. Along with grist millers, tanners, wagon-makers, whisky distillers, brewers, cobblers, weavers and blacksmiths there was another category of entrepreneurs; newspaper editors, who established their journals almost as soon as the new towns came into being. Between 1810 and 1850 the base of the Canadian press at that time was founded and within it already existed the notion that any editor had to have the ability of gaining his readers, finding the path to printing advertisement and

¹² Silva, Renán. *Prensa y revolución a finales del siglo XVIII*. Medellín: La Carreta, 2004, p. 25.

¹³ Kesterton, *op. cit.*, p. 8.

selling subscriptions.¹⁴ In contrast, that period in Colombia was a frenzy in which neither industrialization nor press consolidation was attainable.

Culturally, as stated above, by 1800 the appropriate environment for publishing and discussing ideas and opinions appeared to exist in Canada due to the role of the printing press in England that had evolved during the sixteenth century. Additionally, it may be emphasised the United Kingdom never found the riches that the rest of the continent offered to the Spaniards. Thereafter 17th century policies based on private initiative were the only practical means towards making North American lands profitable. Within a context of economic and political autonomy, individuals had access to land, and in turn, to participating in the process of making and taking decisions. Additionally, the religious notion that one could have a direct dialogue with God by just reading the Bible surely had had an impact on the illiteracy rate in the colonies.¹⁵

Canada, as opposed to Colombia, did experience a real transplant from the English government. The Press was the result of a slow but orderly development in both in the Old and New World. At the time of the New Englanders struggle for independence there was wide distribution of many different publications in all the British colonies. Canada had its first news sheets in 1752; as professor Kesterton asserts, “the story of Canadian journalism is much older than the nation”.¹⁶

From the time in which the colonies were established, there also existed wide discourse over rights among their inhabitants. That, as stated above, was just normal ground for private companies which had long realized that colonies should have a great leverage over their

¹⁴ *Ibid.*, *id.*, p. 11.

¹⁵ I have attempted to explain how Spaniard and British foreign policy after Columbus Discovery affected legal culture in the colonies. See. Beltran, Mauricio. “Políticas británicas en las primeras colonias americanas. Crítica a la visión mítica sobre su establecimiento y efectos sobre la construcción de la tradición legal estadounidense”, *Estudios Socio Jurídicos* 2003, 5, 2, pp. 198-223.

¹⁶ Kesterton, *op. cit.*, p. 1.

own political decisions if they (the companies) expected to become profitable.¹⁷ In short, the de facto recognition of freedom of the press was attained long before the establishment of Canada as a State.

After the War of Independence (1819) printing presses in Colombia were solely devoted to newspapers although in subsequent constitutions (after 1821) newspapers were not the only authorized means of communicating opinions and thoughts. In short, at the time of Independence, Colombia could not publish their opinions and ideas through books because there was neither the cultural nor the economic environment for books to be published. Instead, traditional forms of communication including letters, gossip, lampoons, and communal readings were kept and those guaranteed that people were informed.¹⁸

Colombia supposedly had, since the first constitution in 1821, a legal commitment to freedom of the printing press. For instance, in the 1821 constitution “freedom of the printing press” was the first liberty protected and it embraced the right of any Colombian to write, print, and publish thoughts and opinion.¹⁹ Supposedly, the need to build a republican system within a huge nation known as Gran Colombia (Venezuela, Ecuador and Colombia) was the explanation for understanding why delegates to the 1821 convention recognized this freedom in such a broad form.²⁰ This may be true; however, given the depressing and short history of this liberty during the colonial period,²¹ and the boom of publications after the Declaration

¹⁷ Beltrán, *op. cit.*

¹⁸ See Glave, Luis Miguel. “Del pliego al periódico. Prensa, espacios públicos y construcción nacional en Ibero América”, *Debate y Perspectivas* 2003, 3, 7-30.

¹⁹ The 1821 Constitution was written right after independence war, but it has a provisional sense. An evidence of this is that the very constitution contained a rule that ordered that a constitutional convention would be held in 1831 to revise the document expecting to have already expelled Spaniards from South America. That may be the most clear difference between Colombian and Canadian experience as much as the later remained loyal to the British empire and never had to resort to war to become an independent republic.

²⁰ Bushnell, *op. cit.*, p. 237.

²¹ As it was stated before, the printing press was established during the XVI century in México and Perú by the Catholic Church. It was used only to print catechism and educational books to evangelize indigenous people (Salmoral, Manuel L. *Historia general de España y América: el*

of Independence in 1810, one may add that the idea of many of the delegates was to make their ideology public by placing distance between them and the authoritarian state model that had prevailed in these territories since the middle of the 16th century. They wanted a kind of check and balance system in which political decision were taken by the legislative and executive with the press as vehicle for building political parties.²²

These leaders were not a majority within the population, but among the elite in the 1820s they were at that point of history the strongest group. Some of them had warned, since 1810, that nothing less than a definite rupture from the Spanish empire was necessary to confront a potential Spanish reconquest. When the Spaniards retook power and triggered a bloody repression, they were proved right and their prestige was at a high when Simon Bolivar finally liberated Colombia in 1819.

In short, revolutionary leaders shared the view that, public discussion as a point of departure to build a republic, was a fundamental element of their liberal agenda. Some even believed that economic and political development would never be reached without a free press. However, given the conditions of each territory, amalgamating the

descubrimiento y la fundación de los reinos de ultramar. Madrid: Rialp, 1982, p. 482). Newspapers appeared at the end of 18th and were part of the illustrate policies of the Burbons. In Colombia there were five periodical between 1791 and 1811, two of them were private enterprises. All of them intended to spread ideas of economic and cultural progress that many expected would bring happiness to Nueva Granada inhabitants. See Peralta, *op. cit.*

²² Since the 1950s Jaime Jaramillo Uribe, one of the most renowned Colombian historian, has documented how concepts such as representative governments, popular sovereignty, and right to rebel were already claimed before 1810. The theoretical bases were found in scholastic and natural law arguments stated by Francisco Suarez (1548-1617) and Saint Thomas. Jaramillo found the Colombian “new history” and since then the notion that revolutionary leaders discovered all theoretical foundations on the experiences of France and the U.S have rendered superficial (Jaramillo Uribe, Jaime. *El pensamiento colombiano en el siglo XIX*, 4^o ed., Bogotá: CESO, Uniandes, Banco de la República, Incanah, Colciencias, Alfaomega, 2001). Moreover, an argument exists that opposes this long standing opinion and insist that the relationship between American and French revolutions with insurgent movements in Latin America, was just an minor factor in that process. In short, today it seems obvious for current historians that the events and circumstances that led to independence in Colombia are absolutely complex and they did not stand a single explanation. See Silva, Renán. *Op. cit.*

Desafíos, Bogotá (Colombia), (19): 210-243, semestre II de 2008

economic interests of the clergy, the military, landowners, merchants and handcrafters, was an unattainable goal. People were illiterate and depended in all senses on the local priest. The state, even in the 21th century has not attained the ability to exercise its authority. In short, the great majority of Colombian inhabitants would have no role in the decision making process.

A reliable explanation is that during Spanish control there was no trading structure among the colonies and the geographic obstacles between them had allowed an economic self-sufficiency model to prevail.²³ By the time of Gran Colombia (1821-1830) this colonial pattern meant that each elite within each region had diverse priorities. This is why, in the middle of the War of Independence, it seems that the only common ground for the union was strategic benefit because the Spaniards were still in power in the rest of South America.

Within this context, radical liberals would keep power from 1821 to 1841. After two conservative governments, they re-entered power in 1848 and remained until 1886. In the task of consolidating the Republic, all the constitutions provided evidence of their liberal agenda. Along with freedom of the printing press an extensive list of due process provisions was endorsed by the 1821 constitution and were kept and enhanced in the 1830, 1832, 1848, 1853, 1858 and 1863 constitutions.²⁴

Liberty of the printing press was recognized even in the Organic Decree of 1828 by which Simon Bolivar, in the middle of a structural crisis, proclaimed his dictatorship.²⁵ Arguing he was complying with

²³ The *Conquistadores* rush took them to fund small towns in great part of current Latin America. After two centuries the common pattern was that each province was self dependent and property was highly concentrated.

²⁴ In 1821 twenty articles guaranteed all the rights of what we acknowledge to date as due process. Since then those rights were recognized and the list of individual guarantees has been augmented. The zenith was reached in 1863 when the most liberal constitution was agreed by radical liberals.

²⁵ Under the title General Rules, article 20 stated that everybody had the right to publish and print his opinions without prior restraint. This is especially interesting due to the political and economic crisis on the Great Colombia.

an article of the 1821 constitution which provided that a convention would be convened in February 1831 to revise that constitution, he kept Gran Colombia alive by bringing that convention forward. Although Bolívar organized a constitutional assembly to legitimize his position, he could not save La Gran Colombia.²⁶ In 1830 just after Venezuela had declared the dissolution of the union, a new constitution was established and under the title of Civil Rights and Guarantees the protection of freedom of the printing press was maintained.²⁷

The total separation of Venezuela, Ecuador and Colombia, the death of Bolívar (December 1830), a short lived coup d'état by some Venezuelan military in Bogotá (the capital of the union), and the polarization between some radical liberals and the clergy, were the context under which this 1830 constitution ruled for just two years.²⁸ In fact the animosity between the church and liberals would remain until the 20th century and to some extent explains the constant instability of the whole system.

After Bolívar's death in 1830, his followers retreated and his political model collapsed. The liberals, under the leadership of Francisco de Paula Santander, had regained prominence. Thus, many of the controversies manifested inside the Convention of 1832 were between radical and moderate liberals over issues such as who would become the vice-president; whether or not those servicemen who had supported the coup d'état would be exiled or not, and the appropriate name for the new republic. Being a moderate liberal in those days implied a belief that a negotiation with other *bolivarianos* was possible whereas being a radical liberal meant that those who had supported the military coup in 1830 should be excluded from the decision making process. The former were a minority among liberals.

²⁶ Bolívar and his followers had proposed a constitutional arrangement in which a powerful central government was the key to face the political crisis. This even led them to recommend a system in which the president would have a life position and the natural candidate for that was Bolívar.

²⁷ Article 151 stated that through the press every Colombian had the right to publish his opinions and thoughts without prior restraint.

²⁸ Controversy with the clergy arose over issues such as suppressing convents with less than eight monks; challenging the Vatican's right to choose bishops; and reforming education making mandatory the teaching of Bentham.

As previously stated once dissolution became a fact, a new constitutional convention was organized by liberals and *La Nueva Granada* was created by the 1832 constitution. The institutional arrangement adopted for the republic of 1821 was maintained and with that the recognition of the freedom to publish thought and opinion without prior restraint such as test, revision, and censorship. The pattern of placing this disposition under the title of General Rules reappeared but a new ingredient was introduced: jury trial for freedom of “the printing press cases”.²⁹

In short, neither radical liberals nor conservatives opposed freedom of the printing press and for this reason it was part of the constitutional arrangements of 1821, 1830, 1832, and subsequent constitutions. Indeed, the publication boom in the 1830s and 1840s provides evidence that the press was used to discuss, oppose and defend policies and leaders. This may be explained because, during these two decades, political parties were taking form. Those labelled as *bolivarianos* were the last to organize. Since 1810 liberals had been the natural enemies of the Spaniards. After the Spanish reconquest, most local leaders were liberals; after Bolívar’s total triumph in 1819, cleavage among the local elite was the rule.

By 1832 there was no conservative party formally organized but one may argue in broad terms that they comprised those military, clergy and some landowners who did not agree with the liberal approach to education, taxes, and the relationship with the Catholic church. However, no clear pattern existed demonstrating that adhesion to one party or the other could be explained by class division or occupation.³⁰

By that same year, however, Santander had understood that the people were not ready for radical reforms (Bolívar had understood this in 1828). For instance, they knew that an absolute free trade

²⁹ The 1821 Constitution had mandated that Congress would study at some moment the feasibility of regulating this class of procedure for all causes.

³⁰ Supposedly, controversies and armed conflicts arouse over the role of the Catholic Church, but that was mainly an excuse (Palacios & Safford, *op. cit.*, pp. 300-316).

approach was impossible. Three constitutions (1821, 1830 and 1832) had recognized the freedom to choose occupation or profession, but this was a pale reflection of 19th century ideals. Structural obstacles rendered a flourishing free trade economy impossible.³¹ As with other 19th century leaders, they considered economic liberty, due process and freedom of the printing press as instrumental conditions for the building of the republic.

After Independence the periodical press “left a record of the interest and beliefs of a generation”.³² The record illustrates that national leaders aspired to build a republic, provided that their particular economic interests were not at stake. Every character proclaimed himself a patriot and the most prominent invariably became journalists. This practice became the norm and, by the end of 1840s when there were two political parties formally organized, their controversies were aired in the periodical press. Until 1886 both parties seemed to fit into a conservative libertarian agenda which had committed to economic development and respect for individual rights. In fact, professional historians seem to agree that the issue that divided them was the role of the Catholic Church and the proper system of education. This explains why the clergy generally supported the conservatives.

It would be, however, superficial to argue that the various military confrontations during this century were about these issues. The real issue seems to be the mutual exclusion of power that each election provoked. For instance, between 1839 and 1842 military conflict was initiated, but the recently formed political parties were not the main actors. A moderate liberal government supported by *bolivarianos* had been elected in 1837 and conservatives, taking advantage of the cleavage among the liberals, had grouped themselves with liberals in power and, little by little, had taken control of the main positions. In 1839 Congress ordered the elimination of small convents in Pasto, a mostly conservative province, but in which a liberal leader —José

³¹ In fact economic controversies over customs duties were common only around the middle of the 19th century and it produced division within each political party (Bushnell, David. *Colombia una nación a pesar de sí misma*, Bogotá: Planeta, 1996, p. 142).

³² Bushnell, David. “The development of the press in Great Colombia”, *op. cit.*, pp. 432-449.

María Obando— had immense support. He took the opportunity to initiate a rebellion against the central government which had politically excluded him, making regional autonomy the real issue for rebellion.

Since the Declaration of Independence in 1810, radical liberals had defended a strong central government, but in 1840 Obando and others became belligerent supporters of a federalist system. Diverse leaders, including liberals and conservatives, in different regions declared war even though the very Bishop of the region affected by the decision had agreed with the policy. The government overcame the rebels, but the direct consequence was that plans for economic progress made circa 1837 had to be postponed.³³

Another consequence was that a constitutional reform was initiated by the Congress in 1843. Supposedly, it was not a new constitution, but few dispositions remained unchanged. Freedom of the printing press was kept as a mechanism to publish thoughts without any restraint or permit from any authority and juries would be implemented for any procedure related to the abuse of rights.³⁴

The same pattern appeared in 1853. Following legal procedures, the Congress considered that the previous constitution “did not satisfy the wishes and needs of the nation” and changed it. This time freedom of the printing press, along with the common liberties recognized in past documents, were clustered in the fifth article of the first chapter called “of the republic and its citizens.” Among the six constitutional documents up until 1853 this was the second time that these kind of provisions were placed under a title clearly indicating that individual liberties were protected.

This document was legally binding for ten years whereas in 1830 the document lapsed after less than two years. Another special and

³³ Exporting tropical products, introducing steam ship navigation to the Magdalena river and commencing production of glass, paper and iron, were the economic expectations around the end of 1830 decade (Palacios & Safford, *op cit.*, p. 307).

³⁴ Article 163.

unusual feature of this provision was that, besides freedom of the printing press, it protected words and deeds. The wording of the article leads to the conclusion that no law could limit the former liberty. Again, the absence of historical analysis of jurisprudence does not allow us to determine what was the judicial interpretation for such a broad notion of freedom of speech. No single study examining the understanding of this provision by 19th century courts exists and thus any attempt in this paper to explain what these articles implied would be pure speculation. It can be stated, however, that around 1850 a broad defence of “freedom of the printing press” was still considered by main political leaders as instrumental for consolidating the republic. But once again this ideal was not reflective of the economic conditions of Colombia.

By the middle of the century it was manifest that civic leaders had gained prominence over military ones. Those were very aware of the enthusiasm for free market ideas in nations like the United States and England. The latter had become not only the major investor in this part of the continent, but the chief creditor of Colombia. Moreover, England had diminished its tariffs and international demand for raw materials had increased. This caused eagerness in members of the local elite to become liberals in economic terms.

The division between liberals and conservatives continued to be superficial for the only matters in dispute were the appropriate treatment of the Catholic Church and which group should be in power and for how long.³⁵ In short, as in 1821, 1830, 1832, and 1843 local leaders merely had technical disagreements over the distribution of power between the executive and congress. Under a framework of strict distribution of power, the judiciary from 1821 had always been a flimsy branch without any judicial revision power. It would maintain this status until 1910.

By 1850 liberal publicist had been effective in convincing the local elite that this economic enthusiasm required legal recognition of other

³⁵ Bushnell, *op. cit.*, p. 141.

practices. This, in turn, led to the expulsion of the Jesuit congregation along with the acceptance of universal male suffrage, absolute freedom of religion, civil marriage and divorce. These, obviously, were extreme measures alien to masses who had been culturally shaped to strict Catholic rules. In addition, economic policies had not produced results that covered all members of the national elite. Accordingly, tacit agreement about liberal practices did not prevent military confrontations. For example, fighting between groups of liberals led to an eight month military coup in 1854.

Once more, for conservatives, measures against the Church were unacceptable and a perfect excuse to attack liberals, but again what really mattered was who would stay in power and for how long. The liberal agenda in the context of economic stagnation allowed conservatives to take advantage. Thus, once a conservative government won the elections of 1857 all these liberal measures, save universal male suffrage, were reversed. It appears that for both political parties to have the chance, in a context of absurd economic inequality, to manipulate hundreds of voters seemed to be to their advantage. This may explain why, though there was no strict ideological cleavage involved, the political parties were the pre-eminent factor in the unification of Colombia. This would prove catastrophic in the 20th century. Public opinion was limited to what leaders of both parties considered appropriate and just.

One may analyze as an example when, in 1861, a former conservative leader —Tomás Cipriano de Mosquera— overthrew another conservative president. Once officially declared president by a constitutional convention in 1863, he imposed an even more radical liberal reform than those contemplated in the 1858 constitution. These changes, under a conservative regime (but supported by both parties since 1854) had established a federal system. Bolívar, as was already stated, had drastically opposed this kind of power arrangement, but by 1853 that was no an obstacle for conservatives who had formerly aligned with the *Libertador* in the 1820s. Therefore, this form of administrative autonomy, under the scenario of universal male suffrage, was ideal for a handful of leaders all around Colombia. Moreover, radical

liberals found the moment ripe to advance their agenda. Perhaps, some of them were really convinced of their social function, but for most of them this was merely the time for reprisal against the Church which had supported conservatives in the bloody civil war of 1860-1861.

In short, Mosquera became liberal and expanded anticlerical measures including the abolition of tithing and some religious orders, the expulsion of the Jesuits again, and the expropriation of a great deal of Church land. It should be noted again that, at the base of these measures there lay an optimistic if not romantic belief that liberal economic policies would soon render magnificent results.³⁶

Against this background, a public pledge to protect individual rights was rational. This is why one is unable to find a key difference between the 1853 and 1858 constitutions. For instance, in addition to due process provisions, the free exercise of religion, the protection of property, and the freedom to choose ones job, or profession, both documents acknowledged the freedom of private institutions to provide or deliver such types of education as they can fit. Perhaps the only difference is the wording of the head under which these rights were included: “of the republic of la Nueva Granada and of the Granadians” in 1853 and “of the individual rights” in 1858. Regarding freedom of the printing press in 1853, besides defending freedom of thought without limitation, protection was extended to deeds and “the other facts” whereas in 1858 it protected opinion “without responsibility of any kind”.³⁷

As was stated, liberals were convinced that absolute civil liberties provided the foundation of the union. By the middle of the 19th century French romanticism had shaped the liberal agenda and for them a federation was the perfect scenario to advance their economic agenda. In fact, the union increased to nine states in the 1863 constitution and state powers were those not explicitly delegated to the central

³⁶ There was the liberal conviction that a free trade of these lands would stimulate the economy and aid to pay to foreign debt (Bushnell, *op. cit.*, p. 173).

³⁷ Clause fifth of article 56.

government. Additionally, the degree of autonomy was so broad that each state behaved as wholly sovereign, and for the first time, the constitution became rigid as only through a unanimous decision of the states, could it be reformed.

In analyzing the wording of this 1863 constitution, one has to agree that it was the most liberal that Colombia has had in two hundred years of republicanism. Chapter two - Basis of the Union – proclaimed in the section two, article 15 that “the essential and invariable base of the union is the recognition and guarantee by national and local governments of citizens’ and temporary residents’ individual rights.” For the first time, the right to life was established and it included the express abolition of capital punishment. Regarding freedom of the printing press, this liberty was recognized as it was in 1853 and 1858. In other words, individuals were empowered with absolute rights, which included “freedom of the printing press”.

However, reality was more eloquent than words. By 1870, 3% of the whole population went to school whereas in 1835 only 1,2% had access to that privilege.³⁸ Liberal policies in education had increased the chance that people could read newspapers but the legal recognition of the right seemed naive in the context of the time. Every year newspapers appeared and disappeared in each important town. They were the vehicle of local leaders and were used to accuse and defend policies and individuals, but they did not and could not contribute to forging public opinion as a result of Colombian’s structural difficulties.

In the meantime, in Canada the British North American Act had come into force. There was a widely distributed increase in newspaper circulation covering six provinces. Population increased and vigorous growth of the economic and social institutions of the country provided the basis for accelerating the development of the press. One may argue that, contrary to the Colombian experience, Canada had already become a nation in the sense that the policy - making

³⁸ Bushnell, *op. cit.*, p. 182.

process involved different interests. People as whole were obtaining benefits and the press had been actively participating in the building of institutions. It is particularly interesting to note that it was the free press which strongly urged the establishment of the concept of responsible government. This is not to argue that no tensions existed among Canadians, but rather to state that the central and local government had the chance to direct public issues without the need to resort to armed conflict.³⁹ For a Colombian scholar, a broad reading of Canada's final years of the 19th century would lead him/her to conclude that disputes were part of the public debate, that there were ideological differences among political groups and that the press was inspiring institutional solutions.⁴⁰ In fact, Canada reached the 20th century legally recognizing that press restrictions were no longer the capricious desire of a public servant. Since Joseph Howe's libel trial victory in 1835 a fundamental principle of press freedom was established. Those were years of upheaval that marked the political history of Canada and Howe's case symbolized the role played by professional journalists of the era. No longer would government authorities be able to use the criminal law to restrict freedom of press using libel and seditious acts as charges. As far as Howe defended his publication by showing jury members that his motivation was not malicious, but an opinion founded in well known cases of official corruption, Howe set the foundations for making Canadian press a real power control tool.

One should add that that Howe's victory was possible due to the general cultural and economic context of those years in Canada. In terms of legal culture a jury trial, for instance, had profound foundations dating back to 12th century England. The idea of our own peers deciding if our conduct is according to the law of the land, was brought by the migrants who came for these lands in the 17th century. Without jury trial Howe would never have been acquitted.

³⁹ See Peacock, Anthony A. *Rethinking the Constitution: Perspectives on Canadian Constitutional Reform, Interpretation, and Theory*. Oxford University Press Canada, 1996.

⁴⁰ That is the sense when one read a common history text in Canada. See Bothwell & Granatstein. *Our Century. The Canadian Journey in the Twenty Century*. Toronto: McArthur & Company, 2000.

This, however, was just one part of a broad cultural commitment in which the ability of to read was not a privilege as in the Latino case. Thus, Howe's accusation brought huge public attention.⁴¹

Additionally, economics played a key role. The telegraph, extensive of road construction and the age of steam, combined with the introduction of the power press and the manufacturing of paper in Upper Canada in 1830s, were ingredients that made the press an essential part of British North America.⁴² It should be emphasised that this also assured that the whole country knew and discussed Howe's famous trial. In short, within a context of better economics, a libertarian principle of the free press was rooted very early in Canadian history. Colombia, on the contrary, still was trying to define a minimum institutional arrangement to allow the whole state start to operate.

By the 1860s radical liberals had built a political system in which it seemed that liberty as a foundation of the political system had prevailed over authority. The legal frame of this arrangement was the 1863 Constitution, but this, by the end of the 1860s had not proved effective to resolve the economic and social unrest of the whole country.

By those years from a Colombian perspective, Canada had a *sui generis* political arrangement. It continued to be part of the Commonwealth and in 1867 it was formally declared a Dominion of England; however, its degree of political and economic autonomy was extraordinary. The explanation lays in the theory of Responsible Government that by 1867 had been upheld by most of the existing regions of Canada and it had evolved from an interesting negotiation process that had contributed to bring political stability to England at the beginning of the 19th century. In short, whereas Colombia had adopted a model that propelled constant confrontation between the executive and the legislative, Canada had decided that those branches should negotiate

⁴¹ Kesterton, *op. cit.*, pp. 20-23.

⁴² *Ibid.*, *id.*, p. 24.

to discuss and take decisions together. At the same time, whereas Colombia had declared itself as an independent republic, believing that that was a fundamental step to reaching economic development, Canada had remained loyal to the Queen and still it had managed to bring economic prosperity without interference from England.

In that process the Canadian press had been fundamental. The notion of responsible government had been pushed forward by different journals and discussed by editors, and therefore had had an important influence among their readers. However, contrary to the Colombia experience, these were real journalists who by the 1860s did not depend on government patronage for their livelihood, but on commercial advertisement. Finally, all of this was grounded on a Canadian compromise with the principle of authority.

A nation in spite of itself

By the 1860s, Colombian radicals had built a political arrangement in which liberty had prevailed over authority as a foundation of the political and economic system. The legal structure for this arrangement was the 1863 Constitution but profound tensions between radicals and conservatives continued to escalate.

As a result radical liberal policies, such those promoted under 1863 constitution would end up providing an excuse for the first challenge to the federal system established by this document. For instance, in 1876, two states declared war against the federal government. The government prevailed, but it's the economic consequences had weakened federal position. By then, the boom of raw material exports was nearing an end and with it the end of liberal party control.

By 1877, moderate liberals and conservatives had united to challenge extreme federalism and policies against the Church. As a result, Rafael Núñez was elected in 1880. He was determined to adjust the economic and political model, but in order to do so he would need to reform the constitution. One may argue that since 1832 all constitutions were the result of legal procedures contained in the previous document, but the 1863 constitution was almost impossible

to reform because it required unanimity and radical liberals were not ready to relinquish their prominence in at least three states.

Núñez stayed in power for two years as mandated by the constitution and became president again in 1884. Radical liberals initiated a rebellion. The government subdued the rebels and Núñez declared that “the 1863 Constitution no longer existed”.⁴³

A new constitution, one that would last for one hundred and five years, was established. A strong central system was arranged in which the president would appoint governor for each “department” and former church land in the hands of the State, along with strict supervision of education, were also restored to the clergy.

The constitution was written by the most prominent member of the conservative party during the XIX century. Miguel Antonio Caro was a person who acted in accordance with his beliefs. For him the political rupture with Spain was necessary but this did not imply a need to ignore the cultural ties between both nations. Within this discourse, community and social responsibilities and the protection of individual guarantees were two faces of the same coin.⁴⁴ This is why the third head was devoted to Civil Rights and Social Guarantees. Freedom of religion and assembly, due process rights, and the protection of private property, were coherent with capital punishment, while limitations on the press and recognition of the Catholic church were essential to the “social order and national unity”.

It seemed that after more than a half century of praising a liberal past, Colombia had decided to build a conservative future. It had passed from liberty to authority, though its structural economic problems had not been solved. Canada, had already pledged alliance to peace

⁴³ Núñez was a pragmatic leader who understood that Colombian insecurity and instability required a middle ground formula which combined the rule of law and the exercise of basic liberties. He proclaimed that Colombia either choose regeneration or catastrophe, as a result, the last fifteen years of the 19th century is know in Colombian history as the Regeneration.

⁴⁴ Jaramillo Uribe, Jaime, *op. cit.*

and good government, but that was coherent with its loyalty to the English empire during the American revolution. This ideological overturn in Colombia reflected the structural difficulties of an economic system which could not provide a suitable scenario to reach some basic consensus.

According to Caro's views, in the libertarian agenda of the last three constitutions, there had been no place for national unity, personal honour, social order and public tranquillity. For this reason, those principles appeared in the wording of the 1886 constitution as natural limits to a free press.

Moreover, an explicit restriction was imposed in the last chapter of the constitution: "until a free printing press statute is issued, the government is empowered to prevent and repress press abuses".⁴⁵ Twenty periodical publications were closed during the regeneration period. This was the first time that this kind of policy against "freedom of the printing press" was used in Colombia. In May 1888 Congress issued law 61 to provide Núñez with extraordinary powers to suspend any "society or establishment that under scientific or doctrinal pretext were the focus of revolutionary propaganda or subversive teachings." It may be argued that Núñez was committed to preserving a political arrangement for building a true nation because most of the periodical publication were committed to attacking and insulting the president and his closest officials.

Simultaneously, and perhaps ironically "Regeneration" constituted the preface of the modern press. The pamphlet style started to cede its place to news reports and accounts, and in line with government policies, the press also became a vehicle for the construction of nationality. In this sense, Christian virtues, "civility," good taste, and rules of courtesy became some of the topics treated constantly by the press sector which backed the Regeneration.⁴⁶

⁴⁵ Article K, title XXI transitory disposition.

⁴⁶ AA.VV. *Medios y nación*, *op. cit.*, p. 120.

Radical liberals had been successful in transmitting their libertarian agenda, but these were not reflected in good economic results. Moderate liberals and conservatives blamed the confederation model and, once in power, they rectified this by establishing a strong central government. Subsequently, they reversed what for the time were considered extreme forms of individual freedom. In short, between liberty and authority, the promoters of Regeneration for almost forty years chose the latter.

Nevertheless, as had the liberal regimes between 1821 and 1886, conservative administrations could not attain peace between the political groups. In 1899 the liberals rebelled and the Colombia's bloodiest civil war of the 19th century was launched. By 1903 Colombia was bankrupt and the United States had taken Panama.

Meanwhile, the Canadian press had reached maturity. Literacy increased, better transportation and communication, migration to western Canada, scientific improvement of agricultural methods as well as a journalistic industry had taken shape. The occupants of this large territory had reached a confederation, and the press had been the engine that propelled it. Peace, order and good government were not just pure aspiration, but a cultural commitment. This did not require a declaration of independence and armed revolution against England. In fact what we Latinos up until today know as Canada, conceptually, continue to be part of the Commonwealth. At the same time, Canada is respected and treated as one of the sovereign nations that has more influenced the current international legal structure of the 20th century. During the 19th century Canada became an industrialized country with strong internal relation among its regions and the press had been consolidated as a means to control, supervise and propel the decision making political process. It was a stable and secure country that entered the 20th century with the idea of making the century Canadian

In Colombia, meanwhile, in the midst of press restrictions at the beginning of the same century, an environment of reconciliation between political parties seemed achievable. It appeared that a perception of

national tragedy had united political leaders. Censorship, under an authoritarian regime continued until 1910. In that year, within the rule of a moderate conservative government, the press became modern. In sum, information providers run by groups with feasible commercial goals, began to materialize in Colombia in the first quarter of the twentieth century. Prior to that there were, arguably, merely just pure pamphlets written by the most prominent individuals of each region; the process of industrialization and subsequent urbanization allowed a new scenario for the press.

This did not mean however, that freedom of speech had de facto been acquired. By 1920 both political parties had their clientele. Conservatives supported by the Catholic Church maintained the accusation of liberals as communist and atheist. Liberals, mainly through the press, mocked priests and conservatives. In 1930 conservative division permitted liberals once more to win the presidency. By then they had already established an industry to basically attack their adversaries. Regaining the presidency, once more, was connected with the economic crisis of those years.

During the 20th century a close relationship between periodical publications and political careers in Colombia has been maintained. Some have argued that presidents perceived themselves primarily as journalists and secondarily as politicians;⁴⁷ however, one may suppose that during the 19th century prominent leaders found, in pamphlets, a mechanism of expressing their political agenda, but they did not understand this practice as a way of life. When *El Tiempo* (liberal 1911), *El Espectador* (liberal 1887), *El Colombiano* (conservative 1912) and *Vanguardia Liberal* (1919) perceived themselves as part of an industry in the 1920s, true journalists appeared.⁴⁸ A process that in Canada took less than fifty years, took over a century to happen in Colombia.

⁴⁷ Cardona Alzate, Jorge. "De la mordaza a los grandes diarios", in: *Medios y nación, Historia de los medios de comunicación en Colombia*, Bogotá: Aguilar, Alfaguara, Altea, Santillana, Taurus, 2003, p. 128.

⁴⁸ The practice of paying those who produced reports and features came from the final part of the 19th century, and gradually became general after the great newspapers consolidated in the 1920s.

To follow such role models as Pulitzer in the United States, was positive for Colombian journalism as a whole, but the 19th century ideological hatred persisted and worsened after the liberals retook power in 1930. In the period 1910 - 1930 when these newspapers were created they were mainly instruments for liberals who resented their exclusion from the executive power, and for conservatives, who warned about the disgrace of having in the future a liberal president. In short, at least until 1974, it cannot be concluded that those leaders who used the press to advance their agenda, and become presidents, were beyond doubt journalists. All of them, founded periodical publications and participated as columnists in others, but their main concern was to harass leaders of the other political party.⁴⁹

A divided liberal party lost the 1946 elections. It has been extensively documented how key conservative leaders initiated an aggressive propaganda to attack on liberal administrations that went from 1930 until 1946. In one case, the most conservative leader proposed not only civil disobedience, but assassinating the president for what he considered to be immoral political decisions that altered the relationship between the Vatican and the Colombian State.

One may argue that this environment of mutual aggression between members of the elite was almost normal during the nineteenth century. Article K, and Law 156 of 1896 were governmental mechanism to pursue radical liberals who, through anonymous periodical publications, persisted in insulting even the first lady during the Regeneration period. But in the 1940s, the scenario changed substantially. Private radio was born in the 1930 and suddenly an electronic media explosion took place. This was the first suitable mechanism to seduce an illiterate population to participate in the market. In 1936 it was used for the first time to broadcast congressional debates and suddenly the people started to participate in the carnival of mutual accusations previously reserved to elite members. During the nineteenth century those congressional leaders were constantly

⁴⁹ This, obviously, is a broad argument as much as, especially in the twenty century, there existed moderate leaders, but on critical moments, radicals were always the main characters.

ready to take up arms and die in battle, but the twenty century elite had achieved a kind of tacit agreement: armed conflict was not an option to dispute political power. Military men were replaced by professional speakers who took their battles to the Congress, but the people did not understand this logic and they began to participate in the political debate by meeting their opponents physically on Colombian streets and in the country side.

When, on April 9 1948, the most popular leader of the twentieth century was assassinated in midtown Bogotá, a frenzy of killing between conservatives and liberals encompassed the whole country. This period, known as *la violencia*, has been the object of national and international multidisciplinary studies and is a fundamental element to explain the current social unrest in Colombia. There was no civil war in which armies or militias were organized. In fact, as it has been ever since, any casual visitor in those years may have found it difficult to believe that constant killings were taking place all around Colombia because private and public institutions continued functioning and daily life in cities seemed normal.

The Colombian elite, it should be noted, exhibited in the twentieth century an ability to battle without using violence. In this context, from 1953 to 1957 the first and only military government of the twentieth century befell. A general was in power for no other reason than that the elite had decided to bring tranquillity. When he became unbearable the most conspicuous evidence of their ability to dialogue occurred. Known as the National Front, this period (1958 - 1974) allowed liberals and conservatives to share power for twenty years. Democracy had been re-established and a kind of convention guaranteed that after four years of a liberal presidency a conservative would follow.

By 1974 violence between liberals and conservatives was no longer an issue. However, the effects of the Cold War had reached Colombia which, always at the side of the United States, exercised executive exceptional powers to harass, fight and eliminate leftist opposition. Radio, television and national newspaper remained steadily loyal to the

establishment. Whereas other countries in this part of the continent underwent bloody military regimes, Colombia joined Venezuela, and Costa Rica as example of democracy in third world countries.

Colombia, however, had a long tradition of smuggling contraband and when, in the 1960s, the drug market in the U.S claimed attention, Colombian drug dealers emerged and started sending tons of marijuana to Miami. In turn, the whole political spectrum changed and arising from the tacit complicity of the economic and political elite in the 1970s, Colombia in the 1980s had to face the power of hundred millions of dollars put at the service of powerful drug dealers as well as the oldest guerrilla organization, FARC. For the first time in the twentieth century, violence hit the most prominent members of society, especially in Bogotá. In the midst of daily bombings in prosperous neighbourhoods of the capital, the assassination of thousands of members of a leftist political party, and the killing of a popular presidential candidate —Luis Carlos Galán— who besides supporting extradition to the U.S, had challenged the political influence of the most prominent leader of the drug cartels, (Pablo Escobar) a movement to change the 1886 Constitution began in the main law schools of Colombia.

Colombia did not experience a civil rights movement, but one may argue that the social and political unrest of those years was more powerful than an initiative of some specific interest groups to override legal bias against minorities. By 1990 all Colombians had been affected in one way or another by the violence of the drug dealers or the actions of the guerrillas in the countryside. Consequently, a tacit agreement had been reached among former enemies. Liberals and conservatives had long abandoned their insulting language, the M-19 the only popular guerrilla during the history of Colombia, had reached a peace agreement at the end of the 1980s and millions had watched and mourned on national television the assassination of Galán.

Congress was suspended and a National Assembly was convened by decree. Every interest group was invited to participate. Even the

FARC, the most powerful Colombian guerrilla group was invited, though it contained a disguise ultimatum. They did not participate, but Colombians followed through the media the activities of their representatives who enthusiastically created a constitution in which the political arrangement seemed secondary to the First and Second heads which were devoted to principles and all generations of rights. This included specific legal remedies to protect them; one of them, the *Tutela*, would become a hallmark of constitutional history. The institutional arrangement had an innovation, a constitutional tribunal would be in charge of the judicial review process including control of the legislative and the executive branches. Furthermore it has the power to revise decisions of all Colombian judges after they have pronounced in a *tutela* case.

In short, one may argue that the legal nationalization of freedom of the press in Colombia was reached once the Constitutional Court initiated a strong defence of individual rights just after it was created. The facto nationalization required a kind of cultural adjustment and this began when Colombians decided to convene the National Assembly. After liberals, M-19 was the most voted group at the Convention and suddenly forged a coalition with an important conservative group. Its leader -Alvaro Gomez- a hard critic of the “regime” resented the traditional way of doing politics by the establishment. The message was evident, public debate was the only mechanism to overcome the terrible political situation.

Article 20, in contrast to 42 of the 1886 Constitution, did not exclusively focus on regulating press activities, but in emphasizing that individuals have the right to express and spread thoughts and opinions. Most importantly, the 1991 Constitution did not distinguish between peace and war time as basis to grant legal protection to this liberty.

Conclusion

The first newspaper printed in London (1702) preceded by only two years the appearance of the first newspaper in North America.

Desafíos, Bogotá (Colombia), (19): 210-243, semestre II de 2008

Journalism developed rapidly in English colonies and by 1735 Boston had five newspapers.⁵⁰

From a broad reading of Canadian history a basic conclusion in this comparative analysis may be drawn. Whereas in Colombia the origin of the press was connected to the establishment of the republic, in Canada by 1867 the press was already part of its social and political life.

It is important to note that New France did not undergo the same process that eastern colonies had after March 1752 when Halifax founded its first newspaper. The French system of settlement had much in common with the Spanish policy and it was only after France relinquished New France to the English crown that its first newspaper appeared in 1764. There is no related situation in Colombia where a common inheritance supposedly should have facilitated the building of a nation.

Another important feature of the Canadian press was the influence of a southern professional journalist who travelled to the North to found newspapers and, in some cases, kept moving on to do the same in other provinces. This is why Professor Kerstenton has labelled the consolidation process of the Canadian press as a transplant. The case of John Ryan who came first from New York to found the earliest official news organ in New Brunswick and then travelled to Newfoundland to do the same, illustrates the manner in which journalism was born before Confederation. Bushnell documented that in the 1820s there were some foreigners who attempted to found traditional publications, but they became immersed in the political and social unrest of the time rather than focusing on news.⁵¹ In short there was no press transplant in Colombia as in Canada.

In Canada advertising had a place in pioneer journals, whereas in Colombia illiteracy and difficulties in communication always impeded merchants from reaching the majority. Only when radio appeared in

⁵⁰ Kesterton, *op. cit.*, p. vi.

⁵¹ See Busnell, David. "The development of the press in Great Colombia", *The Hispanic American Historical Review* 1950, 30, 4, 432-449.

the 1930s did advertising accomplish what Canadians had seen at the end of the 19th century.

Another aspect was that beginning in 1807, some entrepreneurs in Canada appeared and made journalism a way to earn a living. In those years a new-style editor focused on “Responsible Government”⁵² and pushed an institutional reform that could bring a truly representative government. One may argue that in Colombia during the 19th century, (especially under the liberal government) exclusion was not the intended rule to operate the political system, but was the inevitable result of an economic arrangement that allowed a few to own most of the land and free trade to be reduced, in most cases, to pure interchange between regions.

At the same time, formal legal recognition through statutes and constitutional provision had never been an obstacle for the generation of de facto press freedom in Colombia. However, it would be only in the first half of the 20th century that Colombian professional journalism started to operate. As in the Canadian case, financially self sufficient newspapers needed some national basic economic advances in order to acquire independence and to serve as a means to communicate and discuss all sorts of information that could contribute to the formation of a public sphere. Nevertheless, culture also delayed the establishment of de facto press freedom. A strong relationship between a state with an official religion, and widespread illiteracy, had prevailed on most of colombian republicanism.

Ironically, to date colombian press, radio and television are vigorous mechanisms for the control of political power. Common citizens do not share the violent approach that had marked colombian confrontation between the two main political parties. This attitude has nothing to do with some kind of state manipulation, but with the firm belief that violence has long proved inefficient. Still structural problems remain but a kind of national commitment to peace and

⁵² See Coiné & Valpy. *To Match a Dream. A Practical Guide to Canada's Constitution*. Toronto: McClelland & Stewart, 1998.

has emerged and one may state that legal and de facto nationalization of the free press has finally taken place in Colombia. Canada, in this context, should be a necessary reference for understanding how, from a conservative tradition, a liberal nation may emerge in spite of its multicultural tensions.

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