

## The Artistic Creation and the Juridical-Political Context of the Human Communities

**Abstract:** In the present paper I intend to analyse how the artistic creation, especially the literary one, is influenced by the political regime, the organization, and the juridical norms of the state where it appears. My thesis begins with the idea that human beings, as social beings, develop their artistic activities of creation within the environment where they live, being influenced by it. In their turn, human beings considerably influence their social environment. The artistic creation and people's lives cannot be separated in an objective manner; and the human being as an artist is affected by censorship, different financial and legal aspects etc. In a totalitarian state, where juridical norms strongly impregnated politically are institutionalized, while in a democratic state the restrictions are mainly financial, but what is generally accepted as valuable depends on the taste of the wider public (whose taste may seem quite dubitable at times). Because the work of art is in my opinion the product of human beings as social beings, it is affected by the social environment where it appears and where it is broadcasted or published, and it is influenced by the more or less legitimate juridical norms of the state. The freedom of creation and expression is dramatically limited in a totalitarian regime, but it is not without pressure in a democratic state, which theoretically allows, encourages, and ensures the appropriate circumstances for the artistic manifestations.

**Keywords:** art, politics, law, legal philosophy, human rights, censorship, success, financing art, freedom of expression, pursuit of happiness

### 1. Introduction: The appearance of the artistic manifestations

The spiritual need to create is an inherent attribute of the human being. The artistic creation accompanied human civilization from the very start, cheering and emotionally moving our hearts and the hearts of our ancestors. The researches made by specialists show that the human DNA is less than 1% different than the DNA of our closest relatives, namely the chimpanzee, which means that an extremely little difference in the human genes is responsible with the mastering of the language and with inventivity – that are both essential for the artistic manifestation, as well as for the other

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specifically human activities. The major difference, anatomically speaking, between the human being and the other species consists in the massive dimension of the brain, as we, the human beings, have the biggest brains comparative to our total body weight.<sup>1</sup>

So, probably, the mystery of our creativity and language is somehow related to brain chemistry, but things are not as simple as they may seem at a first look. In this way, although the size of the brain is a necessary condition for our present development, yet it is not a sufficient condition. By interpreting the archaeological discoveries the scientists showed that “our ancestors adopted the vertical loco motor habit around 4 million years ago, while the evolution of the brain size began around 3 million years ago, so we became *Homo erectus* around 1.7 million years ago, and we became the archaic *Homo sapiens* 0.5 million years ago. (...) As a result, the evolutive growth in size of our brain began around 3 million years ago mainly ended around 100,000 years ago. Have the archaeological proofs of human inventivity grown proportionally with the growth of the brain size? Such archaeological proofs included rupestral paintings, portable art, jewellery, musical instruments, worked tools, graves, complex weapons such as the bow with arrows, complex shelters, and sewed clothes. If these signs of human inventivity had appeared gradually as the brain became bigger in size, then we would have a simple explanation of human inventivity it would really be the result of the brain size” (Diamond 1999, 44).

But the signs and proofs of art and human inventivity have not appeared from the very start, from the very moment when our brain started to develop until it reached its actual size. Our ancestors were of African origin 100,000 years ago, they had rudimentary tools, and they were not very skilful hunters. As for the artistic manifestations, there were none at those times. Moreover, the signs of inventivity are completely absent when it comes to the Neanderthal man (who lived then in present times Europe), whose tools have changed extremely little for an interval of 100,000 years. Although anatomically speaking 100,000 years ago, human beings had a brain as big as that of the modern man, and it was practically identical with it (around 99.99% identical), yet they missed an essential element, namely that element which is responsible of inventivity and creativity.

The first proofs of human inventivity were discovered in Western Europe and they are around 38,000 years old. The archaeological proofs of human art which are that old consist of musical instruments, rupestral paintings, statues, jewellery, and clay figurines.<sup>2</sup> It is estimated that around the same period the first religious rituals appeared. This is the moment of the first cultural revolution of the human civilization; some scientists name this moment The Great Leap Forward, and they consider that it was based on the appearance of those “genes responsible for the development of the spoken language” (Diamond 1999, 47). The communication through a

complex language is characteristic of the human being, and it biologically depends on the way our vocal tract is configured. A complex and profound communication is difficult to conceive apart from the language. How else than through language could we review, for instance, a painting that we appreciate? How would the state have appeared? How would have the transmitting of knowledge and information from one generation to another been possible?

If previously to The Great Leap Forward the archaeological discoveries reflect a relatively small number of tools belonging to our ancestors and a total lack of paintings, musical instruments or jewellery, after that moment their number becomes increasingly big, and their evolution and perfecting was extremely rapid: “In opposition with [the tools and the art of the previous periods], the tools and the art of the Cro-Magnon vary so much from a millennium to another and from one region to another, that the archaeologists can use them as indicators of the age of a certain place and of their relation” (Diamond 1999, p.46).

From this moment on, human culture practically started to blossom, it developed and diversified enormously in a short interval of time (compared to the previous three millions of years) until the actual level (which is not at all a terminus). From one stage of his evolution onward, man started to prove one’s desire for luxury, comfort, civilization, and culture, which could only be obtained within well organized, structured and oriented towards such goals communities. By the collaboration of human beings, building comfortable and secure shelters became possible, electricity was invented, technics evolved, and the material elements of our existence were permanently accompanied and completed by the artistic creation through its various shapes and ways.

## **2. The Juridical Acknowledgement of the Artistic Creation within the Democratic State**

Since the initial moment of the appearance of language and inventivity, the artistic creation was an important aspect of our spirit, and it accompanied us incessantly while evolving as a civilization. As our instruments, shelters and clothes have become more sophisticated, the level of comfort and of civilization has grown, and along with it, the aesthetic sense has evolved and refined.

Next, art became an essential dimension of human life and of human communities, accompanying our evolution from the most rudimentary ways of social and political organization to the modern state. Any type of artistic creation delivers a message to the other. Art was created for the spirit to rejoice, and to move us emotionally. The work of art is “destined to symbolize and transmit something” (Hentea 2014, p.13), which as a rule

refers to the feelings and the impressions of the artist, but to the interests of those who finance the work of art, as well, as it is known that usually artists do not have the financial resources that would allow them to create on their own and have (and also had) to make art on commands from the rich or the authorities of the state in order to be able to make a living. Along the centuries of human civilization the social and political organization of the human communities suffered different kinds of transformations, from the initial state which appeared around 6,000 years ago in the Ancient East—Egypt, Babylon, China, India, and to actual state of right, which is considered the most adequate (meaning the least intrusive) when it comes to exercising the fundamental rights and liberties of man. The state of right is that type of a state which reflects democracy in its entirety, meaningly the state where the power is exercised by representatives chosen by means of the secret, direct, and free vote, oriented towards the public good, and where the laws are strictly respected: “Only the juridical norms limit the power within the state of right; individual freedom becomes possible only by turning them into subjective rights, and by proclaiming the national sovereignty the democratic principle will be guaranteed (...) In this way, the state of right implies a total trust in the law” (Chevallier apud Ploscă 2015, 61). In other words, the political power can be exercised only within a democratic and legal environment well configured where all the fundamental rights and freedoms (as The Universal Declaration of the Human Rights, The European Convention of the Human Rights, and all the other international treaties of the kind state them) are assimilated by internal legislations which are strictly respected.

Of course, neither the state of right lacks its problems and it is not beyond any criticism, but, presently, it is considered to be the most functional type of state, as it allows the most freedom when it comes to attaining personal scopes, exercising the rights, and the pursuit of happiness (the second paragraph of the United States Declaration of Independence,<sup>4<sup>th</sup></sup> of July 1776 is essential for showing this idea: “we hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.”<sup>3</sup>). Obtaining individual happiness is an extremely complex, which implies “a subjective situation of absolute contentment regarding one’s own needs and desires, and the subject can see any desired thing as something absolute, so as something absolutely satisfying, no matter if an object is as such in itself. Therefore, the subject can be happy for an infinity of things (money, power, sex, food etc.), and we can call happiness the situation when one possesses such things, except for the situation when one realizes afterwards that one’s happiness is only apparent because the object of one’s desire was overestimated” (Craiovan 2010, 422). In my opinion, the artistic phenomenon also presupposes this

element of pursuing happiness, because domains such as literature, theatre, and cinema often consider the theme of pursuing, obtaining or missing happiness by the human subject. I think that from a juridical point of view the works of art can be considered to be products of our human freedom of expression. There are no such rights as the legal right to art of the human being, but as through art messages are delivered and the emotions, ideas and feelings of the artists are expressed, and the intended scope is to stir similar emotions and strong impressions in the receiver of the message, the art consumer, we can consider that the works of art are expressions of the freedom of expression, a right acknowledged to belong to any human being within a democratic state. The Freedom of Expression is provided by the first paragraph of Article 10 of the European Convention of Human Rights which establishes that “everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.”

The provisions of the 10<sup>th</sup> article regard especially the freedom of the press and of the other mass media means of communication. In a democratic state, the freedom of the press guarantees for the freedom of expression and for the transmitting of the information. Although in the 2<sup>nd</sup> paragraph of the 10<sup>th</sup> article the limits of the exercising of the freedom of expression are stated (“the exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary”), yet the practice of the European Court of Law, as well as the internal legislations of the democratic state are extremely permissive towards what can be published or asserted in the mass media. Sometimes it is hard to distinguish between the freedom of expressing one’s opinion and some forms of racial discrimination or instigating to violence, which break the fundamental rights of men (for instance, the breaking of the 14<sup>th</sup> article of ECHR that legally forbids discrimination). This way, many times The European Court of Law thought that the internal authorities of the states should be extremely prudent so that the press were not stopped neither to acknowledge the discussions of the problems that generally interest the people of the democratic states, and nor to comment on them.

The cultural rights are specially brought under regulation by the international pact regarding the economic, social, and cultural rights –

International Covenant on Economic, Social and Cultural Rights – adopted by The United Nations General Assembly on the 16th of December 1966, that passed the seals to Romania in 1974 and was adopted in 1976. This pact admits among other things “the right of persons to take part in cultural life” (article 15, paragraph 1, letter(a)) and “the right to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author” (article 15, first paragraph, letter c). Moreover, the 3rd paragraph states that “the States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity”. The present Constitution of Romania acknowledges the freedom of expression in article 30, paragraph (1) and in paragraph (2) directly forbids censorship. This regulation totally opposes the provisions of The 1965 Constitution of the Socialist Republic of Romania, as we shall see.

The internal laws of the democratic states undertake international specific norms that protect by Constitution the freedom of expression, as well as the authors’ rights and the connected rights, punishing those who break them. Our legislation contains several normative acts for these, the most important being The Law 8/1996 regarding the authors’ rights and the connected rights which was modified and added to later on, and Law 204/2006 regarding the proper behaviour of those who are involved with scientific research, technological development and innovation, which was modified and added to later on.

Usually, philosophers are reserved when it comes to discussing the state, considering that in time the state (though its representatives) acted more in order to restrain the rights and the freedoms of the citizens and to censor or manipulate intellectual thinking and artistic creation than in order to defend them, encourage or allow them to manifest freely. So the state was seen as a necessary evil. And historical sources show that this thing is as true as possible. The artistic manifestations were never absent, in any historical period or human civilization, and they succeeded in imposing and in gaining their place in history and in our souls in spite of any pressures, manipulation and political influences, and they proved that human spirit is and remains free in its essence.

### **3. Literary Art (Literature) and Political or Juridical Restraints**

Yet, it is difficult if not impossible to imagine the artistic manifestations outside their social context. In the following paragraphs, I will try to analyse some of the obstacles and difficulties that appear against the artistic creation within the social and political environment where it appears.

The main problems when it comes to popularizing the artistic creation in a democratic society seem to be the financial resources and the taste of the

public that in the case of the totalitarian regime are dominated by censorship and the cult of the personality of the dictator. Those in charge who have the power in the totalitarian regimes impose by constraint what to be published, what monuments or paintings to be exhibited, what plays to be performed, and what films to be produced. There are a limited number of themes allowed and they regard the idealizing of those who have the power, anything that opposes them being a subject of censorship. In this way, the 1965 Constitution of Romania provided at article 29 that “the freedom of the written word, of the press, of meetings, manifestations and demonstrations cannot be used against the socialist order and against the interest of the working class.” In Romania of those times there was a Council of State for the Press and Publishing that used to decide which books are allowed to be published, what plays are allowed to be turned into performances, what films are allowed to broadcast and so on. This institution was dissolved in 1977, but its members continued their activity of censorship as they had key roles within the Communist party and the public institutions.

Practically, any political government, military or religious administration has the tendency to “limit the expressing/broadcasting of information, opinions, ideas (in a larger sense even intellectual creations), that the public has the right to know depending on the values that it feels obliged to protect at a certain time” (Petcu 1999, 12). Along history, the examples are infinite, but the first that comes to mind is related to the church and the domain considered the scientific one: the publishing of Galileo Galilei’s book *Dialogo di Galileo Galilei sopra i due massimi sistemi del mondo Tolemaico e Copernicano* in 1632. Previous to its publishing Pope Urban VIII imposed on the scientist to present heliocentric theory as a hypothesis and a theoretical possibility, and not as a scientific certain discovery. But Galileo took advantage on a series of circumstances and published the manuscript in its original form. And the consequence of his act of courage was a trial initiated by The Inquisition, whose sentence was that the Italian astronomer should deny the scientific statements of the book.

Censorship can be done in many ways so that it comes with “a diversity of types regarding their thematic, semantic or temporal development, along with certain constraints of rights or, even more serious, individually acknowledged” (Troncotă 2006, 17). In communist Romania censorship reached its most serious consequences including the death of some authors that were not liked by the totalitarian regime. The legal norms for the authors’ rights were more restrictive in communism in order to ensure the certitude of the dictatorship; the licenses and the patents, the inventions, the artistic creations and other intellectual products were not considered to be acts of opposition against the regime. Even from the beginning of the communist period, precisely since 1949, those publications that were

considered to oppose the regime were put on a list and they went so far that “the censorship eliminated without reason any cultural creation that ideally or imaginatively could have had any possible connection to any other social system, apart from the communist one” (Ficeac 1999, 38). Previously to this moment more normative acts were edicted with the purpose of institutionalizing censorship and punishing by law those who did not respect the political orders: Decree no. 211 by which The General Direction of the Security of the People within The Ministry of Internal Affairs that was supposed among other to “assure the security of RPR against the conspiracies of the enemies from inside and outside the country” (article 2 of Decree no. 211 from the 30th of August 1948). The enemies had in mind were especially the intellectuals who opposed the regime, Decree no. 303/1948 by which the cinematographic industry nationalized and Decree 17/1949 regarding the editing and distributing of books.

The fight against censorship is replaced in democratic societies by the financial struggle for publishing and making the artists famous. In this social field where everything is possible, people play the game chosen by the producer, the paintings of those financially supported are exhibited, and when it comes to literature the same rule applies. This time, the restriction is no longer an ideological, but a financial one and it depends on the caprices of those who have money (and sometimes limited culture and dubitable good taste). But the problem is neither new nor necessarily contemporary. If we consider the case of the 19th century France when famous writers like Gustave Flaubert and Charles Baudelaire lived, and when “money ruled everything everywhere and the fortunes of the new key administrators – manufacturers who made incredible profits from the technical progress and the support offered by the state, but many times only profiteers – who make a show out of their private luxurious houses of the haussmanian Paris or out of the splendour of their carriages and of their outfits. The current practice of the official candidate allows getting political legitimacy by entering the general assembly made of new men, and a large proportion of whom were businessmen, as well as establishing a very tight connection between the political and the economic worlds, which step by step started to control the press, the more it was read and money-making” (Bourdieu 2012, 77). Those men who were less than cultured and they had superficial tastes, and far from the aristocratic scholar societies of the 18th century start to control the market financially and to impose what and how to publish. In this environment serial superficial novels were primary published, but “poetry associated with the great Romantic struggles, to the bohemia and the underprivileged is deliberately and aggressively repudiated” (Bourdieu 2012, 78). In this way they brought suits against some of the poets as well as the publishing houses who publishes poets such as Charles



Baudelaire or Leconte de Lisle), so some of the publishing houses go bankrupt and their owners go to jail because of their debts.

In those times, the artists had the opportunity to meet those in power at exhibitions where the latter had in mind to “impose their own perspective on artists and prove their power of settling things and legitimating mainly through what Sainte Beuve calls *literary press*; in regard to the writers and the artists, they were acting as applicants and intercessors, and sometimes as real pressuregroups as they were struggling to gain immediate control over different kinds of material and symbolic gratifications that the state offered” (Bourdieu 2012, 79-80). The political arms of control that act and settle or at least influence what to publish, exhibit or perform in the theatres are very complex – “as the ways of domination and autonomy are complicated” (Bourdieu 2012, 81). The real power of the artistic domain is controlled by the magazines’ directors who decide what to publish and who can by a single article “make a reputation or open up someone’s future” (Bourdieu 2012, 82).

As the market evolves the power of the wider public grows when it comes to imposing or making certain writers or artists forgotten. This kind of public hidden behind anonymity makes the writers have ambivalent attitudes: on the one hand, they wish to be famous, and on the other hand they criticise the public for its dubitable taste and its lack of culture. The great writers such as Gustave Flaubert or Charles Baudelaire are overtly disdainful towards the representatives of the public, by considering it a regime of “unrefined parvenus completely under the signs of fakeness and artificialness” (Bourdieu 2012, 89). Those writers reacted by dedicating to the “independent art, to the pure art and because art need the matter they would go and look for that matter either in the past or in the present, but they would turn it into simple objective representations as disinterested as possible” (Cassagne 1979, 212-213). Gustave Flaubert wrote in his letter addressed to Louise Colet on the 22nd of September 1853 that the external environment did not offer him anything anymore and that he had to keep one’s head dipped into his writings “just like a mole”. Because of their open opposition and denial of the concessions that many writers made toward the requests of the market which meant renouncing on literary exigencies and style in favour of gaining social privileges, Gustave Flaubert and Charles Baudelaire realised “the progressive affirmance of the autonomy of the writers” (Bourdieu 2012, 91).

Perhaps, the authentic work of art has to be in total opposition against the requests of the market at a certain time, because the requests are usually made by a superficial public, with a dubitable culture, and it should be a purely artistic product. Such a purpose also implies surpassing the opposition against certain social trends; as such an attitude contains in itself a negative element that hinders from creating an authentic and valuable

work. That disdain towards the requests of the market implies the isolation of the artist and the restraining of one's bread and butter, sometimes living at subsistence level. It is a fact that the real work of art has no commercial value, but assuming such a purpose can have dramatical consequences on the authors who have no other financial support.

At the opposite end, while the market evolved a new category of editors developed who only accepted publishing those works that could become best-sellers. Any manuscript should respect certain rules: to have a target public, to belong to a certain genre (fiction or non-fiction) and so on. In order to be published the manuscript of a writer should discuss the themes that proved successful in the past, which obviously could be detrimental to literature itself. Within such a complicated system where what is published is decided depending on the requests of the market, an atypical writer such as Yevgenia Nikolayevna Krasnova may seem to have no chance of being published or successful as a book writer. Her example is accurately and humorously described Nassim Taleb in his book *The Black Swan*. Yevgenia's work *A Story of Recursion* was refused by more publishing houses on the pretext that it would not enter the current genres, being written in a very personal manner, having lines in multiple languages and so on, so that the author posted the content of the book on the internet where it was noticed by the owner of a small and unknown publishing house "who used to wear pink sunglasses and spoke a very primitive Russian but thought that he was fluent" (Taleb 2010, 52). After publishing the book "it became more and more successful, one of the biggest and strangest hits in the literary history and it reached millions of copies sold and was very appreciated by the critics. Meanwhile, the small publishing house became a big corporation with a polite receptionist at its entrance saying hello to visitors (...) Afterwards, many editors reproached Yevgenia that she did not approach them first, being convinced they would have appreciated the qualities of the manuscript" (Taleb 2010, 52-53). The lack of distinction between fiction and non-fiction that was reproached to the author in the first place became "archaic" when the book became a success and a best-seller. This example illustrates the paradoxes that may arrive in a democratic society when it comes to the artistic creations.

#### 4. Conclusions

Out of all the possible ways of governing the laws of the democratic state offer the larger amount of freedom regarding the artistic creation and its promotion. Today, the restrictions regarding the promotion or the publishing of the works of art seem to be juridical, financial limitations and depending on the taste of the wider public and, of course, on the respecting of the fundamental rights of men. Actually, today celebrity and the fame of

an artist or of a work of art dependant on how well it sells, how much it is seen, listened to etc. Sometimes, not rarely, those in control with the media and who decide what is valuable because of its value on the market and what is not are surprised by the success of some works which do not respect the anticipated rules, rules that were established by means of minute market researches.

The internet became the ideal environment for making ideas popular, the virtual medium where artists can show their works with minimum of expenses, and where the wider public can access them and possibly appreciate them. Perhaps, in this way “the art for art’s sake” becomes possible once more; it refers to the artistic creation that consider art in itself, independently of social, political and financial pressures that functioned in time censoring, limiting and even mutilating the work of art.

## Notes

<sup>1</sup> “Our brain is about four times bigger than that of the chimpanzee and a lot bigger compared to our total body weight than the brain of any other animal species. I admit that other attributes are also necessary beyond the developed brain” (Diamond 1999, p.43)

<sup>2</sup> “The most amazing creations out of the inventivity of the Cro-Magnon Homo sapiens are those Sistine Chapels of the Late Paleolithic, as there are the Lascaux cave and Altamira cave.” (Diamond 1999, 46).

<sup>3</sup> The authors of The Declaration of Independance used the expression “pursuit of happiness” in order to underline the diversity of human beings, as well as the freedom that they should have when they choose their life purposes. Attaining happiness is in the power to any of us and, as long as we do not infringe on the rights of the others, we are free to search for it wherever we want.

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