

THE WIKILEAKS' CASE AND ANONYMITY: EFFECTS ON THE INFORMATION FREEDOM

O CASO WIKILEAKS E ANONIMATO: EFEITOS NA LIBERDADE DE INFORMAÇÃO

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RESUMO

A Constituição da República Federativa do Brasil, promulgada em 1988 durante o processo de democratização do país após o fim de um regime autoritário precedido por diversos outros que mostram uma tradição não democrática na República Brasileira, ainda possui resquícios de um Estado Paternalista, a exemplo da parte final do inciso IV do artigo 5º, que diz ser livre a liberdade de expressão, sendo vedado o anonimato, proibição essa que necessita ser repensada, especialmente na internet, aonde a navegação dos dados pessoais precisa de proteção assim como também requer permanecer anônima, um fato que implica a necessidade de reflexão sobre o alcance e como melhor interpretar o dispositivo constitucional citado, um debate que, no artigo proposto, lidará com as ideias de paternalismo, autoritarismo e liberdade, cujo foco será dentro da Internet, redes sociais e Sociedade da Informação

Palavras-chave: Caso Wikileaks; Direito ao anonimato; Paternalismo; Sociedade da Informação.

ABSTRACT

The Constitution of the Federative Republic of Brazil, enacted in 1988 during the democratization process of the country after the end of an authoritarian regime preceded by several others that show a non-democratic tradition in the Brazilian Republic, remained still remnants an authoritarian Patronizing and Paternalist state, the example of the final part of the Article 5, item IV, which claims to be the free expression of thought, but forbids anonymity, prohibition which deserves to be rethought, especially on the internet, where the navigation data of people deserve protection, as well as their rights to remain anonymous, a fact which entails the need for reflection on the scope and how best to interpret the constitutional provision cited, a debate that, in the proposed article, will deal think the ideas of paternalism, authoritarianism and freedom, whose focus will be about within the Internet, social networks and the Knowledge Society.

Keywords: Paternalism; Knowledge Society; Anonymity Right; Wikileaks' Case.

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INTRODUCTION

The Constitution of the Federative Republic of Brazil, enacted in 1988 during the democratization process of the country after the end of an authoritarian regime preceded by several others that show a non-democratic tradition in the Brazilian Republic, remained still remnants an authoritarian Patronizing and Paternalist state, the example of the final part of the Article 5, item IV, which claims to be the free expression of thought, but forbids anonymity, prohibition which deserves to be rethought, especially on the internet, where the navigation data of people deserve protection, as well as their rights to remain anonymous, a fact which entails the need for reflection on the scope and how best to interpret the constitutional provision cited, a debate that, in the proposed article will deal think the ideas of paternalism, authoritarianism and freedom, whose focus will be about within the Internet, social networks and the Knowledge Society.

1 THE PATERNALISTIC STATE AND CONSTITUTIONAL LAW

The term paternalism is coming from the Latin word *pater* (father) and refers to the patriarchal family model, i.e. where the father has the power to make all the choices, especially when it comes to children. In the history of political institutions, there is a form of government called paternalism, which acknowledges that the sovereign is superior to his subjects, compared to minor children, and why should behave towards them as a loving father and beneficial.¹

¹ Cf. WEBER, M. *Die drei reinen Typen der legitimem Herrschaft*. In: WIRTSCHAFT UND GESELLSCHAFT, Johannes Winkelmann (Org.), 4. ed., Tübingen: J.C. B. Mohr (Paul Siebeck), 1956, v. II, p. 551-558, translated by Gabriel Cohn. In: WEBER, Max. *Sociologia*. Coleção grandes cientistas sociais, n. 13. São Paulo: Ática, 1979.

In legal scope, the paternalism has been defined in terms of coercion of the State by laws that interfere with the individuals' actions of freedom. These laws may be justified by the arguments of well-being, happiness, needs or people's values. That is, the principle of paternalism tries to justify intervention in the conduct of the individual to impede that (he might harm himself or, in a more radical sense...) can cause harm to himself or, in a sense more radical, to do so with acting for their own good. However, this definition no longer vaguest, the modes of intervention and that, in the sphere of the law, have fallen into "disrepute" in Western political ideologies, but it can still be seen in many areas of social legislation and policies, and most notably an a example of Brazilian authoritarian seal to the right of a anonymity.²

To the constitutional law, the Paternalistic State is the one which limits the citizen's individual freedom on the basis of axiological values that underlie the state charges. This way, attempts to justify the invasion of the plot corresponding to individual autonomy on the part of the rule of law, based on incapacity or suitability of the citizens to take certain decisions which the State considers correct. Thus, the paternalistic Act requires a basic incompetence from of the individual and a search of equal conditions, trying to re-establish the individual's autonomy, through the values of society. "Legal paternalism as the interference of juridical power exercise on State intervention to individual's autonomy. Legal power is conferred by law. Not all exercise of paternalism by State is legal, but only those which use it as a direct means of action the legal standards. Thus, when the State uses, for example, false speed surveillance radars, one cannot speak of legal paternalism.

In fact, the debate on the paternalism, from J. S. Mill until our days, not to validity limited or not of the principle application of standards or the prevention of damage. What matters is how far the State has the right to, in the case of individual actions that are not directly harmful to its author, of the information and warning to the physical control of these actions? If you do not have this right, how to explain cases of coercive interventions that appear to be supported?

In this context there are two answers to these questions. The first is that supposedly there would be a good reason in favor of a ban on standard in the legal system. This charge is contrary to the will of the recipient when it is needed to avoid a damage, be it physical, psychological or economic of the person against whom the measure is directed. This is the case, for example, the policy to prohibit various types of drugs considered hazardous to health.

² The article will have as theoretical framework the thought of John Stuart Mill on paternalism from utilitarian thinking.

Extremely paternalistic, this policy interferes directly with the freedom and autonomy of citizens subject to it, who are forced not to make use of these substances, justifying itself to this ban for the good of the same individuals whose freedom of choice it restricts, possessing a remarkable moralizing function.

Secondly, intervention would be justified only if it respected the autonomy of individual choices or, in other words, only if the subject concerned voluntarily consenting. If there is no such consent, the speech is illegitimate. This requirement of consent, is that allows admit the principle of paternalism of the State, but it also allows to limit it. If the authority attempts to intervene in the private sphere, its intervention must be dictated by undoubtedly consideration of concerned individual's immediate consent. If, after having prevented the completion of its action (or at the same time of preventing) the individual to express his agreement, he retrieves his total freedom, then the authority loses all legitimacy to pursue intervention in which it is engaged.

It is verified that the dilemma remains. The total acceptance of paternalism of the State would lead to intolerable interference in individual freedom. And total rejection of paternalism would imply in the rejection of a key part of legislation that is generally useful and acceptable, both for the individual as well as to the social body, with the exception that the intervention price must not exceed the benefit gained.

2 BROAD SENSE OF PATERNALISM

Paternalism should be approached in a broad sense covering, in addition to the possibilities of the State's ban on physical, psychological or economic, the idea of prohibiting conduct deemed intrinsically immoral, called "legal moralism". In search of justifying reasons, it is noted that the legal paternalism is not only linked to the prevention of damage, but possesses remarkable moralizing function as it prohibits conduct deemed immoral.

This is the controversial thesis according to which there is a necessary connection between law and morality, this is also the element that deserves to be considered crucial in any attempt to analyze or explain the concept of law. It is necessary to define the terms "required" and "moral", key terms to their interpretations.³ The moral should be understood as an

³ Cf. HIMMA, Kenneth Einar. *Derecho y moral: el debate entre el positivismo incluyente y el excluyente*. Bogotá: Univeridad Externado de Colombia, 2015.

expression of human behaviors in front of conduct that may vary from society to society or from individual to individual. In the general context of moral, it is necessary to make sure the distinction of specific concept of Justice and of the special characteristics that justify its particularly close connection with the law.

It is important to realize that although the concepts of Justice and moral are similar, they are not equal. Justice is a separate sector of moral and legal standards may be approved or deprecated in different ways in relation to them. Fair and unfair are more specific forms of moral criticism of what is good and bad or good and evil, by the fact that it could sustain, in an understandable way, that a law is good because it is fair or that it is bad because it is unfair, but it does not mean that it is fair because it is good or that it is unfair because it is bad. There is some complexity in the structure of the concept of justice. The overriding principle in relations of various concepts of Justice, is that individuals have the right, in their reciprocal relations, to some degree of relative position of equality or inequality.

For example, laws that exclude children or the mentally ill of voting or denying them the power to make Testament or stipulating contracts are considered fair because such people do not have the ability, which is presumed to have adults of sound mind, to make a rational use of these faculties, then, such discrimination are conducted based on reasons that are obviously relevant and also fair.

John Stuart Mill discussed explicitly the term justice as follows:

The society should address equally well all those who deserved it, also it is to say, those who deserved it equally in absolute. This is the highest abstract degree of distributive and social justice, to which the institutions and the efforts of all the virtuous citizens should converge as much as possible.⁴

Or else:

It is considered universally fair that every person (both in good and in evil) should obtain what he or she deserves; it is unfair that one who does not deserve it should have the good or suffer the evil. This might be the clearest and most emphatic way the idea of justice can be conceived. Since it implies the idea of moral merits, comes the question as to what it is.⁵

⁴ MILL, John Stuart. **Utilitarismo**, cap.5, p. 92 da ed. de 1861.

⁵ MILL, John Stuart. **Utilitarismo**, cap.5, p. 225 da ed. de 1861.

Mill's social justice is not addressed to individual, but to the society, in order to organize itself in a way that it can assign specific social production quotas to various individuals or groups. For this reason, the loss of individual freedom cannot be justified by bigger benefits enjoyed by others. Therefore, in a fair society it is deemed equal freedoms of citizenship; the rights guaranteed by the justice cannot not be object for the hiring policy, or for the calculation of social interests.

The main goal of Justice is the fundamental structure of society or, more exactly, how the largest social institutions distribute duties and fundamental rights and determine the subdivision of the benefits of social cooperation. Therefore, a concept of social justice should be considered as a standard, in relation to which the distributional aspects of fundamental structure of society are evaluate. A social ideal is in turn connected to a conception of society, a vision of how it should be taken the purposes and objectives of social cooperation. The various conceptions of justice are the product of different notions of society.⁶

And this is the case, for example, when a society which repudiates morally the homosexuality, which prohibits that homosexual couples walk hand in hand in public places. It is intended to protect a certain notion of "public decency" as the values of that society, but it is not searched the well of these individuals recipients of legal paternalism (although some believe that they are infringing damage to themselves). In short, these are the risks and consequences of paternalism and interventionism that, as a first analysis, contribute to the refusal of an over moralization of right.

3 PATERNALISM JUSTIFICATION

The term "paternalism" itself must be free of moral valuation, i.e. it must be neutral and does not indicate an action essentially illegitimate. Only from this consideration it can be concluded that there are forms of legal paternalism ethically justifiable. Such is the case of the provisions, for example, the Brazilian traffic code --CTB⁷, which disciplines that all drivers and passengers of motorcycles on public roads are required to wear the helmet, as mandatory safety equipment. It is taken particularly the case of motorcyclists who refuse to use the helmet. Here we have a group of well determined individuals that seem to make a conscious choice. They

⁶ Cf. KOLM, Serge-Cristophe. **Teorias modernas da justiça**. Tradução de Jefferson Luiz Camargo e Luís Carlos Borges, São Paulo: Martins Fontes, 2000.

⁷Federal Law No. 9503 promulgated on September 23, 1997 - Instituted the Brazilian Traffic Code.

prefer incurring the risk of being harmed than to abandon this habit. In this case, it would be preferable, from a utilitarian point of view, that the legislature took into account certain specific features and preserve them, exceptionally, of law enforcement.

The purpose and justification of paternalism must have a utilitarian character: the preventing of evil. Utilitarian considerations⁸ have very severe limits to the extent and application of paternalism of the State, which will be summarized into five main conditions. First, the relationship between the action which is a necessary prohibition and its supposedly damaging consequences must be clearly demonstrated. Second, the intervention must have beneficial consequences of an utilitarian point of view. This does not imply only that the intervention price should not overcome the prejudice that the harmful action risks to cause, but also that the consequences of the intervention should not be more damaging to the agent than the consequences of his own decision if it is performed.

Third, the evil to be prevented must be perceived as such, and even as an absolute evil by most individuals affected by this intervention. Course as actions considered harmful must be unconscious actions. Fourth, whenever it is possible, the State must encourage the information and the council to manipulation and coercion. Initially, because the price, from an utilitarian point of view, of information and of the council is, in most cases, less harmful than the price of coercive intervention. Thus, the non-informative intervention does not extend over those whose choices are aware. Finally, whenever it is possible, the legislature must preserve the individuals or groups of individuals that show much more affection to the values and goals of their actions, than to the damage of the same actions, and who are happier doing what they do than refraining from doing so.

This means that, when the intervention is needed, the information and the council are preferable, as means to manipulation and coercion. Because, by definition, the information and the council only affect the unconscious choices and the paternalism of the State cannot extend over consciously calculated choices or even influence them.

5 ARGUMENTS AGAINST PATERNALISM

5.1 Utilitarianism argument

⁸ Cf. MILL, John Stuart. *Utilitarismo*. Tradução de Rita de Cássia Gondim Neiva. São Paulo: Escala, 2007.

Formulated by John Stuart Mill⁹, the utilitarian argument argues that the moral value of the shares depends solely on the consequences that may result from them. However what would be a morally correct action? This definition should be considered in the sense that the morally right action is the one that maximizes happiness for the greatest number of individuals. This happiness should consist in pleasure and absence of pain and no one is better judge for himself to know what affect and hurt his own interests. Verbally, a man may want to refuse the field of pain and pleasure, but in reality he will always be submitted to them.

The main objective is to erect the building of happiness with the instruments of reason and law. Happiness in question is not a lifetime of bliss, but moments of bliss, in an existence made of a few transitional pain of so many and various pleasures, with a clear predominance of the active over the passive, and founded, on the whole, on the fact of not hoping from life more than it is able to grant.¹⁰

The principle of utilitarianism can be considered as an act of the mind, a sense of endorsement, which when applied to any act committed approves its usefulness and should achieve a measure of approval or disapproval to it conferred. Its broad sense covers also the prevention of any injustice, any evil or anything contrary to happiness, both applied to an individual as well as his collectivity, which does not cease to be the sum of interests of several members that composes it. To have maximum approximation of this ideal, the utility would recommend the following means: firstly, that the laws and social devices allow the enjoyment of happiness or (as they could in practice to call it) in the interest of each individual in harmony with the interests of the whole; and, secondly, that education and opinion, which have power over the human character, use this power to establish in the spirit of each individual an indissoluble association between his own happiness and the good of all, especially between their individual happiness and the practice of these modes of conduct, positive and negative, as prescribed by the universal happiness.

We could say that a man is adept to utilitarianism when the approval or disapproval of his action is taken by the measure of the ratio or trend, that this will increase or decrease the happiness of the community, in other words, in his compliance or not with laws or with the

⁹John Stuart Mill, English philosopher and economist, and one of the most influential liberal thinker of the nineteenth century. He was an advocate of utilitarianism, the ethical theory first proposed by his godfather Jeremy Bentham.

¹⁰ MILL, J.S.. *Utilitarismo*, 2007, p. 20.

dictates of utility. The main precursors of this theory of utilitarianism, Epicurus¹¹ and Bentham¹², wanted not something to be distinguished by quality as opposed to pleasure, but the pleasure itself, as well as the absence of pain; and instead of opposing the useful to the pleasant or beautiful, always stated that the term "utilitarianism"¹³ possessed exactly such meanings.

Garzón Valdés¹⁴ set the utilitarianism according to three arguments: that nobody is better self-judge to decide what is best for his life; that interference of society may be based on the general assumption being not applied in concrete cases and; the society should allow each one to live according to his or her principles.

One of the main criticisms of this thought is that it is "impractical" for its dryness, when the word utility precedes the word pleasure, and similarly "practicable" for its sensual pleasure when the word pleasure precedes the word utility. This class of opponents claims that happiness, in any form, cannot be the purpose of human rational life because, firstly, it would be unattainable; second, it is argued that men can live without happiness. However, when it is stated that it is undeniably declared to be impossible that human life should be happy, it is at least according to Stuart Mill, an exaggeration.¹⁵

¹¹Epicurus of Samos, Greek philosopher of the Hellenistic period (342-270 BC) maintained that pleasure and no pain had in and of itself, value. The pleasure of Epicurus who speaks of the wise is pleasure, understood as the stillness of mind and mastery over the emotions and therefore about themselves. It is the pleasure of the just-measured and not the excesses.

¹²Jeremy Bentham, English philosopher and jurist, broadcast utilitarianism, ethical theory that answers all the questions about what to do than admire and how to live in terms of utility maximization and happiness.

¹³Generally speaking, the term 'utilitarianism' refers to the doctrine that the supreme value is that of utility, ie the doctrine that the proposition "X is valuable" is considered synonymous with the proposition "X is helpful". Utilitarianism may be a trend developing a practice or technique, or both at once. As a practical tendency may be the result of instinct (especially the Institute of species), or in consequence of a certain belief system oriented towards the cohabitation of a given community or a manifestation of cultural reflection. As technical development can be the result of an intellectual justification of utilitarian attitude prior, or the consequence of a pure theorizing about the fundamental concepts of ethics and axiology, or both at the same time. The last combination is the usual utilitarian philosophical doctrines. On the one hand, it is usual that he possessed certain utilitarian philosopher experiences geared to the predominant use. On the other, it is necessary that his utilitarian doctrine is not simply an attempt at justification of their experiences. The latter restriction is necessary if one wants that utilitarianism is not equivalent (as is sometimes erroneously is done) with a theory of egoism. Most utilitarian's rightly point out the difference between ordinary and utilitarian philosopher. The first is very consistent, the second exceptional. Bergson wrote that it takes many centuries of culture to forge a utilitarian as J. S. Mill. (FERRATER MORA, J. *Dicionário de Filosofia*. Editora Loyola, p. 2960, São Paulo, Brasil, 2001).

¹⁴ VALDÉS, Ernesto Garzón. *Derecho, Ética y Política*, Madrid, Centro de Estudios Constitucionales, 1993.

¹⁵Opponents of utilitarianism can not always be accused of representing him in an unfavorable light. On the contrary, those among them who take into account anything like the fair idea of its disinterested character sometimes fails to find its standard as being too high for humanity. They claim that a requirement is too harsh to claim that people should always act in accordance with the desire to

John Rawls¹⁶ puts in question the utilitarian doctrine regarding the extension of that thought on society. A person normally tends to increase her well-being, making a balance of gains and losses in order to achieve the greatest possible for herself. Thus, people would submit themselves to all aiming to acquire more advantages. This same thinking can be passed to the collective. From this concern with the collective what seems to be decisive for this classic utilitarianism? The total sum of satisfaction obtained, maximum contentment.

For Rawls that thought is not concerned with the happiness of each individual. It takes into account a general well-being, but is not interested on the person. Here comes the vision's ethics of Rawls which leads him to question the shortcomings of classical utilitarianism. On the other hand, when the utilitarianism talks about the satisfaction of the group, is the general well being that concerns, not the quality of satisfaction. So, this idea of a maximum contentment can lead to the loss of some values: it is put aside the freedom, culture, truth, since the maximum search is helpful and pleasant.

Utilitarianism takes the trends and the inclinations of men as data and struggle, then by satisfying them. In contrast, Rawls reasons from the principles of Justice, proposing a contractualist doctrine among free and rational people. Rawls "imagines" people gathered to choose the rules and principles which should guide the structure of society and, particularly, the distribution of essential goods (rights, freedoms, riches etc.). The main idea for Rawls is that a society is ordered correctly and therefore fair, when its institutions are able to achieve the highest possible usefulness level, obtained through the sum of all individuals belonging to it. When performing their interests, each one is certainly free to take stock of their own losses and gains, and in this way, a society can take stock of satisfactions and lack thereof among different individuals.

Rawls argues that the principles of justice are chosen under a "veil of ignorance". This ensures that, in the choice of principles, nobody is benefited or harmed by natural happenstance

promote the general interests of society. But this is to misconstrue the meaning of even a moral standard, and confuse the rule with the motive of action. It is the task of ethics to tell us what our duties, or by what criteria can we recognize them, but no system of ethics requires that the only reason for everything we do should be a sense of duty, on the contrary, ninety-nine percent of our actions are performed for other reasons and properly made, whether the standard of duty does not condemn them. It is very unjust to utilitarianism that this tone is misleading basis for objection to it, as utilitarian moralists have gone beyond all others in saying that the reason has nothing to do with the morality of the action, although the merit of the agent." (MILL, J.S. *Utilitarismo*, p. 34).

¹⁶John Rawls (1921-2002) was a professor of Political Philosophy at Harvard University, author of *A Theory of Justice* (*A Theory of Justice*, 1971), *Political Liberalism* (*Political Liberalism* 1993) and *The Law of Peoples* (*The Law of Peoples* 1999).

or by contingency of social circumstances. Without this "label" the choice of the principles of Justice would depend on empirical evidence, deriving to utilitarianism. Thus the Rawls's model of Justice establishes the idea of a fair choice procedure. The principle of choice for an Association of men is interpreted as an extension of the principle of rational prudence, applied to an aggregate design group welfare.

Rawls's theory is not without weaknesses and mistakes, when it is given the idea of "original position" it requires more complex reflections than the simplicity he attempts to establish. Despite these difficulties, the doctrine of Rawls has merits: it attempts to draw up a systematic conception of Justice¹⁷ with the appointment of the defects of utilitarianism.

It occurs which, according to Mill¹⁸, critics of the term "utilitarian" come distorting its concept, with its improper employment in manifestations of rejection or contempt of pleasure in some of its forms and thus mistakenly is used as an expression of insult. This perverted use is the only one with which the word is popularly known, through systems that attempt to test, it is applied sound instead of meanings, whim instead of reason, darkness instead of light. The other arguments against utilitarianism are based mostly on confer responsibility for the weaknesses of human nature and the general difficulties that hinder people conscientious on the path of their life.

However, still weighing the criticisms, it is still quite compatible with the principle of utility to recognize the fact that this theory is combined with the freedom of the citizen, being of the most importance to assist in building a fair society and mainly of a fair, prosperous and beneficial state to the welfare of each individual being observed in his full peculiar and particular freedom. The moral basis must be regarded as the greatest principle of happiness, holding that the actions are right insofar that they promote happiness and wrong when they tend to produce their opposite.

5.2 Individual autonomy

¹⁷"From the standpoint of justice as fairness the original position of equality corresponds to the natural state of the traditional theory of the social contract. Certainly, this original position is not considered a real state of things historical still less as a primitive cultural conditions. Should rather be considered as apurely hypothetical condition characterized so as to lead to a certain conception of justice. Among the essential characteristics of this situation is the fact that nobody knows their place in society, his class position or social status, the part that gives him the chance in the subdivision of natural gifts, his intelligence, his strength and the like." (*in*: VECA, S.M.S. (Org.) *A idéia de justiça de Platão a Rawls*, p. 395).

¹⁸ MILL, J. S. *Utilitarismo*, 2007 p. 22.

There's no way to talk about liberty or individual autonomy when there is a paternalistic State intervention. It is appropriate to examine the concept of autonomy and its relationship with paternalism. Defining individual autonomy is to say that the person is autonomous, as he applies his ability to choose and which are disposed all its impediments so that he can exercise his freedom of action/conduct. Among the latest generation of European liberalism, in the Continental part of which it apparently predominates, what it was desired was that the rulers could identified with their people and that their interests were the nation's wishes. In the case of individual treats autonomy related to the moral law, he will be facing a justified paternalism, once the chosen conduct could be immoral. Freedom approached here makes reference to civil and/or social and limits of power exercised legitimately by society over the individual¹⁹.

However a Democratic Republic was felt as one of the most powerful members of the communities of Nations; The elective and responsible Government was made present, it was realized expressions such as "self-governance" and the "people power over themselves". The desire of the people means the desire of most numerous part or the most active; the majority or those who can be accepted as a majority.

This way the society can issue wrong mandates instead of right, practicing a social tyranny. Therefore, protection against the tyranny of the magistrate is not enough, there is also need for protection against the tyranny of prevailing beliefs and feelings; against the tendency of society to impose, by means other than civil penalties, their own ideas and practices such as rules of conduct on those who diverge from them, in halting the development, and if possible in avoiding the formation of any individuality that is not in harmony with their methods, and requiring that all types of character adjust to its own template.

¹⁹The struggle between Liberty and Authority is aware of the characteristic periods of history with which we are remotely familiar, particularly from Greece, Rome and England. In ancient times, this fight was between subjects, or some classes of subjects and the government. By freedom is meant to protect against the tyranny of public officials. Imagine the government (except in a few popular governments of Greece) in a necessarily antagonistic position toward the people they governed. (...) However, there came a time in the progress of human history when the man stopped to think that would be a natural necessity that their governments represent an independent power, contrary to their interests. To them it seemed much better than the various magistrates of the state were to be their tenants or delegates, subject to revocation at will. Only in this way, it seemed they could have complete confidence that it would never abuse the powers of government to their disadvantage. Gradually this new demand for elected officials and temporary became the main object of the efforts of the popular party, wherever similar exist, and supplanted, to a considerable extent, the earlier efforts were limited to limit the power of rulers. " (MILL, J.S. *On liberty*, p. 19).

How to accomplish this fit between individual autonomy (or individual independence) and the social control is a matter on which there is still much to be debated. The freedom for any person will depend a lot on the strengthening of restrictions on the actions of other people. It turns out that these restrictions, in their great majority, are the feelings in the mind of each one of them that it should require that all would act as it would like to act, and also those with whom it is sympathetic. No one admits to himself that his standard of judgment is his own preference. People generally decide according to their own preferences.

It is worth to say that, according to Stuart Mill, the only part of the conduct of any person that is submissive to society is the one that interferes in the lives of others. In the part which merely concerns itself, its independence is, of absolute right. About himself, his body and mind, the individual is sovereign and cannot be compelled to do or not to do something only in virtue of the law. Exception to this rule includes all who do not yet have the maturity of their mental faculties or are in a State that needs the care of others.

Suppose that the use of certain drugs impair the ability of choice, in this case, these philosophers argue that this type of autonomy would tend to be in favour of rational measures to enforce coercively to such persons the prohibition of the use of drugs, despite his paternalistic character. Could be said that when it acts not paternalistic enables the person to choose, because the behavior deemed appropriate is already contained in the rule. In that sense no longer autonomous choice of the individual in taking their decisions. This charge to the individual you are deprived of their freedom of choice and thus violates their private autonomy. It is a morally unjustified ban that argument would not be willing to accept anyone who advocates the exclusive validity of the principle of the damage.

The principle of the damage is related with the presence of risk of harm to third parties, which would be the only reason justifying suicide bombing and glorifying to an interference in individual lives. The only reason justifying suicide bombing and glorifying to an interference in individual life is the presence of risk of harm to third parties. That is, only in order to prevent harm to others is that society is legitimized or morally permissible to interfere by imposing restrictions on individual freedom.

Thus, a person is not free to do what you want when sanctions are applied as opposed to their choices and when these sanctions take the form of a legal ban or a moral condemnation, underpinned by a "tyranny of the dominant feelings and opinion". From a liberal point of view there is therefore a problem. The principle is very simple and absolute Mill seems at first sight attractive because advocates individual freedom against what is considered an abusive extension

of authority. But at the same time, Mill recognizes²⁰ that in exceptional cases the paternalism can be legitimately applied, for example, in the case of a person trying to cross a bridge that is known to be insecure. Mill tolerates the use of force to avoid what can be considered a damage yourself, being added to this paternalism is not tolerable when there is enough time to warn and inform.

The principle of paternalism justifies the intervention in the conduct of the individual to impede that can cause harm to himself or, in a sense more radical, to do so with as there is for their own good. However, this definition leaves vague the modes of intervention. The classification of possible methods is very wide. Someone might, for example, trying to prevent a person from harming herself to provide you with advice and information or advice and "disinformation", manipulating your environment so that the injurious action becomes, if not impossible, at least difficult, or threatens retaliations individual who choose to act, despite harmful consequences to himself.

The usual interpretation of Mill argues that the individual cannot be held accountable to society for his actions, because they do not relate to the interests of anyone except himself. However, those actions that are harmful to the interests of others, the individual is responsible, and may be subject to legal or social punishment, if the company is of the opinion that one or another requirement is for your protection.

This way, the individual can legitimately be requested to cooperate on joint tasks to others or help in preventing a damage, which does not mean that we should use coercion to promote benefit in General, and should be preserved the private autonomy of each individual.

5.3 Violation of individual autonomy

You can still submit position contrary to paternalism in function of a breach of the principle of equality by the paternalistic relationship that the measure imposes of subordination between the parties; However, this argument can be considered unfounded by the finding of several cases of paternalism horizontal.

From the moment whether to consent to a third party to infringe a damage by virtue of a greater good, i.e. when there is the consent of the paternalistic measures by the individual who

²⁰ MILL, John Stuart. *On Liberty*. Editer by Edward Alexander. Ontário: Broadview Literary Texts, 1999, p. 99.

undergoes the intervention, is not more than one act of paternalism, which, in essence, requires otherness.

Recognize that the idea of consent would be the only way justifiable of paternalism. It turns out that the problem with this is that if future consent can appeal to it for justification of measures of paternalism far from the assertion that the individual is unable to understand the goodness of that intervention at the time, i.e. has no competence to do so. In addition, this agreement assumes a rational persuasion. Therefore, the consent of the future presents itself as an instrument of justification also of immorality. In addition, this consent is not phatic, but only hypothetical, based on the assumption that any rational person would agree with the measure.

What is observed commonly in measures paternalistic policies is that the grounds for the action of the ruler often do not relate strictly to intention to prevent citizens suffering some damage, and can use moral justifications to achieve other goals not explicit. Analogously the question of legal paternalism, the search for justification or non-interventionism is a central concern in the heart of moral-ethical investigations.

Despite all the arguments against interventionism, its rejection can also represent the perpetuation of situations of injustice and misery in certain Member States. If taken ethics as minimally universal, i.e. the existence of an ethical content common to all Nations, often the intervention by another State may present as a positive moral obligation. Still under the analogy between the individual and the State, as well as moral, even if it is not only presents a minimum common among people who live in a particular society, at the international level must also be a set of moral rules that prevent, on the one hand, interference on the part of another State and, on the other hand, allow it and to make required.

J. S. Mill identifies in the intervention, either to assist a Government that wants to impose as for assistance to a people rebelled against their Government, negative characteristics. In the first case, assist a Government to impose against the will of the governed appears the sympathy of a despotism by another. A comparison between the forms of Government, democracy would be incompatible with the paternalism, when talk of representatives of the people, can't speak on individual consent and if so, this decision runs the serious risk of being patronizing. Regarding the second case, Mill argues that a people should only get their freedom if the win for yourself, because that is the only way to prove that it really deserves. That's why, if people do not conquer his own freedom, it has proved its weakness and, with this, there is no way to ensure that his rebellion is justified.

6 RIGHT TO ANONYMITY

A democratic State cannot function without a free and informed public opinion as objectively as possible on the facts. The freedoms of thought and expression are essential to individuals and should be ensured both in the positive aspect, i.e. protection of exteriorization of opinion, as under the negative aspect, referring to the prohibition of censorship. There are no means to enforce rules to human thought. However, the manifestation of thoughts always been conditional and, often, punished.

The foundations of freedom of expression are, for Mill, inseparable from the foundations of other fundamental freedoms, notably freedom of action or the right to individuality, that comprises the principle of human freedom, in which the conclusion is the famous formula: "If all mankind minus one shared the same view, and only one person were of the contrary opinion, mankind would have more legitimacy in silence this single person than shelf power had in silencing mankind."²¹

In Brazil the Federal Constitution of 1988-CF/1988²² ensures freedom of thought and its manifestation, but prohibits the anonymity. The CF/1988 has protected freedom in its most varied forms: religious, economic, of Assembly, Association, mobility, vocational choice and manifestation of thought. Why freedom of expression is called the primary freedom and starting point of the other. This is the freedom of the individual to adopt the intellectual attitude of your choice: either an intimate thoughts, whether the position taken by the public, freedom to think and say what is believed to be true.

Freedom of thought is the right to express, in any way, what if you think about science, religion, art, or whatever. It is freedom of intellectual content and individual policy appearing including in the Universal Declaration of Human Rights²³, which in some ways welcomed the idea that freedom of expression includes freedom of thought to establish, in its article 19, that every individual has the right to freedom of opinion and expression.

²¹ MILL, John Stuart. **On Liberty**. Editer by Edward Alexander. Ontário: Broadview Literary Texts, 1999, p. 29. "If all mankind minus one, were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind". (Trad. Bras.)

²²Constitution promulgated on 05 October 1988.

²³Universal Declaration of Human Rights, Article XVII. (1948)

The Brazilian Constitution recognized freedom of thought in two dimensions. How intimate thoughts, provides for freedom of conscience and belief, declaring inviolable (art. 5, VI), as the religious belief and political or philosophical conviction (art. 5, VIII). This means that everyone has the right to join any religious belief as to refuse any of them, embracing atheism, and including the right to create their own religion, as well as the following any current philosophical, scientific or policy or do not follow any, encompassing the skepticism.

On the manifestation of thought, specifically, the Federal Constitution established broad protection and expressed in article 5, subparagraph IV: "free the manifestation of thought, being barred from anonymity". Be anonymous means that the true identity of the person is unknown.

In contradiction to the prohibition of the right to anonymity, comes the text of the Constitution itself, sealing out any type of censorship:

Art. 5 item IX: is free the expression of intellectual activity, scientific and communication regardless of censorship or license.

Art. 220: the manifestation of thought, the creation, expression and information, in whatever form, process, or vehicle, does not suffer any restriction, observing the provisions of this Constitution.

§ 2: it is forbidden any censorship of political, ideological and artistic.

The fence to anonymity enshrined in the Federal Constitution presents itself as a limitation to its full manifestation, feeding controversial discussion about the existing paradox between two streams. The first protects the fullness of thought and its multiple forms of expression, without any kind of restriction, and the second you want to view protected the intimacy and privacy of citizens, and should the individual be held liable for their opinions/publications.

Prohibit the right to anonymity is pretender the prohibition of thought and consequently obtain unanimity authoritarian arbitrary and unrealistic Paternalistic State created by the possibility of anonymity is a condition of freedom.

7 EFFECTS ON SOCIAL NETWORKS

In 1971 emerged the generation 4 computers, which were constructed from some integrated circuits that were inserted a tiny chip²⁴, which included the processor, memory, input controls and data output, among other functions. This technology allowed the gradual replacement of existing - processors until then occupying great spaces and expended large quantities of energy - by microcomputers.

It is during this time that will appear the first computers people (Personal Computer - PC), which, however, only if popularized from 1984, when the Macintosh makes his revolutionary user-friendly operating system, with the aid of a mouse. After that came the Windows 95 system, developed by Microsoft, that from then on, went on to be improved with new versions, and currently is on the threshold so the emergence of computers 5th generation²⁵. In short space of time became available to common people instruments for storage data ever imagined in the recent past. Furthermore, the possibility of transmission of such data over the internet²⁶, has made that the notions of time and space are revised.

You could say that the computer has become one of the great symbols of human life, making himself present in the most banal facts of everyday life²⁷ and becoming means to the achievement of a series of legal acts. This reality cannot be neglected by the State, but worry about the new social relations stemming therefrom, that lack of regulation, i.e. rules on the

²⁴Colonial Title between 1mm and 5mm and width between 5mm and 25mm. The CPU (Central Processor Unit) is one of a microcomputer chip.

²⁵As the 5th generation, still in its dawn, approaching, perhaps led by Japan, where the treatment of voice man / computer will popularize, always say that evolution in terms of "hardware" has been far more intense than the the "software". Using the latest advances in technology - namely, the parallel processing, replacing the single central processing unit of Von Neuman and the technology super condor, allowing the flow of electricity, reduced or zero resistance, better still speed of information - the computer will accept oral instructions and imitate human reasoning, ... Increasingly, the key word seems to be simplicity in the use of equipment and programming, in conjunction with strong telecommunications. " (MARQUES, Garcia; MARTINS, Lourenço. **Direito da Informática**, p.22.)

²⁶According to Julio Maria de Oliveira, "through the Internet (or network or globalnetwork of networks) means the set of networks, modes of transmission and switching, routers, equipment and protocols necessary but not sufficient for communication between computers, which use a pre-existing physical environment, as well as software and data contained on these computers."(OLIVEIRA, Júlio Maria de. **Internet e competência tributária**, p. 131).

²⁷Leaving a huge gap since the "old calculating machines" computers are present everywhere from the supermarket, where do the scanning of prices of good purchased while stocks update, through the management of telephone exchanges and the boxes automatic payment (ATM), who faced every street corner, to support the more advanced sectors of scientific development, the exploration of space, in addition to its close and the original "war industry". (MARQUES, Garcia; MARTINS, Lourenço. **Direito da Informática**, p.7)

right to anonymity. For this reason, before crossing the central theme of this article - which focuses on the authoritarian seal to the right of anonymity - shall be on a brief reflection on the worldwide phenomenon that currently exists in social relations, which gave rise to the so-called information society or the information age.

8 THE INFORMATION SOCIETY

Lives a moment in which the company makes intensive use of the computer, where is increasing the penetration of information technologies in social organizations. This phenomenon not only has radiated its effects on society in General and their organizations, but also has dominated the sector of information about the primary sectors, secondary and tertiary economy²⁸. It is incontestable that delineates the horizon a new paradigm of society, in which the energy, that was in fact the primary source of social progress, is giving this position to information, which has the characteristic to provide new services.²⁹

In document produced in the framework of the European Union, entitled "Europe and the Global information society-recommendations to the European Council" 26.05.1994, stated that the "technological progress enables us today treat, store, retrieve and transmit information in any form-oral, written and visual - no distance limitations, time or volume"³⁰ (emphasis ours). How frightening it has developed the computer industry in dealing with information, has

²⁸Garcia Marques, Lourenço Martins assert that the information society goes through three steps to achieve them, "a first phase, a change in the thinking of organizations and traditional structures and replacement, reflections on employment, a second phase, that of growth, with new products and services and increasing use of telecommunications networks, the third phase, that of assimilation, which is characterized by the balance between the content of work and occupation with physical and intellectual, where the role of man will come strengthened, particularly with regard to the use of their intelligence capabilities." (MARQUES, Garcia; MARTINS Lourenço. *Direito da informática*, p.42) Referrals authors claim also that the developed countries are in transition from first to second phase, or already in it.

²⁹The European Union intended to describe some of these new services in the so-called "Green Paper on Copyright and Related Rights in the Information Society" (European Union, Brussels, 19.07.1995, COM (95) 382 final), home banking, home shopping, electronic newspapers, entertainment (video on demand), entertainment (theater with interactive pieces in the public almost can change the plot), sports relay (where the viewer can change the camera angle), meteorology, tele-education, the tourism distance. Of primary importance will be the area of medical care (care at a distance, home monitoring), and also is emerging telework.

³⁰Regarding the amount of memory in a computer, and Lourenço Marques Martins Garcia recalled that "... in 1961, the memory cost a dollar a bit. Today, 24 million bits cost \$ 60, which means we can more or less ignoring the famine memory of computer graphics ... this, of course, the most absorbent " (MARQUES, Garcia; MARTINS, Lourenço. *Direito da informática*, nota 44, p. 42)

caused perplexity to the State, which perceives the inadequacy of existing legal standards for the regulation of the multiple social relationships (legal) that have occurred in the virtual realm.

This perplexity in the face of the apparent lack of control over internet users and the relationships that develop within this framework leads the Member States, which are guarantors of their legal systems in the regulation of the behaviors of individuals who are under your protective mantle, the wish to have the control also on this level. The perplexity becomes even greater when it reveals that the possibilities for control of social relations, in its traditional form, are not able to regulate this new reality that presents itself.

Given this sense of helplessness experienced by Member States, many can be their postures, since more radical interventions - such as, for example, the total prohibition of the use of the internet, or, at the other end, abandoning all claims to control and regulate the industry before the recognition of lack of capacity for both - even the most mild, such as restrictions on access to some sites (like in some Arab countries, which do not allow access to Yahoo). In any case, the total prohibition of the use or the restrictions on a smaller scale has not worked. Now, just a computer that contains the appropriate components and availability of a transmitter (satellite, phone, etc.) for which a person can connect to a server. There is no way to avoid, so far, which are made available the data and content as you need, nor is how to prevent your access.

The only way to ensure the prohibition, in States that adopts this posture, it is still questionable deletion, offered by odious Government policies, large portion of their populations access to consumer goods and currently available. The binomial misery and ignorance remains the great instrument of social control by the rulers in underdeveloped countries. Leaving aside the more "closed" countries that adopt radical postures, sees that the Member States in General - who are perplexed, repeat-if, before the finding of lack of control over the relationships maintained by its members, and individuals - have been concerned in seeking serious solutions for the recovery of control weakened, especially when it comes to growing crime repression in the digital media and of course, especially as regards the anonymity on the internet.

The internet community is rapidly changing and evolving, often allowing for the evil actions of power (public or private). If on the one hand the man of modern society is privileged by the development of social networks, at the same time suffers the consequences stemming from it through prohibition to anonymity. Freedom of expression and anonymity have always been important real world issues of society and have been the subjects of numerous lawsuits.

These issues are increasingly important, as more people discover the digital world more there is a need to ensure freedom of thought and expression through the right to anonymity in this new society. Over the past few years an intense battle was fought between the citizens and the State. One side feels that it must have enough conviction in their beliefs to express them, without hiding behind anonymity, on the other side feels that anonymity is vital for the protection of freedom of expression. Whichever side it is obvious that technology to maintain anonymity on the internet is readily available.

Though internet users can send messages using the identity of other users or forging "new" identities, one of the most common ways and less complicated to send anonymous messages is to use anonymity services. Anonymity services typically use remailers, which are basically computers on the Internet that route e-mail messages and other files to other addresses, without revealing the address where it came from originally. Before the remailer do the forwarding of information, erases the original message header that cannot be identified the origin of the message.

This is a secure way for online discussions, complaint of illegal activities, sexual abuse, minorities, among many others; without the possibility of further retaliation. Without anonymity, these actions could result in silencing these persons through censorship, physical aggression, loss of employment or position, and in some cases, judicial proceedings.

One of the greatest examples of how the Anonymous Law can be used is by electronic site WikiLeaks (<http://wikileaks.org/>). It is a transnational, non-profit organization, headquartered in Sweden, which publishes in its website email, posts by anonymous sources, documents, photos and confidential information leaked from Governments or companies about sensitive issues. The site was built based on multiple software packages, including MediaWiki, Freenet, Tor, and PGP. The site, administered by "The Sunshine Press", was released in December 2006 and, in mid November 2007, already contained 1.2 million documents. Its main editor and spokesperson is the Australian Julian Assange³¹.

Throughout 2010, the WikiLeaks published large masses of confidential documents of the Government of the United States, with strong global repercussions. In April, released a video of 2007 which shows the attack from a US Apache helicopter killing at least 12 people - including

³¹ASSANGE, Julian is an Australian journalist and cyber-activism. It is one of the nine members of the Advisory Board of Wikileaks. He studied mathematics and physics, was a programmer and hacker, before he became a spokesman and editor in chief of WikiLeaks. WikiLeaks founded in 2006 and serves on its advisory board.

two journalists from the Reuters news agency - in Baghdad, in the context of the occupation of Iraq. The video of the air attack in Baghdad (Collateral Murder) is one of the more notable publications of the site. Another controversial document shown by site is copying an instruction manual for the treatment of prisoners in u.s. military prison in Guantanamo, on the island of Cuba.

In July the same year the WikiLeaks promoted the dissemination of an extraordinary compendium of over 91 thousand reports covering the war in Afghanistan (2004-2010) promoted by the army of the United States, reporting the death of thousands of civilians in this war as a result of American military action. This action became known as "diary of the war in Afghanistan".

In February 2, 2011 the WikiLeaks was nominated for the Nobel Peace Prize by the Norwegian parliamentary Snorre Valen. The author of the proposal said that WikiLeaks is "one of the most important contributions to the freedom of expression and transparency in the 21st century". This freedom of expression and thought, to disseminate information about corruption, human rights violations and war crimes, is only possible by the fact that the subject supplier of information protection to the right to anonymity, preserving the subject of any type of censorship.

All of these reflections on the State's censorship measures must pass, necessarily, the question of freedom. The flow of information on the internet allows its users around the world interact, wherever and in real time with anyone, since it connected to the worldwide network of computers. In addition, anyone can make on websites the content that you want, send the views you want about the most varied themes, anyway, the land provided by the internet for the exercise of freedom is very large and any restriction that may be applied to this form of almost unlimited freedom that must be very well thought-out.

Despite the Paternalistic State prohibit the right to anonymity, in meeting United Nations (UN) in April 2011, occurred in Sweden, was released a document for the protection of human rights on the internet. The document prepared by the Internet Rights and Principles, upholds the principles of open network, accessible to all and with respect to anonymity and privacy of personal data."The document endorses the vision of the internet as a space to be governed by the bias of human rights, thus avoiding regulations which seek to censor network access and free access to the content there available", explains the Coordinator of the Center for technology and society from FGV, Carlos Affonso Pereira de Souza, also member of the IRP.

CONCLUSION

Coercive is in the form that the paternalistic conduct differs from benevolent act to interfere with coactivator in the autonomy of the individual against his own will. I.e. the paternalism seeks a coercively intervention on individual autonomy, justified in order to prevent damage to itself. This is the case, for example, of paternalism persuasive of the campaigns against drug use. It turns out that, in addition to a prevention of corruption, paternalism has an uplifting function to measure prohibiting conduct deemed immoral. Many are the arguments against the paternalism, but, if on one side the total acceptance of paternalism would lead to intolerable interference in individual freedom, of the other total rejection of paternalism would result in the rejection of a key part of legislation that is generally useful and acceptable, with the proviso that the intervention price must not exceed the benefit gained.

There are several arguments against the paternalism, J. S. Mill highlights three; the utility argument argues that the moral value of the shares depends solely on the consequences that may result; respect the autonomy of the individual where the only part of the conduct of any person she is submissive to society is one that interferes in the lives of others and; the violation of the principle of equality.

These concepts are essential to identify the State's authoritarian acts, such as its authoritarian seal to the right of anonymity in the Brazilian Constitution. This right is directly connected with freedom of expression and thought, which the Brazilian Federal Constitution wants to protect any authoritarian act that restricts this freedom. We have here a real paradox, the Federal Constitution while defending the fullness of thought and its multiple forms of expression, is the same that prohibits the right to anonymity alleging that any individual should be held accountable for their opinions/publications. However, a democratic State cannot function without a free and informed public opinion and any act which restricts this freedom will be authoritarian and unconstitutional.

J. S. Mill argues that the grounds of freedom of expression are inseparable of the foundations of other fundamental freedoms that make up the principle of human freedom. From that thought, one can conclude that the fence to anonymity enshrined in the Federal Constitution presents itself as a limitation to its full manifestation.

The possibility of anonymity should be understood as a condition of freedom and not as a prohibition to thought and its forms of expression. This fence will pass directly in authoritarian

several areas, including social networks, because the whole society makes intensive use of the computer, where are increasing expressions of opinions, criticisms, complaints and communications in General. With this rapid evolution, the State feels the duty to control users, allowing for often own evil actions of power (public or private), which in this case is the fence to anonymity.

It is known that there is a strong tendency on the part of power, of wanting to extend their control. An example of how power can interfere directly in these matters is the case of radio, which at first was franchisee freely to individuals and that, after an initial period of détente are gradually brought strong control of States. When dominated their techniques, any person who wanted to convey information by sound waves could buy (or build) a radio transmission and the install where well understood. With time the radio transmission gained the status of public service, whose ownership is assigned to the State (in the case of Brazil, the Federal Union), that "hires" certain persons to provide the service concession arrangements. Any attempt to transmit information through radio, without authorization, entails the seizure of the equipment by the authorities responsible for supervision, in addition to other sanctions.³²

Undeniable that cannot leave the State control the actions of its users and content that are put on the internet available for them. Anonymous is a right to freedom of expression and thought and should be constitutionally guaranteed. One of the safe ways of how anonymity can be useful and well implemented is through the website WikiLeaks, where is a safe place to denounce illegal activities, sexual abuse, minorities, among many others, without the possibility of further retaliation. There is still much to be reflected on the model for the normative rules in the context of the internet. However, argues here that this freedom constitutionally guaranteed by CF/88 is not restricted and that reasonable measures against this authoritarian seal do not exist, in a short space of time, freedom on the internet will be restricted, as was on the radio.

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