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AGENDA-SETTING VERSUS FREEDOM OF SPEECH

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FOREWORD

The most important issue of this paper is contained mostly, though vaguely, in the title. What is agenda-setting and how it is related with freedom of speech domain? In further part I will try to present those, theoretically distant problems. I will also try to present how political and business organizations can affect on daily agenda, so in fact how they can create access to free speech. There are some situations in mass media world, when those practices can be considered as internal or external censorship. In this paper I specific cases, all selected from American political and media systems. I think that US system is full of contradictions, from law conflicts (state *vs* federal law, First Amendment), owners of mass media competition (corporations, FCC) and finally state controlled media on the contrary to free speech (censorship).

Moreover, other essential issue is communication itself. Communication considered as a space in which agenda-setting and free speech relations take place. Treated here as important to society, and its process can be expected to have a great effect upon the nature of a society, including

politics. Media are so deeply involved in the system, that without them political activity could scarcely carry on at all.

SETTING OF THE AGENDA

At the beginning I'd like to explain basic assumptions of agenda-setting theory. Such a distinction allows to better understanding further considerations, and demonstrate how agenda-setting process is threatening to free speech and media. Maxwell McCombs and Donald Shaw created a theory that mass media have big influence on public opinion by their choice of what information to consider as a newsworthy.¹

According to their theory, mass media decide, which topics will become the object of the public interest and what political significance will be assigned to each of them. The influence of mass media on the perception of political events results from the actual position of media, as the only channel of the political agenda. Additionally the appropriate sequence of events and the frequency of transmitting them influences the received image of political reality.²

When mass media and elites can shape public debate, they can also form free speech. On the one hand they can put restrictions on journalists, politicians and, in fact, all society. On the other, media can prime, frame and publish news, skipping others.

FREEDOM OF SPEECH

According to John S. Mill one of the most important element of democracy is representative system of freedom of speech, the press and assembly. He distinguishes three major advantages of that system. First, he claims,

¹ McCombs Maxwell, Shaw Donald. 1972. *The Agenda-Setting of Mass Media*. Public Opinion Quarterly, 36, pp. 176–187.

² Schulz Winfried. 2006. *Komunikacja polityczna. Koncepcje teoretyczne i wyniki badań empirycznych na temat mediów masowych w polityce*. Kraków: WUJ, p. 115.

representative system provides the mechanism and – what is more important – a parliamentary arena in which people can watch and control the exercise of power. Second, system also acts like a watchdog of liberty. Finally, because of elections, it guarantees the high quality of chosen representatives.³ Moreover, in liberal tradition, freedom of speech and information are essential for a democratic society. According to Rodney A. Smolla, freedom of speech serves five functions for democratic self-governance:⁴

1. Participation;
2. Pursuit of political truth;
3. Majority rule;
4. Restraint on tyranny and corruption;
5. Stability.

It is clearly connected with Mill's idea of system in which free press and speech play greatest role. Without free speech and freedom of mass media to publish information critical for government, which some might call revolting or even false information, there can be no other freedoms or rights. How can anyone ever become informed if free speech and criticism are prohibited? Interestingly, similar assumption was made by Walter Lippmann "that government is not only enemy of freedom of speech". He claimed that people, who believe in free speech, are not commitment to it. In fact, it shows two most important subjects of this paper. On the one hand state, which try to control daily news agenda. On second hand we have society members.⁵

Generally, we can say that free speech is form of unlimited and uncensored speech. We can also point some milestones of free speech in human history. In order to explanation I have to underline, that those historical moments are entirely subjectively selected and incomprehensive. Obviously, we can start from Socrates and his speech to jury at his trial: 'If you offered to let me off this time on condition I am not any longer to speak

³ Mill John S. 1951. *On Liberty, and, Considerations on Representative Government*. Oxford: Basil Blackwell, pp. 239–240.

⁴ O'Byrne Darren J. 2003. *Human Rights. An Introduction*. Longan, p. 116.

⁵ Holsinger Ralph L. 1996. *Media Law*. Oxford: Random House, p. 18.

my mind... I should say to you, ‘Men of Athens, I shall obey the Gods rather than you.’” Then quick move to 1644 and Milton’s *Areopagitica* with arguments against freedom of press restrictions. Next is 1791 and The First Amendment of the US Bill of Rights (the first 10 amendments to the US Constitution). Afterwards, quoted here Mill and *On Liberty* (1859). Interesting position is *Manufacturing Consent* (1988 and 1992) by Edward Herman and Noam Chomsky: “Goebbels was in favour of free speech for views he liked. So was Stalin. If you’re in favour of free speech, then you’re in favour of freedom of speech precisely for views you despise.⁶” And the last one is the Patriot Act, since 2001 gives US government new powers to investigate individual suspected of being a threat, raising fears for civil liberties.

THE AMENDMENT

Above we can see just few turning points in free speech history. But one of them was a crucial moment in US, and world, freedom of speech conception. We can ask ourselves a question: how many countries protect free speech in their constitutions? Certainly United States, Germany, Japan, Spain. But it was USA who first assured free speech in Constitution. Freedom of speech, press, religion, and assembly are guaranteed in First Amendment to the United States Constitution (1787, ratified in 1791).

“Amendment I: Freedom of speech, religion, press, petition and assembly.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; **or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”**

Moreover, freedom of information was established in 1966, buy the Freedom of Information Act, and it was clear that government should give access to all documents to the public opinion. The freedom of information

⁶ Quotation in: *Manufacturing Consent: Noam Chomsky and the Media*, movie by Peter Wintonick (1993).

was strictly restricted, especially during the height of Cold War. Although, USA government is often accused of blocking information by censoring media in time of wars.

'A critical report by Human Rights Watch, and American Civil Liberties Union claims that during the Gulf War control over the information received by the media was tightened. Only carefully selected journalists were allowed to cover the fighting, and reporters were to be accompanied by a military escort at all times. Also, before the release, all dispatches were carefully scrutinized by military officials, and this review went beyond simply military matters and sometimes involved the changing of words.'⁷

There is also one important mass media law, signed by President Bill Clinton in 1996. The Telecommunication Act, which in theory deregulates all communication industries and permits the market, not public policy, to determinate the course of the information highway and communications system.

In law theory, First Amendment and other media legislative documents seems to function properly. In fact The First Amendment does not work as Founding Fathers would like to. American journalists are concerned about the First Amendment, which, in part, guarantees free speech and press. The First Amendment was not drafted to protect popular speech, but unpopular speech. Popular speech or expression does not need protection in a democracy, because it is accepted by majority. Unpopular speech or expression needs protection. The First Amendment, particularly the free speech and free press, constitute important civil rights that are under attack today with media codes, political influents, attempts to control and regulate content of the media. Also US Constitution allows people to sign away their right to free speech when entering a contract – workers do not have a right to free speech on corporate property. An unalienable right to free speech will not allow an employer to take away your rights to free speech. Moreover, US constitution does not allow to sue government or a business corporations for restricting your free speech; it only allows a suit to defend your free speech if your are charged with lawbreaking. Now we

⁷ O'Byrne Darren J. 2003. *op.cit.*, p. 115.

have situation when very few corporations own most TV stations, radio, press and bookstores. Those corporations block the public's speech and refuse to publish information which questions their. In fact the US Supreme Court has given corporations the right to control free speech.

It corresponds with theory of Alexander Meiklejohn, who wrote that: "The First Amendment seems to me to be a very uncompromising statement. It admits of no exceptions. It tells us that the Congress and, by implication, all other agencies of government are denied any authority whatever to limit the political freedom of the citizens of the United States."⁸

Moreover, he distinguished two layers of free speech based on First Amendment. First, higher level, speech devoted to public affairs. Second, lower level, actions and deformed debate on public matters, speech directly provoking illegal acts and speech bringing harm to individuals. The first one should be more protected from First Amendment.

FILTERS AGAINST FREE SPEECH

I have mentioned above of book by Noam Chomsky and Edward Herman *Manufacturing Consent*, in which they introduced propaganda model of the mass media.⁹ In short, this model shows how media are influenced by inside and outside factors, and how it reflects news and form of published reality, called media reality. In fact, this model depicts also how in modern American media system driven by corporations, the access to free speech is limited. Authors named five classes of filters in media system and society which determine news. In that case we can consider the filters as five obstacles to gain freedom of speech.

1. Size, ownership and profit orientation of the mass media;
2. Advertising as the primary source of income of the mass media;

⁸ Holsinger Ralph L. *op.cit.*, p. 19.

⁹ Herman Edward S., Chomsky Noam. 1988. *Manufacturing Consent: The Political Economy of Mass Media*. New York: Panteon, pp. 3–31.

3. The reliance of the media on information provided by government, business and experts funded and approved by these primary sources and agents of power;
4. 'Flak' as a means of disciplining the media;
5. Anticommunism as a national religious and control mechanism.

First one includes the market orientation of media corporations, with special consideration of the size of the financial capital needed for leading main media titles, providing with the power and the prosperity to owners and the concentration on the market. Moreover, news programs just duplicate and sustain the viewpoint of the media, business and political elites, which stay in close and intimate relations. Owners of media and governments are setting the news agenda, very media organizations influences the form of this filter.

Second filter demonstrates how advertisers can influence on produced and published news. Herman and Chomsky thought that, companies which order advertisements can put essential influence on market position and prosperity of the media. Thanks to their financing, commercial media can correctly function on free market. While goal for both, advertiser and media company, is to reach highest income. In fact both actors will avoid small media companies, publishing unpopular ideas, which can prise off mass consumption.

Next is a mass media dependence on expert sources of information. Increasing dependence on political or economic data coming from the government source, is beneficial for journalists and media. Thanks to their wide availability media have apt, hard data what makes media reports much more credible. Additionally, that access makes the work easier for journalists, and it affects relative speed and the easiness of building the framework of news. Such process presented in media reality, reflects only reality promoted by the government and media concerns, so in fact blocks an access to free speech and free press.

Forth filter concerns the dependence of media on so-called 'flaks'. Flaks are form of complain, submitted by private person or political institutions, e.g. US government and its agencies. The effect of 'flak' can be juridical and financial. So complains can find their end in form of appropriate legislations or financial penalties.

Last one we can call anticomunism ideology, with one notice. Herman and Chomsky use his notion as wide corral, which the power can categorize everything what is at variance with the media and elites confirmed viewpoint. So all radicalism are immediately considered to be against-system activities, stigmatized by government and media corporations. The result of that understanding is bright and polarized division in media reality for good deeds (good for the system, citizens and state) and evil (the denial and the threat to the media and political system).

Final product of propaganda filtration is the biased news, creating media reality with no reflection in objective reality. Limited free speech with no chances to announce plural point of views, especially those against the market oriented system. Although some media discussion is taking place in political system, but is considered to be a form of self-preservation of elites. Because political and business elites try to give just image of pluralism, not real reforming and vivid free speech access. In Fact real opposition and ideas will never have access to mainstream mass media.

It seems that the theory suggested by American classics definitely is simplifying relations of agenda-setting and free speech. I think that its biggest weakness is basic assumption, that mass media are determined mostly by economic factors. Moreover, authors treat mass media almost like secret organizations, for which creating non-existent agenda, propagating political and economical business of elites are a main task. Although indeed political economy of media plays big role in free speech access and creating political news. Also we have to notice that last filter can no longer find application on current American political reality. Probably therefore authors in the re-edition of the book from 1994 replaced it with the indisputable faith in benefits of the market competition and the consumer capitalism. Moreover, an observed post 9/11 division in the USA can be considered as at least an equally good substitute of anticomunism. When the government and mass media stigmatized all conducts of the opposition to the state, especially international policy, calling them *unpatriotic* and *unamerican*.

INSTITUTION AGAINST FREE SPEECH

It is worth to put emphasis on one element of all filters. The power of political and business organizations to shape media coverage and limit freedom of speech. In USA one of that organizations, maybe the essential, is Federal Communications Commission. Role of FCC is to have control over media free market. Thanks to large competences FCC can shape media reality in USA. FCC policy prevents a television station from owning or being owned by a newspaper in the city in which it holds its broadcast license. Also FCC can prohibit television station owners from holding licenses to more than one TV station in a city and limit the number of TV stations they can directly own across the nation.¹⁰

Chairman of FCC is Michael Powell, who declared that Commission will lead *Copernican revolution* for media market. The mass media are the primary means through which citizens gather news and information. Digital media are at the center of the information economy and the emerging multimedia environment in which consumers and citizens will not only listen and watch, but must also be able to express their opinions and views. The stakes for citizens, consumers and the nation are huge – no less than the viability of democratic discourse in the digital information age.

Commission led by Powell defined its job as merely preventing the complete suppression of ideas, though it should promote the widest possible dissemination of information from diverse and antagonistic sources. It is very narrow view of freedom of speech, and it will not support a vivid democracy and the relaxation of ownership limits.

“Concentration of media ownership reduces the diversity of local reporting and gives dominant firms in local markets an immense amount of power to influence critical decisions. Consolidation in national chains squeezes out the local point of view. Conglomeration of media outlets undermines the watchdog role that the print medium plays with respect to television and vice versa.”¹¹

¹⁰ Cooper Mark. 2003. *Media Ownership and Democracy in the Digital Information Age*. Stanford: Center for Internet and Society Stanford Law School, pp. 3–5.

¹¹ Cooper Mark. *op.cit.*, p. 6.

MASS MEDIA CENSORSHIP

Final question of this paper is: Can we consider agenda-setting process as some form of censorship? Lippmann wrote in *Public Opinion* that “at different times and for different subjects some men impose and other men accept a particular standard of secrecy.”¹² Moreover the border between what is concealed because publication is not ‘compatible with public interest’ fades into what is concealed because it is believed to be none of public’s interest. But what is censorship, and how it can be combined with forming media agenda? I think that good answer is quotation by Darren O’Byrne:

“In human rights circles, censorship is treated as an affront to individual freedom, a violation of our rights to know, to think, to express ourselves. It is a tool for state repression, for the maintenance of power (the task of any state, whatever colour its rosette may be and whatever it claims for itself), achieved through the manipulation of the cultural sphere – ‘the history of censorship belongs to the history of culture and communication.’”¹³

In fact it confirms that censorship, although treated as obstacle to free speech, may be an attribute to creating agenda process. After Paul O’Higgins, who distinguished six types of censorship, we can assume that agenda-setting can be linked with two last¹⁴. First is called voluntary censorship, when individuals or organizations, with no legal power, imposes upon others limitations on what they might say without sanction. Second is subterranean censorship: individual or institution power to set aside for another purpose to impose censorship without direct government involvement.

Mass media by selecting information, forming media coverage, choosing news and broadcasting have to limit access to media reality. It is estimated, that over the 99% of events which every day take place worldwide, are entirely ignored by mass media. Moreover, Marek Chyliński and Stephan Russ-Mohl claim that:

¹² Lippmann Walter. 1922. *Public Opinion*. New York: Harcourt Brace, p. 28.

¹³ O’Byrne Darren J. *op.cit.*, p. 107.

¹⁴ *Ibidem*.

“...over the 99% of all information about which the press knows, never reaches the to the reader, because they are recognized – according to at the moment prevailing ideas – for meaningless, too fragmentary, too polemical or immoral and in the effect of this selection are landing in the waste-paper basket.”¹⁵

But the question of censorship and free speech gets even more complicated when we consider the freedom of the press. The mass media are now so powerful that the public requires protection from them. For example in mediatization process, when media are not passive channels for political communicators and political content. Rather, the media are organizations with their own aims and rules that do not necessarily coincide with, and indeed often clash with, those of political communicators¹⁶. Because of the power of the media, political communicators and public opinion are forced to respond to the media's rules. In this case media themselves are the censors of content. On the other hand, if media are subjected to populist democracy, they shift away from their role as the Fourth Estate¹⁷. They become an obstacle to democracy, and require reform and government intervention. So in fact, media can be censored by those who attempt to intervene.

Finally, I think that agenda-setting process can be considered as a form of organized, accepted censorship. On the one hand we have self censorship practices, when during media process journalists have to choose specific themes, skipping others. Sometimes they limit access to media for some social, cultural and political groups, censoring their message. On the other hand we have “wide range of government limitations which do not appear to have been raised to the status of human rights issues.”¹⁸

¹⁵ Chyliński Marek, Russ-Mohl Stephan. 2007. *Dziennikarstwo*. Warszawa: Polska-presse, p. 119.

¹⁶ See: Mazzoleni Gianpietro, Schulz Winfried. 1999. “*Mediatization*” of Politics: A Challenge for Democracy. “Political Communication”. Vol. 16, pp. 247–261.

¹⁷ O’Byrne Darren J. *op.cit.*, pp. 119–120.

¹⁸ *Ibidem*, p. 108.

SUMMARY

Raised issues should be treaded only as the idea for wider analysis. On account of the form of the paper I tried only to put some frames of presented phenomena. Shown cases do not aspire to the name of only or most important. They are just an effect of subjective choice, which purpose was to fully depict the topic.

I tried to introduce, that the process of forming the media agenda can be a threat to the freedom of speech. Moreover, very media are a threat for themselves. From one side we deal with the attempt to influence the transmission of media on the part of the organization, like FCC or business groups. From second, very journalists are breaking the principle of the freedom of speech, making available the medium for few.

Chosen field of analysis, the USA, seems perfect for it. On the one side state, which first guaranteed the freedom of speech in the constitution. On the other, the defectively functioning First Amendment. On one side, state propagating the democracy worldwide. From second, we have driven and manipulated media by the government and federal organizations (according to propaganda model). Indeed USA is a state of a democracy – against what intellectual Michael Moor propagates. But constantly inducing to *mediocracy*, which constitutes the greatest threat to the free word and independent media.